

Monday, 11 August 2025

Te Hui o Te Kaunihera ā-Rohe o Heretaunga
Hastings District Council
Commissioner Hearing

Kaupapataka

Decision

**Section 357A (1) (G) and (2) RMA - Objection to Decision, 613 Puketapu Road
(Tuck Childrens' Trust) (RMA20240415)**

Te Rā Hui:
Meeting date: **Monday, 11 August 2025**

Te Wā:
Time: **9.00am**

Te Wāhi:
Venue: **Council Chamber
Ground Floor
Civic Administration Building
Lyndon Road East
Hastings**

Te Hoapā:
Contact: **Democracy and Governance Services
P: 06 871 5000 | E: democracy@hdc.govt.nz**

Te Āpiha Matua:
Responsible
Officer: **Group Manager: Planning & Regulatory Services - John
O'Shaughnessy**

Te Rārangī Take
Order of Business

Decision from 11 August 2025 Hearing - Objection to Decision on resource consent, 613 Puketapu Road (Tuck Childrens' Trust) (RMA20240415)

DOCUMENT CIRCULATED FOR HEARING - COMPILED AS ONE DOCUMENT

Document 1 The covering administrative report **Pg 1**

Attachments:

- | | | | |
|---|--|------------------|------|
| 1 | Attachment 1 - RMA20240415 Objection Decision - Tuck Family Trust - Puketapu Rd(2) - Hearing held 11 August 2025 | RMA20240415#0042 | Pg 3 |
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Monday, 11 August 2025

Te Hui o Te Kaunihera ā-Rohe o Heretaunga
Hastings District Council: Commissioner Hearing

Item 2

Te Rārangi Take

Report to Commissioner Hearing

Nā:
From: Caitlyn Dine, Democracy & Governance Advisor

Te Take:
Subject: Decision from 11 August 2025 Hearing - Objection to Decision on
resource consent, 613 Puketapu Road (Tuck Childrens' Trust)
(RMA20240415)

1.0 Purpose and summary - *Te Kaupapa Me Te Whakarāpopototanga*

- 1.1 The purpose of this report is to enable the Decision from the hearing held on 11 August 2025 “Objection to Decision on resource consent, 613 Puketapu Road (Tuck Childrens' Trust) (RMA20240415)” to be put onto the website following the hearing.

Attachments:

- | | | |
|---|---|------------------|
| 1 | RMA20240415 Objection Decision - Tuck Family Trust - Puketapu Rd(2) - Hearing held 11 August 2025 | RMA20240415#0042 |
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DECISION FOLLOWING THE HEARING OF AN OBJECTION UNDER SECTIONS 357A(1)(g) AND (2) OF THE RESOURCE MANAGEMENT ACT 1991 (RMA)

Proposal

To subdivide land at 613 Puketapu Road, Puketapu, Hastings into 2 lots.

The objection is **UPHELD**, and resource consent is granted subject to conditions. The reasons are set out below.

Application Details

Application number:	RMA20240415
Applicant:	The trustees of the Tuck Children's Trust
Site address:	613 Puketapu Road, Puketapu, Hastings
Legal Description:	Lot 1 DP 26268
Site Area:	7.0560 ha
Relevant district plan and zoning:	Hastings District Plan (Operative 2024) – Plains Production Zone (PPZ)
Relevant district plan provisions:	Chapter 6.2 - PPZ - Rules PP24 and PP39 Chapter 6.2 - General Performance Standards and Terms – Rules 6.2.5D and 6.2.5J Chapter 30.1 – Subdivision – Rule SLD25
Application activity status:	Non-complying

Hearing Details

Hearing days:	11 August 2025
Independent Commissioner:	Kitt Littlejohn
Appearances:	<u>Trustees of the Tuck Children's Trust (Objector/Applicant):</u> Lara Blomfield - Legal Counsel Emma Tuck and Simon Tuck – for the objector/applicant Ian Milner – Soil and land use consultant Alison Francis - Planner <u>Hastings District Council:</u> Asher Davidson – Legal Counsel Kelly Smith – Planner Caleb Sutton – Consents Manager Christine Hilton and Caitlyn Dine – Hearings Advisers
Commissioners' site visit	11 August 2025
Hearing Closed:	25 August 2025

Introduction

1. This decision is made on behalf of the Hastings District Council (**Council**) by an Independent Hearing Commissioner.¹ It sets out findings and determinations made following a hearing of the objection by the Trustees of the Tuck Children's Trust (**Trust**) to the Council's decision to refuse consent to their application to subdivide the land at 613 Puketapu Road, Puketapu, Hastings into 2 lots, to create a second lot for the establishment of a new dwelling (**Application**).²
2. The Application was lodged in November 2024. The Council determined that it could be processed without public or limited notification but subsequently refused to grant consent under s 104B of the RMA. The Trust exercised its right of objection to that decision under s 357A(1)(g) and (2) of the RMA and requested that it be considered by an independent hearing commissioner under s 357AB.
3. The Trust's Objection to the Council's decision refusing consent was filed on or about 23 May 2025. It sought that the objection be upheld and that resource consent for the Application be granted.
4. I was delegated the task of considering the Objection on 25 June 2025 and oversaw the issuing of directions for the pre-exchange of reports and evidence over the month of July in anticipation of a hearing in early August.

Objection Jurisdiction

5. Consistent with all appeal processes under the RMA, an objection hearing is *de novo* and there is no presumption in favour of the consent authority's delegated decision that is the subject of the objection.
6. In considering an objection to refuse an application for a resource consent that was not notified, the decision maker may dismiss or uphold the objection in whole or in part (s 357D(1)).

Materials considered and hearing process

7. Consistent with that jurisdiction, I conducted a hearing of the objection to consider the positions of the Trust (as Applicant) and the Council (as consent authority).
8. Prior to the commencement of the hearing the following materials were provided to me and reviewed:
 - (a) A copy of the Trust's Objection, including a copy of the Application and the Council's decision refusing consent;
 - (b) A report on the Objection prepared under s 42A by Ms Kelly Smith, a consent planner;
 - (c) A legal memo from Ms Davidson dated 10 July 2025, addressed to Ms Smith addressing the relevance of personal circumstances to resource consent applications and the relevance of proposed Plan Change 6; and

¹ Kitt Littlejohn, appointed and acting under delegated authority under ss 34 and 34A of the RMA.

² A full description of the Application is set out in s 42A Report.

(d) Briefs of evidence in support of the application from the Trust.³

9. The s 42A report prepared by Ms Smith analysed all of the information received in relation to the Objection in a thorough and considered manner. In the s 42A report, Ms Smith remained of the view that the Application should not be approved and that the Objection should therefore be dismissed.
10. The s 42A report was taken "as read" at the hearing, as were the briefs of pre-exchanged evidence. Witnesses were given the opportunity to summarise and/or highlight aspects of their written briefs.
11. I conducted a visit to 613 Puketapu Road on the day I conducted the hearing, 11 August 2025.
12. At the conclusion of hearing evidence from the Trust, Ms Davidson and Ms Smith summarised their positions and provided responses or further comments on matters that had arisen during the hearing. They confirmed that in the event I considered the Objection should be upheld, the Council's preference was that I also then formally grant consent to the Application under the auspices of my delegation.
13. At the end of proceedings, I requested the parties to confer (on a without prejudice basis) and prepare a suite of conditions that could be imposed in the event I concluded that consent to the Application should be given. I received this material with a Joint Memorandum from the parties on 22 August 2025. Usefully, I was provided with an agreed set of conditions, and I am grateful for the parties' co-operation in this regard.

Matters agreed or not in dispute

14. A notable feature of the Objection and Application were the extent of matters that were agreed, or not in dispute, between the Council and the Trust by the end of the hearing. For the record, these were:
 - (a) The description of the site and its locality, the nature of the proposal for which consent is sought, the reasons for which consent is required under the Hastings District Plan, and the fact that the proposal is non-complying;
 - (b) That the proposal is unlikely to result in any more than minor adverse effects on the environment, in particular:
 - Screening from existing mature trees and the separation distance and limited visual connection between the proposed lifestyle lot and adjacent dwellings will ensure that effects on neighbouring sites, in terms of rural character and amenity, are less than minor.
 - The proposal represents a small proportion of the PPZ versatile land resource as a whole and consequently any adverse effects on the wider versatile land resource will be no more than minor.

³ Mr Simon Tuck, Ms Emma Tuck, Mr Ian Millner and Ms Alison Francis.

17. In the decision refusing the Application, Ms Smith, who was the author of the section 104 Planning Report⁵, identified the following Hastings District Plan provisions that she considered the proposal was contrary to, or inconsistent with, because it sought subdivision of land within the PPZ for a rural lifestyle purpose:

RRSO1 To promote the maintenance of the life-supporting capacity of the Hastings District's rural resources at sustainable levels.

RRSP1 Reflect the various characteristics and distribution of the rural resources to enable the sustainable management of these characteristics.

RRSP2 Provide for a wide range of activities to establish, which complement the resources of the rural area, provided that the sustainability of the natural and physical resources of the area is safeguarded.

RRSO2 – To enable the efficient and innovative use and development of rural resources while ensuring that adverse effects associated with activities are avoided, remedied, or mitigated.

RRSP4 – Rural land close to urban areas or on arterial or national traffic corridors will be managed to avoid sporadic and uncontrolled conversion to activities that will individually or cumulatively adversely affect the sustainability of the rural resource base and the efficiency of the road network.

OBJECTIVE PSMO1 - The land based productive potential and open nature of the Plains environment is retained.

POLICY PSMP1 – Require that the subdivision of land within the Plains Strategic Management Area shall be for the purpose of a land based productive use.

POLICY PSMP2 - Require that activities and buildings in the Plains environment be linked to land based production and are of a scale that is compatible with that environment.

POLICY PSMP3 - Require that activities and buildings in the Plains environment do not compromise the open nature and amenity arising from land based production.

POLICY PSMP5 - Establish clear and distinct urban boundaries to prevent incremental creep of urban activities into the Plains Production Zone.

OBJECTIVE PPO1 - To ensure that the versatile land across the Plains Production Zone is not fragmented or compromised by building and development.

POLICY PPP1 - Encourage the amalgamation of existing Plains Production Zone lots into larger land parcels.

⁵ Note, it is unclear from this document whether Ms Smith was the delegated decision maker or not. It is apparent that she prepared the full Planning Report addressing sections 95A, 95B and 104, and that she made the notification decision under delegated authority on 28 April 2025, but the section 104 decision provided to me is unsigned and undated.

POLICY PPP3 - Limit the number and scale of buildings (other than those covered by Policy PPP4) impacting on the versatile soils of the District.

POLICY PPP6 - Restrict the ability to create lifestyle sites within the Plains Production Zone to those from an existing non-complying site where the balance of the site is amalgamated with one or more adjoining sites to form a complying site.

POLICY PPP7 - Establish defined urban limits to prevent ad hoc urban development into the Plains Production Zone.

OBJECTIVE PPO2 - To provide for flexibility in options for the use of versatile land.

POLICY PPP11 - Require that any subdivision within the Plains Production Zone does not result in reducing the potential for versatile land to be used in a productive and sustainable manner.

OBJECTIVE PPO3 - To retain the rural character and amenity values of the Plains Production Zone.

POLICY PPP13 - Require that any new development or activity is consistent with the open and low scale nature that comprises the rural character and amenity of the Plains Production Zone.

SLDO1 - To enable subdivision of land that is consistent with each of the Objectives and Policies for the various SMA, Zones, Precincts, or District Wide Activities in the District Plan.

SLDO2 - To ensure that sites created by subdivision are physically suitable for a range of land use activities allowed by the relevant Section Rules of the District Plan.

SLDP1 - That standards for minimum and maximum site sizes be established for each SMA/Zone in the District.

OBJECTIVE LSO3 - The values that define the District's Rural and Coastal Landscape Character Areas are identified and maintained.

POLICY LSP12 - To identify, recognise, and maintain the District's Rural and Coastal Landscape Character Areas, where broad areas are highly valued for their cultural patterns of land use, including rural patterns, rather than their natural landscape values.

18. In her s42A report for the objection hearing, Ms Smith maintained her opinion on these matters.
19. In her evidence for the hearing, Ms Francis, for the Trust, agreed that the proposal was inconsistent with some of these objectives and policies, but differed from Ms Smith in that she considered that the productive potential of the land would not be compromised if consent was granted. Relying on Mr Millner's evidence, Ms Francis believes that the actual (as opposed to theoretical) productive potential will not change, because the new lot is a small parcel located between an existing residential area on the site (on one side) and a public cycle path and rural lifestyle sites on the other. Based on this evidence, Ms Blomfield submitted that if I accepted Mr Millner's evidence as to the sites "severely limited" productive potential, the proposal could

not be seen as inconsistent with the key objectives and policies in the Hastings District Plan requiring the productive potential of versatile land in the Heretaunga Plains to be retained.⁶

20. Mr Millner's evidence for the hearing was professionally prepared and well-considered. He is an expert on soil versatility and the productive potential of land. His evidence was both persuasive and unchallenged, and I accept it. It follows that I agree with Ms Blomfield's submission which results from accepting Mr Millner's evidence. However, accepting his evidence on these matters does not fully answer the inconsistencies the proposal still has with some of the relevant objectives and policies of the District Plan. Read as a whole, it is clear that the Trust's proposal for rural lifestyle development in the PPZ finds no support in the Hastings District Plan. The over-riding strategy for the PPZ is that this type of development is avoided.
21. I therefore accept that, based on a strict assessment of the activities proposed at this location against these provisions, Ms Smith concerns with the Application (and the Council's decision) are not unfounded.
22. However, on objection, I am entitled to take a different view in reliance on the evidence presented. In that regard, while I do not consider the Council's planning analysis to be wrong, I consider the Application can be approved for two main reasons. First, it exhibits clearly exceptional, if not unique, circumstances that taken together mitigate any concern that approving it will create an adverse precedent or undermine the integrity of the Hastings District Plan's approach to the PPZ. Second, approving it would be consistent with the sustainable management purpose of the RMA as encapsulated in section 5. I expand on these reasons below.

Precedent and Plan Integrity

23. The section 42A report and the legal submissions for the Trust referred me to a number of relevant decisions of the Environment Court on this issue, including specifically in relation to similar cases in the Hastings District involving the same zone.⁷ Although I am familiar with this area of resource management law and aware of the local cases cited, I have taken the time to review them all in light of the circumstances of this proposal.
24. Overall, I agree with Ms Blomfield's analysis that in each of the relevant cases the Court found that:⁸
 - (a) The specific proposal was contrary to the overarching intent of the District Plan's provisions to maintain the availability of land for productive use and prevent fragmentation of either rural or Plains land; and
 - (b) There were no distinguishing factors which took the particular proposal outside the generality of cases or, to put the matter another way, there would likely be further materially indistinguishable and equally clashing applications to follow.

⁶ Legal Submissions for the Trust, 11 August 2025, para 60.

⁷ *Endsleigh Cottages Ltd* ([2020] NZEnvC 64 (Endsleigh)); *Stone* ([2019] NZEnvC 175); *McHardy* ([2011] NZEnvC 339); *McKenna* ((2009) 15 ELRNZ 41(HC)).

⁸ Legal Submissions for the Trust, 11 August 2025, para 64.

25. The leading authority on the role of the principle of maintaining 'plan integrity', and planning precedent, is *Rodney District Council v Gould*.⁹ Relevant excerpts were included in Ms Blomfield's submissions and I do not repeat them here.
26. In reliance on that case, Ms Blomfield submitted that the proposal exhibited several unique or unusual circumstances that took it well outside the generality of cases with the effect that, if it were approved, the integrity of the District Plan would not be imperilled, and no precedent would be created.
27. On the evidence presented, I consider the following features of the proposal are unique or unusual, and make it exceptional and thus not readily capable of replication by other applicants wishing to undertake non-complying rural lifestyle subdivision in the PPZ:
- (a) The proposed lot is part of a cyclone-damaged site now dominated by recently deposited raw soils, rather than the LUC 3 soils depicted on LUC Capability Maps, and its versatility for soil-based production is thus severely compromised as a result;
 - (b) The site is an orphaned site without any physical connection to any other PPZ land. It is bounded by Puketapu Road to the north, a large and deep Council drain to the east, and public cycle paths located adjacent to the southern and western boundaries;
 - (c) The proposed site is on the western side of Puketapu Road and abuts an area of existing rural lifestyle development (all within the PPZ), with site sizes ranging from 0.4ha to 3.043 ha;
 - (d) The subdivision can be undertaken with no more than minor adverse effects on the environment.
28. Taken together, I am prepared to accept that these features of the Application mitigate the concerns that its approval as a non-complying activity will imperil the integrity of the Hastings District Plan PPZ, or create a precedent.

Part 2

29. Section 104 subjects the consideration of resource consent applications to Part 2. While case law is generally to the effect that reference back to Part 2 is only likely to be needed in cases of plan "invalidity, incomplete coverage or uncertainty"¹⁰, that decision makers may, in an appropriate case, refer back to Part 2 is also an established principle when dealing with applications under Part 6 of the RMA.¹¹
30. I consider this Application to be an appropriate case to refer to Part 2 because of its inconsistency with relevant provisions of the Hastings District Plan, but in circumstances where its effects on the environment are minor and the circumstances surrounding it are exceptional and compelling.

⁹ [2006] NZRMA 217, see paras [99], [100] and [102].

¹⁰ *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593

¹¹ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, at [47].

31. The evidence for the Trust from Simon Tuck and Emma Tuck describes the traumatic impact on the Tuck families' lives caused by a natural disaster – Cyclone Gabrielle. Of the many personal and financial impacts they have suffered, one of them is that the property they owned in Dartmoor Valley, which was also PPZ land, has been deemed to be Category 3 and uninhabitable. With few options available to them, they accepted a buy-out offer for that land and in doing so, relinquished their development rights. They have lived in the Puketapu community for over 30 years and wish to remain there. Allowing this proposal will enable them to do that.
32. In my view, the sustainable management purpose of the RMA will be promoted by allowing this subdivision, which will provide for the long association the Tuck family have with this area to be maintained. It will enable them to provide for their social, economic and cultural well-being, and for their health and safety, without offending any of the 'bottom-lines' in sections 5(2)(a), (b), and (c). Moreover, it will not dis-enable any other people, or the wider community, from being able to provide for their future well-being by keeping PPZ land and versatile soil undeveloped. The overall productive potential of the PPZ will not be diminished because of this proposal, and no versatile land will be lost from productive activity.
33. Consideration of the Application against Part 2 thus results in it finding support from those important provisions. I also find that this offsets its inconsistency with certain objectives and policies in the District Plan.

Outcome

34. Based on my findings in relation to the matters that were not in dispute, and following my analysis of and findings on the principal issue in contention, and my reference to Part 2 of the RMA, I find that the Application merits approval under section 104B.
35. Accordingly, I uphold the objection and grant consent to the Application, subject to the agreed conditions provided to me by the parties. A copy of the consent is included in **Appendix 1**.

Signed:



K R M Littlejohn
Independent Commissioner
11 September 2025

and site-specific report and the recommendations of a registered and professionally qualified geotechnical engineer experienced in soils engineering. This report should cover as a minimum, building siting and foundation design, storm water runoff, and the location of wastewater disposal systems.

Screening

The existing trees (or equivalent size/species) located along the north-west boundary shall be maintained to provide effective screening of any future dwelling and accessory buildings on the site from adjacent land to the north west , to the satisfaction of the Environmental Consents Manager or nominee, Hastings District Council.

Advice Note:

For the purposes of this condition, “maintenance” includes the replacement of any dangerous, dead, or dying plants, and the general preservation of the landscaping to a healthy standard, including irrigation if necessary.

Development Controls

Development on the site shall be limited to one primary residential building and accessory buildings. For the avoidance of doubt, no supplementary dwelling, commercial activity, or industrial activity shall be permitted to establish.

Reverse Sensitivity

This property is located in a productive rural area where agricultural management practices such as agrochemical spraying, use of farm machinery, the operation of bird scarers and other similar activities may occur.

Where landuse activities in the surrounding area are carried out in accordance with the relevant District Plan requirements, the property owner, or their successor in title shall not:

Bring any proceedings for damages, negligence, nuisance, trespass or interference arising from the use of that land; or

- Make nor lodge; nor
- Be party to; nor
- Finance nor contribute to the cost of;

Any application, proceeding or appeal (either pursuant to the Resource Management Act 1991 or otherwise) designed or intended to limit, prohibit or restrict the continuation of the operations of any rural activity on surrounding land, including without limitation any action to require the surrounding landowners/occupiers to modify the rural operations carried out on their land.

Consent Notices

10. That a Consent Notice pursuant to Section 221 of the Resource Management Act 1991 shall be registered against the record of title to be issued for proposed Lot 2 hereon. The notice shall be registered at the consent holders expense and shall read as follows:

A timber close boarded fence no higher than 1.8m shall be constructed along the road boundary from the vehicle crossing in the northern corner for a minimum distance of

170m along the road frontage. This fence is to be maintained in perpetuity and replaced when required.

