

STAFF REPORT

TO: Environment & Planning Subcommittee - Commissioner Hearing

FROM: Ross Shirley, Subdivision Officer

REFERENCE: RM090716

SUBJECT: **P J and P M WILKS - REPORT REP10-09-02** - Report prepared for meeting of 6 September 2010

1. INTRODUCTION

1.1 The applicants, P J and P M Wilks own a 53 hectare Rural 2 Zone property located off the end of Malling Road. The property contains an existing dwelling and is otherwise in pasture and plantation forestry, with a small area of native bush and wetland. The property is accessed via an existing right-of-way and has a legal description of Lot 5 DP 14829 contained in Certificate of Title NL9B/1292.

2. PROPOSAL

2.1 The proposal is to subdivide the property to create Lot 1 of 11.3 hectares containing the existing dwelling and Lot 2 of 42 hectares containing a proposed building site, the plantation forestry, native bush, wetland and most of the pasture. Refer subdivision plan attached as Appendix A.

2.2 The proposal also includes a new right-of-way along the eastern boundary of Lot 1 (shown A on the plan) that links to a new access road to the proposed building site on Lot 2. In addition, there is a proposed right-of-way along the western boundary of Lot 2, supposedly for access to a water supply.

2.3 Easements in favour of Tasman District Council are proposed over the Redwood Valley water pipeline. Covenants are proposed over the wetland and a narrow strip of native bush along the eastern boundary of Lot 2.

3. STATUS OF THE APPLICATION

3.1 The land is zoned Rural 2 under the Tasman Resource Management Plan (TRMP).

3.2 The only area overlay affecting the subject land is Land Disturbance Area 1. The Eves Valley Landfill and Refuse Disposal Designated Area (D163) adjoins the land. Refer Appendix B.

- 3.3 Subdivisions in the Rural 2 Zone require inter alia a minimum area of 50 hectares to be a controlled activity (Rule 16.3.6.1). With proposed allotment areas of 11.3 hectares and 42 hectares the subdivision breaches that rule.
- 3.4 The subdivision is a discretionary activity by virtue of Rule 16.3.6.2.
- 3.5 On-site access in the Rural 2 Zone is limited to a maximum length of 200 metres to be a permitted activity (Rule 16.2.2.1(b)). With the proposed building site on Lot 2 having on-site access of approximately 1200 metres the proposed on-site access breaches that rule.
- 3.6 The on-site access is a discretionary activity by virtue of Section 87(B)(b) of the Resource Management Act (RMA).
- 3.7 Overall, the proposal must be considered as a discretionary activity.

4. NOTIFICATIONS, SUBMISSIONS AND FURTHER INFORMATION

4.1 The application included written approvals from the following persons:

- (a) N J Thompson
- (b) C R and R B Beatson
- (c) G I Muir

Pursuant to Section 104(3)(a)(ii) the decision-making panel must not have any regard to effect on those persons.

4.2 The application was publicly notified and submissions closed on 30 April 2010.

4.3 Submissions in Support

Submitter	Reasons	Wish to be Heard
DAJ Marshall 213 Teapot Valley Road	<ul style="list-style-type: none"> • No loss of productive or amenity values 	No
B P and L A Morley 117 Malling Road	<ul style="list-style-type: none"> • No adverse effects 	No
D G and D B Vanstone 50 Malling Road	<ul style="list-style-type: none"> • Unlikely to be any environmental effects 	No
G I Muir 256 Malling Road	<ul style="list-style-type: none"> • Supports wetland protection • No adverse environmental effects 	No

4.4 Neutral Submissions

Submitter	Reasons	Wish to be Heard
Weingut Seifried Ltd 65 Malling Road	<ul style="list-style-type: none"> Wishes to retain right to farm 	No
NZ Fire Service Commission	<ul style="list-style-type: none"> Requires condition to ensure sufficient water supply for firefighting 	Yes
J M and Y L Barry		No

4.5 Submissions in Opposition

Submitter	Reasons	Wish to be Heard
W H and E G Gourley 119 Malling Road	<ul style="list-style-type: none"> Concerns about the road at the top end of Malling Road 	Yes
P K and K J Buschl 182 Malling Road	<ul style="list-style-type: none"> A Forestry Right registered over Lots 1 and 2 could create a third legal ownership entity Cross-boundary issues with lifestyle block adjoining working farm Right-of-way B and C for forestry purposes will have a detrimental effect on use and value of their property 	Yes
M S and K D Holland 121 Malling Road	<ul style="list-style-type: none"> Adverse effects on operation of stud cattle farm Adverse effect on privacy Reverse sensitivity effects on dog breeding operation Top end of Malling Road not adequate for everyday traffic Reverse sensitivity effects with Eves Valley landfill Inaccuracies in application 	Yes

R E Kiddle 148 Thorpe-Orinoco Road	<ul style="list-style-type: none"> • Concerns regarding subdivision of rural land • Precedent • The Rural 3 Zone caters for smaller land holdings 	Yes
Tasman District Council Engineering Department	<ul style="list-style-type: none"> • Concerns regarding reverse sensitivity with Eves Valley landfill 	Yes

The parties' properties are shown in Appendix C.

4.6 As a result of traffic issues raised in the submissions further information was requested from the applicant and has been copied to all submitters.

4.7 My comments on the submissions are included in later parts of this report.

5. STATUTORY CONSIDERATIONS

5.1 Section 104

A decision on this application must be made under Section 104 of the RMA. The matters for the Council to address are:

- (a) Part II (Sections 5, 6, 7, 8)
- (b) the effects on the environment;
- (c) objectives and policies of the TRMP;
- (d) other matters.

5.2 Section 6

Council shall recognise and provide for the following matter of national importance:

- (a) *the preservation of wetlands and the protection of them from inappropriate subdivision.*

5.3 Section 7

The other matters that Council shall have particular regard to and are relevant to this proposal are:

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

5.4 Section 8

There are no Treaty of Waitangi matters relevant to the application.

6. KEY ISSUES

6.1 Traffic, Malling Road

- (a) Malling Road is designated an access road under Council's roading hierarchy. It provides access to approximately 30 properties and has no through traffic function. Malling Road is sealed and for the most part is capable of handling the additional traffic generated by the subdivision.
- (b) Two of the submitters raised concerns with safety issues at the top end of Malling Road where the applicant's shared driveway joins Malling Road. At the top end of Malling Road approximately 15 driveways converge within a distance of 50 metres at a point where the carriageway is narrower, sight distances are restricted by the brow of a hill and visiting vehicles and the school bus turn. Two of the submitters are concerned that the subdivision will add more vehicles to the problem area and may force Council to invest in upgrading this section of Malling Road.
- (c) As a result of a further information request by the Council the applicant commissioned a report from Traffic Design Group in relation to the concerns raised by the submitters. That report recommended that certain conditions be imposed to mitigate any traffic safety risk. Council's Development Engineer agrees with those recommendations and he recommends additional signage be erected.
- (d) Having regard to the expert evidence and subject to conditions being imposed and complied with my conclusion is that any adverse traffic effects, brought about by the changed circumstances of the subdivision, are no more than minor.

6.2 Rights-of-way

- (a) The subject property is accessed via an existing right-of-way off the top end of Malling Road. This right-of-way serves four other properties, with a legal width of 8.0 metres. The carriageway is gravelled and is generally 4-5 metres wide. Notwithstanding that it does not strictly comply with the permitted activity rule for on-site access (Rule 16.2.1(b)), it is adequate to handle the one additional user generated by the subdivision.
- (b) However, it is noted that the applicant has volunteered to widen and gravel the existing right-of-way, from the end of Malling Road to the turn-out to Lot 2, to provide a formation width of 5.5 metres. The volunteered upgrading works are in response to the concerns of a neighbour regarding the potential adverse effects of the additional traffic.
- (c) It is proposed that the building site on Lot 2 be accessed by a new right-of-way over Lot 1 and thence a new access road over Lot 2. The right and way and access road for the first part follow the valley floor that contains the wetland and thence along a ridge to the building site. The total length of the new right-of-way and access road is 980 metres. Including the existing right-of-way, the total length of on-site access to service the proposed dwelling site is 1200 metres.

- (d) The application also includes a proposed right-of-way along the western boundary of Lot 2. The purpose of this right-of-way is unclear but may be related to the water pipeline that follows the same alignment. The length of this proposed right-of-way is about 1000 metres.
- (e) The standards for on-site access in the TRMP, Figure 16.2A require a maximum length of 200 metres to be a permitted activity. The proposed on-site access to the building site on Lot 2 has a total length of 1200 metres, with a further 1000 metres of right-of-way for an unspecified purpose.
- (f) The construction of on-site access is a means of land fragmentation, which the TRMP seeks to avoid, particularly in this instance, where a long length of new road is required to access the building site. In addition, new roads can have adverse visual effects and in this particular case, potential adverse effects on the natural functioning of the wetland. There are two significant gullies to cross with side drains potentially affecting the drainage of adjoining properties. Up to 2 hectares of land could be taken out of production, with the construction of fences further affecting the efficient management of the land and its productivity.
- (g) The right-of-way along the western boundary, if it is for the purpose of access to the water pipeline, is redundant. This is because Schedule 4 of the Land Transfer Regulations 2002, which govern the rights and powers implied in certain easements, specifically provides for rights of entry for the purpose of performing any duty or in the exercise of any rights conferred or implied in any easement, in this case a water easement. Included in the rights of entry is vehicle access. If the proposed right-of-way is for some purpose other than access to the water pipeline, that purpose needs to be explained and if not a resource management purpose, the right-of-way should be deleted.
- (h) My conclusion is that the proposed on-site access is contrary to the outcome sought by the TRMP, with potential adverse effects on the visual landscape, productivity of the land and the natural functioning of the wetland and is not an efficient use of the land that Part II of the RMA requires Council to have regard to.

6.3 Servicing – Wastewater and Stormwater

- (a) Discharge of domestic wastewater and stormwater from the proposed dwelling on Lot 2 is likely to be a permitted activity under Rules 36.1.4 and 36.4.2 respectively. This is because the land is zoned Rural 2, there are no area overlays, there is a large area available, the erosion of land or sedimentation of watercourses can be avoided and the building site is not close to neighbouring properties, surface water or a bore.
- (b) In the unlikely event that the discharge of wastewater or stormwater is not a permitted activity it is best dealt with through the resource consent process at the time of building consent application.

6.4 Land Fragmentation and Productivity

- (a) Chapter 7 of the TRMP discusses the effects of land fragmentation on the productive values of land. The introduction to that chapter is particularly relevant to the current application that I quote the following paragraph in full:

“The fragmentation of rural land is the progressive breaking up of land parcels through subdivision in association with subsequent land use activities such as buildings, other structures and roads. Land fragmentation may occur for a variety of reasons. While fragmentation may allow for more intensive use of rural land for soil-based and other rural activities, with resulting social and economic benefits, the principal effect of land fragmentation in the Tasman District has been the cumulative reduction in opportunities for the productive potential of land to be taken up, either within sites or over larger areas. As subdivisional 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. This effect is particularly significant for the relatively small amount of land in the District with high productive value (approximately five per cent). This land is a finite resource and its loss through fragmentation is effectively irreversible.”

“The effect of land fragmentation on productive potential is also significant for less productive land where soil, climate or other natural characteristics currently present limitations to intensive use.”

- (b) Objective 7.1.2 is about avoiding the loss of potential of all land and existing and potential productive value and is supported by a number of policies that seek to avoid the adverse effect of subdivision of rural land and the loss of soil-based activities and to require land parcels upon subdivision to be of a size and shape that retains the land’s productive potential.
- (c) The subject land is zoned Rural 2 and is not land of high productive value. The subdivision rules in this zone recognise that productive activities are generally low intensity and therefore the subdivision size threshold is larger than for the more inherently productive Rural 1 Zone land.
- (d) The application includes a farm management report that concludes that the proposed subdivision has no productive impacts on the property. Andrew Burton, Council’s Land Resource Scientist has also provided a land productivity report.
- (e) Given that the application is to create two “non-complying” lots from one “complying” allotment and includes the construction of a long access road that bisects the main farming unit and the construction of a dwelling, I consider the application to be a classic case of land fragmentation that the TRMP seeks to avoid and is contrary to the policies and objectives of that Plan. The adverse effects of the subdivision on the productive value of the land are covered in Mr Burton’s report.

6.5 Rural Character and Amenity

- (a) The surrounding land has a mix of land uses including grazing, deer farming, plantation forestry, vineyards, horticulture and residential. Most of the properties contain an existing dwelling, with the more visually conspicuous ones being on the smaller properties fronting Malling Road.
- (b) The dwellings on the larger properties at the top end of Malling Road in the Rural 2 Zone, including the existing dwelling on the subject land, tend to be less conspicuous. This is because the properties are larger, further from public viewing areas and screened by established landscaping.
- (c) Overall, my impression of the locality, particularly the larger Rural 2 sites, is that it provides a relatively high degree of rural character and amenity and open space and provides an important visual backdrop to the more intensively farmed Waimea Plains and the coastal margin.
- (d) The proposal will result in one additional dwelling and the construction of 980 metres of new access road. The effects of that dwelling and access road must be considered as part of this subdivision application. It is not sufficient, as the application suggests, to consider these effects only if a dwelling is constructed, as the construction of a dwelling in the Rural 2 Zone is a permitted activity.
- (e) The proposed building site is on an elevated ridge that has commanding views over the Waimea Plains and out to Rabbit Island, Waimea Inlet and the eastern hills. Obviously then the dwelling will be visible from the Waimea Plains and beyond, albeit at a considerable distance. Night-time lighting can also detract from a sense of open space, particularly for such an elevated site.
- (f) The application states the visual effects of the dwelling can be mitigated by the appropriate landscape planting. However, with such commanding views it is unlikely a landowner would wish to screen those views with landscape planting. Also, the backdrop of pines that currently would assist in merging the dwelling with the background will not be available in 10-12 years' time when the trees is harvested. The closest neighbour is also concerned about the visual impact of the new dwelling and loss of privacy.
- (g) The proposed access road, particularly the elevated section, is likely even if planted to have a detrimental effect on the landscape and open space of the land.
- (h) The outcome sought by the TRMP with respect to rural character and amenity values is that those values be maintained and protected to a reasonable level by the application of the rules, policies and objectives. That outcome is supported by the following policies and objectives:

5.1.3.1

Management of adverse effects of subdivision and development on amenity and landscape values.

5.2.3.1

Maintenance of privacy for rural dwelling sites.

5.3.3.2

Maintaining the open space of rural areas.

7.4.3.3

Maintenance of local rural character.

7.4.3.4

Exclusion from rural areas activities such as rural-residential, which would have adverse effects on amenity values.

9.2.3.3

Retention of the rural characteristics of the landscape.

9.2.3.5

Management of the cumulative adverse effect on landscape values.

- (i) My conclusion is that, whereas the subject land is not in a special area in terms of landscape values, it does have important localised values as the backdrop to the Waimea Plains and coastal margin. The adverse effects of one additional dwelling in itself are not significant, but in combination with the access road, they are more than minor. In addition, the proposal is contrary to the policies of the TRMP and does not maintain the amenity values of the land that Part II of the Act requires Council to have regard to.

6.6 Native Forest and Wetland

- (a) The application includes an ecological assessment report on the native forest and wetland contained within the subject land. The report has been reviewed by Council's Environmental Resource Scientist, Trevor James. Trevor concurs with the findings of that report but suggested some amendments and additions to the volunteered conditions relating to the wetland.
- (b) The native forest is a 1.4 hectare site located at the top end of the property in a small gully that is a tributary of the Eves Valley Stream. The vegetation is dominated by young mahoe and five-finger. The forest is fenced and is in an excellent condition but its values could be improved by weed control and restoration planting.
- (c) However, overall the report concludes the values of the site are not considered to be significant in the context of the District and no conditions are proposed for its enhancement or protection.
- (d) The wetland is a 1.3 hectare site that runs northward along a pastoral gully system through Lot 2, as shown marked "F" on the application plan. It is fed largely by groundwater and surface run-off and is classed as a swamp. One of the upper arms is fenced. Vegetation is dominated by native sedges. Weeds and grazing by cattle contribute to the wetland's poor condition. Nevertheless, the site is assessed as significant, with conditions volunteered to protect and enhance its values.

- (e) The protection and enhancement of wetlands is supported by a number of policies in the TRMP and there would certainly be some positive environmental outcomes resulting from fencing, weed control and restorative planting of the wetland. However, these things can happen outside the subdivision process and Council has strategies in place to encourage this to happen. For example, Tasman District Council offers half the cost of fencing of streams and gullies and according to the report this wetland would be a prime candidate for such assistance. Also, Chapter 31.4 of the TRMP offers some protection to wetlands by regulating their drainage and infilling.
- (f) My conclusion is that whereas there is support in the TRMP to recognise, protect and enhance the natural functions of wetlands resulting in positive effects on the environment, any positive effects are far outweighed by the adverse effects covered in other parts of this report.

6.7 Existing Pattern of Subdivision and Development

- (a) An examination of the existing pattern of subdivision and development is an important and relevant assessment criteria for subdivisions. A useful map showing that existing pattern is included with the application and for completeness I have attached a copy as Appendix D.
- (b) The subject land was created as a result of a subdivision approved by Council in 1989. At that time the land was zoned Rural B, for which 15 hectares was the minimum area for controlled activity subdivisions. Lot 4 DP 14829, which is the 1.6 hectare title immediately north of the subject land, was created at the same time by virtue of the retirement home subdivision rule that was operative at that time.
- (c) The smaller titles at the western end of the study area but with areas in excess of 15 hectares were also created as controlled activity subdivisions in the Rural B Zone. Two of those titles were subsequently reduced to areas of 11 and 13 hectares by means of authorised boundary adjustments. The title of 18 hectares at the eastern end of the study area was created in 2001 to recognise the split zoning of the parent title. All other titles in the study area are historic.
- (d) The applicant has quite rightly excluded the titles by the Martin subdivision, the Waring subdivision and the Collis subdivision. This is because the Martin subdivision is in the Rural Residential Zone, the Waring subdivision was the result of an Environment Court decision that established clear distinctions between that land and that of neighbouring applications and the Collis subdivision has a spot zoning following a reference to the Environment Court.

Apart from Lot 1 DP 14829, which was a controlled activity subdivision, the application would result in an allotment that is smaller in area than any of the other allotments in the study area.

- (e) My conclusion is that the current application is out of character with the existing pattern of subdivision and development in the locality. This issue is particularly important noting that Council, for reasons of sustaining the rural land resource,

quite deliberately in 1996 increased the threshold for subdivisions in this locality from 15 hectares to 50 hectares.

6.8 Effect on Rural 3

- (a) Following numerous investigations and reports the Rural 3 Zone was introduced in 2003 as a variation to the TRMP. The variation introduced a comprehensive and integrated set of new Plan policies that provided for rural-residential subdivision and development in those parts of the Rural 3 Zone that are considered appropriate to accommodate growth. The Rural 3 Zone also includes a provision requiring developers to pay a services contribution for the progressive provision of reticulated water supply and road upgrading.
- (b) The subject land is close to the Rural 3 Zone, about 4-5 kilometres by road and about the same distance from Richmond as the Rural 3 Zone. In particular, Galeo Estate, CBH, Research Orchard Road and Tasman are Rural 3 developments close to the subject land.
- (c) Rural 3 Zone subdivisions have a relatively high cost of development, which has contributed to a poor uptake in completed developments. This has resulted in a reduced services contribution payment, which in turn affects timing and indeed the viability of the provision of a reticulated water supply and road upgrades.
- (d) The indiscriminate approval of out of zone rural-residential sites that can favourably compete in the marketplace with Rural 3 sites can further reduce the uptake of Rural 3 sites to the extent that the success of the Rural 3 Zone is put at risk, thus potentially compromising an important and considered planning strategy of Council.

6.9 Cross-boundary / Reverse Sensitivity

- (a) Subdivision and development frequently have effects that cross property boundaries. Those effects can detract from the legitimate use and enjoyment of neighbouring properties to the extent that residential activities in rural locations may create pressure to limit effects of rural activities. This in turn may constrain the practicality or viability of some rural or authorised activities.
- (b) Objective 7.2.2 of the TRMP deals with managing the effects of activities in rural areas, including cross-boundary and reverse sensitivity effects. That objective is supported by Policy 7.4.3.4, which seeks to exclude from rural areas uses or activities (including rural-residential) which would have adverse effects on rural activities.
- (c) Three of the adjoining landowners have lodged submissions opposing the application on the grounds of adverse cross-boundary effects and reverse sensitivity.
- (d) M S and K D Holland own the 22 hectare property located immediately to the east of the Wilks property. The Hollands carry out two rural-based activities: running a cattle stud and breeding of dogs. The Holland's submission is that the use of right-of-way A, that follows their common boundary with the Wilks property, will have adverse effects on their cattle stud, particularly the calving

and mating of the stud cows, which takes place on the flat land adjoining the right-of-way. The Hollands are also concerned that the subdivision if approved will create reverse sensitivity issues, particularly in relation to their lawfully established and registered dog breeding programme and the potential for noise complaints from residents of the proposed new dwelling.

- (e) T K and K J Buschl own the 55 hectare property located immediately to the west of the Wilks property. The Buschls have a working farm and have submitted that a right-of-way for forestry purposes immediately adjacent to their boundary will have more than a minor detrimental effect on the use and value of their property. The Buschls also submitted that the proposal creates a potential for cross-boundary issues with an additional lifestyle block adjacent to their working farm.
- (f) Tasman District Council owns a 41 hectare property located immediately to the south-west of the Wilks property. The Council land is subject to designated area D163, which is for the purpose of sanitary landfill refuse disposal and is commonly referred to as the Eves Valley Landfill. Tasman District Council, through its Engineering Manager, has lodged a submission in opposition to the application. The purpose of Council's submission is to ensure that the present and future operation of the landfill is adequately protected and that the reverse sensitivity concerns arising out of the subdivision are able to be appropriately addressed.
- (g) The landfill was formed in 1989 and serves the entire Tasman District. It is the only authorised landfill in the District and there are no alternative sites. The existing resource consents for the landfill (discharge to air, land and water) lapse on 1 October 2015. It is intended new consents be lodged before that date as there is considerable capacity available within this site, particularly if the top level of the landfill is extended towards the upper ridgeline of the valley. It is possible that Eves Valley may become a regional site at some time in the future.
- (i) The Eves Valley site is ideally suited to serve as a long-term regional landfill. It has few close neighbours and is mainly surrounded by non-residential-focused development. It is such a valuable asset that the continuing operation should not be exposed to any risk. The discretionary subdivision of adjoining land and subsequent residential activity is a risk that can and should be avoided.
- (j) Overall, there are identifiable potential adverse cross-boundary and reverse sensitivity effects with three of the neighbouring properties. These effects are more than minor and in the case of the landfill would have a District-wide impact. Further discussion on the public health implications and cross-boundary effects in relation to the proposed subdivision and the Eves Valley Landfill are contained in the separate report prepared by Graham Caradus, Council's Co-ordinator Regulatory Services and included in this agenda.

6.10 Precedent

- (a) It is probable that a grant of consent for the current application will lead to other applications to subdivide Rural 2 land, particularly other land in the study area previously referred to. This is because the land provides very attractive rural-

residential sites, easy topography, panoramic views over the Waimea Plains and estuary and the eastern ranges. The fact that the land is close to Richmond and would not be saddled with the high development costs associated with a Rural 3 subdivision would also contribute to the demand and ready marketing of the sites.

- (b) There are no special circumstances that would distinguish this land from other land in the District, particularly within the study area. Like cases should be treated alike and in the interests of consistent decision-making it would be difficult for Council to refuse consent to other applications. I therefore consider that if this consent is granted, this application will create a precedent.
- (c) The grant of this consent and subsequent subdivisions, particularly in the study area, will adversely affect matters that Council is required to have regard under both the RMA and the TRMP, including the matters of land productivity, rural character and amenity, cross-boundary and reverse sensitivity effects and the success of the Rural 3 Zone.

7. CONCLUSION

When evaluated in terms of the Section 104 considerations there is no justifiable basis to grant consent. This is because the proposal is contrary to a number of Section 7 matters in Part II of the Act, there are adverse effects on the environment in relation to land productivity, rural character and amenity and reverse sensitivity that are more than minor and is contrary to the thrust of the policies and objectives of the TRMP and the neighbours closest to the application site who are most likely to be affected are opposed to the application. The application site has no particular attributes that make it out of the ordinary and therefore to grant consent to the application would have precedent effects, particularly in the vicinity of the site, and would be out of character with the existing pattern of subdivision and development and potentially impact on the success of the Rural 3 Zone.

8. RECOMMENDATION

After weighing up all the Section 104 matters it is my recommendation that the application be declined.

9. CONDITIONS

In the event that consent be granted to the proposal I recommend that conditions be imposed under the following headings:

9.1 Malling Road Upgrade

Conditions as per Traffic Design Group report and Development Engineer's report.

9.2 Right-of-Way "A" and Access Road

Constructed to comply with TRMP standards including engineering plans.

9.3 Easements

9.4 Dwelling

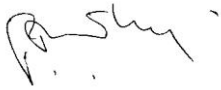
Consent notice relating to location, height, appearance, landscaping and underground electricity and telephone connections.

9.5 Financial and Development Contributions

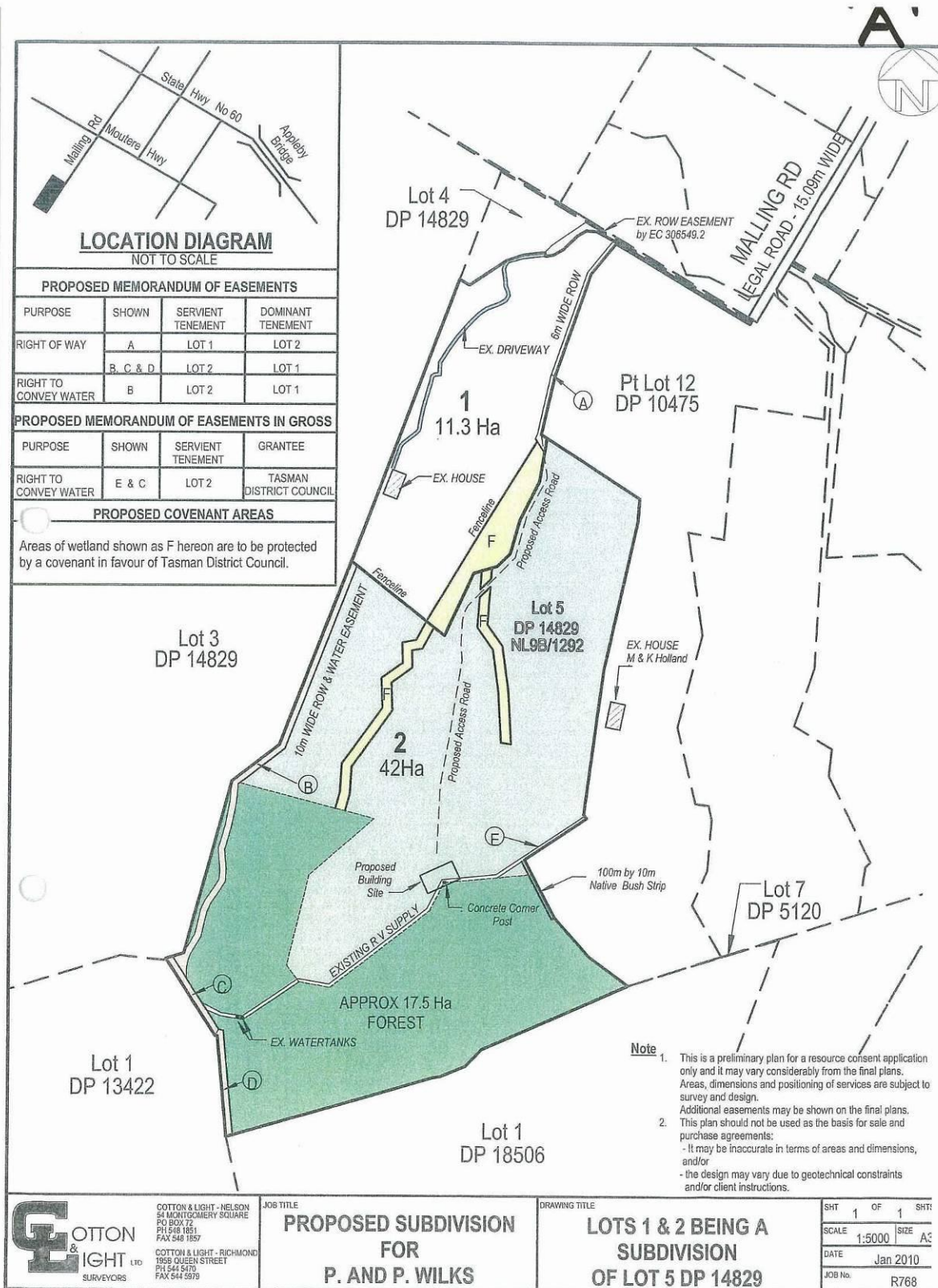
Standard condition.

9.6 Wetland

Management plan.



Ross Shirley
Subdivision Officer



COTTON & LIGHT - NELSON
54 MONTGOMERY SQUARE
PO BOX 12
PH 548 1851
FAX 548 1857

COTTON & LIGHT - RICHMOND
199B QUEEN STREET
PH 544 5470
FAX 544 5979

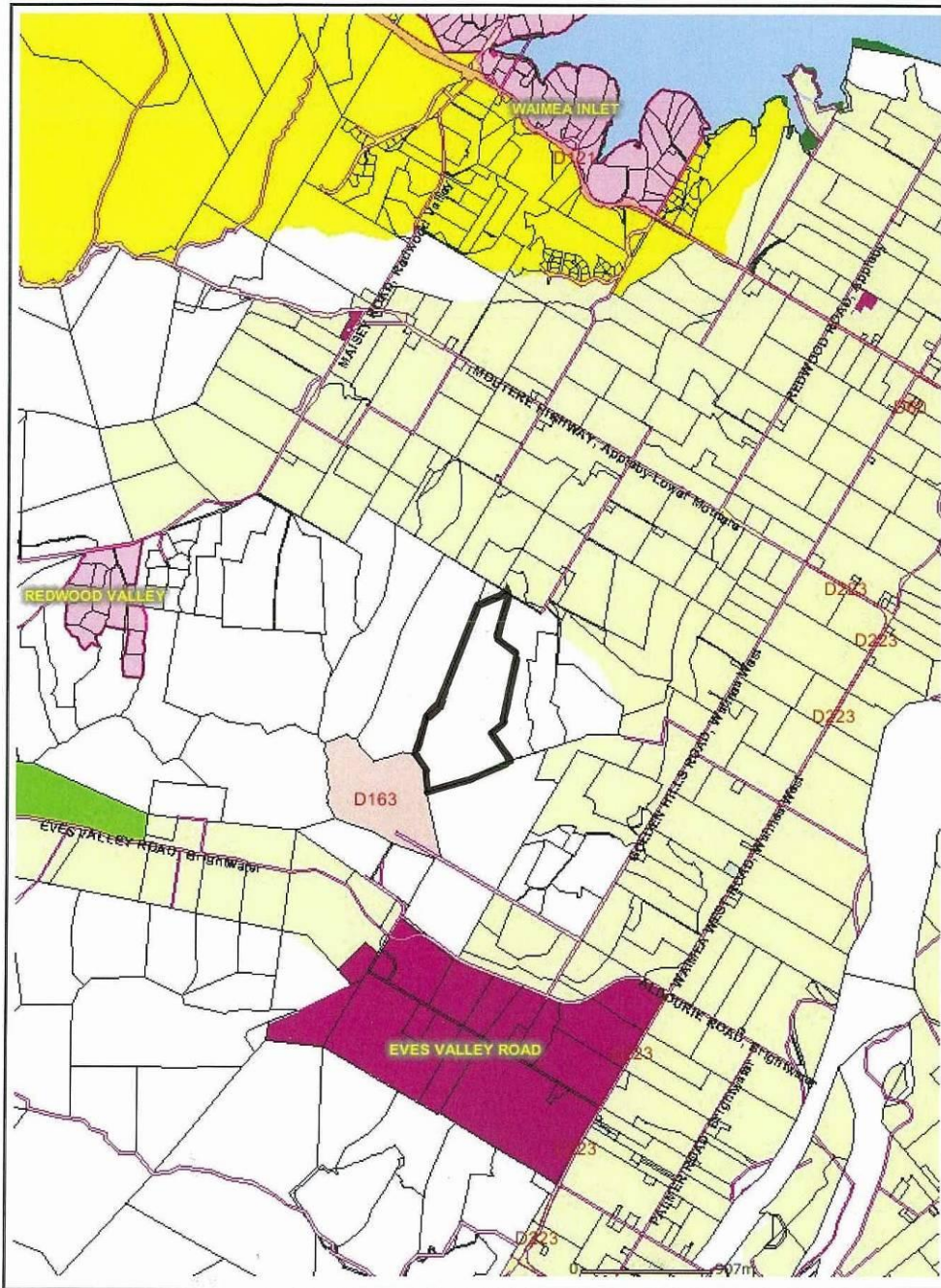
JOB TITLE
**PROPOSED SUBDIVISION
FOR
P. AND P. WILKS**

DRAWING TITLE
**LOTS 1 & 2 BEING A
SUBDIVISION
OF LOT 5 DP 14829**

SHT	1	OF	1	SHT:
SCALE	1:5000	SIZE	A3	
DATE	Jan 2010			
JOB No.	R768			

RM 090716

'B'



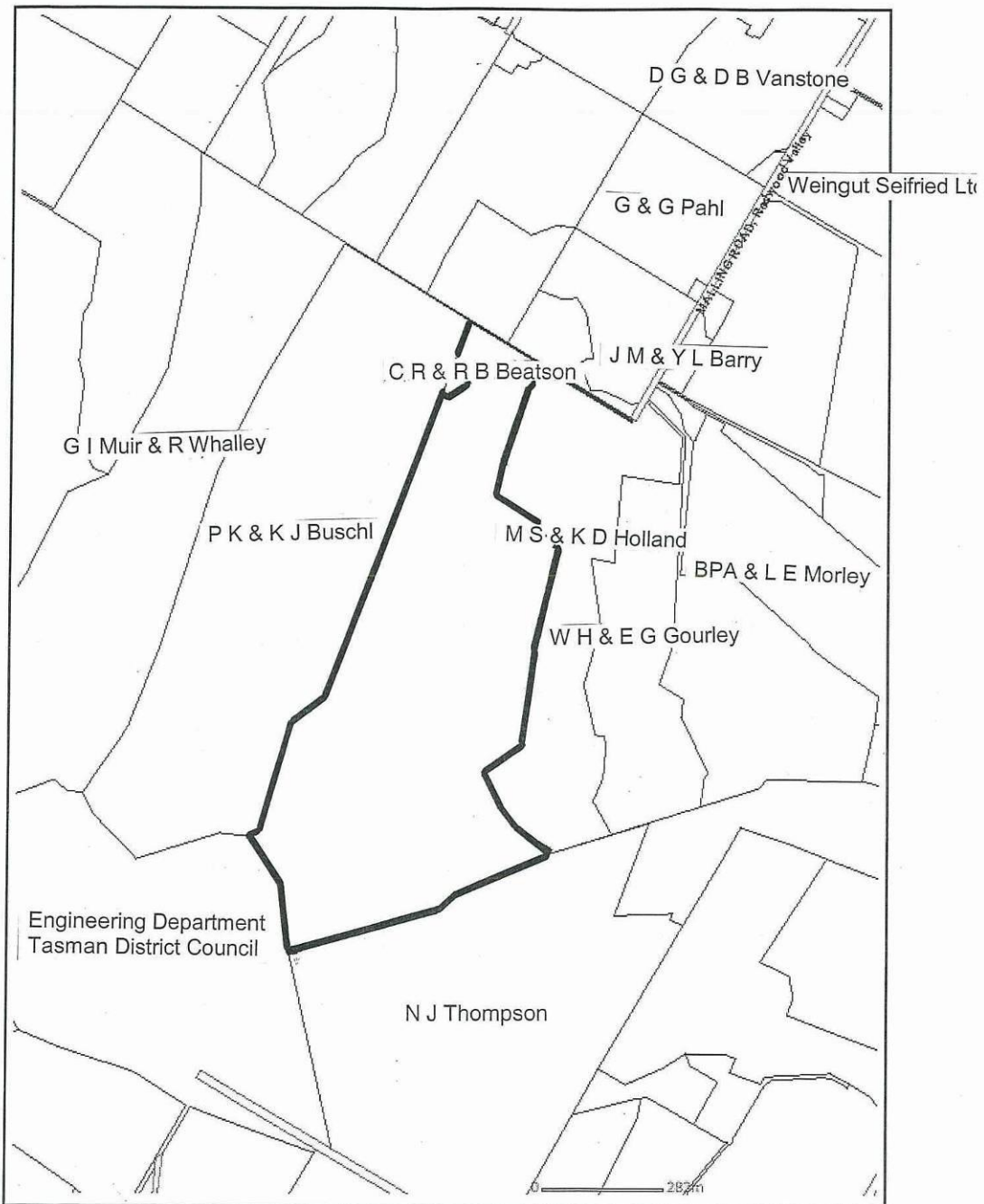
Zones and Designated Landfill Area

23/8/2010 DISCLAIMER:

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'C'

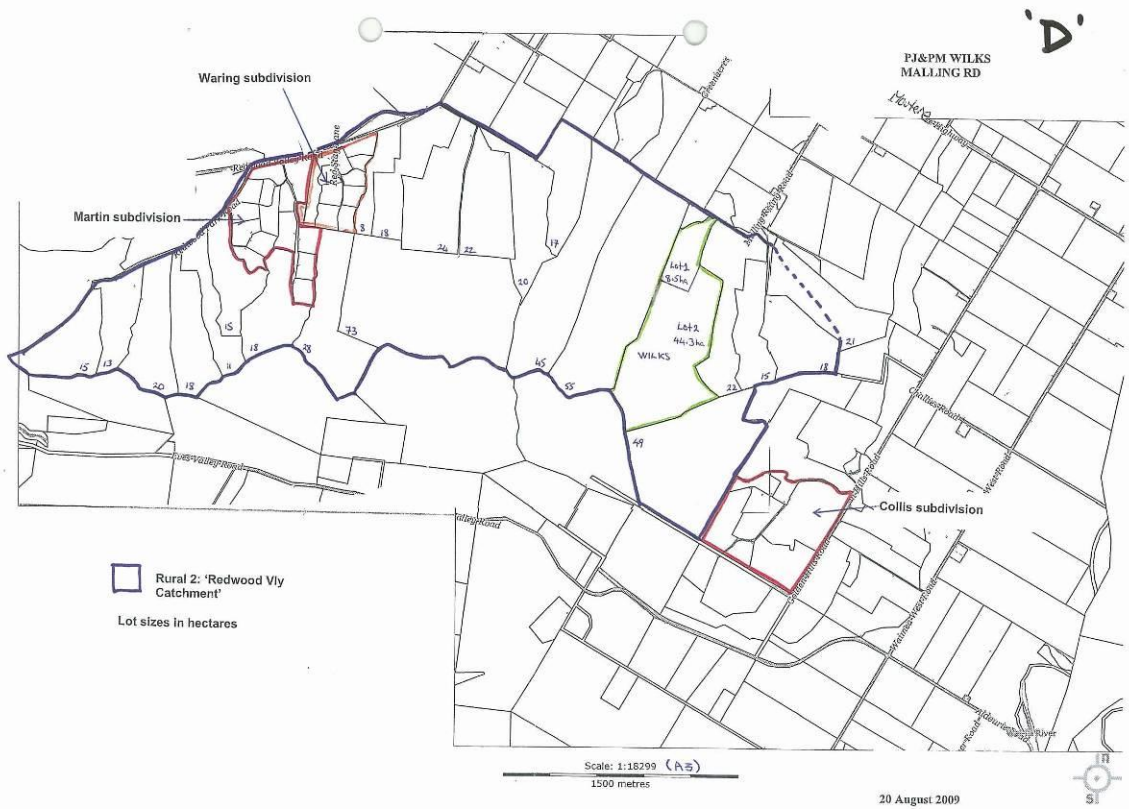


Written Approvals and Submitters

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Land Productivity Report

P and P Wilks, Malling Road

The application area, situated in Redwood Valley consists of 53.3 hectares of hill country.

The applicant has accurately described the land-cover, topography and climate. The landform is typical of the Moutere hills at the coastal margins of the formation. The slope range indicates that the block is generally “rolling” to “strongly rolling”. It is dissected by a main gully system and a number of secondary gullies. These are typical of hill country terrain and do not pose a major hindrance to the block’s potential uses.

The Land Use Capability classification for the productive areas of the block is made up of a mix of class IVe5 and VIe16 land.

- Class IVe5 is found on the gentler sloping areas (up to 15°) situated along the ridgelines, lower slopes adjacent to the gully floor and extensive areas on the western side of the block. It makes up approximately 45% of the area. Although the classification suggests that this land is suitable for limited arable or horticultural use the fragmented nature of this class IV land prohibits any such use. Potential use is intensive pastoral and forestry.
- Class VIe16 land is generally found on the mid-slope zones. It is steeper than the class IV land ranging from 17 to 25°. It makes up approximately 45% of the area. The slope is the major limitation to productive use being too steep for vehicles. Potential use is pastoral and forestry.

The soils found on the block are predominantly Mapua soils. These are characterised by silt and sandy loam topsoils over a clay or clay gravel matrix. The topsoil depth varies but is generally 25cm deep. The variation in depth is dominated by slope with the steeper sites having a relatively shallower depth although no sites were found that lacked a depth of topsoil that would limit the maintenance of productive pasture. Soils were healthy and the good quality of the grass sward indicated that the property was well managed.

Taking the topographical and soil attributes into consideration, the block is suitable of semi-intensive pastoral and forestry based systems. It would class as some of the higher productive hill country in the region.

The applicant has described that summer drought is a regular occurrence and is a major limitation to pastoral production. This is situation of much of the pastoral hill country area through the Moutere Hills and Eastern Hills and is not unique to this block or its environs. The application area is however known to be “early” country experiencing relatively early spring growth compared with areas further inland. This can be attributable to its northerly aspect and relative coastal location. The climatic features of the application area do influence pastoral production and consequently farm management but they are influences that are faced by farmers generally.

The application is for the subdivision of the existing block into 2 lots of 11.3ha and 42.0 ha block. There are several probable effects on the productive potential of the block:

- There will be a small loss of productive land as a consequence of the development of the house and its surrounds and with the access road associated with the house. The applicant has suggested the loss of productive land would be approximately 1 hectare and that this is a minor loss of land and would have no adverse effect on the productive potential of the land.

It equates to a 2% loss in utilizable land which must represent a 2% loss in potential production from the block. This is an estimated reduction of between 8 to 12 stock units for this block. This loss of productive land would not compromise the integrity of this block for any of its potential uses but it would lead to a small reduction in production.

- The subdivision would lead to two smaller blocks which are more likely than not to be farmed separately rather than as one block due to separate ownership. Consequently the economies of scale and the productive versatility enabled by a larger block of Rural 2 land that existed with the original block would be reduced.
- The creation of a lifestyle block (proposed lot 1 – 11.3ha) has a marked effect on the property value of that block. The resulting increase in value usually ends up with a per hectare value far beyond levels that would encourage investment for farming purposes. Lifestyle blocks can be productive and be well managed for those purposes but the likelihood that their productive potential is achieved and maintained is low as lifestyle blocks are primarily occupied for lifestyle values rather than productive purposes.

The property value of the remaining larger block (proposed lot 2 – 42ha) would likely rise in value as well on the expectation that future subdivision into lifestyle size blocks was probable. This is likely to have a negative impact on potential farm amalgamation, farm adjustment and the “buy-in” cost for agricultural investors. This effect would be further compounded through the increase in rates that naturally accompanies land value rise.

The net result of the proposed subdivision is land fragmentation. The TRPS and the TRMP describe the effects of rural land fragmentation. The effect is not just confined to land of high productive value and it emphasises that it is a cumulative effect. This application is no exception in that although its potential effect, in isolation, may be small, cumulatively it is significant.

Council has various measures in place to control or minimize rural land fragmentation processes. Within the Rural 2 area, which is applicable to this application, the minimum lot size for subdivision as a controlled activity is set at 50 hectares. There are also instruments in place in the plan that provide for and encourage the relocation of property boundaries and the amalgamation of lots to enhance the productive capacity of properties. The TRMP also provides for rural residential and lifestyle development opportunities through zoning particular areas. In these areas Council accepts that land productivity opportunities as a result of this type of development will be compromised but accepts that there is a demand for this style of “living” and tries to minimize their impact by restricting the size of these zones and selecting areas of inherently lower productive value.

The application area is not large to start with but this does not in itself justify its further subdivision. Even though an individual farm may become unviable, the land is still part of

that area's production system. Maintaining farm size to the largest possible is imperative in maintaining its probability and versatility of use for productive purposes.

Andrew Burton
Resource Scientist (Land)

MEMORANDUM
Environment & Planning Department

TO: Ross Shirley**FROM:** Graham Caradus**DATE:** 19 August 2010**FILE NO:** RM090716**SUBJECT: RESOURCE CONSENT APPLICATION RM090716, P J and P M WILKS**

1. INTRODUCTION

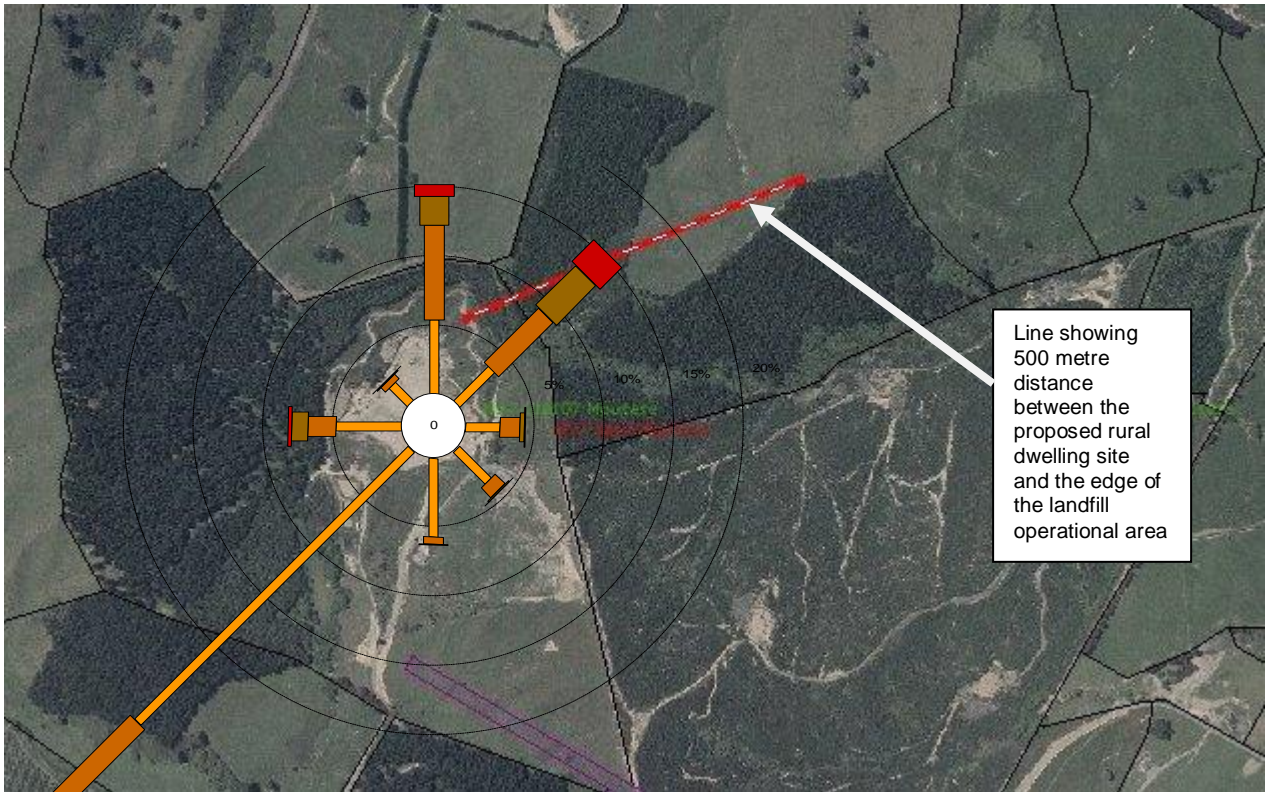
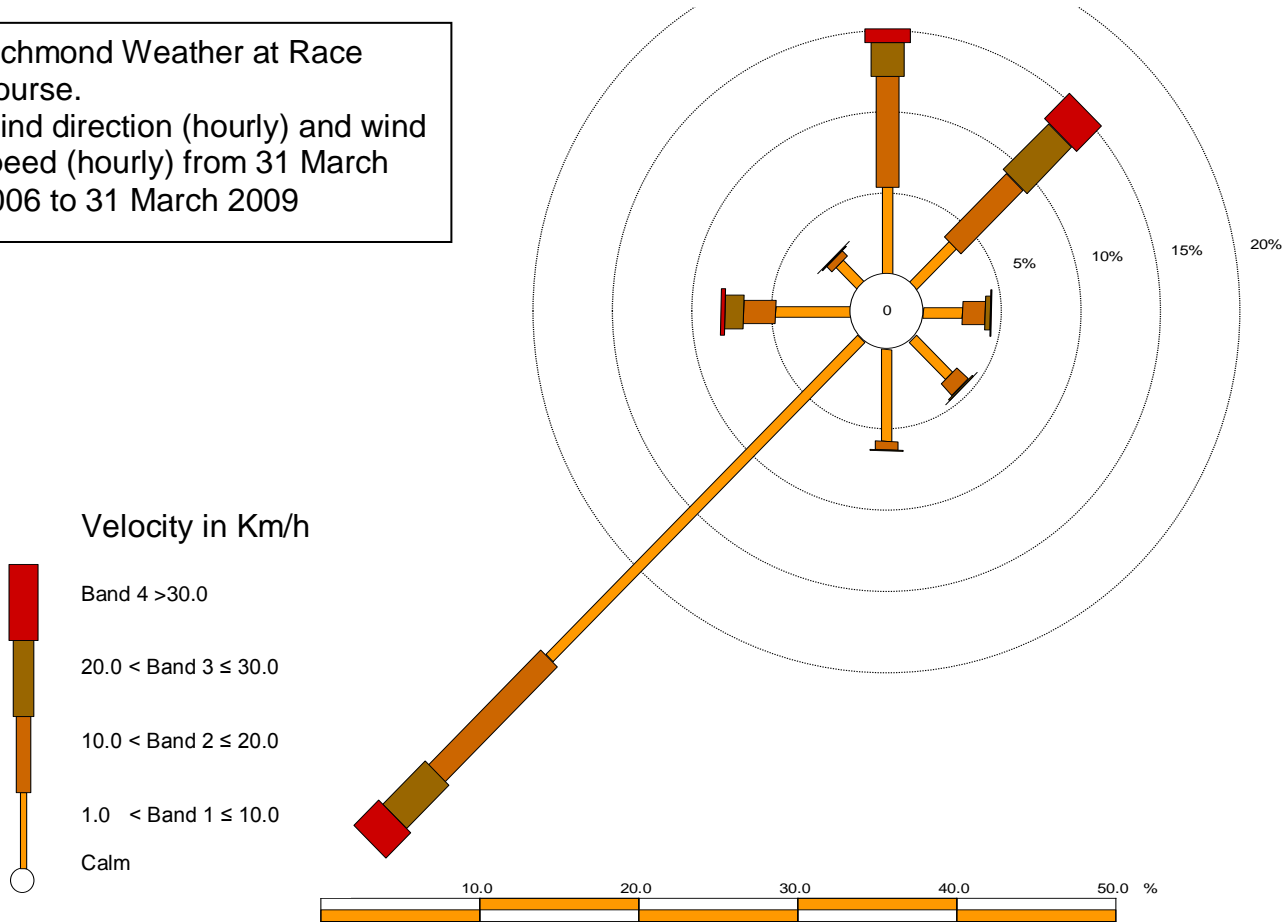
This application relates to a subdivision of land and has some public health implications, primarily as a consequence of the relatively close proximity of the Tasman District Council's land fill site at Eves Valley. This report deals primarily with the cross boundary effects that may occur relating to noise, odour, dust and wind-blown debris from the land fill to adjacent land. The effects of such discharges and the potential for complaint obliging the Council to be involved in an enforcement role is the nub of this report.

2. TRANSMISSION OF EFFECTS OFF THE EVES VALLEY LANDFILL SITE

The effect of discharges generally (including noise) that may be transmitted off the Eves Valley Landfill site will be substantially influenced by the distance between the landfill operation, and the land under consideration, and prevailing weather conditions and topography. Whilst no specific data is available for the Eves Valley site, it is reasonable to assume that the trends in wind direction and strength that occur at the Richmond Racecourse will not be significantly different to the general trends in wind strength and direction at the boundary between the Eves Valley Landfill and the Wilkes property that is the subject of this report. The wind rose for the Richmond racecourse is shown above and superimposed over an aerial picture of the general area below. Bear in mind that the "arms" of the wind rose identify both the direction the wind is coming from, magnitude and frequency, with limitations imposed by using only cardinal and intermediate points of the compass.

The variation that is observed by the contractor operating at the land fill is that the predominant south westerly wind shown in the rose, tends to blow directly up the valley, and is therefore more a south-southwestly at that location. He also notes that the effect of the topography is to accelerate the wind to the extent that from time to time, the heavy machinery on the site is noticeably shaken by wind gusts. Both of these effects relating to the valley slightly changing the direction of the wind and increasing the wind speed for winds blowing up the valley, are logical expectations based on accepted fluid dynamics and meteorological principles.

Richmond Weather at Race Course.
 Wind direction (hourly) and wind speed (hourly) from 31 March 2006 to 31 March 2009



2.1 Noise

An assessment of noise has been undertaken to establish what may be transmitted from the Eves Valley landfill site to sites generally to the north. The detail of the noise measurements made are as follows.

2.2 Sound Level Assessment

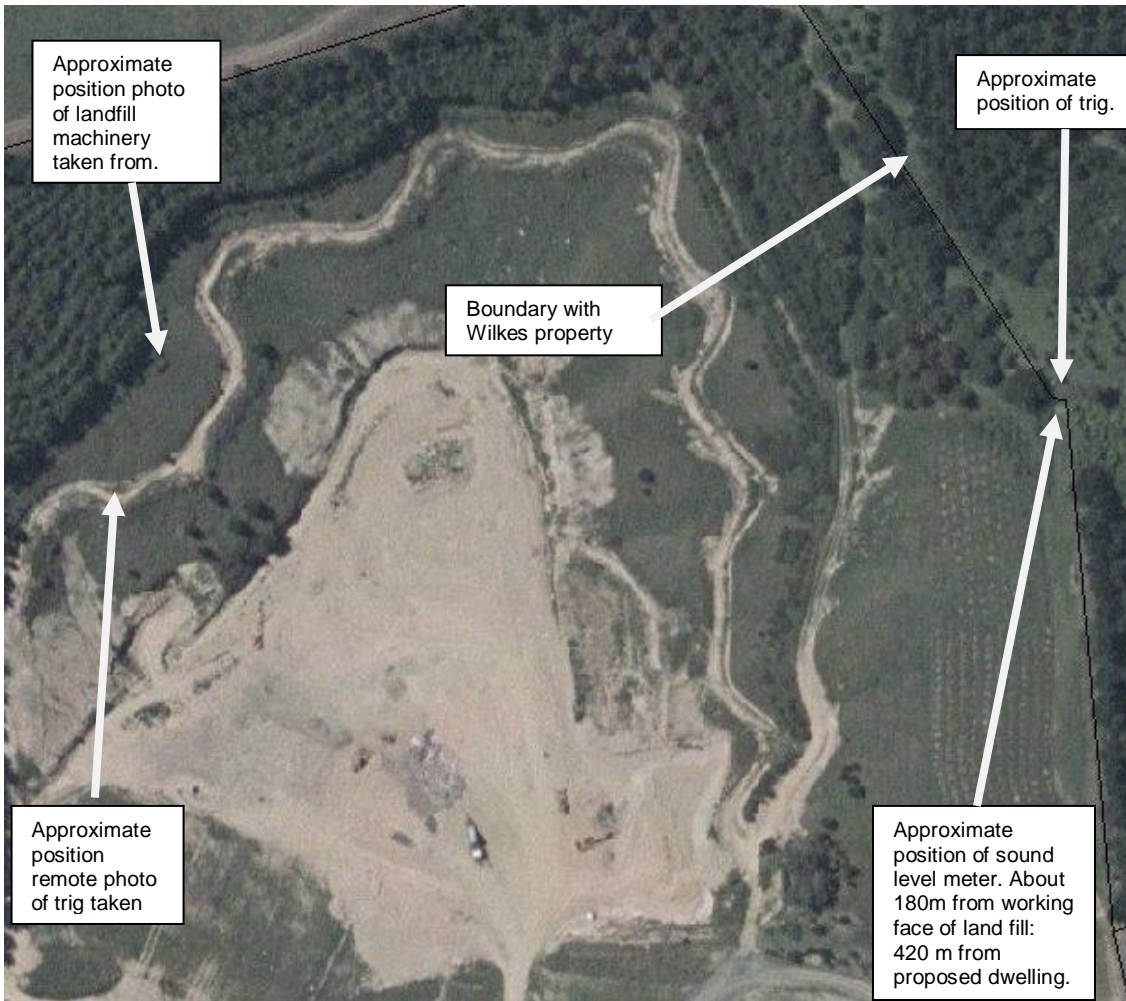
Time of measurements:

11.00 am through to 11.41 am on Thursday 5 August 2010

Location of measurement:

On the fence line within a few metres of the trig on the ridge between the landfill site and Wilkes Property. See the photos below.





Weather Conditions: Fine, clear sky and calm with temperature estimated at 15°C at measurement site (14°C noted in Richmond)

Equipment used:

Sound level Meter: Rion NL-18 Precision Integrating Sound Level Meter (SLM), serial number 00360034.

Calibration due date: 8 April 2011 (last completed by ECS Ltd)

Acoustic Calibrator: Bruel and Kjaer type 4230, serial number 1206832.

Calibration due date: 15 April 2011 (last completed by ECS Ltd).

SLM operator: Graham Caradus

A microphone wind screen was used for the duration of the survey for each environmental measurement. For each result recorded, the SLM was mounted on a fence post slightly over a metre above ground. The SLM was initially calibrated, and not shut down until re-calibrated at the end of the sequence of measurements. Calibration level limits were within 0.5 of target 93.8 dBC and are the only measurement in dBC. All other results are in dBA.

2.2.2 Sound Level Measurement Sites

Sound level measurements were undertaken at one site as marked on the aerial photographs above. The bulldozer and compactor used during the measurements were not in direct line of site, but appeared to be just below the brow of the slope from the measurement position. Subjective assessment made during the period determined that in the general area some variation in the tone of the noise occurred, apparently as a consequence of echoes that could not be heard at the measurement site, but were more evident from other locations. Subjectively there appeared little variation in noise level in the general area.

2.2.3 Sound Level Measurement Results

Calibrate: 11:00am 93.9 dB

	Measurement 1	Measurement 2	Measurement 3
Start time	11:02 am	11:16am	11:34
End time	11:12am	11:28am	
Total Measurement time	10 minutes	10 minutes	2 minutes 37sec
L _{eq} in dBA	37	50	46
L _{max} in dBA	51	57	52
L _{min} in dBA	32	36	35
L ₁₀ in dBA	38	54	47
L ₉₀ in dBA	34	41	42
L ₉₅ in dBA	34	39	41
Comment	Background noise only: Birdsong predominant, also distant logging gang, dogs barking in	Bulldozer and compactor working hard and dominate noise climate. Engine noise dominates over	Opportune truck movement and associated bulldozer and compactor noise.

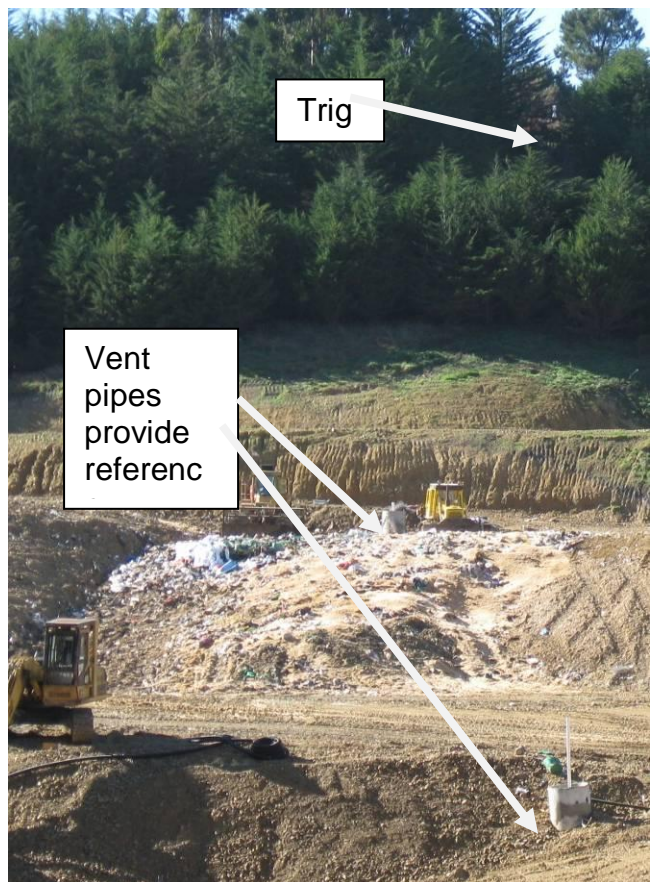
C	distance, and road noise from Waimea Planes and Redwood areas	mechanical noise like caterpillar tracks rattling. No truck movements. Aircraft flyover filtered from measurement.	Banging of tailgate (?) not captured in measurement.
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Calibrate: 11:41am 94.1 dBC

The bulldozer referred to in the comments section of the above results is 18 tonne, 145 horse power D6D Caterpillar crawler tractor with blade, and is fitted with factory standard exhaust mufflers. The compactor referred to is a 33 tonne, 315 horse power Caterpillar 826C, and it is also fitted with factory standard exhaust mufflers. Subjectively there appeared little difference in the noise these two large machines made, with variation appearing to relate to the orientation or position on the working face of the landfill. I stress that these are large powerful machines that are worked hard, up and down slopes and axle deep in refuse and cover material. The relatively high level of noise recorded some distance away at the site boundary is not unexpected, given those factors.

2.3 Observations Made

Shortly before midday, I walked to the site shown in the aerial picture of the landfill site and marked as "...position photo of landfill machinery...". Enroute to this location the photograph on the right was taken and that shows the relationship with the trig near the measurement site, and the working face of the landfill. Photographs were taken of what are understood to be typical activities at the landfill, and subjective observations of the noise climate made. During the period of subjective observations, it became obvious that the noise measured and reported above had not been a complete picture, and that there was from time to time a significant intensity of banging and booming of large metal objects such as the skips that had been emptied of their contents, being returned to the decks of the trucks that transport them; the sound of tailgates and trailer doors being forcefully closed; and the locking mechanisms for trailer doors and tailgates being hammered open or closed.



The level of intensity of the operation associate with the landfill has increased over the life of the site to date. The contractor that runs the landfill estimated that currently 8 to 10 loads of rubbish are received in a day, and that each load takes in excess of

10 minutes to bulldoze and compact. Those figures have a loose co-relation with the hour meters of each of these machines which show about 40 hours work a month each. On occasions both machines are run simultaneously, but that did not happen in my presence.



Other machinery that is routinely used on the site is the heavy truck and digger which are used to provide cover material for the landfill as well as the necessary contouring.

The transmission of noise from this site to the general area of the subdivision has not been specifically investigated, but the writer has personal experience of the "industrial" type of noise that is generated on this site, carrying over the brow of a low hill and being readily heard at remote locations. The example I have in mind are the activities that occur at Port Nelson, and the effect that has in surrounding hillside residential areas in which I live.

As the landfill continues to reach higher up the valley, and occupies different parts of that valley, the noise effects from the machinery working on or visiting the landfill site may be either reinforced or mitigated by the topography. The manner in which noise from the general area of the landfill does carry to the Wilkes property will be dependent on a number of factors, such as those meteorological conditions already referred to, as well as the noise climate at the receiving site of the proposed subdivision. It is suggested that at the site of the proposed subdivision, that generally, the level of background noise could be reasonably expected to be very low, and noise travelling from the landfill site noticeable to the extent that it may cause annoyance to some individuals.

2.4 Summary of Noise Effects

Although the noise measured at the boundary to the landfill site suggests that typical operations will be compliant with TRMP noise performance standards in any nearby rural residence, it is expected that the rural land generally to the north will be impacted by noise from the landfill operation to varying levels, and that from time to time, that noise is likely to cause annoyance to some individuals.

3. WIND-BLOWN DEBRIS, DUST AND ODOUR

These effects are dealt with in a group as it can be expected that the prevailing wind will impact on all these potential discharges in the same way.

3.1 Consent Conditions for Operation of the Eves Valley Landfill

The existing consent for the operation of the landfill (NN9701272) has relevant sections copied below.

Specific Conditions for the Discharge to Air Permit NN 9701272

10 Air Quality

There shall be no discharges to air that are noxious, dangerous, offensive or objectionable at or beyond the legal boundary of the consent holder's property.

11 Dust and Litter

The permit holder shall take the measures specified in the Management Plan to prevent dust and windblown litter from leaving the active landfilling area.

12 Landfill gas flaring

If abstraction and flaring of landfill gas is to be carried out then a separate application shall be lodged as a variation of this consent, pursuant to S 127. This application shall contain the specific methodology with respect to safety precautions, and the collection and treatment or disposal of the condensate. This proposal shall be subject to audit by suitably qualified persons, prior to acceptance, and this audit will be at the expense of the applicant.

3.2 Complaints About Wind-Blown Debris

The day to day running of the Eves Valley landfill is supervised by MWH NZ Ltd and in an email dated 16 August 2010 to Tasman District Council staff, Kathryn A Halder, Environment & Planning Team Leader, states:

The Contractor is required under Contract 611 to control litter arising from operations on the site and this requirement carries over into the new contract 781. The current operator has either collected windblown litter from within the site on a regular basis and from neighbouring properties after high winds himself or employed others to do so. The quantity of loose litter observed on site is a Key performance Indicator for the contract.

Complaints from neighbouring properties about windblown litter have been received and additional litter fencing for around the cut off drain at the rear of the landfill is currently being investigated, concentrating on the area where there are very few trees protecting the boundary. In addition, as a long term measure a planting plan has been prepared for the site and a number of trees of varying sizes have been purchased to be planted this year. Finally under Contract 781 the contractor will also be required to provide additional temporary litter control close to the working site.

3.3 Complaints Received

Occasional complaints are received by Council from residents living near the Eves Valley Landfill. Earlier this year, one such neighbour complained that he was sick of the plastic bags being blown over his property and impacting on his animals. This complaint was the first I could locate through the Council "Service Request" system, but discussion with the contractor that operates the landfill suggest that he makes it his business to tidy up such wind-blown debris from time to time. Ten years ago, complaints relating to seagull numbers in the general area, and odour being detected in Waimea West are recorded.

3.4 Comment on Compliance Issues

The reality is that wind-blown debris, dust and odour are issues that should be internalised at the site, that is, the effects should not be detectable beyond the boundary. Those are not only resource consent conditions, but are requirements of section 15(2) of the Resource Management Act 1991.

The reality in practice may be somewhat different. It is the nature of sanitary landfills, that they receive refuse in varying states of decomposition, and that considerable stench may emanate from such refuse as it is being dumped, compacted and covered. Even with the best planning and most efficient covering of odour producing refuse, it is likely that from time to time, there will be an escape of odour from the site that could impact on properties down wind. Even the venting of the gas generated by the decomposition of materials in the landfill may from time to time cause issues with odour to properties down-wind. Similarly, as the access roads on the site are always of a temporary nature as the topography of the landfill changes, and for that reason unsealed, control of dust from vehicles using those temporary roads or from earthmoving activities associated with contouring, covering and associated excavations is possible if not probable. Such odour, dust or wind-blown debris whilst

being controlled by good management practises most of the time, in reality may be an issue close to the property boundary on occasions.

Whilst management practises may be of the required standard, there is little doubt that effects from a sanitary landfill operation are improved or mitigated by distance. To contemplate rural residential activities close to the boundary of the Eves Valley landfill site may raise operational standards for the landfill to a level that may not be achievable in practice. The eventual consequence may be that the site is no longer a viable option as a sanitary landfill.

4. EXPECTATION OF COUNCIL OFFICERS TO REACT TO COMPLAINT

Whilst robust and enforceable legal agreements may be made between parties such as agreement on covenants on relevant property, I am troubled by the potential obligation to take action, in spite of the existence of such a covenant arranged between parties. As a Council Environmental Health Officer with obligations to investigate matters such as public health “nuisance” (conditions likely to be injurious to health or offensive) pursuant to section 29 of the Health Act 1956, I have some doubts about what the effect of such a covenant may be on my actions, but believe that I have an obligation imposed by statute to investigate such matters if I receive relevant complaint. Should I default in that action, in simple terms, there exists a clear obligation in section 33(6) of that Act for the Medical Officer of Health to undertake the corrective action and charge the Council for the necessary action thus taken. Procedures for enforcement of various matters under the provisions of the Resource Management Act 1991 also exist, and sections 322 and 327 provide examples of the processes that may be considered. Similarly, if complaint is made by a person not controlled by the covenant, there are precedents associated with determining compliance (reference Environment Court decision No. C 9/2006 Nelson City Council vs. G M Downing and S M Travena) that would require Councils officers to look for the worst case scenario to measure or monitor for non-compliance. The effect of that worst case scenario existing on property on which a covenant is in force clouds the issue.

5. SUMMARY

Typically a sanitary landfill used for disposal of a community’s refuse is not the sort on close neighbouring activity that would be keenly sought after by anyone contemplating erecting a dwelling. If a dwelling was close by and generally down-wind of a landfill operation, it would be naive not to expect some disturbance from noise, or annoyance from dust, odour or wind-blown debris from time to time. If subdivision occurs on sites close to and down-wind of the landfill, increasing levels of complaint could reasonably be expected.

Graham Caradus
Regulatory Services Co-ordinator

Memorandum

TO: Chair and Members, Environment & Planning Hearings Committee
FROM: Dugald Ley, Development Engineer
DATE: 5 July 2010 **FILE NO:** RM090716
SUBJECT: **TWO-LOT SUBDIVISION – Pand P WILKS, 162 MALLING ROAD**

PURPOSE

The above application is to create an additional allotment off the end of Malling Road for rural-residential purposes.

BACKGROUND

Malling Road is a minor access road of approximately 5.0 metres seal width at the southern end and carries approximately 70 vehicles per day.

Fifty metres from the southern end the road, in essence, “splits” into two minor accessways with the applicant’s right-of-way located on the western side. For all intents and purposes there is an informal turning area at this split area and for a non-resident it would appear to be “private” from that point on.

There is no doubt in my mind that the existing road and that of the right-of-way can handle the increased vehicle movements from on extra dwelling.

Two submissions (Gourley and Holland) mention roading issues and highlight concerns in regard to sight visibility when they enter and exit their properties on to Malling Road.

The applicant has subsequently employed a transportation engineer to address these concerns. His report of 18 June 2010 outlines some mitigation measures by the way of signage and pavement edge markings and I agree with his recommendations.

Furthermore, I would recommend that additional signage be erected such as:

“No Exit – Turning Difficult”
sign at the top of the brow of the hill near the four existing letter boxes where the road splits.

As mentioned in the applicant’s report, there are five existing properties that have access to Malling Road to the south of the brow of the hill. This would amount to approximately 50-60 vehicles per day. An extra seven or so vehicles would be deemed to have a less than minor effect on the road and therefore I would recommend (after the committee has heard all the evidence) to allow the extra user at the end of Malling Road subject to the conditions as recommended in the Traffic Engineer’s Report and that of the signage recommendation above.

Dugald Ley
Development Engineer