

MINUTES

TITLE: Environment and Planning Subcommittee
DATE: Wednesday 13 April 2011
TIME: 10.00 am
VENUE: Tasman Council Chamber, 189 Queen Street,
Richmond.

PRESENT: Crs S G Bryant (Chair), B W Ensor, C M Maling

IN ATTENDANCE: Consent Planner – Subdivision (P Webby), Principal
Resource Consents Advisor (J Butler), Executive Assistant
(V M Gribble)

1 APPLICATION NO RM100668 – CRESSWELL FARMS LTD, CENTRAL ROAD, LOWER MOUTERE

The application seeks to subdivide 13.77 hectares of land as follows:

- Lot 1 with an area of 5600 square metres containing an existing dwelling;
- Lots 2 and 3 amalgamated with an area of 12.811 hectares containing an existing dwelling and farm sheds;
- Riverbed to vest 4100 square metres

The land has a Rural 1 zoning according to the Tasman Resource Management Plan.

The application site is located at 297 Central Road, Lower Moutere, being legally described as Lot 1 DP 19654 (CT NL13A/666).

The Committee proceeded to hear the application, presentation of submissions and staff reports as detailed in the following report and decision.

The Committee reserved its decision.

RESOLUTION TO EXCLUDE THE PUBLIC

Moved Crs Ensor/Maling
EP11-04-29

THAT the public be excluded from the following parts of the proceedings of this meeting, namely:

Cresswell Farms Ltd

The general subject of the matter to be considered while the public is excluded, the reason for passing this resolution in relation to the matter, and the specific

grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for passing this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under Section 48(1) for the passing of this resolution
Cresswell Farms Ltd	Consideration of a planning application	A right of appeal lies to the Environment Court against the final decision of Council.

CARRIED

**Moved Crs Bryant/ Ensor
EP11-04-30**

THAT the open meeting be resumed and the business transacted during the time the public was excluded be adopted.

CARRIED

2. APPLICATION NO RM100668 – CRESSWELL FARMS LTD, CENTRAL ROAD, LOWER MOUTERE

**Moved Crs Ensor/Maling
EP11-04-31**

THAT pursuant to Section 104B of the Resource Management Act, the Committee GRANTS consent to CRESSWELL FARMS LTD as detailed in the following report and decision.

CARRIED

TASMAN DISTRICT COUNCIL

Report and Decision of the Tasman District Council through its Hearings Committee

Meeting held in the Tasman Room, Richmond on 13 April 2011

Site visit undertaken on 13 April 2011

Hearing closed on 15 April 2011

A Hearings Committee (“the Committee”) of the Tasman District Council (“the Council”) was convened to hear the application lodged by **Cresswell Farms Ltd** (“the Applicant”), to subdivide 13.77 hectares of land as follows: Lot 1 with an area of 5600 square metres containing an existing dwelling; Lot 2 and 3 amalgamated with an area of 12.811 hectares containing an existing dwelling and farm sheds; and riverbed to vest. The application, made in accordance with the Resource Management Act 1991 (“the Act”), was lodged with the Council and referenced as RM100668.

HEARING COMMITTEE: Cr Stuart Bryant, Chairperson
Cr Brian Ensor
Cr Kit Maling

APPLICANT: Mr Nigel McFadden (Counsel for applicant)

CONSENT AUTHORITY: **Tasman District Council**
Ms Pauline Webby (Consents Planner, Subdivisions)

SUBMITTERS: No submitters were in attendance at the hearing

IN ATTENDANCE: Mr Jeremy Butler (Principal Resource Consents Adviser) -
Assisting the Committee
Mrs Valerie Gribble (Committee Secretary)

1. SUMMARY

The Committee has **GRANTED** a resource consent to subdivide land on Central Road, Lower Moutere, subject to conditions.

2. DESCRIPTION OF THE PROPOSED ACTIVITY

The applicant has applied for subdivision consent to create a 5600 square metre allotment (Lot 1) containing an existing, approximately 80 year old dwelling and its residential curtilage area leaving a balance area of 12.811 hectares (Lots 2 and 3) of Rural 1 land containing an existing 30 year old dwelling and farm accessory buildings. Both dwellings have existing access points from Central Road.

It is proposed that Lot 4 would vest with Crown as river bed. The water course within Lot 4 is known locally as "Blue Creek".

The proposed scheme plan is appended to this report as Plan A.

A prominent feature of the application is a volunteered condition of consent to establish a Queen Elizabeth II Trust covenant (QEII covenant) over Lot 3 which contains a significant stand of lowland kanuka forest.

The application site is legally described as Lot 1 Deposited Plan 19654, comprised in CT NL 13A/666.

3. TASMAN RESOURCE MANAGEMENT PLAN ("TRMP") ZONING, AREAS AND RULE(S) AFFECTED

According to the TRMP the following apply to the subject property:

Zoning: Rural 1
Area(s): Nil

The proposed activity is a Discretionary Activity under Rule 16.3.5.2 as Lot 1 of the subdivision application RM100668 has an area of 5600 square metres which is less than the minimum area of 12 hectares specified in the controlled activity rule 16.3.5.1.

4. NOTIFICATION AND SUBMISSIONS RECEIVED

Written approvals were received from:

- E S Inwood
- B J Page
- B P Wratten Family Trust
- J and T J Greenhough and K L Bisley

We acknowledge that, Pursuant to Section 104(3)(a)(ii) of the Act, we must not have any regard to any effect on these parties.

The application(s) was notified on 15 January 2011 pursuant to Section 93 of the Act. A total of two submissions were received. The following is a summary of the written submissions received and the main issues raised:

Submitter	Reasons
Nelson/Tasman Forest & Bird protection Society	Provided no precedent effect is created for subdivision of Rural 1 land, the protection of the vegetation in the proposed covenant area and the vesting of river bed will provide benefits for wildlife habitat. This submission was in support of the application.
NZ Fire Service Commission	Required water supply for firefighting purposes to be installed in accordance with SNZ PAS 4509:2008 for the dwellings on both allotments. This submission was neutral.

5. PROCEDURAL MATTERS

There were no procedural matters that required consideration or a ruling.

6. EVIDENCE HEARD

We heard evidence from the applicant and the Council's reporting officer. The following is a summary of the evidence heard at the hearing.

6.1 Applicant's Evidence

Mr McFadden introduced the application and said that the intention is to create a separate title for an 80 year old dwelling. He said that this will allow for the wellbeing of both the applicant and the tenant of the building. He said it will also enable a kanuka bush block to be covenanted with the QEII Trust, and the bed of Blue Creek to be vested in the Crown.

Mr McFadden said that this will give effect to the relevant matters of national importance specified in the Act.

Further, he said that there are no adverse effects in any way as the house is existing and authorised, there are no submissions in opposition, provision of public space is provided and significant vegetation is protected.

Mr McFadden seemed to agree that, strictly speaking, the proposal is the fragmentation of rural land. However, he said that the land is not involved in productive food producing terms. He said that the area is very small and the dwelling is part of the character and environment.

Mr McFadden said that we are entitled to consider the positive effects. He said environmental compensation is a concept that has been recognised.

Regarding precedent, Mr McFadden emphasised that cases must be considered on a case by case basis with the circumstances of each being taken into account. He said that the circumstances that set it aside from the generality of cases are: an existing house; provision for matters of national importance; provision for Section 7 matters; protection of kanuka bush block; accordance with policies which enable subdivision to protect significant natural values.

He emphasised that it is not correct to look at individual aspects of the application (such as a perceived negative precedent of subdividing Rural 1 land) when making a decision but that the entire package must be considered. That is, the circumstances of the case must be considered.

Mr McFadden confirmed that the applicant had no concerns with the recommended conditions.

Cr Ensor noted that the benefit from a QEII covenant can be obtained without a subdivision. Mr McFadden said that the matters cannot be considered in isolation. The landowner could protect the kanuka or cut it down. Protection is being offered as a package with the subdivision.

Cr Maling asked where the public access to Blue Creek would be. Mr McFadden said that it is his understanding that people go down there now. He said that this is a part of a chain of vesting in the Crown and over time all the bits will link up and probably get out to Central Road.

Cr Maling noted that there was only a 5 metre separation between two sheds whereas 10 metres is needed to get 5 metre setbacks on both sides of the proposed boundary.

Cr Bryant asked how wide proposed Lot 4 is. He noted the creek only appears to be 5 metres wide and was concerned that public access along the side of the stream would not be enabled.

6.2 Council's Reporting Officer's Report and Evidence

Ms Webby confirmed that her recommendation was neutral. She expressed concern that a second dwelling that is surplus to its owners' needs should be reason for a subdivision. Further, she said that it was her assessment that the presence of the second dwelling on the property that is surplus to the applicant's needs should not be a reason for approving the subdivision.

Ms Webby recognised that a QEII Trust covenant offers more protection than what a normal covenant would offer and, on balance, she concurred with Mr McFadden's assessment.

Regarding the value of Blue Creek Ms Webby said that it is important that linkages and walkways are secured for the long term as and when the opportunity arises. She said that the applicant may wish to guarantee that the width of proposed Lot 4 is wider on survey to ensure there is a viable public access corridor along the bank.

Cr Ensor asked what the existing protection for the native forest is under the TRMP. Mr Butler advised the panel that 0.2 hectares could be harvested every three years.

6.3 Applicant's Right of Reply

Mr McFadden advised the proposed width of Lot 4 is approximately 8 metres and paragraph 2.3 says the stream flow width is 3 to 4 metres, therefore ample width should be available for walking access. He said that the Council should want the land because the benefits are realised without any cost. He said that Blue Creek fits into an overall plan as it adjoins other sections of creek that public access is already provided for.

However, Mr McFadden considered that if the land is to be vested in the Crown, it would be inappropriate for us to require fencing as a condition of consent.

7. PRINCIPAL ISSUES AND OUR MAIN FINDINGS

The principal issues that were in contention and our main findings on these issues are:

a) **What effects (both adverse and positive) will result from the proposed subdivision?**

In her Section 42A report Ms Webby presented a very good summary of the effects that may or will result from this development. In general we agree with and adopt her assessment.

Lot 1 is the only portion of land to be subdivided off that contains potential productive values and we agree with Ms Webby that much of it has already been lost to development by the legal existence of the old residential dwelling and its curtilage area. Further, the small remainder of the 5600 square

metres is separated from the main body of the land by a drain, substantial trees and a terrace escarpment.

We also agree with all parties that the proposal will not change the amenity or rural character since the old residential dwelling is existing and has been for a long time.

Again, since the second residential activity is legally authorised, and has been for many years, there is no increase in reverse sensitivity effects by granting the consent. Put another way, there is no greater likelihood that surrounding landowners and farms will be constrained or affected to a greater degree than currently as the nature of the residential activity will not change.

There is a significant positive effect that has been volunteered by the applicant. We consider the protection of the "tall kanuka forest" to be of significant value given its evident rareness in this lowland setting. An additional positive effect is the setting aside of a section of Blue Creek and its margins¹. This will create positive future opportunities for walking linkages and water quality improvements.

b) To what extent would granting of the application create an adverse precedent for further future subdivision of rural land where two houses exist on a title?

We are satisfied that there is one significant circumstance of this case which means that a precedent is not set. We agree with Mr McFadden that looking at the circumstances of a case is essential in determining the extent to which a decision could be relied upon by another future applicant looking for the same result.

The covenanting of a substantial area of lowland kanuka forest that has been described by Mr North as being significant² is an important consideration that is unlikely to be often repeated in other subdivision applications that may come before the Council. In the event that such a circumstance was part of a future application we would expect that it be given its due weighting at that time.

8. RELEVANT STATUTORY PROVISIONS

8.1 Policy Statements and Plan Provisions

In considering this application, we have had regard to the matters outlined in Section 104 of the Act. In particular, we have had regard to the relevant provisions of the following planning documents:

¹ There is some uncertainty about the legality of vesting riverbed in the Crown without the Crown's approval. It does not appear that this approval has been sought nor obtained in this case. Therefore, a more legally robust method is to identify the bed of Blue Creek (bank to bank) as "hydro" on the survey plan deposited for the purposes of Section 223 of the Act. This approach has been agreed upon with the applicant's surveyor. Establishment of a narrow esplanade strip either side of the hydro parcel to achieve the public access outcomes that were originally provided by the proposed vesting is also appropriate.

² Letter from Mr Philip Lissaman to Ms Jane Hilson dated 1 September 2010.

- a) Tasman Regional Policy Statement (TRPS); and
- b) the Tasman Resource Management Plan (TRMP).

With respect to the TRMP we have had particular regard to the objectives, policies and other provisions of the relevant chapters:

Chapter 5 - Site Amenity Effects;
Chapter 7 - Rural Environment Effects;
Chapter 8 - Margins of Rivers, Lakes, Wetlands and the Coast;
Chapter 10 - Significant Natural Values and Cultural Heritage; and
Chapter 14 - Reserves and Open Space.

8.2 Part 2 Matters

In considering this application, we have taken into account the relevant principles outlined in Sections 6, 7 and 8 of the Act, as well as the overall purpose of the Act as presented in Section 5.

9. DECISION

Pursuant to Section 104B of the Act, we **GRANT** consent, subject to conditions.

10. REASONS FOR THE DECISION

Effects on the Environment

We are satisfied that the positive effect of the covenant on the kanuka forest and setting aside of Blue Creek as hydro with an esplanade strip on the true left bank for public access would outweigh the adverse effects which we consider to be the fragmentation of rural land by subdivision and the slight loss of productive land from the parent title.

Objectives and Policies of the TRMP

Amenity and Rural Character

The following objectives and policies relate to the amenity values of the site. We are satisfied that these provisions will not be offended by the proposed subdivision as the old residential dwelling and the residential activity exists currently.

Objective 5.1.2 *“Avoidance, remedying or mitigation of adverse effects from the use of land on the use and enjoyment of other land and on the qualities of natural and physical resources.”*

Policy 5.1.3.1 *“To ensure that any adverse effects of subdivision and development on site amenity, natural and built heritage and landscape values, and contamination and natural hazard risks are avoided, remedied, or mitigated.”*

Objective 5.2.2 *“Maintenance and enhancement of the amenity values on site and within communities throughout the District.”*

Policy 5.2.3.1 *“To maintain privacy in residential properties, and for rural dwelling sites.”*

Policy 5.2.3.6 *“To maintain and enhance natural and heritage features on individual sites.”*

Rural Land and Productive Values

The following relevant objective and policies seek protection of the rural land resource from fragmentation and discourage alienation of land from use for soil-based production purposes. Policy 7.1.3.3 also discourages activities which may cause cumulative effects on the rural land resource.

These provisions are important and prominent as they protect against the ad hoc, unplanned and uncontrolled subdivision and fragmentation of the rural land resource. We agree with Ms Webby that the proposed subdivision is **not** consistent with these objectives and policies. It has the effect of fragmenting rural land.

Objective 7.1.2 *“Avoid the loss of potential for all land of existing and potential productive value to meet the needs of future generations, particularly land of high productive value.”*

Policy 7.1.3.1 *“To avoid, remedy or mitigate the adverse effects of subdivision of rural land, particularly land of high productive value.”*

Policy 7.1.3.2 *“To avoid, remedy or mitigate the effects of activities which reduce the area of land available for soil-based production purposes in rural areas.”*

Policy 7.1.3.3 *“To avoid, remedy or mitigate adverse actual, potential, and cumulative effects on the rural land resource.”*

Policy 7.1.3.4 *“To require land parcels upon subdivision to be of a size and shape that retains the land’s productive potential, having regard to the actual and potential productive values, the versatility of the land, ecosystem values, the management of cross-boundary effects, access, and the availability of servicing.”*

Protection of Significant Natural Values

The following objectives and policies reflect an intention in the TRMP to protect habitats of significant value. We consider that the proposed subdivision will give effect to these provisions.

Objective 7.2.2 *“Provision of opportunities to use rural land for activities other than soil-based production, including papakainga, tourist services, rural residential and rural industrial activities in restricted locations, while avoiding the loss of land of high productive value.”*

Policy 7.2.3.4 *“To enable the subdivision of land or amalgamation of land parcels for the preservation of:*

(a) *significant natural values, including natural character, features, landscape, habitats and ecosystems;*
...

Objective 10.1.2 *“Protection and enhancement of indigenous biological diversity and integrity of terrestrial, freshwater and coastal ecosystems, communities and species.”*

Policy 10.1.3.1 *“To recognise and protect indigenous vegetation and habitats and individual trees which are of significant scientific, wildlife and botanical value assessed according to criteria in Schedules 10B and 10C.”*

Policy 10.3.3.2 *“To provide opportunities in association with subdivisions to create special purpose allotments that secure protection of heritage, specimen trees, special habitats or biological corridors.”*

Objective 14.3.2 *“The conservation of those areas in the District which have significant natural and scientific values such as landform, ecosystems, natural character and heritage values.”*

Policy 14.3.3.1 *“To identify and protect areas of conservation value by incorporating them into land with a protective status.”*

Margins of Rivers and Public Access

The following provisions support the provision of public access to and along water bodies. Initially we questioned the value of providing for public access along Blue Creek, however we understand that there are many other public access linkages that have already been secured in the immediate area and therefore proposed access along the Creek will not exist in isolation. We also consider that this property is in a very central location between Central Road, Edwards Road and the Moutere Highway, all of which are main thoroughfares through the Moutere Valley lowlands.

We consider that the subdivision will give effect to these provisions.

Objective 8.1.2 *“The maintenance and enhancement of public access to and along the margins of lakes, rivers, wetlands and the coast, which are of recreational value to the public.”*

Policy 8.1.3.1 *“To maintain and enhance public access to and along the margins of water bodies and the coast while avoiding, remedying or mitigating adverse effects on other resources or values, including: indigenous vegetation and habitat; public health, safety, security and infrastructure; cultural values; and use of adjoining private land.”*

Policy 8.1.3.4 *“To set aside or create an esplanade reserve, esplanade strip or access strip at the time of subdivision of land adjoining water bodies or the coastal marine area, where there is a priority for public access.”*

Policy 14.1.3.7 *“To identify, acquire, and manage land, including esplanade reserves and road reserves, to facilitate public access to water bodies and the coast.”*

Other Matters

We made the decision to grant this consent because we are satisfied that no adverse precedent would result. We consider that a volunteered covenant on the kanuka forest, showing the bed of Blue Creek as a hydro parcel and establishing an esplanade strip on the true left bank of the hydro parcel will result in considerable positive effects resulting from the subdivision.

We have balanced these positive effects against the widely perceived risk that any subdivision of rural land will create a precedent and that others will follow. In many cases this is a justifiable fear.

If the present application had come before us without the volunteered QEII covenant on the kanuka forest and without the proposed vesting of Blue Creek³ we are in no doubt that we would have declined the consent. This would have been on the basis that there was nothing to set the application apart from, in Mr McFadden’s words, the generality of other consents that may come before us. Doubtless, there are many rural properties in existence which, through historical circumstances, have two or more dwellings. By granting such a consent, in the absence of the covenant and the creation of a hydro parcel and public access, we would certainly consider that unacceptable fragmentation of rural land would result and the integrity of the Rural 1 provisions of the TRMP would be compromised.

As a result of this application, fragmentation is certainly occurring; and we record our chagrin and disquiet about this. However, we recognise that this fact cannot be looked at in isolation from the covenant and the changes to Blue Creek. All matters must be considered as a package and we find that the covenant on the significant forest and the creek becoming public domain with associated public access outweighs the fragmentation of rural land and also precludes the establishment of a precedent of granting subdivision consents where multiple dwellings exist.

We consider this approach to be consistent with that taken by Council decision-makers in deciding upon other rural subdivision applications where such circumstances have been either absent or minor. In those cases consent has generally be declined to avoid fragmentation of the rural land resource and to uphold the integrity of the TRMP.

Purpose and Principles of the Act

We consider the following to be the relevant matters of national importance as specified in Section 6 of the Act:

³ Note that Blue Creek is no longer to be vested, but shown on the Survey Plan as a hydro parcel along with narrow esplanade strips.

- Section 6(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
- Section 6(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers.

We consider that the subdivision proposed will give effect to those matters of national importance.

We have also had particular regard to the other matters listed below:

- Section 7(b) the efficient use and development of natural and physical resources.
- Section 7(d) intrinsic values of ecosystems.
- Section 7(f) maintenance and enhancement of the quality of the environment.
- Section 7(g) any finite characteristics of natural and physical resources

The subdivision of rural land is not an efficient use of resources and we are conscious of the finite characteristics of the rural land resource.

Adopting a broad overall judgement approach to the purpose of the Act, we are satisfied that the proposal is consistent with Part 2 and achieves sustainable management of natural and physical resources as set out in Section 5 of the Act.

As stated above, this overall consistency with Section 5 is principally swayed by the covenanting of the significant vegetation and, to a slightly lesser extent, by the benefits for public access along and into Blue Creek. We are satisfied that, given these circumstances, there will be no adverse precedent set for the subdivision - and thereby fragmentation - of rural land where two existing dwellings exist.

11. COMMENTARY ON CONDITIONS OF CONSENT

Several of the conditions of this consent are pivotal to the decision to grant the consent. In particular these are Conditions 2, 7 and 8. Any future analysis of the reasons for granting this rural subdivision should have due regard to the circumstantial importance of these conditions.

We have decided to impose a condition that requires fencing between the remaining farm property (Lot 2) and the bed of Blue Creek. We consider that as part of the commitment to relinquishing ownership of the bed it is also incumbent on the consent holder to exclude stock from the stream. We see this as a reasonable requirement to achieve positive outcomes from the subdivision that support the provisions and outcomes sought by the TRMP.

Finally, in the advice notes of the consent document we have brought two matters of non-compliance to the attention of the consent holder. These relate to a consequential breach of the TRMP rules by the creation of a property boundary between two existing buildings, and to the illegal position of the offal pit close to Blue Creek. Both matters will need to be resolved, but the latter as a matter of

urgency as it is likely to be having adverse effects on the water quality of Blue Creek.

12. LAPSING OF CONSENT(S)

Section 125(2) of the Act makes particular provision for the lapsing of subdivision consents. This consent is given effect to when a Survey Plan is submitted to the Council for the subdivision under Section 223 of the Act. Once the Survey Plan has been approved by the Council under Section 223 of the Act, the consent lapses three years thereafter unless it has been deposited with the District Land Registrar as outlined in Section 224 of the Act.

Issued this 10th day of May 2011



Stuart Bryant
Chair of Hearings Committee

CONFIRMED MINUTES



RESOURCE CONSENT

RESOURCE CONSENT NUMBER: RM100668

Pursuant to Section 104B of the Resource Management Act 1991 (“the Act”), the Tasman District Council (“the Council”) hereby grants resource consent to:

Cresswell Farms Limited
(hereinafter referred to as “the Consent Holder”)

ACTIVITY AUTHORISED BY THIS CONSENT:

To subdivide 13.77 hectares of land as follows:

- Lot 1 with an area of 5600 square metres containing an existing dwelling.
- Lot 2 and 3 amalgamated with an area of 12.811 hectares containing an existing dwelling and farm sheds.
- Riverbed, 4100 square metres, to show on the Survey Plan as “hydro”.

LOCATION DETAILS:

Address of property: 297 Central Road, Lower Moutere
Legal description: Lot 1 DP 19654
Certificate of title: NL13A/666
Valuation number: 1928034200
Easting and Northing: 2508259E 6004521N

Pursuant to Section 108 of the Act, this consent is issued subject to the following conditions:

CONDITIONS

General

1. The subdivision shall be undertaken in accordance with the information submitted with the application and in particular with the plan prepared by Planscapes (NZ) Ltd titled, “*Lots 1 to 4 being proposed subdivision of lot 1 DP19654*”, Job no 0318 dated June 2010 and attached to this consent as Plan A. If there is conflict between the information submitted with the consent application and any conditions of this consent, then the conditions of this consent shall prevail.

Blue Creek

2. The survey plan which is submitted for the purposes of Section 223 of the Act shall show as “hydro” that part of the bed and inner banks of the watercourse referred to as Blue Creek and shown in the scheme plan as Lot 4.
3. An esplanade strip 3 metres wide shall be created over the land in Lot 2 adjoining Blue Creek. An esplanade strip shall also be created on any consequential title that is created outside of the hydro parcel on the true right bank of Blue Creek (i.e. between the hydro parcel and the existing title boundary). The purpose of the strip(s) is to enable public access to and along Blue Creek. All the prohibitions of Clause 2 of the Tenth Schedule apply to the strip(s), except for Clause 2(e) to allow dog walking and Clause 2(f) to allow for bicycles. There is no provision for fencing (Clause 3) or closure (Clause 7).

The survey plan submitted to Council under Section 223 shall show a 3 metre wide esplanade strip on Lot 2 adjoining Blue Creek and, where appropriate, an esplanade strip covering any allotment(s) formed on the true right bank of Blue Creek.

Advice Note:

The applicant originally volunteered that Lot 4, as it was shown on the scheme plan with the application, would be vested in the Crown. This was found to be unworkable due to limitations in the Act and has been superseded by the showing of the bed of Blue Creek as “hydro” and the creation of a narrow esplanade strip adjoining true left bank. This solution has been agreed with the applicant’s surveyor. This achieves the same outcome as was volunteered by the applicant (public access was to be provided on the true left bank of the creek) and therefore no compensation is payable for the esplanade strip.

Fencing of Blue Creek

4. The consent holder shall permanently fence the edge of the “hydro” parcel on the bank of Blue Creek so that stock are excluded from the bed of Blue Creek.

Advice Note:

It is acknowledged that this fencing will cause the esplanade strip to be separated from the bed of Blue Creek. However, public access is not practicable at this time and value is to be gained from excluding the stock from the waterbody. It may be that in the future when public access along the stream is more practicable the need for the fence or the location of the fence can be reconsidered.

Easements

5. Easements shall be created over any services located outside the boundaries of the allotments that they serve as easements in gross to the appropriate authority or appurtenant to the appropriate allotment. The survey plan which is submitted for the purposes of Section 223 of the Act shall include reference to easements.

Rural Emanations Easement

6. A rural emanations easement in favour of Lot 2 DP XXX shall be registered on the title of proposed Lot 1 DP XXX and the memorandum granting the easement is to be generally in the form attached as Appendix A.

Financial Contributions

7. The Consent Holder shall pay a financial contribution for reserves and community services in accordance with following:
 - (a) the amount of the contribution shall be 5.62 per cent of the total market value of 2,500 square metres (rural)(at the time subdivision consent is granted) of Lot 1;
 - (b) the Consent Holder shall request in writing to the Council's Consent Administration Officer (Subdivision) that the valuation be undertaken. Upon receipt of the written request the valuation shall be undertaken by the Council's valuation provider at the Council's cost;
 - (c) if payment of the financial contribution is not made within two years of the granting of the resource consent, a new valuation shall be obtained in accordance with (b) above, with the exception that the cost of the new valuation shall be paid by the Consent Holder, and the 5.62 per cent contribution shall be recalculated on the current market valuation. Payment shall be made within two years of any new valuation.

Advice Note:

A copy of the valuation together with an assessment of the financial contribution will be provided by the Council to the Consent Holder.

Protection of Lot 3 via a QEII covenant

8. The survey plan which is submitted for the purposes of Section 223 of the Act shall show Lot 3 as the QEII Covenant Area.
9. Written confirmation and copy of the QEII covenant agreement shall be provided to Council prior to Section 224 approval.

Advice Note:

Conditions 7 and 8 above were volunteered by the applicant.

Amalgamation

10. That Lots 2 and 3 hereon be held together in the same computer freehold register.

Land Information New Zealand reference: 986270

Vehicle crossing to Lot 1

11. The existing vehicle crossing to the dwelling on Lot 1 shall be upgraded to meet the following standards:
 - (a) is between 5.5 metres and 8.0 metres in width at the property boundary;
 - (b) the surface of the vehicle crossing and access shall be sealed from the Central Road carriageway edge to the existing metal cattle stop.

GENERAL ADVICE NOTES

Council Regulations

1. This is not a building consent and the Consent Holder shall meet the requirements of Council with regard to all Building and Health Bylaws, Regulations and Acts.

Other Tasman Resource Management Plan Provisions

2. This resource consent only authorises the activity described above. Any matters or activities not referred to in this consent or covered by the conditions must either:
 - 1) comply with all the criteria of a relevant permitted activity rule in the Tasman Resource Management Plan (TRMP); 2) be allowed by the Resource Management Act; or 3) be authorised by a separate resource consent.

3. The consent holder is hereby advised that no landuse consent has been applied for, nor granted, for the breach of building setback between the "New Garage" on Lot 1 and an "Implement Shed" on Lot 2. The gap between these two buildings is approximately 5 metres and therefore there is insufficient room for both buildings to be set back 5 metres from the common boundary between Lot 1 and Lot 2.

The consent holder is advised that it will either need to apply for and obtain a land use consent to breach one or both setbacks, or else one of the buildings (most likely the old implement shed) will need to be demolished and the common boundary be established 5 metres to the south of the existing garage on Lot 1.

4. The consent holder is also advised that the offal pit on Lot 2 does not meet the provisions of Rule 36.1.2.10 of the TRMP as it is too close to Blue Creek. This matter has been referred to the Council's Monitoring and Compliance staff and the consent holder should comply with the rule as a matter of urgency.

Consent Holder

5. This consent is granted to the abovementioned Consent Holder but Section 134 of the Act states that such subdivision consents "attach to the land" and accordingly may be enjoyed by any subsequent owners and occupiers of the land. Therefore, any reference to "Consent Holder" in the conditions shall mean the current owners and occupiers of the subject land. Any new owners or occupiers should therefore familiarise themselves with the conditions of this consent, as there may be conditions that are required to be complied with on an ongoing basis.


Development Contributions

6. Council will not issue a completion certificate pursuant to Section 224(c) of the Act in relation to this subdivision until all development contributions have been paid in accordance with Council's Development Contributions Policy under the Local Government Act 2002.

The Development Contributions Policy is found in the Long Term Council Community Plan (LTCCP) and the amount to be paid will be in accordance with the requirements that are current at the time the relevant development contribution is paid in full.

This consent will attract a development contribution on one allotment in respect of roading.

Issued this 10th day of May 2011



Stuart Bryant
Chair of Hearings Committee

Right to Emit Noise from Hail Cannons and Other Farming Activities/Equipment, Odour from Farming Activities, and Drift from Agricultural and Horticultural Sprays

1. Definition

In this easement the term “authorised farming activities” means all rural activities, including farming and horticultural crop production (and in particular, odour and noise from farming activities, the spraying for weeds and horticultural pests and diseases and the use of hail cannons to protect against hail damage to fruit crops) together with any other activity permitted under the relevant District Resource Management Plan for the time being in force and any existing uses and any activity permitted by any resource consent(s). The term “authorised farming activities” shall also include any other activity ancillary to the activities already defined or necessary therefore.

2. Rights and Powers

The owners or occupiers from time to time of the Dominant Tenement shall have the full, free, uninterrupted and unrestricted right, liberty and privilege for themselves and their respective servants, tenants, agents, licensees and grantees from time to time to emit noise from hail cannons and other farming practices and equipment, odour from farming activities, and drift from agricultural and horticultural sprays and to allow such emanations to escape, pass over or settle on the Servient Tenement in the course of the use of the Dominant Tenement for rural purposes with the intent that such aforementioned rights shall run with the Servient Tenement and be forever appurtenant to the Dominant Tenement.

3. Terms, Conditions, Covenants, or Restrictions in Respect of the Above Easement

- (a) The owners or occupiers from time to time of the Servient Tenement shall allow authorised farming activities to be carried out on the Dominant Tenement without interference or restraint.
- (b) All noise emitted from hail cannons, and farming practices and equipment shall not exceed the maximum level permitted in any relevant District Resource Management Planning document.

The owners or occupiers from time to time of the Servient Tenement shall not:

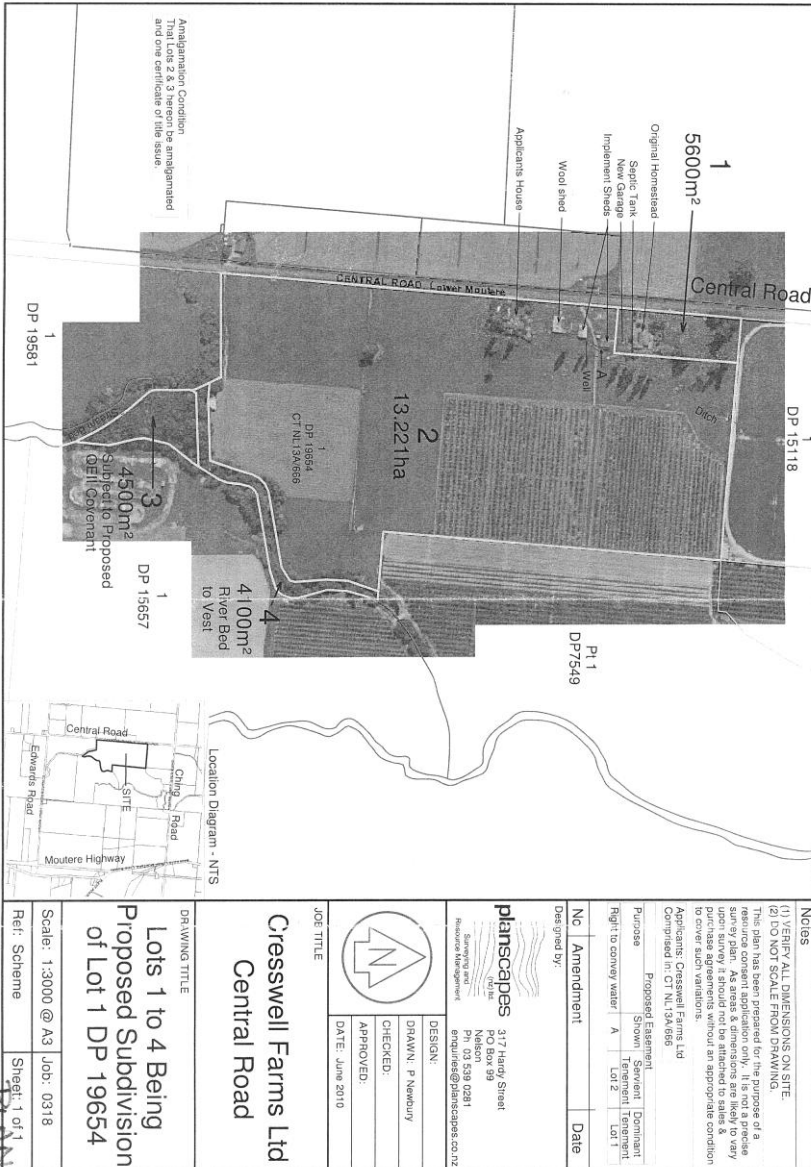
- (i) make or lodge; nor
- (ii) be party to; nor
- (iii) finance nor contribute to the cost of;

any submission, application, proceeding or appeal (either pursuant to the Resource Management Act 1991 or otherwise) designed or intended to limit,

prohibit or restrict the continuation or recommencement of the authorised farming activities by the owners or occupiers from time to time of the Dominant Tenement.

- (c) The owners or occupiers from time to time of the Dominant Tenement shall at all times use sprays in accordance with usual agricultural and horticultural practices in the District.

Plan A



RM 100 668

Date Confirmed:

Chair: