

In the matter of the Resource Management Act 1991 ("the RMA")
RC 2250414-RMACOM being an application by Nags Head Horse
Hotel Limited for subdivision and land use consent at Kerikeri
Inlet Road, Kerikeri.

Evidence of Kim Floyd Taylor and commentary on the arguments as to the legal position in relation to the rights of Access over C D J on the Application plan (as revised) and how that affects this Application, including the response to Counsel's opinion Appendix D of the S42A report

House keeping -

- i) We use the term "Applicant" throughout to cover any company which has been controlled by Mrs Lowndes, that has been the registered owner of the applicant land from time to time. As far as we can tell the first company being Good Move NZ Property Co Ltd but currently Nags Head Horse Hotel Ltd
- ii) Fenton is Mr and Mrs Fenton, prior title owners of the Houry and Applicant land
- iii) WK is Williams and King, the Applicant's planners
- iv) HW is Haigh Workman, the Applicant's engineers
- v). SL is Sellars Law, the Applicant's lawyers. MLL is Macdonald Lewis Law, Mrs Houry's lawyers before and at the beginning of this application. JD is Mr Dawson now representing Mrs Houry.
- vi) AC is the Applicant's Counsel, Mr Webb KC and we congratulate him on his recent appointment.
- vii) Private road lot allocations, which are private property rights, are "PRLAs"
- viii) When we use Mrs Houry, Mr Malcolm and Applicant, where the context requires, we mean the rights attached to their respective land holdings, rather than personal rights.
- ix) I use the word "dispute" in law as "a disagreement or conflict concerning a point of law or fact, or a conflict of legal views of the interests between parties." I imagine that is not disputed.
- x) "ROW dispute" as per our original submission, refers to the current unresolved dispute over the Right of Way C D J on DP167657 between the Applicant, Mr Malcolm and Mrs Houry particularly as to PRLAs
- xi) I use "We" and "I" interchangeably. Usually when I use "I" it is my opinion based on my own legal experience.
- xii) I qualified as a UK solicitor in 76, and have spent a professional lifetime in UK court advocacy. Back in the day, lawyers were often multidisciplinary and, coextensively, I have spent 30+ years in conveyancing. Easements, registered titles and private property rights in relation to property developments were my daily lot. The same common property law principles apply in New Zealand. I am not seeking to apply English law, but applying what appears to me to be the relevant NZ law.
- xiii) Whilst balancing those two disciplines was often testing, there have been many occasions when a working knowledge of both worlds has been of assistance in number of disputes, such as this, including in New Zealand.
- xiv) Although not technically required, as I am not qualified in NZ, I voluntarily adopt the same professional duties as apply to all the advocates and experts appearing in this process, to assist, and not seek to mislead the Committee. I have no client to whom I owe any potentially conflicting duty. If there is a client, I suppose it is the administration of justice.
- xv) I have used the word Committee although I now realise the application likely will be heard by Mr Watson as an Independent Commissioner sitting alone. No offence is intended.
- xvi) When I use the initials OJC I mean "objectively and justifiably characterised"
- xvii) We withdraw the formal Abuse of Process argument. It would be OJC appropriate on the facts, if this were this matter in the Environment Court or the High Court but we acknowledge that the availability of a formal Abuse of Process argument in the administrative context of an RC application is questionable. We maintain that this application is OJC an abuse of process, and all the other reasons from inherent defect onwards as to why this application should either be adjourned or refused.
- xviii) If the Committee should wonder why I have spent so much time on this? First, it is because being now retired, I can, and secondly it is for the reason that I became a lawyer in the first place - to prevent what appears to me to be a potential miscarriage of justice.

xix) There are 4 Appendices to this commentary

1 The email SL to WK 14th July 2025 - the SLC

2 An explanation and my submission on the correct interpretation of the Applicant's Right of Way over CDJ

3 Whether there is in fact a dispute here

4. The legal effect of the arguments advanced by Applicant's Counsel

xx) I hope my observations from the perspective of an advocate and conveyancer may be of assistance to the Committee.

1. In our submission at paragraph 15, I posed the question - "Why is the application for a private road access only, when as far back as 2000 (*by D587086.3*) the Applicant appeared to acknowledge that a public road would be required for any development of the Applicant land".

2. a) It is helpful to consider the likely background. There may be other possible explanations, which the Applicant is invited to share. However it appears to me, having considered the history, knowing all the parties over the last 30 years and all the documentation available to me, that the most likely reason for, and explanation of, the current dispute is as follows.

b) On the purchase of the bare applicant land with a view to development, the Applicant and its advisors have failed to ensure adequate rights of way over CDJ from its land to Inlet Road to achieve that purpose as explained in c) to h) below

c) The public road which appears to have been anticipated as long ago as 1995 to carry the subdivision traffic cannot be accommodated within the right of way easement C.871824.10, ".10", over C D and J because it has only lately been realised by the Applicant and its advisors that at the junction of the right of way with Inlet Road, the width of the right of way is only 13.64m and not the 20m necessary for a public road (although that 13.64 m was shown on the 1994 DP166944 at p6 of Mr Malcolm's Submission and the Applicant's title 1995 Plan DP167657 p360)

d) If there can be no public road access, the Applicant has to fall back on easement .10 to use the private road CDJ .

e) A "right of way" for the Applicant land obviously gives an indefeasible right of way for that land as-a-whole but to use that right of way for subdivision of that land, there will need to be in addition, PRLAs, which may either be expressed, or implied based on the words, their meaning, the surrounding context and the intention of the parties.

f) By its email of 14th July 2025 SL on behalf of the Applicant concedes in respect of the Applicant's right of way .10 (I refer to this as "the SLC") end of para 3 , middle of the page -

" No provision for allotment allocations was provided for in this Easement Certificate."

This admission is therefore that it has no PRLAs to support its application for a 4 lot subdivision, by way of a private road.

It was with my original submission in the emails attached but as it is one of the most important documents in this matter, I add it again as Appendix 1

g) For a full discussion on interpretation of .10 see Appendix 2, but I agree with the SLC that the interpretation of .10 is that it contains no PRLAs.

h) It appears to me that if the Applicant has insufficient PRLA's, legally, to support this Application for a 4 lot subdivision, it should fail .

3. None of the above is the fault of Mrs Houry nor Mr Malcolm, yet they have been subject to the Applicant's continuing attempts to obtain from them some of their PRLAs granted by C871824.6 (".6"), which have been legally established and properly registered on their respective titles since 1995.

4. The Applicant failed to secure an arrangement to obtain any of Mrs Houry's and Mr Malcolm's PRLAs in the tripartite, legally represented, ROW dispute which commenced around October 2024 and remained unresolved as at the date of the Application.

5. This application OJC is an attempt to appropriate PRLAs from Mrs Houry and Mr Malcolm.

6. Deleted

7. FNDC can only look at the legal PRLAs as currently contained in the respective property titles, and not, with respect, what the Applicant would like them to be.

8. a)The Applicant's suggestion that somehow it is entitled to 4 PRLAs and that Mrs Houry and Mr Malcolm's PRLAs may be relegated to only 1 each ("4/1/1") is not supported by its registered title and .10, and the effect of .6

8.b Further the Applicant's unilateral reduction of Mrs Houry's and Mr Malcolm's PRLAs guaranteed to them by .6 in their registered titles has, not at all surprisingly, produced strong objections from them.

9. They do not need to apply to the High Court under the PLA to maintain their argument because they already have , and are relying on, their PRLAs as per their registered titles.

10. If the Applicant wishes to seek to change the PRLAs as set out in the three registered titles, it would have to apply to High Court

11. Only the High Court could decide that the PRLAs in the existing registered titles provide the Applicant with 4 PRLAs and remove some of the PRLAs of Mrs Houry and Mr Malcolm. If anyone wishes to apply to the High Court to change the existing registered titles it is with respect the Applicant. As the SLC quite rightly agrees that the Applicant has no PRLAs, that looks potentially difficult.

12. As identified in our first email of 26th June 2025 this application is therefore inherently defective.

13. FNDC's Consideration of the application.

Upon receiving the application the first question the FNDC must ask itself .

Does the Applicant legally have the 4 PRLAs it claims ?

14.a The Application as we have noted is unusually silent on PRLAS and simply adopts 4/1/1 from the HW report but that only refers to "existing easements" with no explanation of why . The existing legal easements over CDJ from the legal titles attached to the Application are , for the Applicant .10, and for Houry/Malcolm .6 but no-one offers even a basic explanation of why or how the "existing easement" .10 may grant 4 PRLAs, let alone why the Houry/Malcolm PRLAs in .6 (which are all the PRLAs that exist up to the maximum (now 8)) may be reduced to 1 each.

14. b We have by email been asking WK and HW to explain 4/1/1 since 26th June and have had no reply. Our initial email included a copy of our submission so our objection to 4/1/1 is plain for them to see.

14 c. We have in late September referred them to The Environment Court Practice Note 2023 Code for Experts and the various obligations in 9.2 and 9.3 - which may be broadly summarised as having to provide an explanation of where they get the information (i.e 4/1/1) from, whether they have any uncertainty about that, why alternative views (ie ours) may not be supported and if they acknowledge any knowledge gaps.

14 d. We have had no reply. We would still like to hear their views on that, but cannot ask them at the hearing. Hopefully the Committee will be of the view that obtaining the answers to those 9.3 points, will be of assistance.

15. FNDC has the SLC, in the emails attached to our original submission which admits

"No provision for allotment allocations was provided for in this Easement Certificate" (ie .10, the Applicant's easement)

The Applicant's lawyer admits that it has no PRLAs to permit a subdivision which we agree is the correct interpretation of .10 given its context and intention . The detailed explanation of that is in Appendix 2

16. So the answer to the question in 15 appears to be - No, or at the very least there is insufficient certainty to be able to answer that question with a yes.

17. In my view that is the end of the matter , the Application gives no explanation of why it believes the Applicant legally has the 4 PRLAs it claims and the SLC admits it has none. The Application appears inherently defective and, with respect should be refused.

18. Our submission concentrated on the effect of .6 (because our focus was on the application's attempt to reduce the Houry/ Malcolm PRLAs to 1 each contrary to the provisions of .6) but in fact in my view the Applicant's problem is .10.

19. If the Applicant does not have any PRLAs, as per the SLC, no one would need to look at . 6 at all . .6 is only relevant if my view is wrong, the Applicant does indeed have a legal right to 4 PRLAS and the issue then becomes do the PRLA rights in .6 and .10 exceed the max possible for a private right of way. Our submission does that maths and I need not repeat it here . That would mean at least 11 lots with PRLAs and that could not be accommodated by way of a private road.

20. After the submissions, FNDC raised a S. 92 request on the ROW dispute and AC responds in a series of emails which become Appendix D to the S42A report .

21. FNDC did not refer those emails to us, nor to MLL , nor give us an opportunity to respond to AC's email arguments , despite AC's suggestion that if they wish to understand the dispute , they should refer back to me.

22. FNDC did not comply with the following provision of the RMA

S 92 (3B)- The consent authority must, as soon as is reasonably practicable after receiving the information or report, give written or electronic notice to every person who made a submission on the application that the information or report is available at the authority's office.

23. So the first we see of AC's opinion is in the S42A report . The S 42A report does not give any consideration as to what are actually the private property rights of the Applicant, Mrs Houry and Mr

Malcolm as contained in their legally registered titles , nor the submissions made by us, Mrs Houry and Mrs Malcolm.

Without the discussion that AC invites, the S42A report simply adopts one of AC's arguments " .6 cannot apply because it is not registered on the Applicant's title" (which as I explain below is factually incorrect as well as not being relevant)

With respect, that is OJC beyond staggering.

The Reporting planner has just done what even the High Court in my view could not do, (at least without a big fight with LINZ) which is grant the Applicant some PRLAs private property rights it admits it does not have , and not only remove from Mrs Houry and Mr Malcolm their legally registered private property rights, but then also hand them to the Applicant.

24. RESPONSE TO THE EMAILS OF COUNSEL - AC

I have explained for all the reasons set out above, why in my submission this application should be refused which covers the main points but to address the specific points made by AC , and I apologise if that necessitates some repetition. I have extracted and grouped the points below in red from his 3 emails in Appendix D of the S42A report. I adopt the same narrative style.

A) He denies the nature of dispute and /or does not understand the dispute -

"First, I am not clear about the nature of the dispute."

"I still do not understand what the "dispute" is. However, with respect, that is a matter for Mr Taylor to explain to you, not my client, but that is not a reason to hold up processing of this application."

" As noted in my earlier letters, I am also not clear about what the dispute is."

i) I note, and am particularly grateful to AC for his candour, but I can see that to admit there is any dispute here would be to admit there is uncertainty as to the Applicant's PRLA position generally, and as to .10 and .6 specifically . That uncertainty, in my submission, should prevent FNDC being satisfied that 4/1/1 is legally supported. Admitting that there is a dispute would be detrimental to the Applicant's position

ii) For evidence that there is a dispute, I refer to Appendix 3. To suggest that there is no, and can be no dispute, is, respectfully, untenable

iii) Whilst I disagree with most of his arguments, I can agree with his admission that he "does not understand the dispute".

iv) In my view this is a simple legal matter. FNDC needs to consider whether easement .10 grants the Applicant the 4 PRLAs it needs for a 4 lot subdivision over a private access road.

In my view you only need to read two documents to answer that definitively .

The SLC admits it does not, and you might have a look at .10 and see whether that could interpreted to include 4 PRLAs. In my view, supported I would say by LINZ , it cannot .

I have covered that in Appendix 2.

v) If AC admits he does not understand the dispute it may , again with respect, cast some doubt on the all points he argues.

vi) The fact that the Reporting Planner should adopt just one of Counsel's arguments, with the OJC staggering result explained above, shows the capacity of statements of Counsel and particularly senior Counsel (although at least a decade my legal junior) to mislead but I accept that arises from the misunderstandings which seem to be apparent.

B) The interpretation of C.10

" • The easement registered on my client's title (C871824.10) has no restrictions as to development of that land. "

See the SLC 2, and Appendix 2 as to my view on the proper interpretation of .10 .

.10 is restricted by the Applicant's admitted lack of PRLAS for a subdivision which is to be served by a private road. Respectfully, It seems to me, it cannot be argued from its context that .10 has "no restrictions"

C) .6 is not registered against my clients title.

"The easement referred to in the submissions (C871824.6) is not registered against my client's title."

"Given that Easement .6 is not registered on Record of Title 552855 (the land to be subdivided) the limitations imposed by that Easement are not relevant to my client."

i) This is the argument that ,with respect ,has so misled the Reporting Planner.

I hope that the general explanation of the considerations to be given by FNDC as above explains why this may not be relevant. The Applicant's principal, and principle, problem appears to me to be that on consideration of its own registered title and .10 it does not appear to have the PRLAS for its proposed 4 lot private access subdivisions as admitted in the SLC and that would be determinative in this case .

ii) Only if it can establish from its own title that it does have 4, will .6 be relevant. Then FNDC have to consider, how many other PRLAS belong to the surrounding land as established by the relevant registered titles. Whether or not .6 is registered on the Applicant's title is not in my view therefore relevant.

iii) You would not necessarily expect it be, and it need not be. It is not a benefit for, nor a burden over , the Applicant land. It is properly registered where it needs to be, on the Houry and Malcolm titles to guarantee the right of way for Malcolm over Houry land plus the agreed division of the all PRLAs that can exist from time to time between them. A prudent conveyancer acting for the Applicant in my view would always look at the servient title (now Houry title) of the .10 CDJ right of way, particularly if subdivision were expected, to see whether there are any coextensive easements over CDJ - exactly , exactly, because you would not want your client to be involved in a dispute over PRLAS, such as this.

iv) .6 registered in 1995, would have been clearly shown as .6 on the servient title in 2000, as it is now.

v) As a matter of fact .6 is also noted on the Applicant's title. It is in the legend to DP167657 in the "Proposed Easements" . If you work through the lots affected it is Mr Malcolm's easement over D J . It cannot on DP167657 be shown as ".6 " because (the plan being created before registration) the Surveyor preparing the Plan cannot know what certificate number will be allocated to that "Proposed Easement " upon registration of the plan , but it is there, whether it is spotted or not.

(It is only shown as "proposed" on DP167657 because the 1994 plan that creates it, DP166944 , has not yet been registered. They were registered simultaneously.)

vi) If the Proposed Easement was spotted in 2000, the prudent conveyancer would note it is on an old 1995 plan, wonder what had happened to it and be 99% certain that by 2000 it would be registered on the servient title. That would give an additional reason to look at the servient title. There it is .6

Because in my view the correct interpretation of .10 is that it has no PRLAs, that does not conflict with .6 which contains all the PRLAS up to the max of whatever it is at the time, then 5 now 8 .

vii) See also para iii a-d and particularly iii b) and Attachment 1 of Mr Malcolm's submission. It appears to show "Certificate of Title under Land Transfer Act 101B/256" dated the same day as the registration of .6 and .10 ie 31st July 1995 .6 appears to be registered against the Fenton pre subdivided title.

viii) AC purports to deal with Mr Malcolm's iia-d in his opinion as follows :-

Corrected & Revised Scheme Plan

[... not relevant to this point....]

This addresses Peter Malcolm's submission point (iii)(a), (c) and (d) – we apologise for this error.

ix) But with respect AC has omitted to comment on iii b which refers to Attachment 1, a particularly important document as it appears to show dated 31st July 1995 the whole of the Fenton land is subject to .6 which is another reason the argument made by AC may have difficulty.

x) Once Mr Malcolm's right of way is registered in 1995 , he does not have to keep an eye on all the subdivisions of the servient title thereafter and get .6 registered on all of those. He relies on his dominant registration at LINZ which will also have the corresponding servient entry on the servient Fenton (now

Houry) land . Any subsequent owner of one of the Fenton subdivisions relying on a right of way who does not check the servient title to that right of way, would in my view do so at their peril

With respect ,.6 is noted on the Applicant's title, and for all the reasons above this is not a relevant point

D) Simultaneous registration

I note in passing that Easement.6 and Easement.10 were both registered simultaneously on 31st July 1995 at 2.34pm, i.e., at the exact same date and time as survey plans DP 166944 and DP 167657 deposited.

i) Agreed, and as explained above in C , with the correct interpretation as per the SLC there is no problem with that

This signals both that the limitation differences were intentional

ii) Not sure what AC means by "limitation differences" . There are "intentional " differences in that .6 intentionally includes an apportionment of all possible PRLAs for a private road (limited to the max currently 8) between Houry and Malcolm land , but in my view the correct interpretation of .10 is, that it is different, intentionally , and that PRLAs are excluded ie limited to zero - See the SLC and Appendix 2.

iii) Because of the Fenton /Malcolm deal .10 could not exist before .6 , .10 is not shown or even contemplated on DP166944 which created .6 . Compare the reference to Mr Malcolm's right of way as a Proposed Easement in the legend to DP167657 which created .10.

iv) They can coexist (and LINZ seem happy with that) because :-

a) .6 apportions between Fenton(now Houry) land and Malcolm land all the PRLAS up to the max for the time being

b).10 apportions to Fenton (now owned by Houry) land and Fenton, (now owned by the Applicant land) in my view, none.

v) If .10 does indeed give an unrestricted and unfettered right to subdivide that is obviously something of a conundrum . On the one hand the max PRLAS are allocated in .6 and as well there is an unlimited number of extra PRLAs in .10 .

vi) They can coexist (theoretically only because of the actual history) even if .10 had been registered before .6, because .10 intentionally does not include any PRLAS, so .6 is free to apportion all the PRLAS as it wishes, which it does.

Respectfully the contemporaneous registration shows LINZ took the view that iv) is the appropriate interpretation of the position , v) creating something of a problem .

and, more importantly, that the limitations from Easement .6 did not exist on any earlier Title and certainly not before survey plan DP 167657 was deposited with Easement .10 registered on Record of Title 552855.

vi) I see the point being made, but the explanation is as in C above. Mr Malcolm's easement over DJ was created by DP166944 in 1994. It was referred to on DP167657 legend but could not there be shown as .6. .10 could not have existed without .6 because .6 was part of the deal with Malcolm to give Fenton enough hectareage to effect the subdivision which created for Fenton , who retained them for a number of years, the DP167657 lots.

See also Mr Malcolm's iii) b and Attachment 1 referenced above

With respect, this is not a material consideration

This also explains why Easement .6 was not shown as an existing easement on DP167657 (refer Malcolm Submission at(iii)(d)(Q1)).

vii) It does not need to be, and it was noted as a "Proposed Easement" - see C , but for the reasons explained above it cannot there have been referred to as .6. With respect , this is also not a material consideration.

E The High Court and the PLA

Even if the parts of the submissions referred to above do raise a legitimate dispute (denied) then such dispute is plainly outside the scope of matters relevant to determine this application for the reasons given in my 31 July letter.

Even if a legitimate dispute about my client's rights in respect of the RoW had been raised,

i) I think we can all agree by now, that there is a dispute. With respect, to maintain otherwise is untenable but this is a repetition of untenable point 1

there is no power under the RMA for the Council to resolve that dispute in the context of an application for subdivision consent.

ii) Respectfully, that misunderstands the situation . See the commentary at beginning . The Council are not being asked to do that . They are only being asked to do what they must do on every RMA application , which is to consider and give effect to the legally registered (meaning at LINZ) PRLA rights of the relevant titles.

iii) For the reasons explained above, in my view .10 has no PRLAs to support the Applicant's claim to be able to use CDJ for a 4 lot subdivision and, as per the SLC the Applicant has already properly admitted that

iv)The dispute over the interpretation of .10 is whether fetters and restricts, and therefore prevents any subdivision of the Applicant land where CD J remains a private road. Whether it does or not, the view may well have taken that it would not matter anyway because it was always expected that CD J would become a public road. The Applicant could have tried to negotiate with Fenton in 2000 to include some of Fenton's PRLAs but it seems the Applicant settled for tidying up the anticipated public right of way as per D587083.4.

vi) Contrast Mr Malcolm's wisdom in negotiating in .6 a 40% share of the max PRLAs that could from time to time exist in case a public road was for whatever reason not possible . He retains his 40%.

Mrs Houry retains her 60% (less the one granted to the Applicant being the land-as-a-whole right).

vii) Those are his and her guaranteed legally registered rights at LINZ and no one, neither the High Court (at least without a fight with LINZ) , nor the FNDC , nor the Applicant can take those away from them.

With respect - this misunderstands the situation

Such a dispute would be determined under the Property Law Act 2007 (PLA) and a separate application under the PLA (and outside the RMA regime) is required.

ix) As explained above Mrs Houry and Mr Malcolm do not need to do anything under the PLA . They rely on their existing legally registered PRLAs as determined from their registered titles. If the Applicant wants to challenge those rights it is for the Applicant to apply under the PLA if it wishes.

As you know, the Council's role under the RMA is to determine the application based on its assessment of effects and the planning provisions.

x) Yes agreed , but before FNDC can do that , they first have to be sure that the Applicant has the PRLAS legally to support a 4 lot subdivision over a private road which in my view it does not - per .10 and the SLC.

Any allegedRoW dispute under the PLA is not a matter that can therefore legitimately delay processing the application under the RMA.

I am also bound to advise that my initial view is therefore that most of Mr Malcolm's and Mr Taylor's submission are simply not relevant to the issues the Council must consider under the RMA

viii) Again ,with respect, that misunderstands the situation. I group all the above as a matter that is not a relevant point

28. I hope that having considered all the above, I may have been able to assist Counsel and that he may be able to reconsider his initial view.

29 We invite the Applicant to:-

- a) withdraw the application, or
- b) agree to adjourn the matter while it makes its application to the High Court under the PLA to seek to determine whether .10 grants 4 PRLAS over CDJ, contrary to the SLC which agrees it has none, or

- c) agree that the hearing on 22nd October be limited to the legal issues of whether the Applicant legally has 4 PRLAs to support its 4 lot subdivision application and if it can whether it can appropriate PRLAs from Mrs Houry and Mr Malcolm (essentially our Part A matters and those in this evidence and commentary).which will save the cost of the expert evidence as to the effects and environmental matters which would only be required if the Applicant can succeed on the Part A PRLA issues.

30 We take the view that it will not be necessary for us to add to our Part B submissions but we note our suggestion that there be a setback of 100 metres from the lake is supported by Ngati Rehia

31. Following the withdrawal of the formal Abuse of Process argument, we submit that the Application be :-

- a) refused as inherently defective because the Applicant does not have the legal right to the 4 PRLAs it needs for this proposed 4 lot subdivision and/or for all the other reasons set out above and in our earlier submission or
- b) that the Committee make such directions as it deems suitable in relation to the application as are fair, equitable and appropriate to do justice to the interests of all interested parties, having regard to their conduct in the course of this application.

32. As the parties are aware, we are unable to be at the hearing either in person or by remote means. I regret that this is all rather longer than it would have been had I been able to attend because I have tried to cover all possible angles and questions that may arise, but at least it can be read beforehand rather than me take up valuable hearing time. We rely on our submissions and this document and its appendices. No one will be attending in person on our behalf.

33. If any party, or the Committee wishes to raise by email any questions or queries before hand, or the Committee afterwards, please do not hesitate to contact me by email prior to Monday 20th October or after Thursday 24th October 2025

14th October 2025

Kim Taylor on behalf of self and Sally Taylor

kftuk50@gmail .com

SELLARS LAW

14 July 2025

Natalie Watson
Survey & Planning Solutions Limited
By email: nat@saps.co.nz

RE: NAGS HEAD HORSE HOTEL LIMITED: RC2250414 – KERIKERI INLET ROAD – LOT 2 DP 442820

1. As you know, we act for Nags Head Horse Hotel Limited (**Nags Head**).
2. You have asked us to comment upon the issues raised in the email from the owners of 431 Kerikeri Inlet Road, Kim and Sally Taylor, set out in their email to you dated 27 June 2025.
3. The simple point is that Nags Head's land comprised in Record of Title 552855 has the benefit of the right of way easement referred to in Easement Certificate C871824.10 dated 24 July 1995 (registered 31 July 1995). That Easement Certificate records rights of way in favour of Lot 2 on DP 167657 (NA101C/993) over the areas shown as C, D and J on Lot 3 on Deposited Plan 167657 (NA101C/994). Nag's Head's Record of Title 552855 which issued on 8 March 2013 is derived from Record of Title NA101C/993 and, as such, receives the benefit of this easement and is subject to the terms and conditions of it. No provision for allotment allocations was provided for in this Easement Certificate.
4. Mr and Mrs Taylor refer to the terms of Easement Certificate C871824.6, but in Nags Heads' view the restrictions and rights contained in that Easement Certificate are a matter as between the parties to that easement and do not affect or derogate from Nags Heads' rights under Easement Certificate C871824.10. Easement Certificate C871824.6 created amongst other things, a right of way in favour of Part Lot 2 on Deposited Plan 124059 and Lot 1 on Deposited Plan 166944, owned by Peter Malcolm over Part Lot 1 on Deposited Plan 107204 (Fenton). That right of way is shown as "Area C" on DP 166944. Area C on Deposited Plan 166944 is also referred to as area J on DP 167657. Easement Certificate C871824.6 provided in respect of Area C on DP 166944 that Mr Malcolm would be entitled to subdivide his property to a maximum of two allotments serviced by right of way C and that the owner of Part Lot 1 (Fenton) could subdivide Part Lot 1 to a maximum of three allotments serviced by Area C.
5. We trust that addresses Nags Head's position on the issue raised.

Yours faithfully



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APPENDIX 2

1. The Interpretation of .10

Reference to .10 at p 370 shows that it grants the Applicant land only “ A right of way ” No other words are included.. It is conceded above on behalf of the Applicant, as it must be, that the grant does not include any “lot allocations” - the SLC .

In marked contrast, .10 also includes “ a right of way “ for other land , in this case marked “A” on Deposited Plan 167657 (which relates to the Egret Way development) which specifically is

“ (a) While the Local Authority planning requirements restrict the number of rear allotments that may be served from the right of way the registered proprietor of the servient tenement will be entitled to subdivide his property serviced by the right of way marked "A" to a maximum of one-half of such entitlement and the registered proprietor of the dominant tenement will be entitled to subdivide his property serviced by the right of way marked "A" to a maximum of one half of such entitlement.”

2. So in .10 for “A”, serving the Egret Way development, PRLAs are specifically granted, but in the same document for C D J, there are none.

3. Note - We had assumed in our original submission that .10 was granted by Fenton to the first of the Applicant companies but we now see that .10 was granted by Fenton to Fenton on the subdivision in 1995 evidenced by DP167657. It was only later that the Applicant became involved (2000 as far as we can establish) and bought two of the lots deriving from the DP167657, Fenton to Fenton, 4 lot subdivision

4. We note that although DP166944 for .6 was dated 1994 and DP1676567 for .10 was dated later, in 1995, the memorandums of easement for .6 and .10 were both dated the same day 24th July 1995 (and then later registered at the same time on 31st July 1995)

5. So Fenton to Malcolm in .6 apportions all PRLAs to the max. for CDJ between them. Fenton knows there are no more PRLAs available over CDJ so Fenton to Fenton, same day, in .10, (whilst it specifically contains PRLAs for “A” relating to the Egret Way development) contains none for CD and J . The absence of PRLAs in .10 is obviously intentional and the grant in .10 for C D and J was fully intended to be “fettered” and “restricted” by the lack of those PRLAs . Even if they purported to grant themselves PRLAs in .10 they cannot have, because after .6 they do not now have any left to give - Nemo dat quod non habet.

6. Whilst NZ law appears quite willing to imply PRLAs in rights of way, in my view that should not apply here because:-

- a) whilst that may be appropriate looking at a single right of way, here we are considering two, which are contemporaneous
- b) looking only at .10 there is a strong contraindication against so implying from the words and the circumstances of .10 ie the difference between the grant for “A” (which included PRLAs) and “CDJ” which did not
- c) Looking at both .6 and .10 together is an even stronger contraindication (5 above)
- d) to imply PRLAs in .10 would require a contortion of logic . The max have been given in .6 and so where do any others come from. By definition of the max in .6 there are no more to imply in .10.
- e) If they are to implied how many?

7. Obviously Linz thought .6 and .10 could coexist and are logical , and in my view, that could only be the case if no PRLAs are implied in .10 . LINZ would be unlikely to approve the contortion of logic necessary to imply the PRLAs for CDJ

8. From the Fenton DP167657 subdivision, lot 2, which became the Applicant land, plus lot 3 which is now Mr Houry's land plus the Malcolm land was, and still is, approx 90ha . A private road in 1995 could only then serve 5 lots , even now only 8 , which was never going to be enough to meet the development aspirations of the parties. The intention must always have been for a public road, as is also demonstrated by the 20m nominal width for CDJ , much greater than a 5 or even 8 lot subdivision would require, then or now.

8. As referenced in our original submission and above, that was recognised by the 2000 arrangement with the Applicant in D 587086.3 when the terms of the right of way were tidied up (by the addition of Z and the dedication agreement) the better to accommodate the public road that everyone assumed would be necessary for subdivision of the Applicant land.

9. Whilst the SLC acknowledgement that .10 contains no PRLAS is appropriate, it does not mean that the Applicant land has no right of way at all .

10. The effect of .10 is that .10 must transfer one, and one only, of the (ex Fenton but now Houry PRLAs to the Applicant being access for the Applicant land as -a -whole ie undivided but as explained above, no PRLAs for a subdivision.

If there was to be any future subdivision of the Applicant land, everyone knew there would have to be a Public Road

11. In our submission the correct interpretation of .10 therefore is that the Applicant has no more than 1 PRLA, and is legally not entitled to the speculated 4 (or any other random number) which may be contained in the application.

12. Legally, to support the Applicant's speculated 4/1/1 the following rights or something similar would have to be implied into .10 . They are obviously not expressed.:-

- a) Notwithstanding that this right of way contains no lot allocations and was not intended to include any lot allocations, it does however include the right for the dominant tenement to disregard that and chose however many lot allocations as it wishes, without limit, and
- b) Also grants to the dominant tenement the right to demand that the High Court and LINZ cancel and/or appropriate to the dominant tenement the private property rights registered at LINZ of any other titles with coextensive rights of way including, for the avoidance of doubt, any PRLAs those titles may possess, and specifically those contained in .6

13. That would fix it, but It seems unlikely that any court would be keen to accept that .10 does imply that .

For a further discussion on the effect of AC's argument - see Appendix 4

APPENDIX 3 - Whether there is a dispute .

1. The actual extracts from AC's opinion are in red and blue :-

First, I am not clear about the nature of the dispute. Even if a legitimate dispute about my client's rights in respect of the RoW had been raised, there is no power under the RMA for the Council to resolve that dispute in the context of an application for subdivision consent. Such a dispute would be determined under the Property Law Act 2007 (PLA) and a separate application under the PLA (and outside the RMA consenting regime) is required. As you know, the Council's role under the RMA is to determine the application based on its assessment of effects and the planning provisions. Any alleged RoW dispute under the PLA is not a matter that can therefore legitimately delay processing the application under the RMA. -

As noted in my earlier letters, I am also not clear about what the dispute is. Certainly, while Mr Taylor has made some observations about Easements .6 and Easement .10, I still do not understand what the "dispute" is. However, with respect, that is a matter for Mr Taylor to explain to you, not my client, but that is not a reason to hold up processing of this application

However, with respect, that is a matter for Mr Taylor to explain to you, not my client, but that is not a reason to hold up processing of this application

2) We, respectfully, cannot agree with AC that there is no dispute over the interpretation of .10 and the effect of .6 and the PRLAs .

3) I have criticised the Applicant for not disclosing the existence of the dispute in the application, and the Applicant's lawyers SL for similarly not disclosing it in their email, which contains the SLC, of 14th July 2025 in the knowledge that there was an current RC application to which it relates .

4) Perhaps AC has also not been fully advised by the Applicant or SL of that dispute or the matters in 5 a-f which follow. However he is obviously aware of the objections which have arisen following this application. - 5 g-i

5. The evidence that there is a dispute over private property rights and PRLAs appears to be overwhelming and incontrovertible. It derives in approximate chronological order, from :-

- a) A series of emails as to lot allocations (and costs of right of way upgrades) from around October 2024 between the Applicant and her lawyer Sophie Waller of Sellars Law, Warkworth; Mr Malcolm and his lawyer Richard Ayton of Law North Kerikeri; and Mrs Houry and her lawyer Tim Lewis of Macdonald Lewis Law of Auckland .
- b) If the Applicant, its planners, lawyers and AC continue to argue that there is no dispute on PRLA, private property rights, they are requested to provide a copy of all that correspondence as early as possible to us, and the Committee, to enable the Committee to make its own assessment as to whether it reveals a private property rights dispute concerning .6, .10 and PRLAs.
- c) Our email of 26th June 2025, immediately upon receipt of the notification of application, to the Applicant's planners and engineers, and copied to FNDC, identifies that there is an inherent defect in the Application and explains how it derives from the documentation attached to the application with particular reference to .6 and .10. We asked in that email that WK and HW explain why they had speculated that the Applicant has 4 PRLAs, and, at least as importantly, why Mrs Houry and Mr Malcolm are permitted only 1 PRLA each. We still have no response as to that point. WK forwarded an email from Sellars Law on behalf of the Applicant dated 14th July 2025 (the SLC) making much the same points as AC, but for the same reasons we cannot agree them. As stated above that email also acknowledges, end of paragraph 3 is that "No provision for allotment allocations was provided for in this Easement Certificate." which we submit is fatal to the Applicant's claim to 4 allotment allocations/ PRLAs.
- d) Despite our requests no explanation of the derivation of the Applicant's 4/1/1 has been received. (and still has not)
- e) We note that our 26th June email and its reasoning was fully supported by an email from Macdonald Lewis Law ("MLL") dated 15th July 2025 to WK and copied to FNDC. MLL were involved in the dispute referred to in a) above which should be evidence enough, from one of

the qualified NZ lawyers involved in it, that there is, and has been for some while, a dispute over matters relating to the rights of way .6 and .10 and PRLAs

- f) Mr Malcolm's submission disputes that his PRLAs , which are private property rights, are as speculated in the application and objects to the Applicant seeking to appropriate his private property rights
- g) Mrs Houry's submission disputes that her PRLAs, private property rights , are as speculated in the application and objects to the Applicant seeking to appropriate her private property rights
- h) Our submission in rather more detail, explains why there is a dispute over the PRLAs as speculated in the application. and objects to the Applicant seeking to appropriate private property rights from those entitled as identified in f and g above
- i) Given that the effect of AC's legal argument see Appendix 4 is that the Applicant can, at will, appropriate all Mr Malcolm's and Mrs Houry's legally registered PRLAs, and rights of way it is with respect untenable to think , let alone argue, that there could be no dispute about that, whether he understands it or not.

APPENDIX 4 The legal effects which follow from AC's argument .

1. The effect of AC's argument is that the Applicant is able to cancel Mr Malcolm's and Mrs Houry's registered private property rights, and even their basic rights of way over CDJ at will. With respect that cannot be correct.

2 a) Consider - Mr Malcolm in 1994/1995 in good faith has helped Fenton get enough land to meet the 60Ha requirement for a 3 x20ha subdivision (in fact it becomes 4 lots on DP167657 because of the shared interests in the lake (Lot 4) . Part of that arrangement is the right of way grant (a private property right) to Mr Malcolm in what becomes .6 . In case there may be unforeseen problems with a public road, he is wise enough to have obtained additional "private property rights" ie the private road lot allocations "PRLAs" (40% of the max) .

b) .6 is registered on Malcolm's title and on the Fenton title pre subdivision , see Malcolm submission p 6, at iii b plus a copy of C871824.5 attachment 1 which shows that the Fenton land before subdivision does have .6 registered.

c) .6 can exist independently see DP166944 , but .10 can only exist following the arrangement which includes .6 and the land transfer to enable the subdivision DP 167657, which then results in the creation of .10.

d) What more can Mr Malcolm do to protect his undoubted right of way. It is registered on his title as the dominant tenement and on the relevant part of Fenton land, now of Mrs Houry's title, as the servient tenement . His private property rights PRLAS are legally protected at LINZ

e) He does not need to keep an eye on any and all further subdivisions of the Fenton land and apply to register this interest on their titles. ie when the Applicant land is sold to the Applicant . The registration against the relevant part of Houry land in 1995 is sufficient for all purposes and all persons to protect his interest .

3. Fenton continued to hold the 4 subdivided lots of DP167657 in their name for a number of years

4. The Applicant buys 2 of Fenton's lots. Lot 1 on DP167657 becomes the Egret Way development to the west which does not concern us here. Lot 2 is the Applicant land.

5. The Applicant's dilemma by contrast is entirely of its own making.

a) The Applicant and its advisors in 2000 or thereabouts appear to have failed to notice, or recognise the significance of, the fact that the public road idea was "width challenged", and so impossible .

b) The Applicant and its advisors also failed to understand .10 granted it no PRLAs

d) Despite those failings, AC's argument now is that he can imply in .10 effectively the rights in paragraphs 12 a and b of Appendix 2

e) The Application has chosen to claim 4 PRLAs and "allow" Malcolm and Houry only 1 each, but , if the Applicant were to make a non complying RC application for an 8 lot subdivision, what would then be the result?

f) On AC's argument, the Applicant could simply extinguish :-

- i) all of Malcolm's and Houry's properly registered PRLAs and
- ii) any right of way at all

g) Neither Houry nor Malcolm, in that scenario, now have any right to use the private right of way at all because the Applicant has seized all 8 PRLAS, the current max, and there are none left for them.

g) Mr Malcolm now has no PRLAs and no right of access over CDJ. Even Mrs Houry has no right of access over her own land to reach Inlet Road

h) .10 cannot in my view be interpreted as suggested in a way that does that.(See Appendix 2)

i) If AC's argument results in such a grossly unjust and inequitable result as summarised above ie to result in the annihilation of all the properly registered Houry and Malcolm property rights and PRLAs, we submit not only is it more than capable of challenge, but his argument would be extremely unlikely to be attractive to any tribunal

j) If the Committee adopts AC's argument, as has the S 42A report without it seems any consideration of the Houry and Malcolm claims, it would be support for AC's proposition that the Applicant can on a whim cancel the Houry and Malcolm PRLAS and in fact any private property right of way at all. see g above.

k) AC suggests in one of his emails " That said, if parties with access rights under Easement .6 wish to form the accessway to a higher standard now, then my client is willing to engage in discussions with them separately to discuss an equitable cost sharing arrangement for that purpose. However, that is not the current position, and no change is sought to the application. If this changes, we would of course notify you, but otherwise again, that cannot delay the processing of this subdivision application.

With respect, in this 8 lot subdivision scenario, they cannot because with all 8 PRLAs appropriated by the Applicant, and no public road physically possible, they cannot obtain any access at all see g above .

l)As he generously concedes, respectfully, he misunderstands this matter, and the inevitable consequences of his argument.