



STAFF REPORT

TO: Environment & Planning Subcommittee

FROM: Mark Morris, Co-ordinator – Subdivision Consents

REFERENCE: RM060558

SUBJECT: **Thawley Orchard Ltd - REPORT EP07/11/11** - Report prepared for 19 November hearing

1. APPLICATION BRIEF

1.1 Proposal

1.2 Location, Legal Description and Background

The property is located at 3 AppleValley Road.

The legal description of the land is Lot 1 DP 1572 (CT NL 55/117).

1.3 Zoning and Consent Requirements

The land is zoned Rural 3 under the Proposed Tasman Resource Management Plan.

The subdivision is considered to be a Restricted Discretionary Activity under rule 16.3.9D of the Proposed Tasman Resource Management Plan in that the minimum lot size is less than the 50 hectares required under the controlled activity rule 16.3.9C for the Rural 3 zoned land.

The proposed subdivision is also discretionary under rule 16.4.2 of the TRMP, in that the site adjoins the coast and the allotments are less than 4 hectares.

The site is also within the Coastal Environment Area, which has specific rules in Section 18.14 of the TRMP on building heights and setbacks from the coast, in particular rule 18.14.3 which requires a 100 metre setback from the line of mean high water springs (MHWS) for all new buildings.

The site currently has a designation (D138) for State Highway Purposes to Transit New Zealand, which covers the area shown as Lot 4 to vest as road reserve. This is recent alteration to the existing designation, which originally had Apple Valley Road intersecting the State Highway, much further south of the existing intersection.

In August this year, Transit New Zealand applied to Council for an alteration to the existing designation (RM070778) to allow for new intersection to the north of the present intersection and this was approved on 14 August 2007, with the designation area being covering the same area as the proposed Lot 4. A copy of the proposed new Apple Valley East intersection for the proposed Ruby Bay Bypass is set out in Appendix 1 attached to this report.

2.1 The Application Site

The 4.65 hectare rectangular site adjoins the State Highway and extends from Apple Valley Road on the southern end to the Waimea Inlet at the northern end. The property is part of a small peninsula that juts into western end of Waimea Inlet.

The property slopes gently to the north and has a dwelling at the southern end of the site. There is an old packing shed on the property which is about 50 metres back from the coastline. The property is currently in apple orchard which is part of Thawley Orchard Company Ltd which also has orchard land in two titles (11.8 hectare and 9.9 hectare) on the other side of the State Highway. There is also a small title, of about 0.137 hectares which contains a dwelling just to the south of the site, which appear to have been "cut off" as a separate title when the coastal highway cutting was created in the early 1960s, which would have split one of the existing titles.

There is a large macrocarpa shelter belt, that screens much of the site from the State Highway.

The site has existing right-of-way in favour of Lot 1 DP 315786, which connects with the state highway at CP 17. However because CP17 is proposed to be closed off as part of the applicants volunteered conditions, this right-of-way will be extinguished. Lot 1 DP 315786 has its own primary access on to Apple Valley Rd East.

3. NOTIFICATION, SUBMISSIONS and AFFECTED PARTIES CONSENT.

The application was publicly notified on 7 July 2007.

Four submissions were received.

1. New Zealand Fire Commission

Did not support or oppose the application, but asked a condition be imposed as a consent notice requiring that any new dwelling constructed on the new allotments comply with the New Zealand Fire Service Code of Practice for Fire Fighting Water Supply SNZ PAS 4509:2003.

Wished to be heard.

2. Graeme Thawley

Supported the application, in the particular the provision of an esplanade reserve, which in time could form part of a coastal walkway. In view of the major road works involved in the Ruby Bay Bypass, the proposal makes good use of the land in question. The effects on neighbouring properties would be very slight.

Did not wish to be heard.

3. New Zealand Historic Places Trust (NZHPT)

Did not support or oppose the application, but stated that although there are no archaeological sites recorded on the property, the coastal location meant that the presence of subsurface archaeological material cannot be discounted.

Requested that special advice note on the consent decision, if granted, to ensure that the applicant is aware of their responsibilities under the Historic Places Act 1993 if any archaeological material is encountered during earthworks.

Did not wish to be heard.

4. Andrew H Earlam

Supported the application, stating that they own a property that looks over the applicant's proposed subdivision.

Did not wish to be heard.

Affected Parties Consent

The applicant has not provided written consent from any affected parties.

The application did include details of consultation with Transit New Zealand, which included a letter dated 5 June 2007 from Mike Weir, Transit's Regional Planning Manager advising that Transit would be happy to provide written affected party approval, subject to closure of two crossing places 10 and 17. The applicant has agreed to these closures, even though CP 10 is for the Thawley land on the other side of the State Highway, which is not part of the subdivision site. In spite of this, formal written consent from Transit New Zealand has not yet been provided to Council.

4. PRINCIPAL ISSUES

The principal issues associated with the applications are:

- a) Is the proposed development consistent with the Rural 3 zone Design Guide is the scale of the development appropriate?
- b) Will the development be able to achieve and maintain an acceptable level of rural character and amenity that is in keeping with the surrounding area?
- c) Will the development have an adverse effect on the productive values or the productive potential of the site?

5. STATUTORY PROVISIONS

The application is a restricted discretionary activity in the Rural 3 Zone. The Council must consider the application pursuant to Section 104 of the Resource Management Act 1991.

The matters for the Council to address in Section 104 are:

- Part II matters;
- the actual and potential effects on the environment of allowing the activity (Section 104 (1)(a));
- relevant objectives and policies in the Tasman Regional Policy Statement, and the Proposed Tasman Resource Management Plan (Section 104 (1) (b));
- any other matter the Council considers relevant and reasonably necessary to determine the application (Section 104 (1)(c)).

Section 104C of the Resource Management Act 1991 (as amended) provides:

When considering an application for a resource consent for a restricted discretionary activity, a consent authority—

- (a) must consider only those matters specified in the plan or proposed plan to which it has restricted the exercise of its discretion; and*
- (b) may grant or refuse the application; and*
- (c) if it grants the application, may impose conditions under section 108 only for those matters specified in the plan or proposed plan over which it has restricted the exercise of its discretion.*

5.1 Resource Management Act Part II Matters

In considering an application for resource consent, Council must ensure that if granted, the proposal is consistent with the purpose and principles set out in Part II of the Act.

Section 5 sets out the **purpose** of the Act which is to promote the sustainable management of natural and physical resources. “Sustainable management” means:

“Managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while -

- sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- avoiding, remedying, or mitigating any adverse effects of activities on the environment*

Sections 6, 7 and 8 set out the **principles** of the Act:

Section 6 of the Act refers to matters of national importance that the Council shall recognise and provide for in achieving the purpose of the Act. The matters relevant to this application are:

- The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development.
- The maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers

Section 7 of the Act identifies other matters that the Council shall have particular regard to in achieving the purpose of the Act. Relevant matters to this application are:

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

Section 8 of the Act shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). I understand that the applicant has consulted with iwi. I do not anticipate that there are any relevant issues for this application in respect of Section 8.

If consent is granted, the proposed activity must be deemed to represent the sustainable use and development of a physical resource and any adverse effects of the activity on the environment are avoided, remedied or mitigated.

These principles underpin all relevant Plans and Policy Statements, which provide more specific guidance for assessing this application.

5.2 Tasman Regional Policy Statement

The Regional Policy Statement seeks to achieve the sustainable management of land and coastal environment resources. Objectives and policies of the Policy Statement clearly articulate the importance of protecting land resources from inappropriate land use and development.

Because the Proposed Tasman Resource Management Plan was developed to be consistent with the Regional Policy Statement, it is considered that an assessment under the Proposed Plan will satisfy an assessment against Policy Statement principles.

5.3 Tasman Resource Management Plan

The most relevant Objectives and Policies to this application are contained in:

- Chapter 5 “Site Amenity Effects”;
- Chapter 7 “Rural Environment Effects”;
- Chapter 8 “Margins of Rivers, Lakes, Wetlands and the Coast”;
- Chapter 9 “Landscape”

These chapters articulate Council's key objectives: To ensure land uses do not significantly adversely affect local character, to provide opportunities for a range of activities in rural areas while retaining the productivity of the land.

The most relevant Rules which follow from these imperatives are contained in:

- Chapter 16.3 'Subdivision',
- Chapter 17.5A 'Rural 3 Zone',
- Chapter 16.2 'Transport',
- Chapter 16.4 'Esplanade Reserves, Strips and Access Strips',

Matters Council has restricted its discretion are listed in Appendix 1. Details of the assessment of the proposed activity in terms of these matters are addressed through the assessment of actual and potential effects in paragraph 6.1 below and analysis and discussion on the relevant policies and objectives in paragraph 6.2 of this report.

5.4 County of Waimea District Planning Scheme 4

As the land is zoned Rural B within this Transitional District Plan and does not meet Ordinance 406, which requires a 15 hectare minimum lot size, the proposed subdivision constitutes a **non-complying activity** under the Waimea Scheme.

Weighting

Whilst the Rural 3 provisions of the Proposed Tasman Resource Management Plan have advanced through the hearing and decision processes, Section 19 of the Act directs that the Transitional District Plan cannot however be set aside entirely. As the subdivision constitutes a **non-complying activity** under this Transitional District Plan (*County of Waimea District Planning Scheme 4*), overall the development must be assessed as a **non-complying activity**.

However, due to the advanced stage of the Proposed TRMP through the statutory process, and I understand that there are no outstanding references on the Rural 3 zoning that might affect this property, I recommend that very little weight should be given to the Waimea District Planning Scheme in the assessment of this proposal.

6. ASSESSMENT

Pursuant to Section 104(1)(a) of the Resource Management Act, the following effects assessment has been set out:

6.1 Actual and Potential Environmental Effects

6.1.1 Permitted Baseline

Under Section 104 (2) of the Resource Management Act the Council may use the "permitted baseline" test to assess the proposal. Under this principle the proposal is compared with what could be done as permitted activities under the relevant Plan.

Subdivision

In terms of the subdivision there is no permitted activity rule in the Rural 3 zone so the permitted baseline test is not considered relevant for subdivision.

6.1.2 Rural Land Productivity

The Coastal Tasman Area, including the Rural 3 Zone, has been identified as an area where rural residential and residential development opportunities within the rural environment could be enabled, subject to protecting the productive values of the rural land resource, coastal and rural character, and amenity values, and avoiding, remedying and mitigating adverse effects on the environment, and encouraging low impact subdivision and development. To assist in this assessment a Design Guide covering the matters identified above and others has been developed; and a matter of discretion is the level of consistency with this Design Guide.

Where those living opportunities can be achieved without compromising productive values, natural character, rural character and amenity values, other significant values and avoid, remedy, or mitigate adverse effects on the environment it may be appropriate to grant consent.

The site's productive land values have been assessed by Council's Resource Scientist (Land), Mr Andrew Burton (attached as Appendix 2 of this report)

Classification System

The "Agriculture New Zealand Classification System for Productive Land in the Tasman District" is used to determine productivity potential of the land. The classification system ranges from "A" to "H", with "A" being land with the highest versatility being described as very flexible and "H" being land with the lowest versatility being described as inflexible for primary production activities.

Mr Burton has utilised this classification system and has identified the land as entirely Class B land.

Land Class Assessments

Mr Burton's report states the property has gently rolling topography with average slopes ranging from 3 to 7 degrees and a favourable north facing aspect.

Assessment of Soils

Mr Burton states that the soils have been mapped as Mapua Sandy Loams and have a Classification of Class B which is the second most versatile of the 7 class ranking system for the Tasman District. Class B soils make up the top 5% of productive soils in the Tasman District.

It appears that the entire property has Class B soils, which means that any subdivision of the property will impact the productive use of the site.

For the purposes of this report, I would classify that Class B soils, that are in the top 5 % of the soils in the District as “soils of high productive value”. I accept that Class B soils and many of the Class A soils may not technically meet the definition of “ high productive value” in Chapter 2 of the TRMAP, because of their low natural fertility, but with correct fertiliser application, available irrigation water and good management, can be highly productive in terms of horticultural and viticultural production. There are no Class A soils in the Rural 3 zone, and so in reference in the Design Guide and the policies and objectives to land or soils of high productive value, should include the Class B soils which are found on this property.

The site has sufficient available irrigation water, under the existing Thawley Orchard Co Ltd water permits to allow for on-going horticultural use of the property.

Land Productivity and Versatility

The subdivision will effectively fragment an existing small orchard block in such a way, it is likely that continued productive use of the property will cease as result of the subdivision.

Whereas the existing site has the dwelling at the far southern end of the property, making the rest of the site available for productive use, it is likely that the subdivision will result in Lot 1 being lost to productive use and Lot 2 being compromised for productive use, by way of the dwelling site in the middle of the property and small size of the allotment.

It is considered that productive values of the site will best served by the property remaining in its current form, without any further subdivision.

The proposed subdivision will have an adverse effect on the actual and potential productivity of the site, in such a way that it is likely the long term productive use of the property will be lost.

6.1.3 Rural Character, Landscape and Amenity Values

“*Rural character*” is defined in the PTRMP (Chapter 2) as:

“the character of the land as shown by the predominance of rural productive activities and includes:

- (a) a high ratio of open space to built features;*
- (b) large areas of pasture, crops, forestry, and land used for productive end;*
- (c) built features associated with productive rural land uses;*
- (d) low population density;*
- (e) predominant form of residential activity directly associated with a productive land use;*
- (f) social and economic activity associated with productive land use;*
- (g) cultural values associated with farming and living on the land.”*

The current landscape of the immediate surrounding area comprises all of the aspects of “rural character”, with high degree of open space, relatively intensive horticultural and viticultural activities present, a low population density and a relatively open landscape, in spite of the small size of the existing title.

It is considered that the proposed subdivision will adversely affect this “rural character” in creating allotments will have a primarily residential use as the main activity on the allotment, rather than a rural productive, that the site has at present.

Assessment of the Proposed Character

Design Guide for Subdivision and Development in the Coastal Tasman Area (The Guide)

The essence of the Coastal Tasman Design Guide as set out in Part II Appendix III of the TRMP recognises the potential for more residential development while still retaining its particular rural character and landscape values with the minimal loss of the productive and versatile qualities of the land.

To be consistent with The Guide the development will provide an acceptable level of rural amenity within and outside the developed area and still the retain the availability of productive land for productive uses.

The following table assesses the development against outcomes anticipated by The Guide:

The Guide	Thawley Orchard Proposal
2.2.3 Gather information on landscape, character and amenity attributes of the site and surrounding landscape, including productivity values and productivity assessment.	Very little information in the application of the amenity attributes of the surrounding landscape. No productive values assessment was provided.
2.2.4 (i) Using the information gathered under 2.2.3, map and describe areas where land development would potentially result in adverse effects.	Not provided with the application.
(ii) Map and describe areas of the site where development could occur without adverse effects that are more than minor.	No such map was provided.
(c) Overlay the constraints information with the constraints information to show area that may be developed without adverse effects and those where development may in conflicts with the guidelines of the Design Guide.	Not provided.
2.2.5 Using the information gathered in 2.2.3 & 2.2.4 determine possible building location areas an allotment boundaries plus road access and servicing options.	While building location areas were provided, they do not appear to be based on a comprehensive design analysis set out in the Design Guide.
2.2.6 Compile all the documentation used in the design process, including the information gathered, the evaluation process and process of subdivision	Very little information or analysis was provided.

and development design and submit this Council with the application.	
3.1 High productive Land.	
(a) Land with highest productive values remains available for future productive uses.	Houses sites are in the middle of the productive areas of the block. Subdivision layout will mean that is likely that much of the land in either lot will remain available for productive use.
(b) Separate and/or buffer existing and future potential rural productive activities from residential land use activities.	A 30m separation has been provided from the adjoining vineyard block, but there no buffering from the house site on lot 2 and the productive land within the lot.
(c) Seek to retain high productive land in unfragmented landholdings.	The productive land will be fragmented in to two allotments.
3.2 Fresh Water Resources and the Coastline.	
(a) Seek to maintain and/or enhance riparian buffer strips along the coast.	The applicant has provided esplanade reserves and has volunteered riparian planting along the coast.
(b) Seek to protect riparian margins and the coast from stock access.	Protected by way of proposed esplanade reserves.
(c) Avoid earthworks in close proximity to the coastline.	Unlikely that there will be any significant earthworks close to the coast.
(e) Seek to retain significant separation distance and/or buffer between any building development and margins of the coast.	One of the proposed building sites (Pack House site) is less than 100m from the coast. The other house is more than 100m from the coast.
(f) Create esplanade reserves along the margins of Waimea Inlet.	Proposed as part of the application, along the coastal frontage.
3.3 Drainage and Stormwater	
(a) retain the natural drainage characteristics of the landscape.	Unlikely that these will change as part of the subdivision.
(b) Avoid excessive earthworks.	Few earthworks involved in the subdivision.
(c) Use low impact stormwater design for stormwater management.	Very little stormwater runoff from subdivision. Stormwater will be need to be managed as part of any dwelling consent.
3.4 Access & Transport	
(a) Design driveways to complement contours and minimise the need for significant earthworks.	Very few additional access ways, which should not require significant earth works.
(b) Keep roads and driveways to a minimum.	Roads and driveways kept to a minimum.
3.5 Wastewater	
(b) Ensure that the disposal field of the wastewater system is located on terrain that is suitable for disposal.	Confirmed by waste water disposal report.
(c) Ensure that on-site disposal systems do not compromise the ability of high quality land to be used for rural productive uses.	Disposal field on highly productive land, that could limit its productive use.
(e) Ensure that the disposal system is large enough to assimilate the proposed long-term wastewater volume as well as incorporating sufficient reserve area.	Confirmed by wastewater disposal report.
3.6 Water Supply	
(d) Provide on-site water storage for the purpose of fire fighting.	Would be required as part of a resource consent for a dwelling.
3.7 Recreation, Conservation and Open Space.	
(a) Provide for public access alongside coastal margins.	Provided as part of the proposed esplanade reserves.
3.8 Allotments	
(a) Apply the matters relating to	Allotments contrary to the specific guidance set down in

location specific guidance (Chapter 4) to the design and layout of allotments, when considering a pattern of allotments.	4.2.4 of the design Guide.
(b) Provide for a variety of allotments shapes and sizes, which are in keeping with the landscape values, the topography of the site, and the landscape character of the surrounding environment.	Allotments with a size as low as 1 hectare, is not in keeping with the landscape character of the surrounding environment.
(c) Seek to determine allotment boundaries based on natural landscape contours and geographic features.	Allotments do not appear to be determined on natural landscape contours.
(d) Determine allotment boundaries with a view to minimising the potential for adverse cross boundary effects between current and future productive uses.	Allotment boundaries have not been determined in such a way to minimise the potential for cross boundary effect between residential sites and continued productive use of the site.
(e) Seek to ensure that high-productive land is not fragmented	Subdivision will fragment highly productive land.
3.9 Building Location Areas	
(a) Seek to retain dwelling privacy and outlook to the rural and/or coastal landscape in the selection of building location areas.	Dwelling privacy will be achieved, though coastal outlook of existing dwelling on Lot 1 could be adversely affected by the building location area on Lot 2.
(b) Ensure that building location areas are in places that are not highly visible from the coast or public viewing points	Building location areas will be highly visible from the coast, though this could be mitigated by the proposed riparian planting along the esplanade reserve.
(c) Develop an uncluttered pattern of building location areas on the landscape.	Difficult to assess with one additional lot, but having a building location area in the middle of the productive area is likely to create a more "cluttered " landscape than if the house site was clustered with the existing dwelling, and the existing productive area was left un-fragmented and un-built on.
(d) locate building location areas in positions that will avoid, remedy or mitigate the potential for adverse effects cross boundary effects with productive land uses.	Building location areas in the productive land area, which creates the potential for conflicts with the productive use of the site.
(e) Avoid placing building location areas on land that has high productive values.	Building location areas are on land of high productive value.
(f) use the location specific guidance (in Chapter 4) to assist in determining appropriate location for building location areas.	Proposal contrary to specific guidance in 4.2.4.
3.11 Vegetation	
(a) Seek to use appropriate native species within riparian margins.	Native planting proposed for esplanade reserve areas.

Under the Landscape Areas Descriptive and Advisory Notes (March 2003), the subject site falls within Landscape Unit Nine, Sub Unit 9A. Sub unit 9A which was originally 2D (Matahuna Peninsula) In the original Landscape Areas Descriptive and Advisory Notes (2003) is 20 hectares in size and in the 2003 Advisory notes this sub unit was anticipated to accommodate no additional house sites.

Maintaining the landscape qualities within 9A will be achieved by:

- *There being no further subdivision for house sites in this landscape sub-unit.*

Overall, it is considered that the proposal subdivision is not in consistent with the Rural 3 design guide, in particular the guidelines in Chapter 3 of the Guide and the Location specific guidelines for this Landscape sub unit 9A, set out in 4.2.4 of the Guide.

Amenity Values

Amenity values, as defined in Section 2 of the Resource Management Act 1991, is set out below:

“Amenity values” means those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.”

Amenity values arise from a number of qualities or elements that people value and are based on the natural and physical qualities and characteristics of an area. In relation to the rural locality they are most likely to include qualities such as:

- a sense of spaciousness (wide open spaces)
- expansive views of natural features such as hills, water, plains
- pleasant environment
- the presence of significant areas such as natural habitats.
- an environment with rural productive activities such as farming and horticulture
- privacy, peace and quietness, and absence of traffic and bustle
- an environment relatively uncluttered by structures and artificial features
- elements such as planting, topography, land use activities, waterways.

It is considered that proposed subdivision with allotment sizes of 1hectare and 2.7 hectares, will not achieve or maintain the existing rural amenity of this surrounding area.

6.1.4 Cross Boundary and Reverse Sensitivity Effects

The creation of small rural residential allotments in a productive rural environment has potential to create cross- boundary effects. With those residential land owners and existing horticultural and vineyard operators which require spray and management regimes, that may conflict with the new residential landowners expectations. While building setbacks can reduce some effects and rural emanation easements can make it clear what sort of environment new landowners are entering, they do not necessarily remove the potential for future cross boundary conflicts.

6.1.5 Transport Effects

The proposed additional allotment will access on to Apple Valley Road which is due to be upgraded By Transit New Zealand as part of the proposed Ruby Bay bypass. The application includes an area of Road to vest to allow for the realigned Apple Valley Road and the new intersection with the State Highway. This is shown as Appendix 1 to this report.

Transit New Zealand advised that they were happy to give their written consent to the proposal, providing Crossing Place 10 and 17 are closed. The closing of these crossing places has been volunteered by the applicant.

6.1.6 Public Open Space and Esplanade reserves.

These matters are covered by Ros Squire's report which is attached to this report as Appendix 3

6.1.7 Ecological Values

It is considered the proposed subdivision will not adversely affect ecological values. The proposal involves riparian planting along the esplanade reserve which should improve the quality of run off into the Waimea Inlet.

6.1.8 Contaminated Site Issues

Because the subdivision site has been used for orcharding since before the 1970's, there is potential that property contains spray residues from DDT and lead arsenic, that were commonly used at the time. The applicant commissioned a Pesticide Contamination Report by MWH, which was completed in April 2007. The report concluded that *"this site complies with the guideline levels for residual pesticide levels and from this consideration the property is suitable for future residential development."* (p5) (para2)

The report has been reviewed by Council's Resource Scientist for Contaminated Sites, Jenny Easton, who agreed with the reports conclusions that the property was suitable for residential use.

6.1.9 Natural Hazards

Although the site is on the coast, it is considered that there is no hazard from coastal erosion or inundation. Because of the gently sloping nature of the property, it likely that any proposed building sites areas are at least 7 metres above mean seal level, which means there is very little chance of coastal flooding affecting the property.

6.1.10 Cultural Heritage Assessment

According to the submission from the New Zealand Historic Places Trust (NZHPT) there are no known archaeological sites on the property. However, because of the coastal location, they recommended an advice note be included in the decision advised of landowners' obligations under the Historic Places Act.

6.1.11 Servicing Effects

Water Supply

No specific water supply has been proposed for the subdivision, though it does anticipate on page 10 of the application, that 23,00 litres of water storage will be required for dwellings. This satisfies the Proposed Plan permitted activity criteria for the volume of potable water stored on the site.

Provision for Fire Fighting

The New Zealand Fire Service Commission requested in its submission (2) that the applicant achieve compliance with the NZ Fire Service Code of Practice. If the Committee decides to approve the application, The Commission requested that the condition be imposed as a consent notice that:

“Compliance with the New Zealand Fire Service Code of Practice for Fire Fighting Water Supply SNZ PAS 4509:2003, in terms of any dwellings constructed on the proposed allotments.”

Wastewater

The application included a report by Tasman Consulting Engineers, a report on the suitability of Lot 2 for on-site wastewater disposal. The report confirm that the site is considered adequate for on-site disposal. The report was reviewed by Jeremy Butler, who at the time was Council’s Senior Natural Resources Planner at the time, who advised the report was acceptable. He advised that discharge consent would be required for any on-site waste water system for the proposed dwellings.

The applicant has not applied for any consent for a dwelling or wastewater discharge. There fore a detail assessment cannot be provided, as part of this report, except to advise that wastewater discharge consent will be required together with any dwelling consent for a dwelling on Lot 2.

Stormwater

It is considered that there are no additional works required as part of the subdivision that will result in the requirement for a stormwater consent. However, storm water discharge consent may be required for any proposed dwelling on Lot 2, as there is no permitted activity rule for stormwater discharges in the Rural 3 zone.

An advice note will need to include in any decision to grant consent to the subdivision, stating that a stromwater discharge consent may be required together with any dwelling consent for dwelling on proposed Lot 2.

Power and Telephone

There do not appear to be any problems providing power and telephone servicing to the additional allotment.

Provided there are adequate legal instruments, such as Easements, which are recommended as conditions of consent if granted, the adverse effects of servicing are considered to be minor.

6.1.12 Summary of Assessment of Effects

The summary of adverse effects is as follows:

Summary of Effects	
Effects Assessed	Adverse Effects
Rural Land Productivity and Versatility	More than minor
Rural Character, Landscape Character, and Amenity Values	More than minor
Cross Boundary and Reverse Sensitivity Effects	Minor
Transport Effects	Minor
Public Access and Links	Minor
Ecological Values and Archaeological Sites	Minor
Servicing Effects	Minor

Overall my assessment is that the actual adverse effects on the environment are more than minor and the subdivision proposal is inconsistent with the Design Guide for Subdivision and Development in the Coastal Tasman Area and anticipated outcomes for Landscape Sub Unit 9A.

6.2 Relevant Objectives and Policies of the PTRMP

The following Policies and Objectives have been considered relevant for this proposal:

- Chapter 5 “Site Amenity Effects”;
- Chapter 7 “Rural Environment Effects”;
- Chapter 8 “Margins of Rivers, Lakes, Wetlands and the Coast”;
- Chapter 9 “Landscape”;

6.2.1 Chapter 5: Site Amenity Effects

Issues:

- (a) Provision for appropriate protection, use and development of the District’s resources so that activities at one site do not adversely affect the use and enjoyment of another site, or resource.
- (c) Amenity can be compromised in site development and site use.
- (d) Some localities exhibit special characteristics which people wish to retain.
- (e) Safety of people, property, and resources.

Objectives	Policies
5.1.0 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.	5.1.1 5.1.3 To limit the intensity of development where wastewater reticulation and treatment are not available 5.1.4 5.1.9 5.1.9A
5.2.0 Maintenance and enhancement of amenity values on-site and within communities, throughout the District	5.2.4 5.2.7 5.2.8 To avoid, remedy or mitigate the adverse effects of traffic on the amenity of residential, commercial and rural areas. 5.2.13
5.3.0 Maintenance and enhancement of the special visual and aesthetic character of localities	5.3.2 To maintain the open space value of rural areas. 5.3.5

Comment

The above objectives and policies selected by the writer confirm the need to protect amenity values and whilst Chapter 5 policies and objectives cover all zones, it is clear that rural and rural/residential amenity values have to be safeguarded from adverse environmental effects.

6.2.2 Chapter 7: Rural Environment Effects

Relevant Issues:

Tasman District's land resource is largely rural. Rural character, amenity values, and the productive use of rural land underpins the social, economic and cultural well-being of the people of the District.

An important aspect of managing rural environmental effects is recognising the qualities and character of rural areas, and the legitimacy of existing established activities and a range of potential future activities which involve the productive use of the land resource.

A main issue Council has to consider is how to provide for non-soil-based production uses in rural areas without diminishing the availability of the productive land resource and how to maintain an appropriate level of protection of rural character, ecosystems and amenity values.

Objectives	Policies
<p>7.1.0 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.</p>	<p>7.1.1 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 7.1.3</p>
<p>7.2.0 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.</p>	<p>7.2.1 To enable activities which are not dependent on soil productivity to be located on land which is not of high productive value. 7.2.1A To enable sites in specific locations to be used primarily for rural industrial or rural residential purposes (including communal living and papakainga) with any farming or other rural activity being ancillary, having regard to: (a) the productive and versatile values of the land; (c) outstanding natural features and landscapes; (d) cross-boundary effects; (e) servicing availability; (g) transport access and effects; (h) potential for cumulative adverse effects from further land fragmentation (j) efficient use of the rural land resource; 7.2.2 7.2.4</p>
<p>7.2A Managing the pressure for residential development in the Coastal Tasman Area while protecting the productive values, rural character and amenity values.</p>	<p>7.2A.1 to 7.2A.16B inclusive 7.2A.21</p>
<p>7.3.0 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.</p>	<p>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 7.3.6 7.3.8 to 7.3.10</p>

6.2.3 Chapter 8: Margins of Rivers, Lakes, Wetlands and the Coast

Relevant Issues

Provision of public access to and along coast and the maintenance of the natural character of the coastal environment are important issues in the Tasman District.

Objectives	Policies
8.1.0 The maintenance and enhancement of public access to and along the margins of... wetlands... which are of recreational value to the public.	8.1.1 To enhance public access to and along the coast... 8.1.3 8.1.5 8.1.7
8.2.0 Maintenance and enhancement of the natural character of the coastal	8.2.1 to 8.2.3 8.2.5 to 8.2.7 8.2.13 to 8.2.15 8.2.19

The following extracts from the principal reasons and explanations for Chapter 8 are considered relevant:

Protection of the natural character of the coastal environment from inappropriate subdivision, use and development and the enhancement of public access to and along the coast are matters of national importance in promoting the sustainable management of natural and physical resources...effective riparian management including the planting and fencing of riparian margins can protect natural ecosystems and habitats.

Comment

The application includes public access around coast as part of the proposed esplanade reserves and the proposed riparian planting should help retain the natural character of the coastal environment.

6.2.5 Chapter 9: Landscapes

Relevant Issues

The urbanisation of rural landscapes and managing the effects of subdivision in coastal landscapes are important issues in the Tasman District.

Objectives	Policies
9.1.0 Protection of the District's outstanding landscapes and features, from the adverse effects on natural landform, surrounding natural features and on visual amenity values.	9.1.5 to 9.1.7A
9.2.0 Retention of the contribution rural landscapes make to the amenity values and environmental qualities of the District, and the protection of those values from inappropriate subdivision and development.	9.2.1 to 9.2.5 To require subdivisions with more intensive subdivision than the plan permits to demonstrate consistency with design guides. To retain rural characteristics of the landscape within rural areas.

7. SUMMARY AND CONCLUSIONS

- 7.1 The existing site is 4.9 hectares in size, mainly in orchard. There is an existing dwelling at the southern end of the property and a old packing shed near the coast.
- 7.2 The proposal seeks to create 1 additional residential building site. A reserve of 0.34 hectares is proposed to vest as council esplanade reserve and Lot 4 of 0.47 hectares will vest in Crown as road.
- 7.3 It is acknowledged that there will be a positive benefit from the protection and enhancement of public access along the coast by way of the vesting of the proposed esplanade reserve (Lot 3). Also the coastal riparian margin will be enhanced by the proposed planting out of the esplanade reserve.
- 7.4 The proposal has not sought to retain the productive land in one unfragmented allotment, which is anticipated with the Rural 3 Design Guide. Instead the productive areas of the site has been fragmented into two rural residential allotments, with the dwelling site in the middle of the main productive area, thereby compromising the long term productive potential of the site.
- 7.5 The main issue with this proposal is whether the existing productive rural character can be achieved by the development.
- 7.6 It is considered that the proposed allotments of 1 hectare and 2.7 hectares respectively, will not achieve the rural character that is anticipated by the Proposed Tasman Resource Management Plan.
- 7.7 "Rural Character" is defined in Section 2 of the Plan as:

"the character of the land as shown by the predominance of rural productive activities and includes:

- (a) a high ratio of open space to built features;*
- (b) large areas of pasture, crops, forestry, and land used for productive end;*
- (c) built features associated with productive rural land uses;*
- (d) low population density;*
- (e) predominant form of residential activity directly associated with a productive land use;*
- (f) social and economic activity associated with productive land use;*
- (g) cultural values associated with farming and living on the land."*

It is considered that the features listed here that make up "rural character" will not be achieved by this proposal.

- 7.8 The proposal is considered to be contrary to the policies and objectives of the Proposed Tasman Management Plan, in particular those that seek to maintain enhance rural amenity and character values and avoid the adverse effects of fragmentation of highly productive land.
- 7.9 The applicant has not provided a comprehensive Rural 3 design guide analysis of the site, surround area and how the development complies with the guidelines and site specific landscape sub unit requirements.

7.10 The proposal will not retain productive land for long term productive use in unfragmented holdings, but instead will fragment productive land in to smaller rural residential lots, which will effectively be lost to any long term productive use.

8. RECOMMENDATION

Subdivision consent (RM070558)

That pursuant to Section 104B of the Resource Management Act 1991 the Tasman District Council **DECLINES** its consent to the application by Thawley Orchard Company Ltd to subdivide Lot 1 DP 1572 into four allotments.

9. RECOMMENDED CONDITIONS

Subdivision Consent (RM070558)

If the committee were going to grant consent, I would recommend that approval include the following conditions:

RESOURCE CONSENT

RESOURCE CONSENT NUMBER: RM060419

Thawley Orchard Company Limited
(hereinafter referred to as "the Consent Holder")

ACTIVITY AUTHORISED BY THIS CONSENT: To subdivide an existing title comprising 4.9068 hectares into four allotments, two of which are to be vested.

LOCATION DETAILS:

Address of property:	3 Apple Valley Road East.
Legal description:	Lot 1 DP 1572
Certificate of title:	CT NL55/17
Valuation number:	1938067800

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 "Proposed Subdivision for Thawley Orchard Co " Job No. R661, dated April 2007, prepared by Cotton & Light Ltd, 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.

2. The survey plan which is submitted for the purposes of Section 223 of the Act shall show Lot 3 as vesting in the Tasman District Council as Local Purpose Reserve (Esplanade). The Local Purpose Reserve (Esplanade) shall have a width of least 20 metres, in from the line of mean high water springs.
3. The survey plan which is submitted for the purposes of Section 223 of the Act shall show Lot 4 vesting in the crown as road reserve.

Building Location Area – Lot 2

4. The location of any new buildings on Lot 2 shall be contained entirely within a rectangle measuring 20 metres (east-west direction) by 50 metres (north-south direction) and shall be located generally in the location, 27 metres south of the Right of Way A shown on Plan A 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.
5. The eastern edge of the building location area on Lot 2 shall be setback a minimum distance of 30 metres from the legal boundary of Lot 1 DP 315786.

Easements

6. 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.
7. The survey plan which is submitted for the purposes of Section 223 of the Act shall include reference to easements.

Power and Telephone

8. The Consent Holder shall provide written confirmation from the relevant utility providers that power & telecommunication services are available to Lot2.

Access to Lot 2

9. Engineering Plans shall be provided to Transit New Zealand for the proposed Lot 2 access crossing for approval by Transit New Zealand, prior to the commencement of any works.
10. If the Apple Valley Road realignment has not been completed, a 3m wide metalled access will need to be provided from Apple Valley Road, through Lot 4 to the boundary of Lot 2
11. Written confirmation shall be provided from Transit New Zealand, that the Lot 2 access works have been completed in accordance with the approved engineering plans.

Esplanade Reserve Planting

12. An indigenous vegetation buffer strip at least 20 metres wide shall be planted within the Lot 3 esplanade reserve prior to a completion certificate being issued pursuant to Section 224(c) of the Act. The indigenous vegetation shall comprise species that are commonly found in the local area.
13. The existing pond on the esplanade reserve shall be filled in prior to the signing of the Sections
14. The consent holder shall prepare a planting plan and management plan for the proposed plantings, which shall be submitted to Council's reserves Manager for approval prior to the commencement of any works. The management plan shall details of the removal of gorse, pampas grass and the removal of the pond within the esplanade reserve.
15. The consent holder shall be responsible for maintenance of the esplanade reserve plantings and implementation of the management plan for a period of two years from the issue of the section 224 certificate. A cash or bank bond, approved by the Council Reserves shall be taken to cover these works over this two year period.
16. Certification that the Building Location Area on Lot 2 is suitable for the erection of a residential building 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.
17. The existing packhouse on Lot 2 as shown on the application plan shall be demolished and removed.

Financial Contributions

18. 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 site within Lot 2.
 - 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 one allotment in respect of roading.

Consent Notices

19. The following consent notices shall be registered on the certificate of title for Lot 2 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 Lot 2 shall be restricted to the building location area shown on Title Plan DP ...and buildings shall be fully contained within the area identified.
- ii) A resource consent shall be required for any dwelling on lot 2 and a discharge consent will be required for any on-site water system associated with the dwelling.

The resource consent for the dwelling will require a full assessment, by a suitably qualified landscape design professional, of the proposed dwelling and associated landscaping against the *Design Guide for Subdivision and Development in the Coastal Tasman Area, Tasman District* set out in Part II – Appendix 3 of the Proposed Tasman resource Management Plan.

- iii) The existing shelter belt, or replacement if it has to be removed for Ruby Bay Bypass works, along the State Highway Boundary with Lot 2, shall be retained and maintained in perpetuity by the landowner to ensure that the Lot 2 dwelling is adequately screened from the State Highway.
- iv) No buildings shall be erected on Lot 2 within 100 metres of the line of mean high water springs.
- v) Compliance with the New Zealand Fire Service Code of Practice for Fire Fighting Water Supply SNZ PAS 4509:2003, in terms of any dwellings constructed on the proposed allotment.

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.

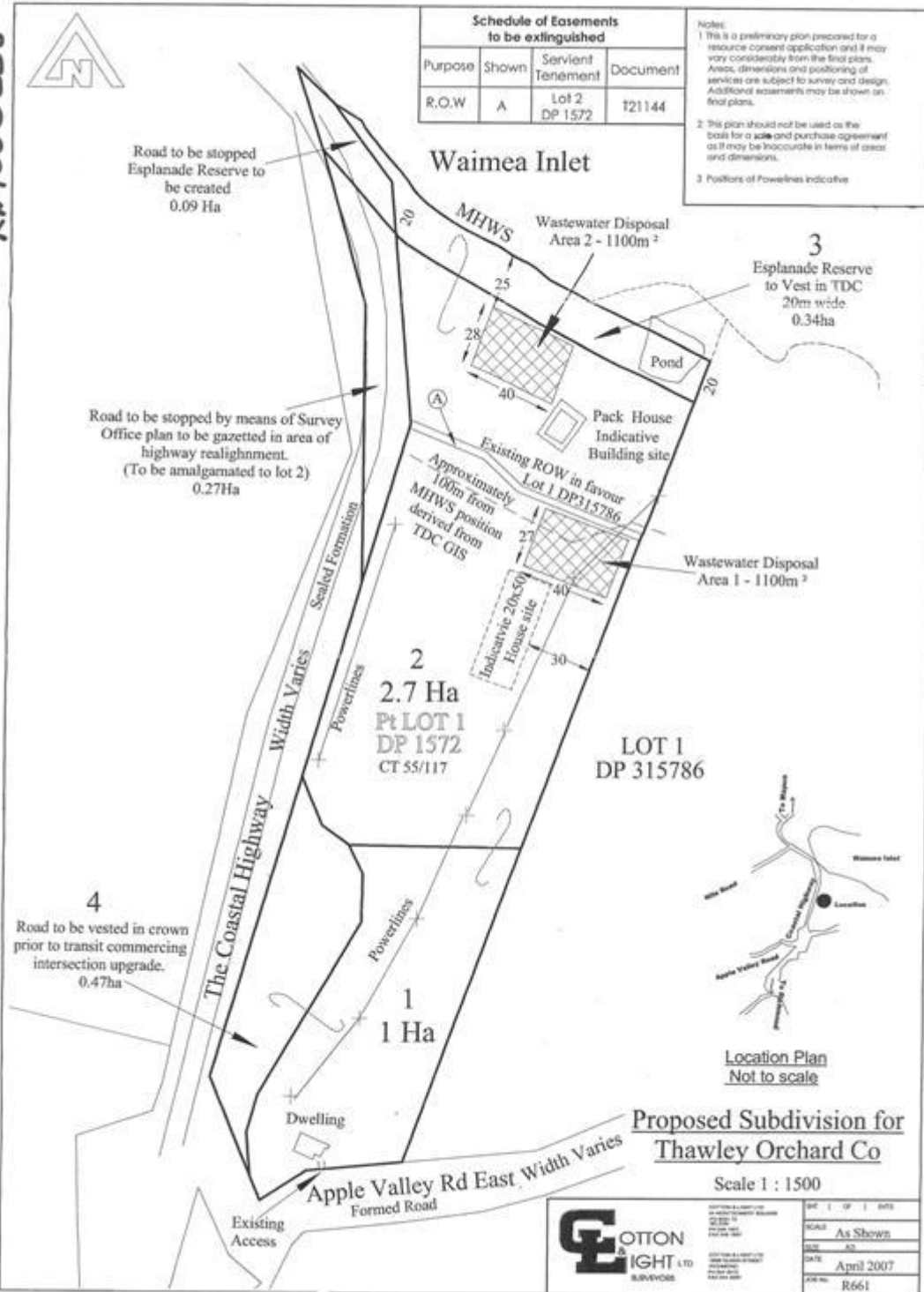
Other Proposed Tasman Resource Management Plan Provisions

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.
3. A resource consent is required for the construction of buildings on the respective allotments.
4. A discharge consent will be required on any new on-site wastewater disposal system.
5. A stormwater discharge consent may be required for the stormwater runoff from new buildings on the allotments.
6. Access by the Council's Officers or its Agents to the property is reserved pursuant to Section 332 of the Resource Management Act 1991.
7. 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.
8. 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.
9. 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.

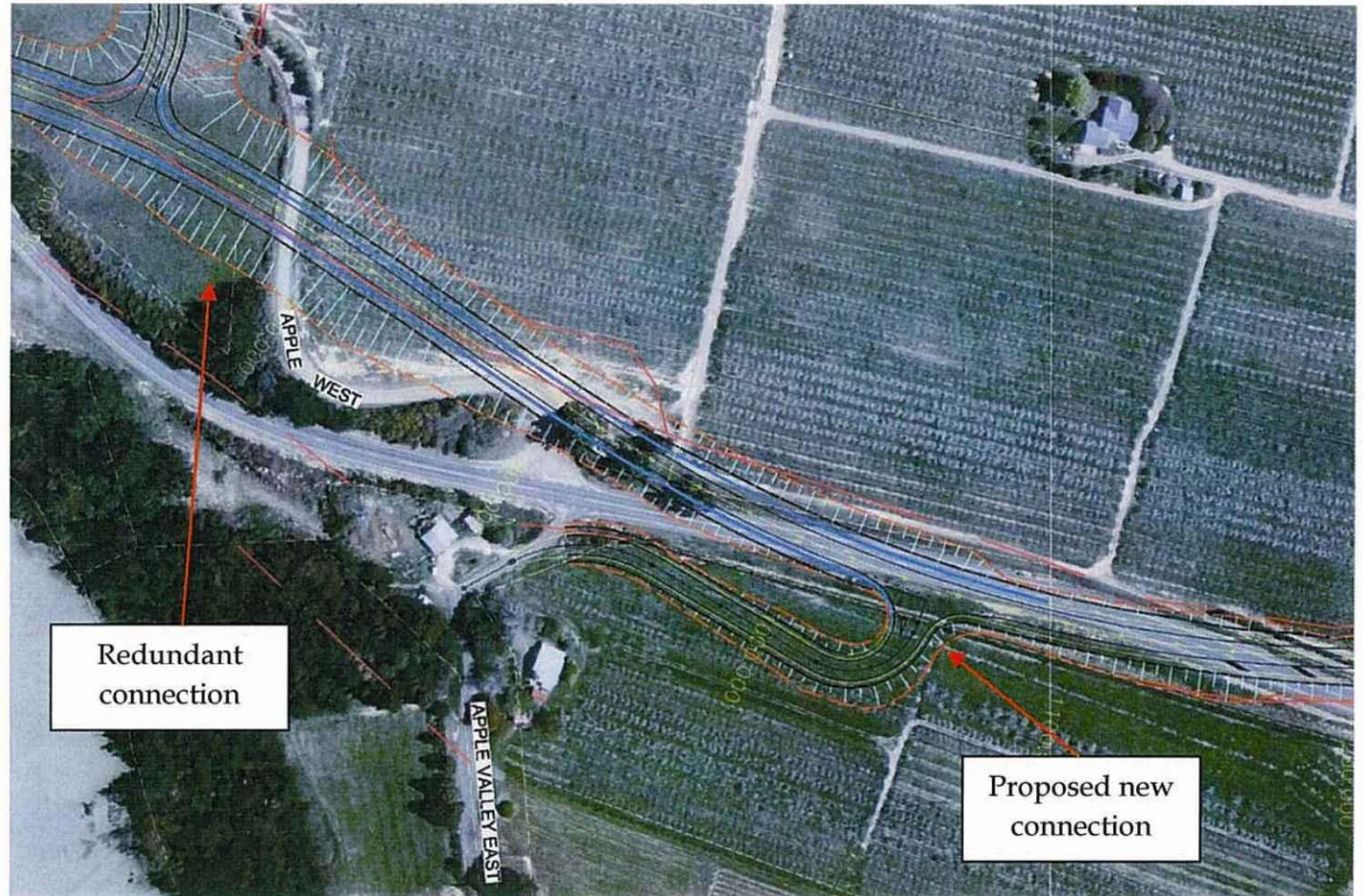
Mark Morris

Co-ordinator – Subdivision Consents.

RM060558



**APPENDIX 1:
Proposed Apple Valley East Road Re-alignment associated with the Ruby Bay Bypass.**



Thawley Orchards Co. Apple Valley Road East

The application area is located at the coastal end of the Moutere Formation bordering the Waimea Inlet. The main physical factors that influence potential productivity are climate, topography and soils.

Climatic factors in this part of the region are recognised as being of minor limitation with possibly low rainfall being the most significant limiting factor but able to be minimized by irrigation.

The topography is gently rolling ranging in slope from 3 to 7 degrees and is only a minor limitation to use. A full range of orchard equipment can be used on slopes up to 15 degrees.

The other topographical factor that can influence productivity is aspect. In general much of the block has a favourable north facing aspect.

The soils mapped on the application area are described in the "Soils of the Waimea County" are Mapua sandy loams. Much of the pipfruit industry in this area is or was situated on this soil type. Increasingly, boutique vineyards and olive groves are being established on small pockets of the Mapua soils.

The "Classification System for the Productive Land in the Tasman District" assesses the application area as class B. This class land is the second most versatile in a 7 class ranking system for the Tasman District. The classification report indicates that the crop range in class B is nursery, floriculture, orchards, market garden, cropping, pastoral and production forestry. Although this is a similar crop range to class A land, the difference between the two classes will be found in the versatility within each land use type. For example although orcharding can be carried out successfully on both class A and B land, a wide range of orchard crop could be grown on class A where only a limited range could be grown in class B areas due to greater soil, slope or climate limitations.

The current land use demonstrates well the productivity of this land. The majority of the block is in orchard production. Land of similar topography and soil type in the surrounding area has been used for a variety of crops ranging from pastoral and production forestry through to orchard and viticulture production.

In the Rural 3 Zone, there are no class A soils, class B is the most versatile and covers 1600ha or 44% of the Rural 3 zone area. The rest of the zone 3 area is class E. The productivity difference between these two types of land is very significant.

Andrew Burton
Resource Scientist (land)
05.11.2007

To: Environment & Planning Subcommittee
From: Rosalind Squire, Planner, Community Services Department
Date: 2 November 2007
Subject: **RM060558 Thawley Orchard Co, Apple Valley Rd East**

The report by the Principal Planner outlines the proposed subdivision. This memorandum summarises the issues with respect to the acquisition of reserves. Staff from the Community Services Department have visited the application site, considered it in the wider context and make the following recommendations. The recommendations are made without prejudice subject to the application being granted.

The application involves the subdivision of a 4.65 hectare Rural 3 zoned title into 3 allotments:

- *Proposed Lot 1 is 1 hectare in area and will accommodate the existing dwelling on the site.*
- *Proposed Lots 2 is 2.7 hectares in area and will be used for rural residential purpose.*
- *Proposed Lot 3 comprises 3,400 square metres of estuary margin which is proposed to be vested in the Tasman District Council as Local Purpose Reserve (Esplanade) in accordance with section 230 of the Resource Management Act 1991 (RMA). There is also a 900m² area of road to be stopped and vested as Local Purpose Reserve (Esplanade).*

Proposed Lot 3 - Local Purpose Reserves (Esplanade)

Section 230 requires that where any proposed allotment created by a subdivision is less than 4 hectares in area a 20 metre esplanade reserve or strip be created adjacent to the coastal marine area. However, the Act allows specific Plan rules, or any resource consent, to waive or amend the width of an esplanade reserve.

Community Services staff support the vesting of the Local Purpose Reserve (Esplanade) and see no reason to waive or amend the 20 metre width specified in the Act. The vesting of the reserve is consistent with the objectives and policies of the Tasman Resource Management Plan and the purpose of the Resource Management Act 1991.

Page 9 of the application states that it is desirable that the existing vegetation along the coastal margin be replaced with species indigenous to the locality and that development and implementation of an appropriate planting program can be the subject of a condition requiring a landscape planting plan to be approved and implemented prior to section 224 approval.

This is supported and it is recommended that a condition requiring that the existing vegetation adjoining the coastal margin to be replaced with species indigenous to the locality be imposed. The condition shall require that a landscape planting plan be prepared and submitted to the Reserves Manager for approval prior to any planting being undertaken. The condition shall also state that all works shall be undertaken at the applicants cost.

Page 14 of the application raises the issue of the pond which will lie within the proposed esplanade reserve and states that discussions with Council staff indicate that the pond be filled in.

Community Services staff have discussed the matter with the applicant and support the infilling of the pond for amenity and safety reasons. It is recommended that a condition be imposed requiring that the pond be filled prior to section 224 approval.

Rosalind Squire
Planner
Community Services Department