

MINUTES

TITLE: Environment and Planning Subcommittee
DATE: Monday, 5 March 2012
TIME: 9.30 am
VENUE: Tasman Council Chamber, 189 Queen Street, Richmond

PRESENT: Crs S G Bryant and T B King

IN ATTENDANCE: Subdivision Officer (R Shirley),
Executive Assistant (V M Gribble)

1. **WAKATU INC, LEPIEN AND WOODCOCK, GREEN LANE, MOTUEKA - APPLICATION NO RM110463**

The hearing of an objection pursuant to Section 357 of the Resource Management Act to Council's delegated decision on the application.

A subdivision consent was issued to the applicant, under delegated authority, on 30 September 2011. The consent included a condition that a financial contribution be paid. An objection to the final contribution condition has been lodged.

The report in the agenda from Subdivision Officer, Ross Shirley, assessed that objection and provided a recommendation to the Subcommittee based on that assessment.

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

Decision of the Tasman District Council through a Panel of Hearing Commissioners

**Meeting held in the Richmond Office on 5 March 2012, commencing at 9.30 am
Hearing closed by the Chair on 12 March 2012**

The hearing of an objection by **Wakatu Incorporation** pursuant to Section 357 of the Resource Management Act 1991 to Council's delegated decision on the Subdivision Application RM110463. The consent was granted to Wakatu Incorporation, J W and G M Leppien and A E Woodcock.

PRESENT: **Hearing Commissioner**
Cr Stuart Bryant
Cr Tim King

**CONSENT HOLDER/
OBJECTOR** Mr Graham Thomas (Resource Management Consultant)
Mr Mike Ingram (Consent Holder/Objector)

CONSENT AUTHORITY: Tasman District Council
Mr Ross Shirley (Subdivisions Officer)

IN ATTENDANCE: Mr Jeremy Butler (Principal Resource Consents Adviser) –
assisting the Commissioners
Mrs Valerie Gribble (Executive Assistant)

1. BACKGROUND TO THE OBJECTION

A subdivision consent was issued to Wakatu Incorporation, J W and G M Leppien and A E Woodcock, under delegated authority, on 30 September 2011. The Council's decision contains useful background to the subdivision and for ease of reference is quoted below:

"The application site is located at the junction of Green Lane and Grey Street, Motueka and consists of two adjoining titles in the Rural 1 Zone:

- (a) Title 1 is a 4.6 hectare title in two physically separate parcels. Firstly, a parcel located at 35, 37, 39 Green Lane which in turn is subject to three leasehold titles, each of which contains a dwelling and residential curtilage. Secondly, a parcel located at 3 Green Lane which contains a dwelling and orchard land;*
- (b) Title 2 is a 9.5 hectare title located at 87, 89, 93, 97 Grey Street which in turn is subject to four leasehold titles each of which is fully planted in productive orchard.*

The proposal is to subdivide the land to create:

- (a) Lot 1 of 3860 square metres containing the existing dwelling on the secondly described parcel of Title 1 above;*
- (b) Lot 2 of 1.5 hectares containing the orchard land on the secondly described parcel of Title 1 above;*
- (c) Lots 3, 4, 5 and 6 of total area 9.5 hectares, each allotment being one of the four leasehold titles described in Title 2 above;*
- (d) balance area of 2.6 hectares being the parcel firstly described in Title 1 above.*

Lot 2 is to be amalgamated with Lots 3-6 resulting in a new title area of 11.0 hectares.

The applicant has undertaken to complete the legal registration work necessary to ensure that upon completion of the subdivision a single computer leasehold interest (Leasehold Title) will be issued to include Lots 2 and 3.

The purpose of the subdivision is to allow Mr and Mrs Leppien freehold ownership of their family dwelling while at the same time providing for the Wakatu Incorporation to obtain clear ownership of the orchard land."

The subdivision consent is subject to the following condition:

“Financial Contributions

That a financial contribution be paid as provided by Chapter 16.5 of the Tasman Resource Management Plan assessed as follows:

- (a) *5.62% of the total market value (at the date of this consent) of a notional building site of 2500 square metres contained within Lot 2.*

The Consent Holder shall request the valuation to be undertaken by contacting Council’s Administration Officer (Subdivision). The valuation will be undertaken by Council’s valuation provider at Council’s cost.

If payment of the financial contribution is not made within 2 years of the date of this consent and a revised valuation is required as provided by Rule 16.5.2.4(c) of the Tasman Resource Management Plan, the cost of the revised valuation shall be paid by the Consent Holder.

Advice Note:

A copy of the valuation together with an assessment of the financial contribution to be paid will be provided to the Consent Holder within 1 calendar month of Council receiving the request to undertake the valuation.”

Financial contributions for reserves and community services are payable on subdivision and building development as provided for in Section 16.5 of the TRMP.

2. THE OBJECTION

A Section 357 Objection was received from the applicant on 18 October 2011. The objection was to the condition requiring payment of a financial contribution. The objection notice also made reference to the development contribution advice note in the decision. The advice note referred to Council’s LTCCP policy that requires development contributions to be paid in full before the issue of the Section 224(c) certificate for the subdivision.

The stated reason for the objection is *“the subdivision is the reduction in size of an existing leasehold title and the conversion of the smaller leasehold to freehold with the balance of the old leasehold title being included in other existing titles.”* And because *“no extra titles are being created”*.

3. PROCEDURAL MATTERS

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

4. REPORT AND EVIDENCE HEARD

A report on the matters of objection, being the financial contribution (FC) and development contributions (DC) advice note, by the Council’s Subdivision Officer Mr Ross Shirley had been circulated prior to the hearing. The Commissioners heard evidence for the applicant, and a response from Mr Shirley. The following is a summary of the information presented.

4.1 Officer's Report - Mr Shirley

Mr Shirley outlined the importance of the collection of FCs for the provision of new facilities to cater for the growth of population. He referred to Chapter 16 of the TRMP which allows the Council to require that a FC is payable on each additional allotment created. He said that the present subdivision clearly records that there are two existing titles, and after the subdivision there will be three. Therefore the FC has been imposed on the one additional title created.

Mr Shirley said that the activity is for the subdivision of freehold titles and the overlying leasehold titles are irrelevant.

Finally, Mr Shirley said that there is a clear history of Council decisions which consistently require FC payments when extra titles are created.

4.2 Applicant's Evidence - Messrs Graham Thomas and Mike Ingram

Mr Thomas said that Chapter 16 of the TRMP makes it clear that the requirement for FCs is triggered by increases in demand for those services. In this case he considered it appropriate that the requirement for FCs and DCs be waived as, in effect, they are starting with three titles and finishing with three titles, albeit with one of the titles altering its legal status from perpetual leasehold to freehold. He contended that this change is irrelevant.

Mr Ingram presented his evidence. He said that the perpetual leasehold titles are the only ones that are identified as being Maori land and are subject to separate legislation. Therefore he considered there to be no danger of creating precedents for other landowners to exploit.

Mr Ingram discussed Section 226(bb) and (bc) of the Act and relevant sections of the Counties Amendment Act 1961 and the Land Subdivision in Counties Act 1946. He contended that if a plan of subdivision has been undertaken and endorsed by the Native Trustee or his delegated representative it does not require the consent of the local authority. Therefore, he considered that the parcels of land have a clear freehold status, regardless that they are held in a leasehold estate.

Mr Ingram also referred to resource consent RM110522 to Tasman Bay Roses which was a nearly identical situation and for which the decision did not require either FCs or DCs. He questioned how two similar applications could result in such different decisions.

Mr Thomas continued that it is the overlying Perpetual Leasehold Titles that pay rates and that the underlying Freehold Titles do not pay any rates.

In summary, Mr Thomas said that the status of one title altering from Perpetual Leasehold to Freehold is irrelevant as the number of titles that can be developed is not increasing.

4.3 Reporting Officer

Mr Shirley confirmed his opinion that FCs relate to Freehold Titles and that since an additional Freehold Title will be created the imposition FC and DC payments are warranted. Mr Shirley referred to other Council decisions to demonstrate that

wherever additional titles have been created the Council has been firm that payments should be made to cover that growth.

Mr Shirley reported on the Tasman Bay Roses resource consent referred to by Mr Ingram. He said that in his opinion the application had been incorrectly processed and FC and DC requirements should have been imposed as he had done for the current consent.

4.4 Applicant's Right of Reply

Mr Thomas said that the applicant is applying to the Council to alter boundaries for Titles that are below the TRMP controlled activity lot sizes and therefore approval is needed. He said that Chapter 16.5 is effects based and there are no greater development rights as a result of this subdivision.

Mr Thomas believed that the Tasman Bay Roses consent document was correct. He said that nowhere else in Tasman are there Perpetual Leasehold Titles.

5. PRINCIPAL ISSUES AND FINDINGS

Before identifying the issues in contention it is worth stating that all parties appear to agree on the following points:

- The number of Freehold titles will increase from two to three.
- The number of Leasehold titles will decrease from eight to seven.

The principal issues that were in contention were:

a) Should consideration of FC payment requirement take leasehold titles into account?

Mr Shirley considered that the FC payment should be based solely on freehold title numbers and that since there will be an additional freehold title an FC should be payable.

Mr Thomas said that the perpetual leasehold titles that overly the freehold titles should also be taken into account as it is these that confer development rights.

In weighing up the evidence we find that we prefer Mr Thomas's argument because we are in agreement with him that it is each of the leasehold titles that confer development rights. In the circumstances of this case all of the freehold title land was covered by leasehold titles and therefore up to eight development rights existed.

After the subdivision seven development rights on the leasehold titles exist and one development right on the newly "freeholded" title also exists. Hence the overall number of development rights remains unchanged.

Inherent in this argument is that freehold and leasehold titles have the same status when it comes to development rights. It is our understanding that this is correct and the evidence presented to us did not dispute this assumption.

It is also interesting to note that the *quid pro quo* of this reasoning would be that if Leasehold Titles were to be subdivided (more than 35 years) without change to underlying Freehold Titles, FCs would be payable.

b) Was the Tasman Bay Roses consent processed correctly or incorrectly?

We have further analysed the Tasman Bay Roses consent and we believe that the conditions placed on that consent were appropriate. I.e. we accept that the substitution of Freehold Titles for Leasehold Titles need not require the payment of FCs.

We note that there is no mention of this decision in the objection document dated 17 October 2011. From the processing timeline that was tabled at the hearing Mr Thomas and Mr Ingram were clearly aware of the content of the Tasman Bay Roses decision. So we question why reference to that decision was not made to point out to Mr Shirley that there was an inconsistency. As the consent holder/objector in this case was the applicant for both applications it was well placed to include a reference to this inconsistency.

Mr Thomas and Mr Ingram emphasised at length their concern with the time taken by the Council to address this objection. While this matter is beyond the scope of our consideration, it occurs to us that a clear comparison with the Tasman Bay Roses decision in the objection may have enabled the matter to be resolved more quickly and potentially without the need for a hearing.

6. RELEVANT STATUTORY PROVISIONS

6.1 Policy Statements and Plan Provisions

In considering this objection, we have had regard to Section 108 of the Act and the relevant provisions of the Tasman Resource Management Plan (TRMP). In particular Chapter 16.5 of the TRMP is relevant.

6.2 Part II Matters

In considering this objection, I 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.

7. DECISION

That pursuant to Section 357D(1) of the Act, we hereby **UPHOLD** the objection.

8. REASONS FOR THE DECISION

- a) Leasehold Titles have effectively the same development rights as underlying Freehold Titles.
- b) The effect creation of a new Freehold Title has been obviated by the amalgamation of two Leasehold Titles.
- c) It is not reasonable and or equitable to impose FCs because there will be no increase in the rights to develop residential activities on the land.

- d) Making a final decision on DC requirements is not within the scope of this objection and hearing. Such requirements must be addressed through the provisions of the Local Government Act 2002 and the Council's Long Term Plan. However, we find that there is doubt that the DCs will have to be paid such that it is appropriate that the Advice Note be removed from the decision, as was sought by the Consent Holder in the notice of objection.

RESOURCE CONSENT DECISION

Resource Consent Number: RM110463

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

Wakatu Incorporation, J W & G M Leppien, A E Woodcock
(hereinafter referred to as "the Consent Holder")

Activity Authorised by this Consent: To subdivide Lot 25 DP 1512 and Lots 9-13 DP 1511 to create Lots 1-6 and balance area as shown on resource consent application plan, sheets 1-3, a copy of which is attached as Appendix A.

Location Details:

Title	Address	Legal	CT	Area	Valuation
No.	3, 35, 37 and 39 Green Lane, Motueka	Lot 1 DP 6382 Lot 21, Lot 25 and Pt Lot 22 DP 1512	3A/950	4.6	1956036600 h 1956036401 a 1956036300 1956036200
No.	87, 89, 91, 93 and 97 Grey Street, Motueka	Lots 9-13 DP 1511	145/14	9.5	1956037200 h 1956037300 a 1956037100 1956037000

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

CONDITIONS

1. Amalgamation

That Lots 2-6 hereon be held in the same computer freehold register.

Land Information New Zealand reference: 1014370.

2. Rural Emanations Easement

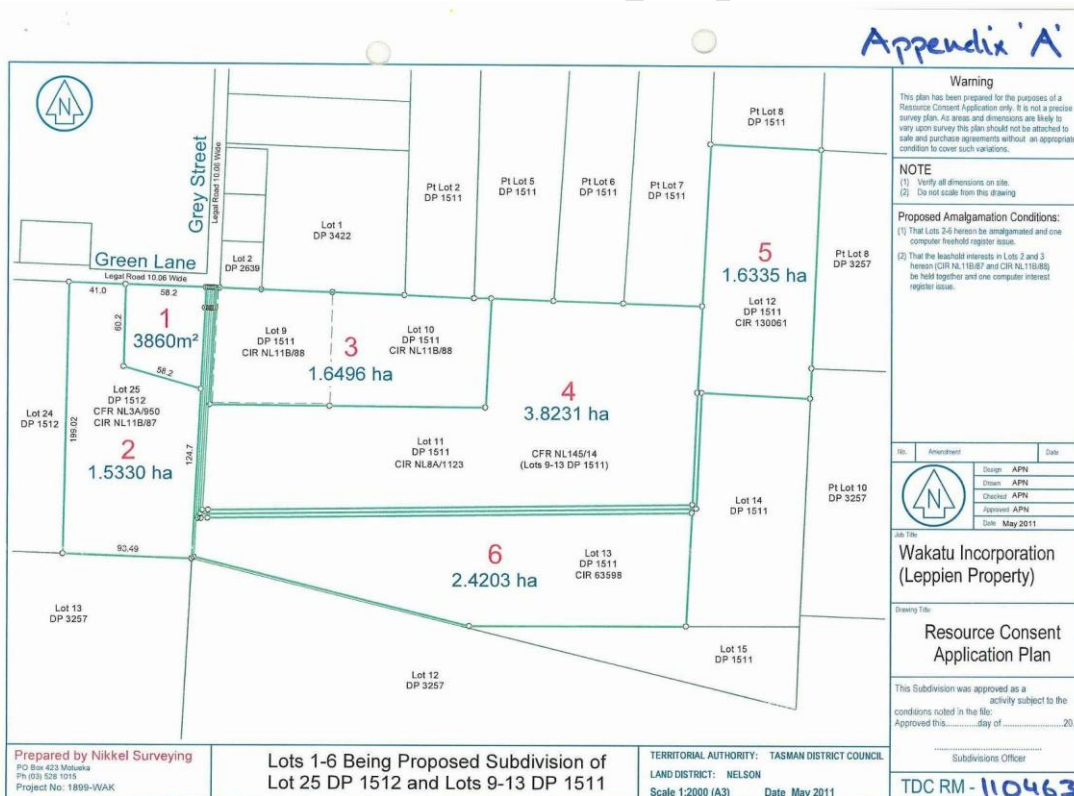
That a rural emanations easement be duly granted or reserved over Lot 1 hereon for the benefit of Lots 2 and 3 hereon.

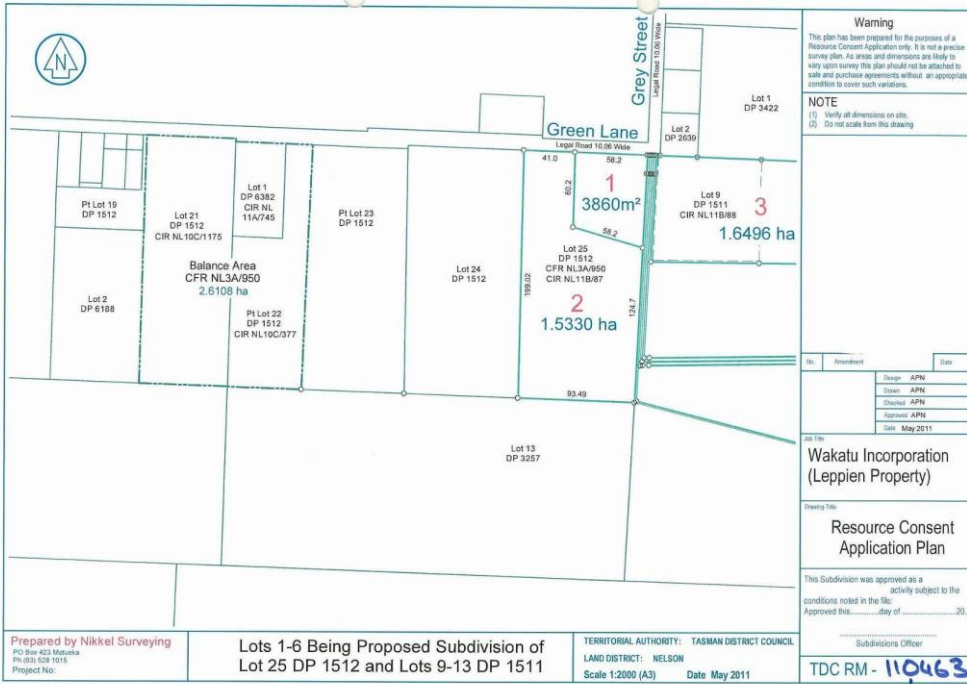
The purpose of the easement is to allow authorised farming activities to be undertaken on the dominant land without interference or restraint from the owners or occupiers of the servient land.

Issued this 4th day of April 2012



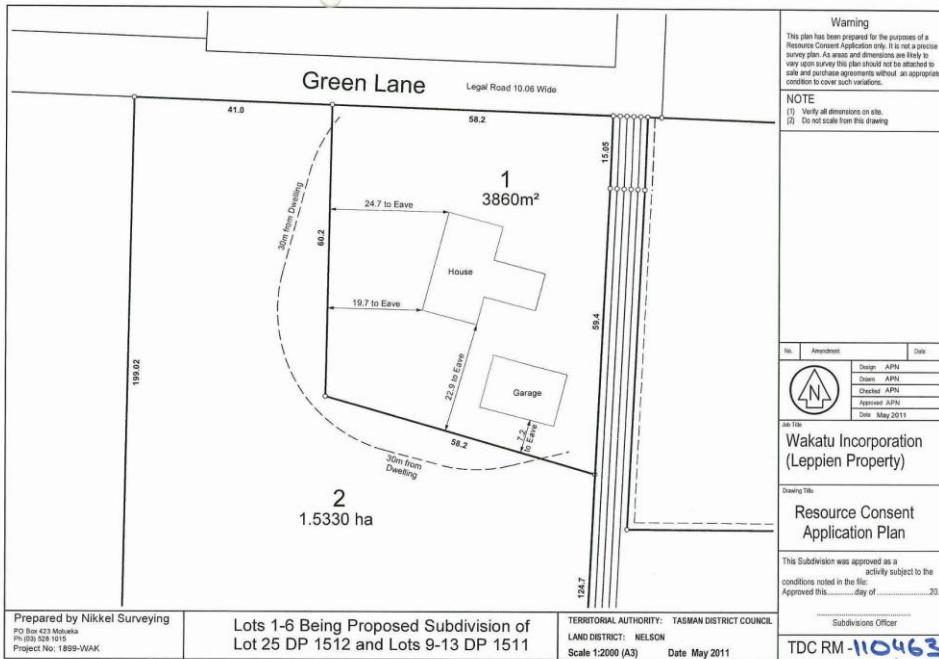
Stuart Bryant
Chair of Hearings Committee





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NOTES



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Date Confirmed:

Chair: