

MINUTES

TITLE: Environment & Planning Subcommittee – Consents
DATE: Monday , 30 July 2012
TIME: 10.25 am
VENUE: Council Chambers, 189 Queen Street, Richmond

PRESENT: Cr B W Ensor (Chair), Crs S G Bryant and M L Bouillir

IN ATTENDANCE: Kevin and Jill Charles (Applicants)
Anthony “Michael” Verall, Verall & Partners Limited
Consent Planner - Subdivision (Pauline Webby)
Principal Resource Consents Advisor (Jeremy Butler)
Administration Officer (Garry Woodgate)

K and J CHARLES, BIRD LANE, WAKEFIELD - APPLICATION No. RM110977 and RM 110980

The application sought the following:

RM110977 Subdivision Consent

To subdivide a 2.0391 hectare title into three allotments as follows:

- Lot 1 having an area of 1850 square metres;
- Lot 2 having an area of 3100 square metres with an existing dwelling and sheds;
- Lot 3 having an area of 1.44 hectares.

RM110980 Land Use Consent

To construct dwellings on Lots 1 and 3.
The land has a Rural 1 zoning as defined by the Tasman Resource Management Plan.

The application site is located at 21 Bird Lane, Wakefield, being legally described as Part Lot 2 Deposited Plan 7804 and Lot 2 Deposited Plan 328246 (CFR 115200).

The Commissioner 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 Bryant / Ensor
EP12-07-01**

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

K and J Charles

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
K and J Charles	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
EP12-07-02**

**THAT pursuant to Section 104B of the Resource Management Act the Committee GRANT IN PART consent to K and J Charles as detailed in the following report and decision.
CARRIED**

**Moved Crs Ensor / Bouillir
EP12-07-03**

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

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

**Meeting held in the Tasman Room, Richmond on 30 July 2012
Site visit undertaken on 30 July 2012
Hearing closed on 30 July 2012**

A Hearings Committee (“the Committee”) of the Tasman District Council (“the Council”) was convened to hear the application lodged by Kevin and Jill Charles (“the Applicant”), to subdivide land at Bird Lane, Wakefield and to construct dwellings. The application, made in accordance with the Resource Management Act 1991 (“the Act”), was lodged with the Council and referenced as RM110977 (subdivision) and RM110980 (dwellings).

HEARING COMMITTEE: Cr Brian Ensor, Chairperson
Cr Martine Bouillir
Cr Stuart Bryant

APPLICANT: Mr Mike Verrall (Surveying Consultant)
Mrs Jill Charles (Applicant)
Mr Kevin Charles (Applicant)

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

IN ATTENDANCE: Mr Jeremy Butler (Principal Resource Consents Adviser) -
Assisting the Committee
Mr Garry Woodgate (Committee Secretary)

1. SUMMARY

The Committee has **GRANTED IN PART** a resource consent, subject to conditions, to subdivide land and construct dwellings at Bird Lane, Wakefield.

Consent for proposed Lot 1 as applied for has been **REFUSED** and a significant boundary setback from the Light Industrial Zone land has been imposed on Lot 3. Consent for the construction of a dwelling on the area of proposed Lot 1 has also been **REFUSED**.

2. DESCRIPTION OF THE PROPOSED ACTIVITY

This application seeks to subdivide a 2.0391 hectare Rural 1 zoned property into three allotments and provide for a dwelling on each of Lots 1 and 3. The property has existing access and servicing for water and sewer from Bird Lane, Wakefield. The property is legally described as Lot 2 DP328246 and Part Lot 2 DP7804 and is located at 21 Bird Lane, Wakefield.

The north west boundary of this property adjoins a Light Industrial Zone (LIZ). On the other boundaries the property adjoins strip residential development and lifestyle allotments, all of which are within the Rural 1 zone.

The application proposes three allotments as follows: Proposed Lot 1 is a bare land serviced site with an area of 1850 square metres that would lie between the applicants existing dwelling and two residential dwellings to the north east; proposed Lot 2 would encompass 3100 square metres and include the existing dwelling and shed; and proposed Lot 3 is the balance area of 1.44 hectares within a new building location area for a future dwelling.

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): Land Disturbance 1

Activity	Relevant permitted rule	Applicable rule	Status
Subdivision (Rural 1)	16.3.5.1	16.3.5.2	Discretionary
Dwellings on Lots 1 and 3 in a Rural 1 zone with areas less than 12 hectares.	17.5.3.1	17.5.3.3	Discretionary

Overall the proposal is a discretionary activity.

4. NOTIFICATION AND SUBMISSIONS RECEIVED

Prior to notification written approvals were received from:

- B, R, S and A Andrews, 25 Bird Lane (Light Industrial Land)
- N R and C J Curtis family Trust, 17 Bird Lane
- K R and C J Nixey, 23 Bird Lane
- R J and E M Ramon, 21 Bird Lane
- G K and C J Baird, 187 Whitby Road, Wakefield
- M A Stuart and W McCulloch, 195 Whitby Road, Wakefield
- E B Illing, 197 Whitby Road, Wakefield
- B H and H S Disken, 193 Whitby Road, Wakefield

Pursuant to Section 104(3)(a)(ii) of the Act the decision-making panel must not have any regard to any effect on these parties.

The application was notified on 9 May 2012 pursuant to Section 95 of the Act. Two submissions were received. The following is a summary of the written submissions received and the main issues raised:

Neutral submissions

Submitter	Reasons
NZ Fire Service Commission	Recommendations for compliance with NZ Fire Service Fighting water supplies Code of practice SNZ PAS 4509:2008

Submissions in opposition

Submitter	Reasons
S and J Mattsen	Land Fragmentation and Visual effects

5. PROCEDURAL MATTERS

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

6. EVIDENCE HEARD

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

6.1 Applicant's Evidence

Mr Mike Verrall (Surveying Consultant)

Mr Verrall described the history of the applicants' association with the subject property. He said that it was previously zoned Rural, then Deferred Residential, and now Rural 1.

Mr Verrall said that the surrounding area has been subject to a number of residential in-fill subdivisions and the area now has a strong residential amenity.

Mr Verrall then described the application. He said that proposed Lots 1 and 2 would be large residential sections. Proposed Lot 3 would be a larger lifestyle block. He considered that the proposed lots would be compatible with the surrounding more built up area.

Mr Verrall agreed that the TRMP is the appropriate planning document for us to consider. He identified three subdivision consents in the immediate vicinity which have been granted in the last 20 years. He also made mention of a subdivision consent for the same land as the current application which was declined by a Council committee, and this decision was upheld by the Environment Court.

Mr Verrall summarised by stating his opinion that the proposal is not contrary to the TRMP and the effects on the environment are minor.

There was some discussion regarding the relationship of the applicants to their neighbours who had lodged a submission. The matters at issue (noise of motor-cross and the height of shelter boundary trees) did not relate to the effects of the proposed subdivision. However, we offered a general opinion that these matters could be addressed through effective communication and collaboration between neighbours.

The Chair asked if any soil testing had been undertaken on the property and was advised that it had and no contamination resulting from the adjacent industrial land had been detected. Cr Bryant noted soil contamination on property to the west of this site and Mr Charles said that their property had been used only for the storage and drying of untreated timber and that no soil contaminants were recorded in subsequent tests.

Cr Bouillir asked for clarification of “low productive value land” and was advised by Mr Charles that most of their land was very hard-packed gravel as in the past it had been used by the nearby Mill for log storage and drying. Gravel and rock had been imported to provide a hard surface.

6.2 Council’s Reporting Officer’s Report and Evidence

Ms Webby highlighted the key decision-making considerations from her report. These included:

- The small size of the proposed lots given the zone;
- Water and sewer servicing was available to all three Lots;
- The area is zoned Rural 1 but, in this case, is of limited productive use;
- A 1995 Environment Court ruling which declined consent to a similar application.
- The potential for reverse sensitivity effects due to the proximity to the LIZ land.

The report contained a statement from the Council’s Resource Scientist, Land concluding that the circumstances of the site “*almost entirely eliminates the possibility of intensive land based productive use or amalgamation with other productive blocks*”.

Cr Bryant asked about the 1995 decision and the similarity or otherwise with the situation today. Ms Webby and Mr Butler provided a commentary on the 1995 decision. We further review and provide our findings on the applicability of the 1995 decision below.

The Chair asked the Ms Webby if there were any concerns over flooding on the three proposed allotments. Ms Webby stated that this had been investigated and was not considered to be a concern.

6.3 Applicant’s Right of Reply

Mr Verrall reminded us that the Environment Court’s 1995 decision reflected the planning framework of the time and that the Deferred Residential zoning was no longer there and that a new Plan was now in place.

Mr Verrall added that water and sewer services are available to the proposed lots and that this was quite a unique situation in a Rural 1 zone. He considered that what his clients were requesting “fitted” the TRMP provisions.

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 will the proposal have on the rural character, landscape and amenity values of the location?**

It seems clear to us that a grant of consent would certainly contribute to what is already an existing residential enclave, becoming increasingly residential. We do not think that further residential development will cause any undesirable reduction in rural character or amenity values. The enclave is well enclosed on three sides by Whitby Road, Bird Lane and LIZ land. To the south there are some larger properties in between this enclave and the margins of Wakefield proper.

The application site is largely internal to the enclave. The development is not visible from any other public or strategic location and therefore a grant of consent would not contribute to a more widespread loss of rural character or the fragmentation of a rural landscape.

b) To what extent will the proposal compromise the productive use of the land? Will the proposal contribute to the cumulative fragmentation of the rural land resource?

No party to the hearing contended that the land had any particular productive value. The report from Mr Burton made it clear that he has no particular concerns with the loss of productive land as a result of this proposal.

We agree that there is little or no effect on the rural land resource. However this finding should not be construed as supporting subdivision of even small blocks of Rural 1 land. This finding is based on the evidence before us that the productivity of this specific site is low, and on its location within a developing residential enclave.

c) To what extent is the 1995 decision relevant today?

We have given careful consideration to the 1995 Environment Court decision. The decision reached by the Court was to decline an application for a subdivision which effectively sought to add one new dwelling in a similar position to proposed Lot 1 as it is sought by the current application.

There were several important considerations that the Court took into account in making its decision:

1. The land was zoned Rural B under the Transitional District Plan, but had a residential deferred notation upon it. Therefore the Court stated: "*[the plan] signals quite clearly that this land may in the future be used for residential purposes*".
2. The Court stated that it was not persuaded by the Council's concern at the time that the development would be adjacent to industrial land uses. Importantly though, this was in part because of the deferred residential zone: "*The Council has obviously addressed its mind to the situation and ... have concluded that residential development in the future contiguous with that zoning is acceptable.*" And "*the Council has obviously had [the potential effects of the LIZ land] in mind and has deliberately placed deferred residential zoning adjacent to the industrial zones with what it considers to be appropriate buffer strips between.*"
3. The reason for the decision to decline consent was based on the wording of the scheme statement for the deferment which was as follows:-
 - (ii) *Deferred not before 1995*
 - (a) *This deferment shows the next possible expansion area for residential development after the zoned areas have been not less than 75% developed.*

...

The Court stated as reasoning for its final decision that:

"The objectives, policies, rules and indeed all provisions of the Transitional District Plan are against the present proposal. We have no doubt that to grant consent under s.104 would effectively challenge those provisions which we should not lightly set to one side.

In our opinion it would require a unique situation before we effectively negated the district plan by ignoring the deferred development provisions. We can find no such factors existing in the present case. Indeed were we to grant this present proposal we would be simply stating that the plan should be set to one side on the basis of very minor points in favour of the subdivision and that any person in remotely similar circumstances should be allowed to subdivide ... Were this to happen the public confidence in the provisions relating to deferred residential would be totally destroyed."

Obviously there were other considerations but the above three items address the central points that are pertinent to our decision on today's application.

It is quite clear that all three points are more or less irrelevant for our decision. The land does not now have a deferred residential zone upon it. The residential zoning was not carried through into the TRMP which replaced the Transitional Plan and Section 6.17 of the TRMP now identifies cross boundary effects as a problem and seeks to "reduce the extent of residential zoning in the vicinity of the Bird Lane industrial area" (Method of Implementation 6.16.20.2). So using the same logic as the Court previously did we must recognise that this area is now deliberately excluded from the residential development plans for Wakefield.

The same logic applies to the second point above. Previously the Court concluded that the relevant Plan must have been accepting of further development in close proximity to the Industrial Zone. Now we cannot make this assumption. We have not looked into the exact reasons why the deferred residential zoning was not brought forward into the TRMP but restricting development around the Industrial Zone appears to have been a consideration. Either way the important statutory planning document that guides our decision does not provide any encouragement for us to allow further development in close proximity to the Industrial Zone.

Finally, the third point above is also no longer relevant since the TRP is obsolete in this matter and the TRMP is the relevant statutory planning guide. Therefore there is no policy direction that restricts or dictates the order of development of Wakefield township.

In summary, we find that the Environment Court's past decision to decline subdivision consent is virtually irrelevant as the context or relevance of the main decision making points has changed. The most that can be said is that the decision forms a useful decision making reference for gauging the importance and relevance for the points that we must take into account in making our decision. We are satisfied that there is absolutely no obligation upon us to decline the current application to maintain consistency with that previous decision.

d) To what extent might the proposal cause reverse sensitivity effects due to the proximity to the Light Industrial Zone (LIZ) land?

In this matter we have had practically no evidence placed before us. Mr Verrall did not put any compelling evidence before us on the matter of conflict of residential activities with potential uses of the LIZ land. In fact it is barely mentioned in Mr Verrall's evidence.

To deal with this issue we have considered the TRMP and what can be done in the LIZ as of right. Currently the LIZ land is significantly under-utilised and we have been careful not to be lulled by this. At the hearing Mr Verrall referred to the upcoming strategic development planning that has been programmed for Brightwater and Wakefield. He considered it unlikely that the adjoining land would remain zoned as light industrial. He thought that this zoning would change in time; however Mr Verrall provided no evidence on this point. At this juncture, and without any formal

consideration of the matter which will follow in time, we see no reason why the zoning of the LIZ land would change. We are aware that there is a general shortage of industrial land in the District and as Wakefield grows there will be an increase in pressure to utilise such land to service the needs of the town. Regardless, we must consider the facts as they currently are and not as they might be in the future.

Under the TRMP the LIZ land can, as a controlled activity, be subdivided down to 500 square metre sections (subject to meeting the other performance standards of Rule 16.3.4.1).

Whether subdivided or not the land can also be used for any activity that is not a residential or commercial activity, or an aviation landing site. As the LIZ land does not adjoin a residential zone, motor vehicle repairs or sheet-metal work may be undertaken. In further considering the use of this land we consider it not unlikely that light industrial activities and services such as landscaping supply depots may be set up. We see these types of service industries as important for the ongoing development of Wakefield. A 20 metre building setback on the LIZ land applies where it adjoins Rural land. But there are many outdoor light industrial activities that can occur within that setback that can have significant effects. For example, car bodies could be stored up to the boundary, or landscaping supply bins could be established close to the boundary with associated heavy vehicle traffic. Buildings in the LIZ can be up to 15 metres in height as permitted activities.

For these reasons we have real concerns with allowing what would amount to ribbon residential development along the boundary of the LIZ land. Purchasers of the proposed lots may eventually have a substantial industry operating next door. Alternatively they may have two, three or more adjoining or adjacent allotments the use of which may cause issues, concerns and problems. While rules exist in the TRMP that require the internalisation of effects within properties it is a matter of fact that dust, noise, odour and light glare are hard to control and can be the cause of considerable angst in peoples' everyday lives.

Many people when purchasing a property do not have the knowledge or take the time to consider the future ramifications of the planning framework. Potential purchasers of Lot 1 or 3 may see an open property that is not particularly pretty but equally not offensive and be happy to live next door to that kind of land use. It is a fact that people, particularly those who are not versed in planning or the development of land, are not entirely rational and forward-looking when purchasing land for a home. Further, peoples' needs and priorities change. Hypothetically, a single person or a couple may buy a property such as proposed Lot 1 as an affordable section upon which to build and live. With the arrival of children priorities may change with babies being woken early in the morning or during daytime sleeps. While the *caveat emptor* principle should prevail, we are considering whether new titles that may face these challenges should be created.

An Industrial Emanations Easement has been volunteered and there is an argument that this should be sufficient to address issues into the future. However, under the present circumstances we are dubious about its effectiveness. Returning to the example above, when a tired baby is woken up prematurely by noise next door a legal instrument agreed to years earlier will not relieve a parent's angst nor stop them from complaining to the Council or the neighbouring industrial operator. The Easement would also only apply while an industrial business is operating within permitted activity standards or consent conditions, and future neighbours will generally be unaware as to whether the effects they are experiencing are within those limits or not. This uncertainty and need for enquiry and communication just adds to the complexity and potential conflict that can occur over a residential-industrial boundary.

For these reasons we favour maintaining a buffer around industrial land. In a green-fields situation where new industrial and residential zones are being established good planning practice would generally dictate a buffer between what are arguably the two most incompatible zones. We see no reason why the same principle should not apply in the current case.

There are already two houses that are immediately adjoining the Light Industrial Zone to the west. One is the applicant's dwelling house and the other, we understand, was originally the caretaker's house for the timber treatment yard next door. The argument was put to us that two more houses will not create a problem because there are already residential activities in close proximity. We accept this to a degree but we do not see that it is sufficient reason to add to what may become a significant problem in the future. Also, with every dwelling that is added around the boundary the potential for reverse-sensitivity effects, which may affect both the residential landowner and the operation of legitimate industries, increases.

When sharing a common boundary with a Rural Zone (as is the case here) noise limits on activities in the Industrial Zone apply at the notional boundaries of dwellings. Where dwellings do not exist there are no such noise limits. Therefore, the creation of more titles on the boundaries creates more notional boundaries and therefore more restrictions on industrial activities with the LIZ.

In summary, we see a significant potential for direct effects and reverse sensitivity effects on future residential landowners and industrial operators, respectively. The situation seems benign at the present time, but our consideration must be in the context of the maximum permitted future use of the LIZ land.

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:

- a) Tasman Regional Policy Statement (TRPS);
- b) the Transitional Regional Plan (TRP);
- c) the Tasman Resource Management Plan (TRMP);

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.

There are no Section 6 matters of national importance that are relevant to this application.

We consider that under Section 7 we must have particular regard to clauses (b) the efficient use of natural and physical resources; (c) the maintenance and enhancement of amenity values; (f) maintenance and enhancement of the quality of the environment; and (g) any finite characteristics of natural and physical resources. These Section 7 matters are of some importance in reaching our final decision and so we provide further commentary as part of setting out the reasons for our decision below.

9. DECISION

Pursuant to Section 104B of the Act, we **GRANT IN PART** resource consent, subject to conditions, to subdivide land and construct a dwelling at Bird Lane, Wakefield.

However, we **REFUSE** consent for the creation of proposed Lot 1 and for the construction of a dwelling on the area of proposed Lot 1. On Lot 3 we impose a significant boundary setback from the Light Industrial Zone land.

10. REASONS FOR THE DECISION

Effects on the Environment

We agree with and adopt Ms Webby's findings relating to the effects of the proposal on rural character, landscape and amenity values (Section 6.1 of Section 42A report), rural land productive values (Section 6.2), and servicing and access (Section 6.3). We record that we find there to be no effects under these headings that are more than minor.

We have thoroughly discussed the matter of cross-boundary effects between the proposed residential development and the LIZ land. We see potential for future effects on residential land-owners, and equally, we see potential for reverse sensitivity effects resulting from the creation of titles adjoining land that can and should be used for industrial activities. However, we acknowledge that the LIZ land is currently undeveloped for industrial purposes (although this could happen at any time and as Wakefield grows it becomes increasingly likely). So currently there would not be any cross-boundary effects to be concerned about.

Proximity and separation is the key for avoiding the cross-boundary effects that we have discussed above. We have granted consent for the subdivision of Lot 3 as it is entirely possible and practicable to increase the separation distances. With the provision an adequate buffer we can accept residential development in that location.

Objectives and Policies of the TRMP

In her Section 6.4 of Ms Webby's report which contains her Reverse Sensitivity Assessment she has included specific TRMP items which relate specifically to the LIZ land that is at hand. These are:

Issue 6.17.1.3 *Cross-boundary effects between residential and industrial activities.*

Policy 6.17.3.3 *To avoid, remedy or mitigate adverse effects on residential activity in the vicinity of the State Highway and the Bird Lane industrial area.*

Method of Implementation 6.17.20.1:

(a) *[not relevant]*

(b) *Reducing the extent of residential zoning in the vicinity of the Bird Lane industrial area.*

We feel it is appropriate to also provide the more general planning provisions from earlier in the same Chapter of the TRMP:

Objective 6.5.2.1 *Accommodation of a wide range of industrial activities in locations where adverse effects on other values and activities are avoided, remedied or mitigated.*

Policy 6.5.3.3 *To identify areas where light industry can operate with convenient access to the transport system and without adverse effects on or from other activities.*

Policy 6.5.3.5 *To avoid a reduction of amenity standards in residential areas by industrial activities.*

We consider that this policy framework clearly sets out a desire to avoid effects by industrial activities on residential areas and vice versa. Given the lack of evidence put before us we cannot be entirely sure of the likely magnitude of effects that may occur at the subject site into the future but as we have stated above we consider it likely that such effects will eventuate in time.

As such we find that the application as proposed is inconsistent with the objectives and policies of the TRMP. It also goes against the overall direction of the TRMP that is set out in the statements of issues, methods and general text.

Other Matters

We are aware of other examples and situations in the Tasman District where adjoining residential and industrial land uses generate complaints, cause adverse effects (either real or perceived) and conflict. Such existing situations, for the most part, cannot be helped and require ongoing management and tolerance from both sides. In this case we are conscious not to repeat past mistakes or, through a lack of caution, create another situation where such issues may arise in the future. No evidence has been presented to us to demonstrate that this will not happen.

We are also conscious that the Council has programmed in the 2012 Environment and Planning Activity Management Plan a project entitled "Wakefield strategic development planning". The Activity Management Plan also references a report to the Environment and Planning Committee: EP07-12-04 which describes the project. The latest advice from the Council's Policy Manager is that this work will commence in 2013. While this future planning work is not a specific reason for declining aspects of this application, it is likely that this planning work may yield a more robust and clear planning regime for dealing with the separation of industrial and residential land uses.

Indeed, it may be that future planning provisions may require greater internalisation of effects within LIZ land by requirements for greater setbacks of both buildings and activities. This may allow residential development right up to the boundary of the LIZ. It is also possible that Mr Verrall's prediction of the rezoning of the current LIZ to another land use may eventuate. Such possibilities may provide another opportunity for the applicant to attempt to subdivide proposed Lot 1.

Lastly, we have considered the matter of precedent. Precedent is not an environmental effect *per se*, but setting a precedent can be adverse if it causes the integrity of the TRMP to be compromised or may lead to a cumulative effect on the environment. Precedent depends on how comparable the circumstances of two applications are and relies on the principle that like applications should be treated alike and that applicants have a legitimate and reasonable expectation that two very similar applications should have the same, or similar, outcomes. We are aware that the Environment Court has regularly expressed caution in giving too much weight to considerations of precedent.

In this case we find that there is a real risk that a grant of consent for the application as applied for will set an undesirable precedent. A grant of consent as sought would imply that we have no concerns with allowing residential activities against the boundary with the LIZ land. Of particular concern would be the potential for development of Lot 2 DP3241 to the south-west. A grant of consent as sought to this application would make it extremely difficult to refuse consent to one or more dwellings at the northern extent of that property when there is very little differentiate that property from proposed

Lot 3 of the current application. In this manner, ribbon development and residential intensification could expand in a situation such as this.

UNCONFIRMED MINUTES

Purpose and Principles of the Act

As stated above the Act requires us to have particular regard to Section 7:-

- (b) the efficient use and development of natural and physical resources;
- (c) the maintenance and enhancement of amenity values;
- (f) maintenance and enhancement of the quality of the environment;
- (g) any finite characteristics of natural and physical resources.

Considering (b) and (g) first, we have had to consider whether the LIZ land can be considered to be a physical resource. We consider that, while the actual zoning is an abstract concept and not a physical resource, the land that has been deemed suitable for industrial development is. The TRMP states:

Industrial land is a scarce resource. Industry has specific locational requirements and the following criteria are indicative of general industry needs:

- (a) *Proximity to main access roads.*
- (b) *Adequate roading for heavy vehicles.*
- (c) *Proximity to labour force.*
- (d) *Separation from sensitive environments, including residential areas, rivers, streams, the coast and aquifer recharge areas.*
- (e) *Services such as sewer and water.*
- (f) *Flat land.*

Specific areas have been set aside for industry and this would be advantageous for industry because these needs have been taken into account.

It is these aspects of industrial land that we consider to be a finite resource. On this basis we find that the risk of ribbon development around the LIZ and the associated increase in cross-boundary effects may put at risk the efficient use and development of the LIZ land.

Another aspect to our finding on the finite characteristics and efficient use of industrial land is the matter of soil contamination. We understand that the main area of the Brookside Sawmill that was on the land further to the north-west (currently zoned Heavy Industrial) has been remediated. The LIZ land has not been remediated and according to the Council's records there is a likelihood of at least some contamination with arsenic amongst other metals. Therefore, we reason that the ideal and most efficient use for the LIZ land is for industrial purposes where it will mostly be sealed, there will be minimal exposure pathways to affect human health, and no food products will be produced. In this (slightly perverse) sense the contaminated land is a "resource" which is finite and adds weight to the value it has for industrial purposes. To allow ribbon development and thereby compromise its long term use for industrial purposes would be risking the efficient use of the land.

Regarding Section 7(c) we have previously indicated that we see a real risk that the amenity values of the new lots as originally proposed may be low and this is not supported. Generally speaking, we consider it unlikely that future planning programmes or regulatory regimes would create a LIZ immediately adjoining a Residential or Rural Residential Zone. Therefore, we see no reason why we should consent to the same outcome in this case.

In summary, while we do not see any significant adverse effects on the environment being caused directly as a result of this development, we do see the application as being inconsistent with the TRMP. Finally, the Act and case law require us to make an "overall broad judgement". We do not consider that allowing an intensification of

residential development around the LIZ land to be sustainable management of natural and physical resources as set out in Section 5 of the Act. However, we are satisfied that in refusing proposed Lot 1 and amending the building location for Lot 3 we have established a more sustainable outcome that does provide for the wellbeing of the applicants and the ongoing development of Wakefield.

11. COMMENTARY ON CONDITIONS OF CONSENT

Additional conditions have been imposed which implement the partial approval of this consent. Condition 2 has the effect of removing proposed Lot 1 from the subdivision plan and Condition 3 amends the building location for Lot 3.

An error in the Financial Contributions figure in Ms Webby's report has been corrected in Condition 8.

We have deleted the recommended condition which prohibited further subdivision. We do not see any particular reason in this case why there should be a "no further subdivision" condition.

Mr Verrall sought that the substantive engineering works for the new dwellings in the subdivision be completed at building consent time rather than prior to the issuing of a Section 224(c) certificate. Given that the services are available and there are no difficulties with extending them to the Lot 3 building site we have accepted this.

12. LAPSING OF CONSENT(S)

Section 125(2) of the Act makes particular provision for the lapsing of subdivision consents. In the case of the subdivision consent (RM110977), 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.

Land Use Consent, (RM110980 for the construction of a dwelling) will lapse five years after the issue of the certificate of title for Lot 3. This is a pragmatic approach to ensure that delays with the subdivision do not compromise the effective 'life' of the land use consent for the dwelling to be erected on the title created by the subdivision.

Issued this 24th day of August 2012



Councillor Stuart Bryant
Chair of Hearings Committee

RESOURCE CONSENT

RESOURCE CONSENT NUMBER: RM110977

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

Kevin and Jill Charles
(hereinafter referred to as "the Consent Holder")

ACTIVITY AUTHORISED BY THIS CONSENT:

To subdivide Lot 2 DP 328246 & Part Lot 2 DP 7804 into two titles

LOCATION DETAILS:

Address of property:	21 Bird Lane
Legal description:	Lot 2 DP 328246 & Part Lot 2 DP 7804
Certificate of title:	115200
Valuation number:	1937007302
Easting and Northing:	2514699E 5978690N

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

CONDITIONS

Survey Plan

1. The subdivision shall be undertaken in accordance with the information submitted with the application and in particular with the plan prepared by Verrall & Partners Ltd titled, "Proposed Subdivision 21 Bird Lane, Wakefield", Job no 7055, dated October 2011 and attached to this consent as Plan A, except for the amendments shown on the above plan and the amendments specified in Conditions 2 and 3.

Notwithstanding the above, 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.

2. Consent for proposed Lot 1 has been refused and that proposed lot shall be deleted from the subdivision plan.
3. The "Proposed Building Area" on proposed Lot 3 shall be moved so that it is 30 metres distant from the common boundary with Lot 1 DP 19743. The amendment to the building area is identified on the plan referred to in Condition 1.

Advice Note:

For the avoidance of doubt, this condition prohibits the construction of a dwelling or habitable building within 30 metres of the boundary with the land zoned Light Industrial to the north-west.

Easements

4. 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.
5. Easements shall be created over any right of way and shall be shown in a memorandum of Easements on the survey plan submitted for the purposes of Section 223 of the Act. Easements shall be shown on the land transfer title plan and any documents shall be prepared by a solicitor at the Consent Holder's expense.
6. The survey plan that is submitted for the purposes of Section 223 of the Act shall include reference to easements.

Industrial Emanations Easement

7. An Industrial emanations easement ("No complaints" covenant) in favour of Lot 1 DP 19743 (25 Bird Lane) shall be registered on the title of proposed Lot 3 DP XXX.

Financial Contributions

8. 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 3;
 - (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.

Telephone

9. Written confirmation shall be provided from the relevant utility provider that underground telecommunication services can be provided to Lot 3.

The written confirmation shall be provided prior to a completion certificate being issued pursuant to Section 224(c) of the Act.

Site certification

10. Certification that a site has been identified on Lot 3 that is suitable for the construction of a residential building shall be submitted from a chartered professional engineer. This certificate shall define on Lot 3 the area suitable for the construction of a residential building and shall be in accordance with NZS 4404:2010 Schedule 2A.

Any limitations identified in Schedule 2A shall be noted on a consent notice pursuant to Section 221 of the Resource Management Act 1991 prior to the issue of the Section 224(c) certificate. This consent notice shall be prepared by the Consent Holder's solicitor at the Consent Holder's expense and shall be complied with by the Consent Holder and subsequent owners on an ongoing basis.

Consent Notices

11. The following consent notices shall be registered on the certificate of title for Lot 3 pursuant to Section 221 of the Act. These consent notices shall be prepared by the Consent Holder's solicitor at the Consent Holder's expense and shall be complied with by the Consent Holder and subsequent owners on an ongoing basis. All costs associated with approval and registration of the consent notice shall be paid by the Consent Holder.

Fire fighting water storage (Volunteered)

- (a) Water storage for fire fighting on Lot 3 will comply with the Fire Service Fighting water supplies Code of practice SNZ PAS 4509:2008.

Building Location

- (b) The specified dwelling site identified for Lot 3 as amended by Condition 3 of this consent shall be shown on the Section 223 plan. The area shall be dimensioned and identified.

Building Colour

- (c) The exterior of any dwelling on Lot 3 DPXXX shall be finished in colours that are recessive and blend in with the immediate environment and have been approved by the Council. The Consent Holder shall submit to the Council's Planner for approval prior to applying for building consent the following details of the colours proposed to be used on the walls and roof of the building.

Colour Group*	Walls	Roofs
Group A	A05 to A14 and reflectance value $\leq 50\%$	A09 to A14 and reflectance value $\leq 25\%$
Group B	B19 to B29 and reflectance value $\leq 50\%$	B23 to B29 and reflectance value $\leq 25\%$
Group C	C35 to C40, reflectance value $\leq 50\%$, and hue range 06-16	C39 to C40, reflectance value $\leq 25\%$, and hue range 06-16
Group D	D43 to D45, reflectance value $\leq 50\%$, and hue range 06-12.	Excluded
Group E	Excluded	Excluded
Finish	Matt or Low-gloss	Matt or Low-gloss

As a guide, the Council will generally approve colours that meet the following criteria:

- the material to be used (eg, paint, Colorsteel);
- the name and manufacturer of the product or paint;
- the reflectance value of the colour;
- the proposed finish (eg, matt, low-gloss, gloss); and
- either the BS5252:1976 (British Standard Framework for Colour Co-ordination for Building Purposes) descriptor code, or if this is not available, a sample colour chip.

Based on BS5252:1976 (British Standard Framework for Colour Co-ordination for Building Purposes). Where a BS5252 descriptor code is not available, the Council will

compare the sample colour chip provided with known BS5252 colours to assess appropriateness.

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.

Consent Holder

3. This consent is granted to the abovementioned Consent Holder but Section 134 of the Act states that such land use 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

4. 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.


Development Contributions for roading, stormwater, wastewater and water are payable for Lot 3.

Archaeological

5. In the event of Maori archaeological sites (eg shell midden, hangi or ovens, garden soils, pit depressions, occupation evidence, burials, taonga) or koiwi (human remains) being uncovered, activities in the vicinity of the discovery shall cease. The Consent Holder shall then consult with the New Zealand Historic Places Trust's Central Regional Office (PO Box 19173 Wellington, phone (04) 801 5088, fax (04) 802 5180), and shall not recommence works in the area of the discovery until the relevant Historic Places Trust approvals to damage, destroy or modify such sites have been obtained.

The discovery of any pre-1900 archaeological site (Maori or non-Maori) which is subject to the provisions of the Historic Places Act needs an application to the Historic Places Trust for an authority to damage, destroy or modify the site.

Issued this 24th day of August 2012



Councillor Stuart Bryant
Chair of Hearings Committee

UNCONFIRMED MINUTES



RESOURCE CONSENT

RESOURCE CONSENT NUMBER: RM110980

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

Kevin and Jill Charles
(hereinafter referred to as "the Consent Holder")

ACTIVITY AUTHORISED BY THIS CONSENT:

To erect a dwelling on Lot 3 of the title authorised by resource consent RM110977.

LOCATION DETAILS:

Address of property: 21 Bird Lane
Legal description: Lot 2 DP 328246 & Part Lot 2 DP 7804
Certificate of title: 115200
Valuation number: 1937007302
Easting and Northing: 2514699E 5978690N

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

CONDITIONS

General

1. The proposed dwelling shall be in accordance with the information submitted with the application except that the dwelling shall be limited to the building location area indicated on the **amended** plan prepared by Verrall & Partners Ltd titled "Proposed Subdivision 21 Bird Lane, Wakefield" Job no 7055, dated October 2011 and attached to this consent. Where there is any apparent conflict between the information provided with the application and any condition of this consent, the conditions shall prevail.

Commencement Date

2. The commencement date for this land use consent shall be the issue date of the certificate of title for Lot 3 approved by RM110977.

Power

3. An underground power connection shall be provided to the boundary of Lot 3 and shall be to the standard required by the supply authority. Written confirmation of the above shall be provided from the supply authority prior to the uplifting of a building consent for the dwelling.

Water Supply

4. Prior to the uplifting of a building consent for the dwelling, a water supply connection shall be provided to the boundary of Lot 3 and a Council approved water meter shall be installed at the toby for Lot 3.

The location and details of the meter shall be recorded on the Tasman District Council's standard Water Meter Location form and submitted to the Council for approval.

Advice Note:

Please note that a water connection fee for any new water connection will be payable under Council's Development Contributions Policy in the Long Term Council Community Plan.

Sewer

5. Prior to the uplifting of a building consent for the dwelling, a sewer connection shall be provided for Lot 3 in accordance with Council's Engineering Standards 2008.

Advice Note:

Note the specific design parameters specified in the Environ WW Ltd report.

Engineering conditions:

Conditions 6 to 11 shall all be completed prior to the uplifting of the building consent for the dwelling on Lot 3.

Commencement of Works and Inspection

6. No works shall begin on-site until the engineering plans have been approved pursuant to Condition 8.
7. The Council's Engineering Department shall be contacted at least five working days prior to the commencement of any engineering works. In addition, five working days' notice shall be given to the Council's Engineering Department when soil density testing, pressure testing, beam testing or any other major testing is undertaken.

Advice Note

Prior to the commencement of work the Consent Holder and its representatives may be invited to meet with Council staff to discuss the work to be undertaken including (but not limited to) roles and responsibilities, timing of the works and reporting.

Engineering Works and Plans

8. Engineering plans detailing all works and services shall be submitted to the Council's Engineering Manager and approved prior to the commencement of any works of the subdivision. All plans shall be in accordance with either the Council's Engineering Standards & Policies 2008 or else to the satisfaction of the Council's Engineering Manager.
9. All works shall be done in accordance with the approved engineering plans.

Engineering Certification

10. At the completion of works, a suitably experienced chartered professional engineer or registered professional surveyor shall provide the Council's Engineering Manager with written certification that all works, have been constructed in accordance with the approved engineering plans and the conditions of this consent.

As-Built Plans

11. As-built engineering plans detailing all service connections for Lot 3 are required to be submitted to the Tasman District Council Engineering Manager. All engineering details are to be in accordance with the Tasman District Council Engineering Standards & Policies 2008.

UNCONFIRMED MINUTES

Colour

12. The exterior of the dwelling on Lot 3 shall be finished in colours that are recessive and which blend in with the immediate environment. The Consent Holder shall submit to the Council's Consent Planner, Richmond for approval prior to applying for building consent the following details of the colours proposed to be used on the walls and roof of the building:
 - (a) the material to be used (e.g. paint, colour steel);
 - (b) the name and manufacturer of the product or paint;
 - (c) the reflectance value of the colour;
 - (d) the proposed finish (e.g. matt, low-gloss, gloss); and
 - (e) Either the BS5252:1976 (British Standard Framework for Colour Co ordination for Building Purposes) descriptor code, or if this is not available, a sample colour chip.

The building shall be finished in colours that have been approved by the Council.

Advice Note

The Consent Holder should engage the services of a professional to ensure the exterior cladding and colour selection are compatible with the long term durability of the building material in the subject environment and in accordance with the requirements under the Building Act 2004.

Review

12. That pursuant to Section 128(1)(a) and 128(1)(c) of the Act 1991, the Consent Authority may review any conditions of the consent (within two years from the date of issue of this consent and thereafter within one within one month of the anniversary of the date of this consent) for any of the following purposes:
 - a) to deal with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage; or
 - b) to deal with inaccuracies contained in the consent application that materially influenced the decision made on the application and are such that it is necessary to apply more appropriate conditions; or
 - c) to assess the appropriateness of imposed compliance standards, monitoring regimes and monitoring frequencies and to alter these accordingly.

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.

Consent Holder

3. This consent is granted to the abovementioned Consent Holder but Section 134 of the Act states that such land use 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 which are required to be complied with on an ongoing basis.

Development Contributions

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

Council will not issue a Code Compliance Certificate until all development contributions have been paid in accordance with Council's Development Contributions Policy under the Local Government Act 2002.

Provision of water storage

5. Water storage for fire fighting on Lot 3 will comply with the Fire Service Fire Fighting Water Supplies Code of practice SNZ PAS 4509:2008.

Monitoring

6. Monitoring of this resource consent will be undertaken by the Council as provided for by section 35 of the Act and a one-off fee has already been charged for this monitoring. Should the monitoring costs exceed this fee, the Council reserves the right to recover these additional costs from the Consent Holder. Costs can be minimized by consistently complying with conditions, thereby reducing the necessity and/or frequency of Council staff visits.

Archaeological

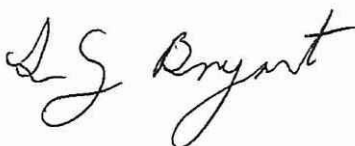
7. In the event of Maori archaeological sites (eg shell midden, hangi or ovens, garden soils, pit depressions, occupation evidence, burials, taonga) or koiwi (human remains) being uncovered, activities in the vicinity of the discovery shall cease. The Consent Holder shall then consult with the New Zealand Historic Places Trust's Central Regional Office (PO Box 19173 Wellington, phone (04) 801 5088, fax (04) 802 5180), and shall not recommence works in the area of the discovery until the relevant Historic Places Trust approvals to damage, destroy or modify such sites have been obtained.

The discovery of any pre-1900 archaeological site (Maori or non-Maori) which is subject to the provisions of the Historic Places Act needs an application to the Historic Places Trust for an authority to damage, destroy or modify the site.

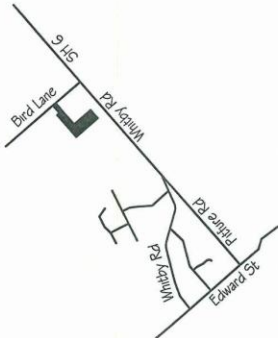
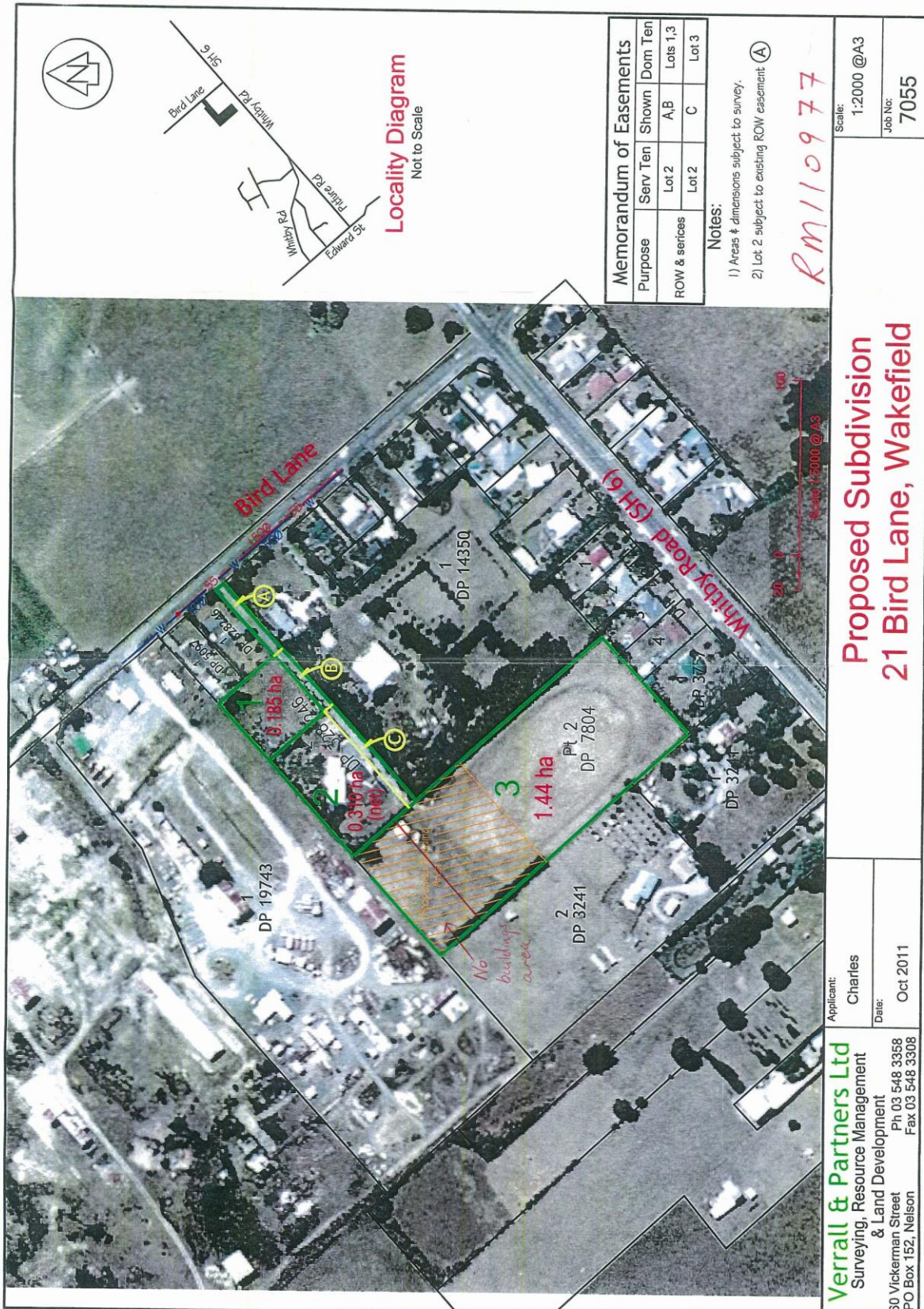
Interests Registered on Property Title

8. The Consent Holder should note that this resource consent does not override any registered interest on the property title.

Issued this 24th day of August 2012



Councillor Stuart Bryant
Chair of Hearings Committee



Locality Diagram
Not to Scale

Memorandum of Easements			
Purpose	Serv Ten	Shown	Dom Ten
ROW & services	Lot 2	A,B	Lots 1,3
	Lot 2	C	Lot 3

Notes:

- 1) Areas & dimensions subject to survey.
- 2) Lot 2 subject to existing ROW easement (A)

RM110977

Proposed Subdivision
21 Bird Lane, Wakefield

Scale: 1:2000 @A3
Job No: 7055

Verrall & Partners Ltd
Surveying, Resource Management & Land Development
60 Vickerman Street
PO Box 152, Nelson

Applicant: Charles
Date: Oct 2011

Date Confirmed: _____

Chair: _____