



## STAFF REPORT

**TO:** Environment & Planning Subcommittee  
**FROM:** Gary Rae, Consultant Planner  
**REFERENCE:** RM070575  
**SUBJECT:** **N B and B A RANDALL - REPORT EP07/09/01** - Report prepared for Hearing of 3 September 2007

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### 1. APPLICATION DETAILS – RM070575

#### Proposal

To undertake a subdivision of land described as Pt Sec 3-4 District of Pigeon Valley, comprised in CT NL8A/1113 Pigeon Valley Road, Wakefield, having an area of 16.89 hectares to create three allotments of 7.34 hectare (Lots 1-2), 3.04 hectare (Lot 3) and 5.98 hectare (Lots 4-5) in area, and to vest 0.61 hectare of road reserve aligned to current formation of Pigeon Valley South Branch Road.

#### Location

Pigeon Valley South Branch Road, Wakefield.

#### Zoning

Proposed Tasman Resource Management Plan: *Rural 2, Land Disturbance Area 1*

#### Resource Consent Type

Subdivision

#### Submissions Received

- E L and G F Coles, 235 Pigeon Valley Road, Wakefield
- Department Of Conservation, Private Bag 5, Nelson
- New Zealand Fire Service Commission, C/- Beca Carter Hollings and Ferner Ltd, PO Box 3942, Wellington
- Hancock Forest Management, PO Box 7403, Te Ngae, Rotorua
- Ian Douglas Galbreath, 867 Dovedale Road, RD 2, Wakefield

## **2. INTRODUCTION**

My name is Gary Rae. I am a planner within Incite (Nelson) Limited, an environmental and resource management consulting firm. I have a Bachelor of Science Degree (Geography) and a Diploma of Town Planning. I have 24 years experience in resource management, including the assessment of applications for subdivision and land use in Tasman District.

I have been engaged by Tasman District Council to prepare the Council's Officer Report, pursuant to Section 42A of the Resource Management Act 1991, on the subdivision application made by NB and BA Randall.

Council's Consents Co-ordinator (subdivisions), Mark Morris, and other Council officers, have assisted me in the preparation of conditions for the subdivision consent should it be granted.

## **3. SITE AND NEIGHBOURHOOD**

The site is located in Pigeon Valley South Branch Road, 5.3 km from Wakefield. It is roughly rectangular in shape, with approximately 650m of frontage on Pigeon Valley South Branch Road. It has an average width of 200m between the road and exotic forestry on the adjoining valley wall.

## **4. PROPOSAL**

The proposal is to subdivide a 16.89 hectare property on an existing single allotment into three smaller allotments. The land is described as Pt Sec 3-4 District of Pigeon Valley, comprised in CT NL8A/1113 Pigeon Valley Road, Wakefield, having an area of. Allotments of 7.34 hectare (Lots 1-2), 3.04 hectare (Lot 3) and 5.98 hectare (Lots 4-5) in area, and to vest 0.61 hectare of road reserve aligned to the current formation of Pigeon Valley South Branch Road.

The property is currently leased for grazing purposes and contains a dwelling and associated outbuildings intended for uses consistent to small-scale farming. The property is currently for sale.

It is assumed that the two additional allotments (Lots 1-2 and 4-5) will be sold as rural-residential allotments as no particular farming or horticultural use has been nominated. Building sites have been nominated for one dwelling per allotment, and it is expected therefore that these additional allotments will also contain residential dwellings and associated outbuildings as a result of the proposed subdivision. The existing dwelling would be contained within the proposed Lot 3 of 3.04 hectares. The farm buildings on the property would be separated from the existing dwelling on Lot 3 and would be on proposed lot 4.

## **5. NOTIFICATION AND SUBMISSIONS**

The application was notified on 1 June 2007, and the period for submissions closed on 27 July 2007. Submissions were received from four parties. One was in support, four were neither in support or opposition, but required specific conditions.

The submissions are summarised as follows:

**1. Ian D Galbreath**

Mr Galbreath owns the adjacent property west of the site. He supports the application, as it will fit in well with other properties in the area.

He does not wish to be heard.

**2. E L and G F Coles**

The Coles property is directly opposite Lot 3 on the subdivision plan. The Coles are not in opposition to the proposed subdivision, provided no further development occurs on the proposed Lot 3, which contains the existing dwelling. Additionally, they request that all native vegetation remain to protect the rural amenity of the area.

The Coles do not wish to be heard.

**3. Department of Conservation**

The Director-General of Conservation (DoC) made a neutral submission, but highlights the statutory provisions which need to be considered with respect to the provision of esplanade reserves and strips. The submission refers Council to Section 6 of the Resource Management Act 1991, the Tasman Regional Policy Statement and the Tasman Resource Management Plan.

DoC does not wish to be heard.

**4. New Zealand Fire Service Commission**

The Commission made a neutral submission, while voicing concern with fire fighting capacity for the proposed subdivision. The submitter commented that the proposed subdivision should take into account the operational requirements of the Fire Service to adequately provide for fire fighting activities within the subdivision in a safe, effective and efficient manner as required by the Fire Service Act 1975.

The Commission identified that each fire hazard (proposed dwellings and other structures) must comply with the Code (that being a minimum dedicated static fire fighting water supply of 45,000 litres within 90m of any fire hazard). Also the dedicated fire-fighting reservoir must be equipped with a compliant coupling system.

The application states that domestic water supply will be via collection and storage of rainwater. On-site storage for each residence will not be less than 23,000 litres. This falls short of the minimum 45,000 litres required by the NZ Fire Service Commission. If consent is granted for this subdivision the Commission's concerns with regard to the minimum water supply dedicated to fire fighting can be addressed through a Consent Order to require the minimum 45,000 litres. The Commission also stated that residential sprinkler systems with a static capacity of 30,000 litres would satisfy Code requirements.

The submitter wishes to be heard.

## **5. Hancock Forest Management**

Hancock Forest Management is satisfied, that provided their access rights to their forestry interests are adequately protected through an emanations easement, they are not in opposition to the subdivision. The applicants have entered into an agreement to provide this easement. This effectively means the future owners of each lot cannot complain about adverse effects from adjacent forest activities.

The submitter does not wish to be heard.

## **6. Affected Parties Consent**

No affected parties consent was provided with the application

## **6. STATUTORY PROVISIONS**

### **6.1 Status of Resource Management Plans**

The two relevant plans are the Transitional District Plan (Waimea Section) and the Proposed Tasman Resource Management Plan.

However the Proposed Tasman Resource Management Plan (TRMP) has reached the stage where most of the references to the Environment Court about its contents have been decided. There are no outstanding references on the Rural 2 Zone rules. Therefore, in terms of Section 19 of the RMA, the relevant rules can, I believe, be treated as operative, and the rules in the Transitional Plan are no longer relevant.

### **6.2 Relevant Rules**

The application for subdivision is a Discretionary Activity in terms of the TRMP.

Rule 16.3.8 (a) requires that the minimum lot size for consideration as a Controlled Activity subdivision in the Rural 2 Zone is 50 hectares. This proposal is for a subdivision to create allotments of only 7.34, 5.98 and 3.04 hectares.

Rule 16.3.9 requires that subdivision in the Rural 2 Zone that does not comply with the standards and terms for a Controlled Activity is a Discretionary Activity. This application is therefore a Discretionary Activity.

The relevant assessment criteria are set out in Schedule 16.3A (which I refer to later).

### **6.3 Section 104 of the RMA**

Section 104 of the Resource Management Act 1991 (RMA) provides that when considering an application for resource consent and any submissions received, the Council is required, subject to Part II, to have regard to:

- any actual and potential effects on the environment of allowing the activity,

- any relevant provisions of:
  - a regional policy statement
  - a plan or proposed plan, and
  - any other matter that is relevant

The Council may disregard an adverse effect if the plan permits an activity with that effect.

Section 104B provides that the Council may grant or refuse an application for a Discretionary Activity, and if it grants the application it may impose conditions under section 108.

## 6.4 Part 2 RMA

Part 2 contains the purposes and principles of the RMA.

**Section 5** describes the purpose of the RMA as being to promote the sustainable management of natural and physical resources. 'Sustainable management' is defined, and the Panel will be familiar with that.

My assessment of the proposed activity is that it has elements of 'sustainable management of resources', as follows:

- The property is currently for sale. The proposal will provide for the economic well-being of the applicant, in the sense that it allows for income from the proceeds of selling two additional rural lifestyle allotments that are classed as Category D under the Tasman District Council's Land Use Classification System, and has reduced productive capability.
- There will be no loss of the life-supporting capacity of air, water, soil and ecosystems from this activity.

Balanced against this is that the proposal will fragment the land resource for rural-residential use, there may be adverse visual and landscape effects from additional dwellings and associated buildings. Additionally, there may be adverse cumulative effects, as a continuation of historical subdivision into rural-residential allotments in Pigeon Valley. These matters are discussed further below.

**Section 6** contains matters of national importance. In my assessment none of these matters are relevant to this application or to this site. It has no coastal margins, wetlands or lakes. Pigeon Valley stream flows adjacent, however this watercourse is not listed as significant in the TRMP. There are no "outstanding natural features", areas of significant indigenous vegetation or significant habitats of indigenous fauna. The site is highly modified from its natural state, as is the land around it that is used for farming, rural-residential and exotic forestry.

**Section 7** contains 'Other Matters' for the Council to have particular regard to. The matters of most relevance to this application are as follows:

### (b) The efficient use and development of resources

The further fragmentation of this 16.89ha site may not at the end of the day greatly change the way the property is being used. The existing land use of this property will remain largely as it is now, that is rural-residential with some stock grazing. In that sense this is a more intensive use of the land resource, but it will be for rural-residential use rather than for rural use in accordance with its zoning.

In my view the further fragmentation and development of the property cannot increase its potential range of farming uses or its potential to be used for productive purposes, it can only reduce that potential. I will comment on this in more detail later in this report.

**(c) The maintenance and enhancement of amenity values**

**(f) Maintenance and enhancement of the quality of the environment**

This part of Pigeon Valley is characterised by a fairly narrow valley with generally smaller farm and rural-residential properties near the road and larger farm blocks and pine plantations to the rear against the hill slopes. The site is at the western end of the valley, and the house is in fact the last house on the north side of the valley (one additional house may be expected as a result of a 2003 approved subdivision which I will refer to later).

My impression is that the south side of the road in the valley has a more rural residential character and the north side of the road has a slightly more open, rural feel to it.

This proposal would result in two additional dwellings along this relatively narrow strip of pastoral land to the north side of the road. This, in my view will extend the existing development up the valley, and will add to the sense of development in the area, particularly on this north side.

**Section 8** relates to principles of the Treaty of Waitangi. There are no known Treaty issues affecting the site, and none have arisen from the public notification and submission process.

## **6.5 Tasman Regional Policy Statement**

The objectives of the Tasman Regional Policy Statement that are considered relevant to this application are as follows:

### **General Objectives**

*Objective 3.1 Maintenance and enhancement of the quality of the Tasman District Environment.*

*Objective 3.3 Avoidance, remedying or mitigation of the adverse effects on the environment and the community from the use, development or protection of resources.*

*Objective 3.4 Efficient use and development of resources.*

*Objective 3.5 Maintenance of economic and social opportunities to use, and develop resources in a sustainable manner.*

The issues raised in these General Objectives have largely been addressed in my discussion on Part 2 above.

## **Land Resources**

*Objective 6.1 Avoidance of the loss of the potential for land of productive value to meet the needs of future generations, particularly land with high productive values.*

*Objective 6.3 Avoidance, remedying, or mitigation of adverse cross-boundary effects of rural land uses on adjacent activities.*

*Policy 6.1 Council will protect the inherent productive values of land from effects of activities which threaten those values, having particular regard to:*

- (i) the effects of land fragmentation on productive values; and*
- (ii) the protection of land with high inherent productive values; and*
- (iii) the protection of significant natural or heritage values; and*
- (iv) the availability of water to support productive values.*

*Policy 6.2 The Council will ensure that subdivision and uses of land in the rural areas of the District, avoid, remedy or mitigate adverse effects on:*

- (i) productivity and versatility of land, particularly in areas of high productive value; and*
- (ii) provision of services including roading, access, water availability, wastewater treatment or disposal; and*
- (iii) amenity, natural and heritage values of sites, places or areas including landscape features such as karst terrain;...*

All of these matters are discussed in the assessment of the TRMP objectives and Policies.

The matters in Policy 6.1 have been addressed previously in this report.

## **Environmental Hazards**

*Objective 11.1 Reduced risks arising from flooding, erosion, inundation and instability and earthquake hazards.*

*Policy 11.1 The Council will seek to reduce risks to communities in relation to land use and development on floodplains that are also subject to flooding.*

The site is located on the alluvial floodplain of the Pigeon Valley Stream. The Pigeon Valley Stream flows through the property. Council has limited flood pattern records for this site and the flood hazard has not been accurately determined. However, the sizes of the allotments are such that there is adequate scope for flood free house sites to be established (such as on a raised building platform if necessary) without adversely affecting flood patterns on neighbouring properties.

An advice note could be included as part of any consent that is granted for this subdivision.

## 6.6 Proposed Tasman Resource Management Plan

The following are, I believe, the most relevant objectives and policies with respect to this application:

### Chapter 5, Site Amenity Effects

#### *“5.1.0 Objective*

*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.*

#### *Policies*

*5.1.1 To ensure that any adverse effects of... development on site amenity, natural and built heritage and landscape values, and... natural hazard risks are avoided, remedied, or mitigated.*

*5.1.4 To avoid, remedy, or mitigate effects of:*

*(a) Noise and vibration*

*(g) Vehicles*

*(h) Buildings and structures; beyond the boundaries of the site generating the effect*

The proposed subdivision in itself will not give rise to any site amenity effects of significance. However, the Panel is able to consider the effects from subsequent development of the lots, the most obvious are the effects arising from two additional dwellings and buildings, and associated traffic generation, noise, and effects on visual amenity.

Additional dwellings on this property will add to the built form of development in this area. It is true that extensive development has already occurred in the valley, however my concern is that the upper reaches of the valley are quite open in character and this proposal (in particular for a new dwelling on Lot 1) would essentially extend the rural residential development further still up the valley.

Having said that, I acknowledge that a dwelling on proposed Lot 4 (i.e. the lot at the Wakefield end) is essentially an infill, as it will be located between the existing house and a dwelling on the adjacent lot to the east. Accordingly a dwelling on Lot 4 will have less adverse visual and rural character effects than would a new dwelling on Lot 1.



I note that the adjoining landowners to the south (EL and GF Coles), have raised amenity concerns in their submission and are concerned that no further development occurs on proposed Lot 3. This application does not propose any additional dwellings on Lot 3, that being the lot containing the existing house.

In terms of traffic effects, two additional dwellings can be expected to generate on average an additional 12 – 20 car movements per day to the site. Pigeon Valley Road is sealed for this section, and is capable of accommodating the traffic from 2 additional dwellings. The proposal is to utilise the existing vehicle crossing for both Lots 3 and 4, and a new crossing for proposed Lot 1. A standard condition is recommended to require the accesses are to be upgraded and fenced to meet the standards for accesses in the TRMP (Rule 16.2.2).

## **Chapter 7, Rural Environmental Effects**

### *7.0 Introduction*

*This chapter deals with the fragmentation of rural land, the availability of rural land for non-rural purposes, and the protection of the rural character and amenity.*

*The principal effect of land fragmentation is the cumulative reduction in opportunities for the productive potential of land to be taken account up, either within sites or over larger areas. As subdivision lots become smaller, and as new structures or services are established, the range of soil-based production activities that can be physically or economically undertaken, progressively reduces in scope. The reduction in productive potential of any land, together with the physical coverage of productive land, may reinforce the demand for further fragmentation...*

*The establishment of dwellings on rural land, without any productive use of the land, has been a significant cause of land fragmentation in the district. ...The prospect of residential development may increase the value of other rural land in the vicinity to the extent that soil-based productive activities are progressively rendered uneconomic... It is occurring predominantly near the larger settlements, where the demand for rural residential living is greatest...*

It is quite evident that the Pigeon Valley is becoming increasingly under pressure for rural-residential living, as here have been several subdivisions that have occurred in recent years. The situation has reached the stage where adverse cumulative effects have arisen from close development and dwellings being erected in the area.

The subject site is relatively large, as far as properties in the south branch of Pigeon Valley go. The subdivision of this site into 3 allotments can be seen as an extension of the historical fragmentation.

The Galbreath subdivision approved in 2003, immediately west of the site, was for three lots, two on the south side (4ha each) and one on the north side of the road (13ha). This will result in one new dwelling on the 13ha lot to the west of the site. As noted earlier, my main concern is to maintain the existing sense of open space and semi-rural character on the north side of the valley. A new dwelling on the Galbreath property, on the 13ha lot on the north side, will have an effect, but this effect is not as significant as allowing yet another dwelling on Lot 1 of the Randall property.

### **7.1.0 Objective**

***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.***

#### ***Policies***

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

***7.1.2A To avoid, remedy, or mitigate adverse actual, potential, and cumulative effects on the soil resource and the productive value of the land.***

***7.1.3 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, access, and the availability of servicing.***

The Explanation for these policies includes: *“Subdivision below the threshold will be limited to that which supports the objective. The Rural 2 Zone comprises land of more limited inherent productive and versatile values [than the Rural 1 Zone], and the subdivision size threshold is thus larger”.*

The 50 hectare lot size threshold has been set as a ‘trigger’ to enable an assessment to be carried out, to determine whether any particular subdivision can meet the relevant policies and objectives in the plan. Subdivisions less than 50 hectares in area are classed as discretionary activities in the TRMP, and they are to be assessed against the criteria in Schedule 16.3A.

I acknowledge that this valley has few, if any, 50 hectare allotments left after historical subdivision has been allowed to occur. I find it disappointing that ad hoc subdivisions have been allowed to this extent, and this is one of the most graphic example of adverse cumulative effects of subdivision in a concentrated area that I have seen. It is now at the on where the valley bears little resemblance to the Rural 2 Zone, even though this zoning which has been retained through the last review of the TRMP. The applicant makes the point that this subdivision is in keeping with the average size of other allotments in the valley, and I accept that.

The subject property is 16.89ha in area, and is therefore acknowledged as being small for most primary productive farming activities. However, I would comment that the site has had farming use as evidenced by the farm buildings on the site. The proposal to split it into 3 allotments will reduce the potential for farming in my view as a planner. The significance of this is best addressed by the land productivity experts (Mr Bennison for the applicant, and Mr Burton for the Council).

Andrew Burton, Tasman District Council's Resource Scientist (land) has made the following comments as they relate to our concerns with regard to soil productivity within the subject site's immediate area:

*"Duke and Cook, valuation and property specialists have carried out a brief land productivity report. That report correctly describes the soils on the property as Dovedale gravelly loams. They cover approximately 6700 hectares of the Waimea District and are typically found on the floors of the side valleys, such as Pigeon Valley, that flank the Wai iti Valley and Waimea plains. As they are derived from outwash from the Moutere Formation they are naturally deficient in most nutrients. They are moderately to strongly acid, phosphorus and calcium are medium to low, and potassium is low. These nutrients vary considerably in different localities but are more often low. The texture of the soils varies from silt loam to sandy loam and most commonly gravels are present on the surface. Areas without gravels in the topsoil are usually thin and overlie gravels. A site inspection has not been carried out so the local variations have not been assessed.*

*The Duke and Cook report commented that the soils were extremely free draining and have poor moisture holding capacity. This is somewhat different from information Council holds which demonstrates that the water holding capacity of the Dovedale soils is not poor. From the national Fundamental Soils Layer, Dovedale soils have a "profile total available water" description as moderately high and a "profile readily available water" description as moderate. To put this in context it has the similar available water properties as the Sherry, Motupiko and Braeburn soil series and better available water properties than the Ranzau soils. Around the district the Dovedale gravelly loams sustain a variety of intensive land uses including viticulture, pipfruit and dairying.*

*The Agriculture New Zealand, Classification System for Productive Land in the Tasman District classifies the area as D. The attributes of class D are shallow soils, often infertile and poor structure, topography is steep to flat, and climate is colder with soil temperatures cool to mild. The land use range is cropping, pastoral, production forestry and extensive arable cropping as its highest land use. The climate is possibly the main limitation to crop diversity; the side valleys such as Pigeon Valley are colder than the main Wai Iti Valley. It should be noted that this block was used for tobacco growing in the past indicating that intensive cropping can be sustained in this area although the range of crops that can be successfully grown will be small.*

*Water for irrigation would be required to fully realise the potential of the land because of the summer water deficit. No existing irrigation water source is available on the property at present. Potential sources of irrigation water include onsite or offsite surface water storage structures reliant on winter recharge.*

*The effect of the proposed subdivision on the potential use or productivity of the land would be primarily the loss of land associated with future dwellings, associated buildings, driveways and gardens. Smaller lot sizes would also affect any economies of scale that currently exist. This effect is un-quantifiable but it is logical to assume that the economics of any land use activity would not be improved by reducing the lot sizes further".*

## 7.2.0 Objective

***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.***

### ***Policies***

***7.2.1 To enable activities which are not dependent on soil productivity to be located on land which is not of high productive or versatile value.***

These provisions are given effect to through specific rural-residential zones throughout the District (e.g. The Rural 3 Zone in Mapua/Tasman) and by assessing discretionary activity subdivision consents elsewhere in the rural zones.

The Environment Court in the case *Jennings v Tasman District Council (RMA0350/02)* provided some very useful analysis of these policies. In the Jennings case the Council's had refused consent for a 3-lot subdivision of a property in Teapot Valley, to create 3 rural-residential allotments in the Rural 1 Zone, on a site with low productive potential. The Council's decision was upheld in the decision dated 8 July 2003, and an appeal to the High Court was refused in June 2004.

The Court found that rural-residential subdivision and development is discouraged on land of high productive value, but it may be consented to elsewhere in the Rural 1 Zone, depending on the locality and the extent to which the values identified in the objectives and policies are affected. It then said: *"Although the site is not of high productive value, neither Objective 7.1.0 nor Policy 7.1.2A is limited to land of that quality. We hold that a rural-residential subdivision of land of lower productive quality might still be contrary to that objective and policy"*.

This is an important point, because, notwithstanding the Rural 2 Zone in Pigeon Valley, it removes the notion that non-productive rural land can simply be subdivided for rural-residential use, without some consideration of the fragmentation effect, and the effect on rural character.

From my observations, that reasoning had formed the basis for Council decisions to grant applications for subdivision, prior to the time of the Tapper & Stott decision (in 2004). This was an application for subdivision of a Pigeon Valley property of 3.7ha into 2 allotments of 2.89ha and 1.48ha. I was involved in that case (and recommended the application be declined, and this was accepted by Council). Since that time, I have been told by Council staff that there have been no subdivisions for new allotment creation in Pigeon Valley since the time of that decision.

## 7.3.0 Objective

***Avoidance, remedying or mitigation of the adverse effects of a wide range of existing and potential future activities, including effects on rural character and amenity values.***

## **Policies**

**7.3.3 To provide for the maintenance and enhancement of local rural character, including such attributes as openness, greenness, productive activity, absence of signs, and separation, style and scale of structures.**

**7.3.4 To exclude from rural areas, uses or activities (including rural-residential) which would have adverse effects on rural activities, health or amenity values, where those effects cannot be avoided, remedied or mitigated.**

**7.3.9 To avoid, remedy or mitigate servicing effects of rural subdivision and development, including road access, water availability and wastewater disposal.**

I have discussed issues of rural character previously. I also note that the applicant has agreed to a rural emanation easement with the adjacent forest manager, and few other cross-boundary are anticipated.

Road access has also been discussed. There is no reticulated water supply available, and wastewater disposal will be via approved on-site effluent facilities.

## **6.7 Schedule 16.3A – Assessment Criteria for Subdivision**

The application is a discretionary activity under the proposed TRMP, and Schedule 16.3.A of the TRMP sets out the assessment criteria to be used when considering the application.

The matters that are considered relevant to this application are as follows:

- The potential effects of the subdivision on the amenity values and natural and physical character of the area.
- The extent to which the effects of natural hazards will be avoided or mitigated.
- The cumulative effects of the subdivision on the District's infrastructure and its efficient use and development, including the capacity and capabilities of the road network and utility services to meet the demands arising from the subdivision.
- The relationship of the proposed allotments and their compatibility with the pattern of adjoining subdivision and land use activities and access arrangements, in terms of future potential cross boundary effects
- Taking into account local land form, whether allotments are of a regular shape that will maximise the range and efficiency of potential activities that may take place on the land in the future
- The effects of existing or future buildings on an allotment in relation to natural hazards and effects on adjoining sites and whether future building or development should be limited to particular parts of the allotment, or minimum floor levels set.

These matters have been discussed in the preceding assessment, and some further discussion is provided below in the assessment of actual and potential effects.

## **7. ACTUAL AND POTENTIAL EFFECTS**

### **7.1 Ecosystems**

The site does not contain any areas of significant indigenous vegetation, or significant habitats of indigenous fauna, identified in the proposed plan. Therefore the adverse effects of the subdivision on native flora and fauna would not be more than minor.

### **7.2 Effluent Disposal and Water Supply**

This part of Pigeon valley has no other services, other than a sealed road. Stormwater drains to the stream to the north, and each lot will need to provide their own water supply. Wastewater disposal will need to be provided for each site. Therefore there will be no impacts in terms of servicing this subdivision.

Michael Durand Natural Resources Co-ordinator for the Council has provided the following comments:

#### Wastewater Discharges

*“The proposed allotments are not serviced by reticulated sewerage so any dwellings on the site would need to be serviced either by on-site wastewater treatment and disposal systems (i.e. on each allotment) or a small decentralised cluster treatment and disposal system (i.e. servicing all allotments). The proposed subdivision does not appear to provide any large wastewater disposal areas that would be required as part of a cluster system, so I assume the intention is for each allotment to be serviced by an on-site system.*

*Factors determining the feasibility of on-site systems on any given allotment include the volume of water to be treated and discharged, physical factors including the soil type and groundwater depth, and the extent of available land (determined by topography, allotment size and other factors). In the present case, each proposed title is intended for use as a residential unit, and therefore each on-site wastewater system would need to service a dwelling plus any minor outbuildings such as workshops, studios or sleepouts (typically approximately 1000-1600 litres per day). Many proprietary wastewater systems can be purchased to provide treatment and disposal for this volume of wastewater. The soil on the site is thought to be Dovedale gravelly loam and this is concurred by Council's database. Such soils sit within the mid-range of those considered suitable for on-site wastewater disposal. Typically, on a gravelly loam soil, a wastewater disposal area (including reserve area) consisting of trenches or beds would require approximately 200 square metres (20 m x 10 m). More area (approximately 600 square metres) may be required if the discharge was proposed via dripper line irrigation. The proposed allotments are sizable and it is reasonable to suggest that a suitable wastewater disposal area could be located on each. Given a suitable design for each system, and a suitable location for the disposal, it is likely that wastewater discharge to land would be a permitted activity on each allotment, according to rule 36.1.4 of the TRMP.*

*However, each system design would be assessed in detail at the building consent stage”.*

## Stormwater discharges

*The proposed allotments are not serviced by a reticulated stormwater system, so the diversion and discharge of stormwater must be adequately managed on site. In the Rural 2 Zone, discharges and diversions of stormwater are permitted activities if they meet criteria (a)-(k) of rule 36.4.2 of the TRMP. Critically, under this rule, the discharge must be into the same catchment as that where the diversion arose, and any ground soakage system must meet criteria (k) (i)-(v). These involve the location of the soakage system relative to unstable ground, depth to groundwater, and the adequate sizing of the soakage system. It appears that all the criteria of rule 36.4.2 can be met and therefore stormwater diversion and discharge on the proposed allotments can be properly managed as a permitted activity. However, a detailed assessment of stormwater management proposals will be made at building consent stage.*

### **7.3 Archaeological Sites**

The subject site is not identified as being an area of archaeological significance. The proposed plan does not identify any archaeological features or sites of significance to iwi within the subject site, and no submission was received from iwi in this respect.

### **7.4 Natural Hazards, Land Stability and Disturbance**

The site topography is generally flat, with most of the land being below the level of the road. There are no known land stability issues. However, the property lies adjacent to the Pigeon Valley Stream and low lying land on the property may be subject to flooding from time to time. That part of the property may be flooded is not considered an impediment to subdivision, provided that an adequate flood free building site (in terms of the Building Act 1991) is available.

Provision of suitable building sites can be imposed as a condition of consent to subdivide.

### **7.5 Soils/Productive Land Values**

The potential effects on productivity have been discussed in the policy assessment sections above.

In summary, the subject property is already well below the threshold size for permitted subdivision in the Rural 2 Zone. The site has limited versatility for a range of crops or horticultural enterprises, however the subdivision will separate the farm buildings from the existing dwelling, will introduce additional residential structures to the property, and overall will further diminish its limited potential for productive use.

### **7.6 Air Resources**

The subdivision itself will not lead to any increase in airborne contaminants, particularly as there is not expected to be any increased need to establish roads or other significant earthworks.

## **7.7 Rural Character and Amenity Values**

As previously discussed Pigeon Valley has a distinctive character influenced by fairly close development along the road, primarily on the south side. It does however retain a rural character on the north side, but this is becoming eroded by additional development in recent years.

In my assessment there will be adverse effect on rural character or amenity values arising from this subdivision, notwithstanding the development that has already occurred in the vicinity.

The proposal will result in two additional dwellings and there is very limited screening from most views by trees on the frontage and near property boundaries. As noted a dwelling on Lot 4 will be essentially an infill, however a dwelling on Lot 1 will be much more apparent as new development at the head of the valley.

## **7.8 Esplanade Reserves/Vesting of Steam Bed**

In their submission the Department of Conservation states that the allotments adjoining Pigeon Valley Stream are less than 4ha in area. However, staff understand that by virtue of Section 218 (3) of the Resource Management Act 1991 proposed lots 1 and 2 and 4 and 5 are considered to be single allotments, held together by amalgamation conditions, with areas of 7.34 and 5.98 hectares respectively. As such Rule 16.4.2A not 16.4.2 applies in this situation and compensation is payable if an esplanade reserve is vested or an esplanade strip created.

Community Services staff have visited the site and considered it in the wider context of esplanades, reserves and walkways in the area. They have concluded that on balance there would be limited benefit in requiring the vesting of esplanade reserves or esplanade strips adjoining the stream in this location as it is considered to have limited value in terms of the purposes of Section 229 of the Resource Management Act 1991.

It is considered that the vesting of the stream bed will provide for future public access to the stream if/when adjoining properties are subdivided.

Although staff acknowledge that the conservation values of the stream would be enhanced by the creation of an esplanade strip, the cost of this needs to be balanced against the creation of esplanade reserves or strips adjoining the coast or other rivers which have conservation values which have a higher priority for protection and enhancement.

I agree with Community Services staff that the public access and conservation benefits resulting from the vesting of an esplanade reserve or the creation of an esplanade strip on allotments greater than 4 hectares in this area would be limited.

## **7.9 Traffic and Access Effects**

This section of Pigeon Valley Road is sealed, and the existing vehicle crossing will be utilised for Lots 3 and 4 and a new crossing installed to provide access to the western allotment (Lot 1). Subject to upgrading of the access, and formation of the new access,



to meet TRMP standards, I consider that the traffic aspects of the proposal are considered satisfactory.

The Council's Development Engineer has viewed the application and is satisfied that there are no matters that require any further special comment.

The proposed subdivision, and further subdivision and development in the general area, will eventually require that the road network is upgraded. One of the recommended conditions of consent for this subdivision is a standard condition for subdivisions requiring that a development fee is to be paid for roading purposes.

### **7.10 Effects on adjacent properties**

As noted a submission has been lodged by the neighbour opposite the site, which would be met by no further development of proposed Lot 3.

Other potential effects on neighbouring sites include cross-boundary, or reverse sensitivity effects. As noted there is an adjacent forestry block, managed by Hancock Forest Management Limited, to the rear of the site. Hancock Forest Management has lodged a submission, saying it is not opposed to the proposed subdivision providing that an emanation easement ensuring that their forestry interests are registered on any new titles resultant of a subdivision. I do not consider such arrangements ideal, however I acknowledge the Council has accepted these as appropriate for other subdivisions in the District.

## **8. OTHER RELEVANT MATTERS**

### **Precedent**

Clearly there has been past and recent subdivision activity on South Branch Road.

The applicants cite several approved subdivision consents in the Pigeon Valley area. However, since 2004, when the Tapper and Stott (RM040823) decision was released, there has been no subdivision in the Pigeon Valley. In that case, the Hearings Panel was aware of past subdivision activity and took this into account. The Council's overriding concern, in that case, was the cumulative effect, and there would be an undesired precedent arising from granting the subdivision consent on the Pigeon Valley environs.

In their decision the Panel stated the following:

*"The creation of another small rural-residential style allotment would not be appropriate. Considerable weight was given to the issue of precedent and cumulative effects arising from the granting of such a consent. To approve this subdivision (and thus allow an additional dwelling to be constructed as a permitted activity) would be inconsistent with the policies, objectives and rules under the Proposed Plan in terms of the issue of fragmentation and inappropriate development in the rural zone. The incremental addition of residential activities in the rural zone contributes to a loss of rural character and amenity and open space values that the Plan identifies as issues to be protected. The Committee agreed with the view that approval of the subdivision would add to the existing degree of rural-residential development in the area and may create more pressure for further subdivision".*

Another subdivision (Ashmere and Norton) was being processed at the same time as the Tapper and Stott one, but this was withdrawn shortly after the decision to decline the Tapper and Stott application. I understand, from talking to the surveyor, that it was withdrawn as a direct result of Council's decision on Tapper and Stott (i.e. the applicant considered that a benchmark had been established for further small lot subdivision).

Whilst I acknowledge the Council has granted other small lot subdivisions in Pigeon Valley, in my view there can be no suggestion that precedent arising from any of those subdivisions now requires that the Council must approve the current application. Each application is required to be assessed on its merits, as a discretionary activity in terms of the assessment criteria in Schedule 16.3A.

In the case *Dye v Auckland Regional Council and Rodney County* (CA86/01), the following determinations were made:

*"A consent authority is not formally bound by a previous decision of the same or similar authority", and*

*"no two applications are ever likely to be the same, albeit one may be similar to another. The most that can be said is that the granting of consent may well have an influence on how another application should be dealt with. The extent of influence will obviously depend upon the extent of similarities".*

In my view there is nothing to distinguish the applicant's site from other sites in the valley. Whilst there are some smaller properties in evidence, this property of 16.8ha has a dwelling, farm buildings, fences and other infrastructure. It is not dissimilar to other properties and there is certainly nothing to distinguish it in terms of avoiding a precedent should consent be granted. In summary it is my concern that granting consent here would create expectation for other properties to be similarly subdivided and this has not occurred since the Tapper and Stott decision.

Having said that, I acknowledge that this subdivision is of slightly larger lot sizes than for the Tapper and Stott subdivision. If the proposal was reduced to two allotments, it may be more clearly distinguished from that of Tapper and Stott, and several other subdivided properties in the valley, and the lot sizes would be more in keeping with the Galbreath subdivision, which has a 13ha allotment created on the north side of the road.

## **9. CONCLUSIONS**

I acknowledge that this is a difficult application to determine, particularly as a result of the character of the valley having changed in recent years as a result of extensive ad hoc subdivision activity (certainly in a Rural 2 Zone context).

The subject site at 16.8ha is fairly small in terms of the Rural 2 Zone, and whilst it is larger than several other properties in the area, I accept it has some limitations for productive farming purposes. It is also acknowledged that there have been previous subdivisions of properties along Pigeon Valley Road, and this proposal is not inconsistent with that pattern. However, in my assessment the area still has some rural character, particularly at the head of the valley on the north side.

Another concern is the cumulative effects from further fragmentation of rural land. The property may have limited potential for productive use, but the subdivision of this site for rural-residential usage will further reduce what potential it does have. The Environment Court in *Jennings* provided a useful insight into the meaning of the relevant policies and objectives, and it is clear to me that the lack of productive potential is not to be viewed as a licence to subdivide and further fragment the land resource, particularly where there is a potential adverse effect on rural character at the head of the valley.

In summary, I believe that the application has potential adverse cumulative effects, and any approval may send a signal to other landowners in Pigeon Valley that further small lot rural-residential subdivision and fragmentation of similar sites is acceptable (contrary to the determination in the Tapper and Stott decision). The Galbreath property next door, for instance, would be a prime candidate for re-subdivision as it has a 13ha allotment and Mr Galbreath has supported the subdivision of the Randall property.

Were the consent limited to two allotments rather than three, with the only new dwelling restricted to the (infill) building site shown on Lot 4, my concern would be lessened, in terms of both the fragmentation issue, and from a rural character and landscape point of view.

However, in overall terms, should consent be granted to the application as lodged (3 lots with 2 new dwellings arising), the Council will be effectively endorsing the continued spread of rural-residential development in the valley. Should the Council decide that this is appropriate, given the development that has already occurred, it would then be worthwhile in my view for Council to initiate a study to investigate re-zoning of Pigeon Valley to provide for a Rural-Residential Zone, complete with servicing and design guides and controls to ensure integrated development. This will enable future small lot development in the valley to be properly considered.

## 10. RECOMMENDATION

My recommendation is in two parts, with the order of preference specified below:

That pursuant to Section 104B of the Resource Management Act 1991, the Tasman District Council:

1. Refuses its consent to the application by NB & BA Randall (RM079575) to subdivide Part Sections 3-4 Pigeon Valley District, Block VII, Wai-iti Survey District, to create three allotments (Lots 1 and 2 held together measuring 7.34 hectares, and Lot 3 measuring 3.04 hectares and Lots 4-5 held together measuring 5.98 hectares), further described in the application letter from Staiger and Smith Ltd dated 31 May 2007, and the attached plan;

or as a second preference:

2. Approves the application in part, for two allotments, those being:
  - Lot 1, 2 and 3 (existing dwelling) held together in one title; and
  - Lots 4 and 5 held together in one title, and with a new dwelling site being limited to the building site shown on Lot 4.

## 10.1 Conditions

Should the Council decide to grant consent to the application as lodged, I recommend that the following conditions are included on the consent.

**RESOURCE CONSENT NUMBER:** RM070575

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

**Nigel B and Beverley A Randall**

(hereinafter referred to as "the Consent Holder")

**ACTIVITY AUTHORISED BY THIS CONSENT:** To subdivide an existing title comprising 16.89 hectares into three titles.

### LOCATION DETAILS:

Address of property: Pigeon Valley West Branch Road  
Legal description: Part Section 3,4 District of Pigeon Valley

Certificate of title: CT NL 8A/1113  
Valuation number: 1937002301

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 general accordance with the information submitted with the application for consent and in particular with the plan entitled "Resource Consent Plan, N & B Randall" Job No. 8573, dated 11/08/2005, prepared by CAD Solutions, and attached to this consent. If there is any conflict between the information submitted with the consent application and any conditions of this consent, then the conditions of this consent shall prevail.

#### Amalgamation Conditions

2. Lots 1 and 2 shall be amalgamated and one certificate of title issued and Lots 3 and 4 shall be amalgamated and one certificate of title issued.
3. The amalgamation conditions shall be shown on the survey plan which is submitted for the purposes of Section 223 of the Act.

**Advice Note:**

The District Land Registrar will need to confirm that these conditions are practicable provided all the normal requirements apply to the issuing of amalgamated titles. These include requirements that the land is in the same ownership and that any existing joint family settlements are cancelled or extended to include all the land being amalgamated.

**Vesting Road Conditions**

4. The survey plan which is submitted for the purposes of Section 223 of the Act shall show Lot 6 as vesting in the Tasman District Council Road Reserve at no cost to Council.

**Advice Note:**

This condition was volunteered by the Consent Holder and the Tasman District Council has confirmed that it will accept ownership of Lot 6.

5. The survey plan which is submitted for the purposes of Section 223 of the Act shall show the bed of Pigeon Valley Stream as vesting in the Tasman District Council.

**Building Location and Building Platforms – Lot 1 and 4**

6. The location of any new buildings on Lot 1 shall be located generally in the location the plan entitled “Resource Consent Plan, N & B Randall” Job No. 8573, dated 11/08/2005, prepared by CAD Solutions, and attached to this consent. The building location area shall be shown on the survey plan which is submitted for the purposes of Section 223 of the Act.

**Easements**

7. Easements shall be created over any services located outside the boundaries of the lots that they serve as easements-in-gross to the Tasman District Council for Council reticulated services or appurtenant to the appropriate allotment.
8. Easements shall be created over any right-of-way and shall be shown in a Schedule 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.
9. The survey plan which is submitted for the purposes of Section 223 of the Act shall include reference to easements.

**Advice Note:**

Any services located within the Council's road reserve will require a License to Occupy to be obtained.

**Power and Telephone**

10. Full servicing for live underground power and telephone cables shall be provided to the boundary of Lots 1 and 4. The Consent Holder shall provide written confirmation to the Council's Engineering Manager from the relevant utility provider that live power and telephone connections have been made to the boundaries of

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

### Right-of-Way Access to Lots 3 and 4

11. The right-of-way shown as "ROW A" on the plan entitled "Proposed Subdivision Pt Sec 3 and Pt Sec 4 Pigeon Valley District" Job No. 8573, Sheet #1 dated 11 August 2005, prepared by Staig & Smith Ltd Ltd, and attached to this consent shall be formed to the following specifications:

Right of Way Specifications and Formation Standards					
Right of Way	Allotments	Surface width	Shoulders	Side Drains	Legal Width
Right of Way A	Lots 3 & 4	4.5 metres	2 x 500 millimetres	2 x 1.0 metre	7.50 metres

12. The right-of-way referred to in Condition 11 shall be formed and surfaced with a minimum requirement of a 150 millimetre depth AP40 compacted basecourse with the formation of side drains to convey stormwater runoff away from the right of way carriageway.
13. A sealed access crossings shall be provided for each of Lot 1 and the Right-of-Way A entrance. For the purposes of this condition, "sealed" shall mean a surface that has, as a minimum, a Grade 4 Chip first coat, overlain by a Grade 6 void fill second coat.
14. The access crossing shall be sealed and constructed in accordance with the Diagram 1 Schedule 16.2C of the Proposed Tasman Resource Management Plan with the sealing extending at least 5 metres inside the boundary."

The access crossing width for Lot 1 shall be at least 3.5 metres at the property boundary.

### Commencement of Works and Inspection

15. 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.

### Engineering Works

16. All engineering works, including construction of the right-of-way for Lots 3 and 4 and the access crossings to Lot 1 and right-of-way A referred to in Condition 13 & 14, shall be constructed in strict accordance with the Tasman District Council Engineering Standards and Policies 2004 or to the Council's Engineering Manager's satisfaction.

## Engineering Certification

17. At the completion of works, a suitably experienced chartered professional engineer or registered surveyor shall provide the Council's Engineering Manager written certification that the right of way and access to Lot 1 referred to in Condition 15 have been constructed in accordance with the consent conditions and the Tasman District Council Engineering Standards and Policies 2004.
18. Certification that the building platform and nominated building site on Lots 1 and 4 is suitable for the erection of residential buildings shall be submitted from a chartered professional engineer or geotechnical engineer experienced in the field of soils engineering (and more particularly land slope and foundation stability). The certificate shall define on Lot 1 within the building location area, the area suitable for the erection of residential buildings and shall be in accordance with Appendix B Section 11 of the Tasman District Engineering Standards and Policies 2004.

The building site certification shall take into account any flooding hazard that may apply to the building site."

## Financial Contributions

19. 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 5.5 per cent of the total market value (at the time subdivision consent is granted) of a notional 2,500 square metre building sites within Lot 1 and 4.
  - 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 5.5 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.

### **Advice Note:**

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 two allotments in respect of roading.

### **Consent Notices**

20. The following consent notices shall be registered on the certificate of title for Lot 1 and for Lot 4 pursuant to Section 221 of the Resource Management Act. The consent notices shall be prepared by the Consent Holder's solicitor and submitted to Council for approval and signing. All costs associated with approval and registration of the consent notices shall be paid by the Consent Holder.

- i) That the construction of buildings on Lots 1 and 4 shall be restricted to the building location areas shown on the Title Plan and buildings shall be fully contained within the area identified.
- ii) Reticulated power and telephone services to any buildings on Lot 1 and Lot 4, where provided, shall be located underground from the property boundary of the property to the building.
- iii) Lots 1 and 4 shall be required to install water storage tanks in accordance with Condition 21 of subdivision consent RM070575.

### **Water Supply**

21. Water storage tanks with a minimum capacity of 30,000 litres shall be installed on Lot 1 and Lot 4. These water storage tanks shall be equipped with appropriate fire fighting connections.

### **GENERAL ADVICE NOTES**

#### **Council Regulations**

1. This resource consent 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 Proposed Tasman Resource Management Plan Provisions**

2. Any activity not covered in this consent shall either comply with: 1) the provisions of a relevant permitted activity rule in the Proposed Tasman Resource Management Plan; or 2) the conditions of separate resource consent for such an activity.

In respect of stormwater discharges on Lots 1 and 4, the criteria of Tasman Resource Management Plan Permitted Activity Rule 36.4.2 must be complied with or, alternatively, a resource consent (discharge permit) is obtained for the stormwater discharge.



3. In respect of effluent disposal on Lots 1 and 4 the criteria of Tasman Resource Management Plan Permitted Activity Rule 36.1.4 must be complied with or, alternatively, a resource consent (discharge permit) is obtained for the stormwater discharge.
4. Access by the Council's Officers or its Agents to the property is reserved pursuant to Section 332 of the Resource Management Act 1991.
5. Monitoring of this resource consent is required under Section 35 and 36 of the Resource Management Act 1991, and a deposit fee is payable at this time. Should monitoring costs exceed this initial fee, the Council will recover the additional amount from the resource consent holder. Monitoring costs are able to be minimised by consistently complying with the resource consent conditions.
6. Pursuant to Section 127 of the Resource Management Act 1991, the Consent Holder may apply to the Consent Authority for the change or cancellation of any condition of this consent.
7. Council draws your attention to the provisions of the Historic Places Act 1993. In the event of discovering an archaeological find during the earthworks (e.g. shell, midden, hangi or ovens, garden soils, pit depressions, occupation evidence, burials, taonga, etc) you are required under the Historic Places Act, 1993 to cease the works immediately until, or unless, authority is obtained from the New Zealand Historic Places Trust under Section 14 of the Historic Places Act 1993.
8. The site is located on the alluvial floodplain of the Pigeon Valley Stream. A small watercourse crosses the property. Council has limited flood pattern records for this site and the flood hazard has not been accurately determined as part of the application. However, the sizes of the allotment are such that there is adequate scope for flood free house sites to be established (such as on a raised building platform) without adversely affecting neighbouring properties.

Gary Rae  
**Consultant Planner**  
Incite (Nelson) Limited