Report No:	REP12-03-01
File No:	RM110463
Report Date:	21 February 2012
Decision Required	

Report to: Environment & Planning Subcommittee

Meeting Date: Monday, 5 March 2012

Report Author: Ross Shirley, Subdivision Officer

Subject: **WAKATU INCORPORATION, J W and G N LE PINE, A E WOODCOCK**

1. INTRODUCTION

1.1 A subdivision consent was issued to the applicant, under delegated authority, on 30 September 2011. The consent included a condition that a financial contribution be paid.

1.2 An objection to the financial contribution condition has been lodged.

1.3 The purpose of this report is to assess that objection and to provide a recommendation to the Committee based on that assessment.

2. BACKGROUND

2.1 Council's decision dated 30 September 2011 contains useful background to the subdivision and for ease of reference is quoted below: ***(Refer Appendix A for decision)***

"The application site is located at the junction of Green Lane and Grey Street, Motueka and consists of two adjoining titles in the Rural 1 Zone: ***(Refer Appendix B for existing titles)***

(a) Title 1 is a 4.6 hectare title in two physically separate parcels. Firstly, a parcel located at 35, 37, 39 Green Lane which in turn is subject to three leasehold titles, each of which contains a dwelling and residential curtilage. Secondly, a parcel located at 3 Green Lane which contains a dwelling and orchard land;

(b) Title 2 is a 9.5 hectare title located at 87, 89, 93, 97 Grey Street which in turn is subject to four leasehold titles each of which is fully planted in productive orchard.

The proposal is to subdivide the land to create: ***(Refer Appendix C for proposed titles)***

(a) Lot 1 of 3860 square metres containing the existing dwelling on the secondly described parcel of Title 1 above;

(b) Lot 2 of 1.5 hectares containing the orchard land on the secondly described parcel of Title 1 above;

(c) Lots 3, 4, 5 and 6 of total area 9.5 hectares, each allotment being one of the four leasehold titles described in Title 2 above;

(d) balance area of 2.6 hectares being the parcel firstly described in Title 1 above.

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

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

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

2.2 The principal issues associated with the subdivision are recorded in the decision as:

"I consider the adverse effects of the proposal on the environment are no more than minor for the following reasons:

(a) the proposal does not provide for any additional dwellings to be constructed on the land. That is to say, there are four vacant leasehold titles available for dwellings before the subdivision and with the amalgamation of the leasehold interests of Lots 2 and 3, there will be four vacant leasehold titles available for dwellings after the subdivision. Therefore, the proposal does not bring about any changes to the rural character and amenity of the area;

(b) the proposal consolidates all the productive orchard land into one rural title of 11.0 hectares, which is close to being a complying allotment for the zone. The effects on the productive value of the land are positive;

(c) the proposed boundary between Lots 1 and 2 does not comply with the permitted activity rule relating to minimum setbacks for the dwelling on Lot 1 as required by Rule 16.3.5.1(f). The minimum setback in this instance is 30 metres under Rule 17.5.3.2(e)(i). However, the position of the dwelling in relation to the horticultural planting is an existing situation and there is a minimum distance of 20 metres of lawns and amenity trees between the dwelling and the horticultural plantings. It is also intended to impose a rural emanations easement over Lot 1 for the benefit of Lot 2. Having regard to the above I consider the adverse effects of the reduced setback are no more than minor;

(d) the proposal allows a long standing family of the area to obtain freehold ownership of their family home, which in turn provides for their social and economic well-being;

(e) the proposal does not compromise the proposed Plan Change for the area.

Overall, the proposal is not contrary to the thrust of the policies and objectives of the TRMP, which seek to protect site amenity and productive values of rural land. Conditions can be imposed to ensure any adverse effects on the environment are no more than minor."

2.3 The subdivision consent is subject to the following condition:

Financial Contributions

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

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

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

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

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

3. OBJECTION *(Refer Appendix D)*

3.1 An objection was lodged as provided for by Section 357 of the Resource Management Act (RMA) to the condition requiring payment of a financial contribution.

3.2 The objection notice also made reference to who the development contribution advice note in the decision. The advice note referred to Council's LTCCP policy that requires development contributions to be paid in full before the issue of the Section 224(c) certificate for the subdivision.

3.3 Development contributions are not subject to Section 357 objections under the RMA and therefore are not assessed in this report. Rather, they will be assessed at the time the Section 224(c) certificate is submitted to Council.

4. SECTION 357 RMA

4.1 Section 357A provides for a right of objection to a consent authority in respect of the consent authority's decision on an application under Section 88 if the application was non-notified and the decision was made under delegated authority.

4.2 The objection as lodged satisfies those requirements.

4.3 Section 357C(a) requires the notice of objection to set out the reasons for the objection.

4.4 Section 357C(3)(a) requires Council to consider the objection within 20 working days. (The Resource Consents Manager's letter to the Wakatu Incorporation explains why Council was unable to meet this time frame.)

4.5 Section 357D provides for the Committee to dismiss the objection or uphold the objection in whole or in part.

5. ASSESSMENT

5.1 Council's policy and rules governing financial contributions are contained in Chapter 16.5 of the TRMP, which is fully operative.

5.2 However, since 1 July 2004 when development contributions were introduced in the LTCCP, Chapter 16.5 is relevant only to the extent that it applies to the reserves and community services component of financial contributions. That is to say, the roading, wastewater, water and stormwater component of financial contributions of all subdivisions lodged since 1 July 2004 have been superseded by development contributions under the LTCCP.

5.3 The introduction to Chapter 16.5 describes financial contributions as a method of managing adverse effects of activities. They are not simply a tax on development but rather allow some other measure to be purchased or implemented to manage effects.

5.4 Chapter 16.5.1.2 states:

"Financial contributions will be imposed when land is subdivided, and when buildings are constructed, to assist in managing effects anticipated to be generated by the subsequent use of those allotments and buildings."

5.5 The purpose of the reserves and community services component of financial contributions is stated in Chapter 16.5.1.3(f) as:

''Reserves and community services are considered to be essential facilities for the wellbeing of the people of the District. New growth places a demand to upgrade existing services, to expand, and to develop new facilities. Reserves and community services throughout the District are available to the total community. The cost of enhancing such facilities will be funded in part by new subdivision and development."

5.6 Chapter 16.5.2.1 states that Council may require as a condition on a subdivision consent that a financial contribution of the amount stated in Figure 16.5A is payable with respect to each allotment created by subdivision less *"the number of any certificates of title pertaining to the land being subdivided which have resulted from a previous subdivision consent or equivalent approval"*.

5.7 The decision quite clearly records that there are two existing titles pertaining to the land and after the subdivision there will be three titles. The financial contribution has been imposed on one allotment as there is one additional title resulting from the subdivision.

5.8 The objection notice, which states *"no extra titles are being created"*, is not correct in that regard.

5.9 The objection notice makes reference to certain leasehold titles. However, the activity authorised by Council decision is for subdivision of two freehold titles and the fact that there are underlying leasehold interests is irrelevant to that decision. This is because the leasehold interests are essentially leases in perpetuity, over which Council has no regulatory role as it does with subdivisions of freehold titles.

5.10 Figure 16.5A sets the reserves and community services component at 5.62% of the total market value at date of consent of a notional 2500 square metre building site contained in all new allotments created by subdivision. The condition requiring payment of financial contributions has been imposed in accordance with that rule.

5.11 Chapter 16.5.2.3 sets out the circumstances where financial contributions may be reduced, waived or offset. Of particular relevance is 16.5.2.3(c)(ii), which states:

> *"(c) The financial contribution may be waived or reduced where, upon request, the Council considers it fair and reasonable having regard to the particular circumstances. Circumstances which may warrant a reduction or waiver include:*
>
> *(ii) where an activity is to be established which will have no adverse impact on the environment, particularly the infrastructure, reserves or community services of the District;"*

5.12 It is relevant to note that this is a discretionary provision *"the financial contributions **may** be waived …"*. Compare with subparagraphs (a) and (b), which are mandatory provisions: *"the financial contribution **will** be reduced"*.

5.13 The subdivision records that the proposal does not provide for any additional dwellings to be constructed on the land. However, Council has quite deliberately chosen the subdivision stage to impose financial contributions rather than the building stage. It does not matter whether the buildings happen before or after the subdivision, it is the subdivision that triggers the payment of financial contributions.

5.14 To assist me in my assessment of the objection, I have examined previous Council decisions where financial contributions have been an issue. In particular, I have examined those decisions where financial contributions have been objected to and a decision on the objection has been made by a Hearings Committee.

5.15 The most recent and relevant decisions of the Hearings Committee in relation to financial contributions are:

(a) RM071219, J P Best Estate, decision dated 9 July 2010; ***(Refer Appendix E)***

(b) RM100395, A & W Lane, decision dated 20 December 2010; ***(Refer Appendix F)***

(c) RM100507, P Warren, decision dated 20 December 2010. ***(Refer Appendix G)***

5.16 Those three decisions all have a common theme in that the dwellings existed prior to the application and that the Hearings Committee dismissed the objection relating to the payment of financial contributions.

5.17 Of particular relevance is the finding of the Hearings Committee in RM100507, which records *"in our view, the time that has elapsed from the construction and use of the building to the current subdivision application does not materially alter the reasons for the Council imposing the full reserves levy"*.

5.18 There are a number of other subdivision applications with dwellings existing prior to the subdivision where financial contributions were imposed and payments have been made.

6. SUMMARY AND CONCLUSION

6.1 An objection has been lodged against the condition requiring the payment of financial contributions on a subdivision.

6.2 I have assessed the objection having regard to Section 108 of the Act and the Tasman Resource Management Plan (TRMP) and have taken into account the relevant principles of Part 2 of the RMA.

6.3 The financial contribution condition has been lawfully imposed and is consistent with Council practice and implementation of the TRMP.

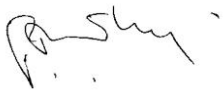
6.4 The condition is fair and reasonable and is based on changed circumstances brought about by the subdivision and is for planning purposes (Newbury test).

6.5 There are no circumstances that warrant a waiver or reduction in the financial contribution.

6.6 The grounds for the objection as stated in the objection notice are not based on facts, or are not relevant.

7. RECOMMENDATION

7.1 That pursuant to Section 357D(1) of the RMA the objection be dismissed.



Ross Shirley
Subdivision Officer

Appendix 'A'

RESOURCE CONSENT DECISION

Resource consent number: RM110463

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

Wakatu Incorporation, J W & G M Leppien, A E Woodcock

(hereinafter referred to as "the Consent Holder")

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

Location details:

Title	Address	Legal	CT	Area	Valuation
No. 1	3, 35, 37 and 39 Green Lane, Motueka	Lot 1 DP 6382 Lot 21, Lot 25 and Pt Lot 22 DP 1512	3A/950	4.6 ha	1956036600 1956036401 1956036300 1956036200
No. 2	87, 89, 91, 93 and 97 Grey Street, Motueka	Lots 9-13 DP 1511	145/14	9.5 ha	1956037200 1956037300 1956037100 1956037000

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

CONDITIONS

1 **Amalgamation**

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

Land Information New Zealand reference: 1014370.

2 **Rural Emanations Easement**

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

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

3 **Financial Contributions**

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

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

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

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

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

Development Contributions – Advice Note

Council will not issue the Section 224(c) certificate in relation to this subdivision until all relevant development contributions have been paid in accordance with the Council's Development Contributions Policy under the Local Government Act 2002. The power to withhold a Section 224(c) certificate is provided under Section 208 of the Local Government Act 2002.

The Development Contributions Policy is found in the Long Term Council Community Plan and the amount to be paid will be in accordance with the requirements which are current at the time the relevant development contribution is paid in full. This consent will attract a development contribution in respect of roading, water and stormwater.

REASONS FOR THE DECISION

Background to Proposed Activity

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

(a) Title 1 is a 4.6 hectare title in two physically separate parcels. Firstly, a parcel located at 35-39 Green Lane which in turn is subject to three leasehold titles, each of which contains a dwelling and residential cartilage. Secondly, a parcel located at 3 Green Lane which contains a dwelling and orchard land;

(b) Title 2 is a 9.5 hectare title located at 87-93 and 97 Grey Street which in turn is subject to four leasehold titles each of which is fully planted in productive orchard.

The proposal is to subdivide the land to create:

(a) Lot 1 of 3860 square metres containing the existing dwelling on the secondly described parcel of Title 1 above;

(b) Lot 2 of 1.5 hectares containing the orchard land on the secondly described parcel of Title 1 above;

(c) Lots 3, 4, 5 and 6 of total area 9.5 hectares, each allotment being one of the four leasehold titles described in Title 2 above;

(d) balance area of 2.6 hectares being the parcel firstly described in Title 1 above.

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

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

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

Tasman Resource Management Plan ("TRMP") Zoning, Area, and Rules Affected

According to the TRMP the following apply to the subject property:

Zoning: Rural 1
Area(s): There are no area overlays affecting the land

No person may subdivide land within Tasman District as a permitted activity according to the TRMP. The activity authorised by this resource consent is deemed to be a discretionary activity in accordance with Rule 16.3.5.2 of the TRMP.

Principal Issues (Actual and Potential Effects on the Environment)

I consider the adverse effects of the proposal on the environment are no more than minor for the following reasons:

(a) the proposal does not provide for any additional dwellings to be constructed on the land. That is to say, there are four vacant leasehold titles available for dwellings before the subdivision and with the amalgamation of the leasehold interests of Lots 2 and 3, there will be four vacant leasehold titles available for dwellings after the subdivision. Therefore, the proposal does not bring about any changes to the rural character and amenity of the area;

(b) the proposal consolidates all the productive orchard land into one rural title of 11.0 hectares, which is close to being a complying allotment for the zone. The effects on the productive value of the land are positive;

(c) the proposed boundary between Lots 1 and 2 does not comply with the permitted activity rule relating to minimum setbacks for the dwelling on Lot 1 as required by Rule 16.3.5.1(f). The minimum setback in this instance is 30 metres under Rule 17.5.3.2(e)(i). However, the position of the dwelling in relation to the horticultural planting is an existing situation and there is a minimum distance of 20 metres of lawns and amenity trees between the dwelling and the horticultural plantings. It is also intended to impose a rural emanations easement over Lot 1 for the benefit of Lot 2. Having regard to the above I consider the adverse effects of the reduced setback are no more than minor;

(d) the proposal allows a long standing family of the area to obtain freehold ownership of their family home, which in turn provides for their social and economic well-being;

(e) the proposal does not compromise the proposed Plan Change for the area.

Overall, the proposal is not contrary to the thrust of the policies and objectives of the TRMP, which seek to protect site amenity and productive values of rural land. Conditions can be imposed to ensure any adverse effects on the environment are no more than minor.

Relevant Statutory Provisions

In considering this application, the Council has had regard to the matters outlined in Section 104 of the Act. In particular, the Council has had regard to the relevant provisions of the following planning documents:

(a) the Tasman Resource Management Plan (TRMP).

The activity is considered to be consistent with the relevant objectives and policies contained in the TRMP.

Part II Matters

The Council has taken into account the relevant principles outlined in Sections 6, 7 and 8 of the Act and it is considered that granting this resource consent achieves the purpose of the Act as presented in Section 5.

Notification and Affected Parties

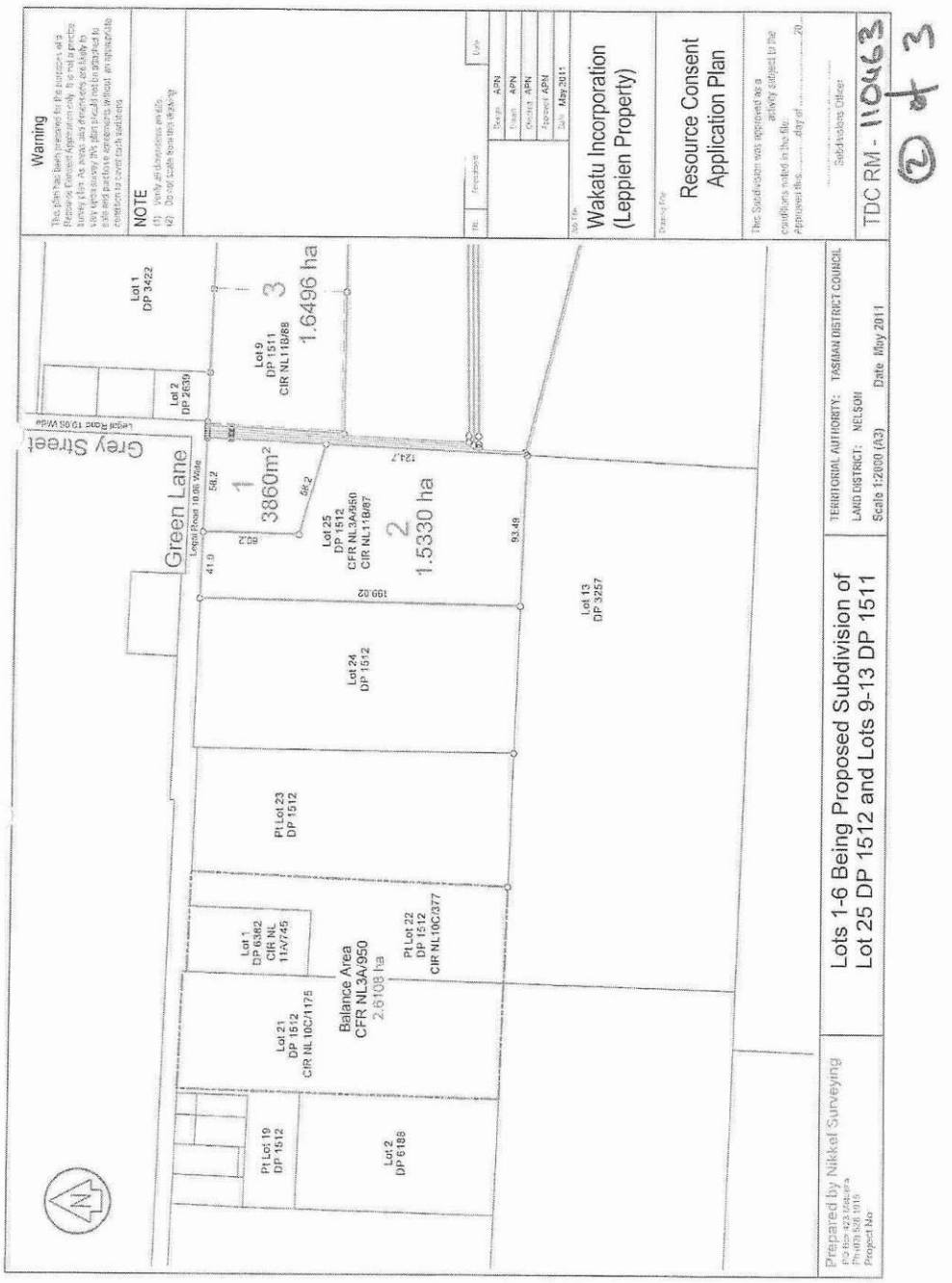
The adverse environmental effects of the activity are considered to be no more than minor. The Council's Resource Consents Manager has, under the authority delegated to him, decided pursuant to Section 95 of the Act that the application did not require public or limited notification.

This consent is granted on 30 September 2011 under delegated authority from the Tasman District Council by:

Ross Shirley
Subdivision Officer

Appendix 'A'

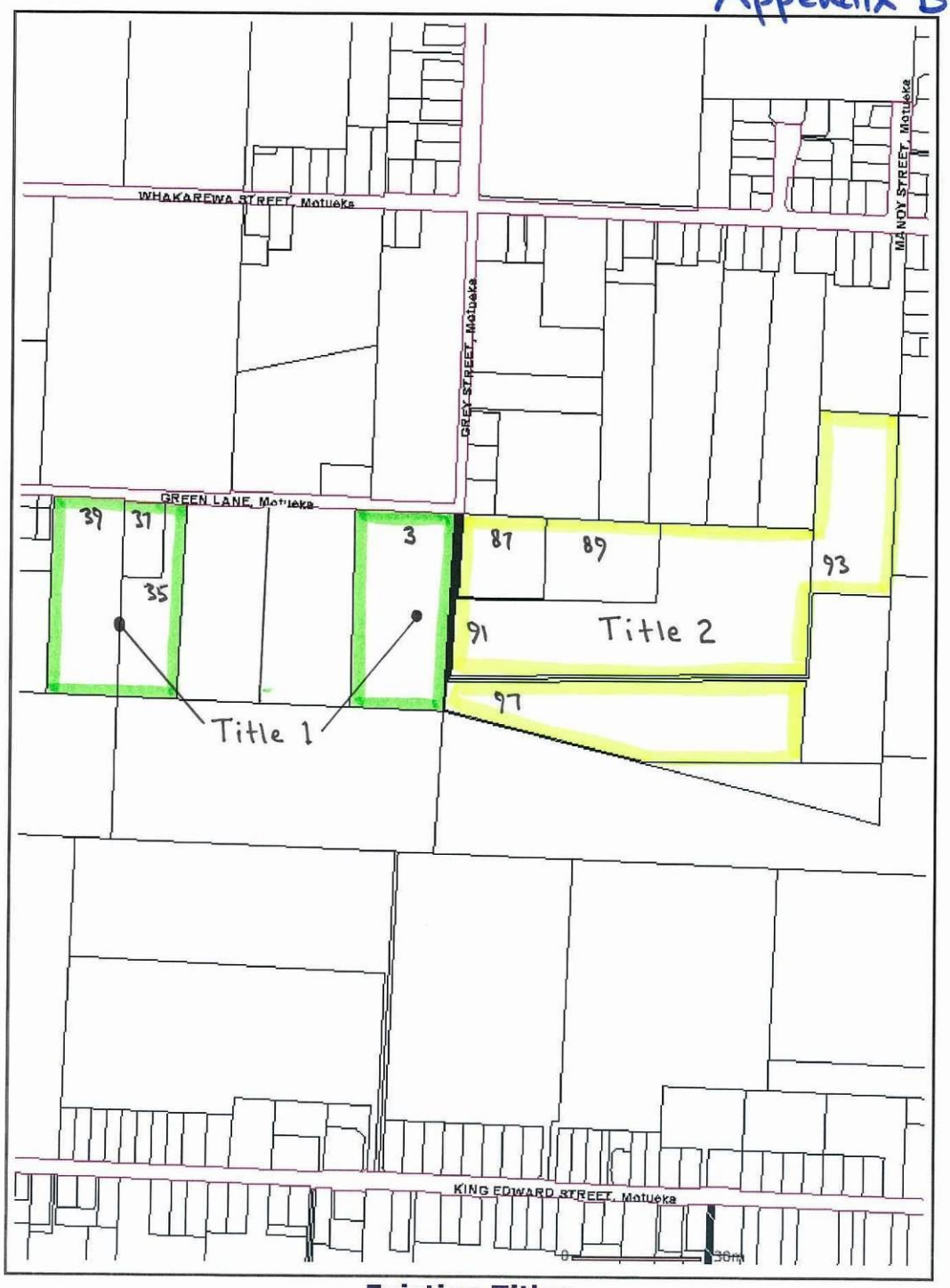
0463


Warning
NOTE
Grey Street
Green Lane
Lot 1 DP 3422
Lot 2 DP 2639
Lot 9 DP 1511 CIR NL11B/88
3
1.6496 ha
1
3860m²
2
1.5330 ha
Lot 25 DP 1512 CFR NL3A/950 CIR NL11B/87
Lot 24 DP 1512
Lot 13 DP 3257
Pt Lot 23 DP 1512
Lot 1 DP 6382 CIR NL 11A/745
Lot 21 DP 1512 CIR NL 10C/1175
Balance Area CFR NL3A/950 2.6108 ha
Pt Lot 22 DP 1512 CIR NL10C/377
Pt Lot 19 DP 1512
Lot 2 DP 6188
Wakatu Incorporation (Leppien Property)
Resource Consent Application Plan
Lots 1-6 Being Proposed Subdivision of Lot 25 DP 1512 and Lots 9-13 DP 1511
TERRITORIAL AUTHORITY: TASMAN DISTRICT COUNCIL
LAND DISTRICT: NELSON
Scale 1:2000 (A3) Date May 2011
Prepared by Nikkel Surveying
TDC RM - 110463
2 of 3

Warning
This plan has been prepared for the purposes of a Resource Consent Application only. It is not a precise survey plan. As areas and dimensions are likely to vary upon survey this plan should not be accepted as sale and purchase agreements without an appropriate condition to cover such variations.
NOTE
(1) Verify all dimensions on site.
(2) Do not Scale from this drawing
No
Amendment
Date
Design APN
Drawn APN
Checked APN
Approved APN
Date May 2011
Job Info:
Wakatu Incorporation
(Leppien Property)
Drawing Info:
Resource Consent
Application Plan
This Subdivision was approved as a
activity subject to the
conditions noted in the title:
Approved this day of 20
Subdivisions Officer
TDC RM-110463
3 of 3
Green Lane
Legal Road 10.06 Wide
1
3860m²
2
1.5330 ha
House
Garage
24.7 to Eave
19.7 to Eave
22.9 to Eave
30m from Dwelling
30m from Dwelling
15.05
59.4
124.7
58.2
60.2
58.2
41.0
199.02
Prepared by Nikkel Surveying
PO Box 423 Motueka
Ph (03) 528 1015
Project No: 1899-WAK
Lots 1-6 Being Proposed Subdivision of
Lot 25 DP 1512 and Lots 9-13 DP 1511
TERRITORIAL AUTHORITY: TASMAN DISTRICT COUNCIL
LAND DISTRICT: NELSON
Scale 1:2000 (A3)
Date May 2011

Map Output

Appendix 'B'



Existing Titles

21/2/2012 **DISCLAIMER:**
This map is derived from ExploreTasman and has generally been compiled from data generated by and supplied to the Tasman DC. It has no legal status and is known to be incomplete. To ascertain the exact location of any item, Tasman DC advises that the customer arrange onsite verification. Tasman DC will not be liable for any damages or loss whatsoever suffered from the use of this information.
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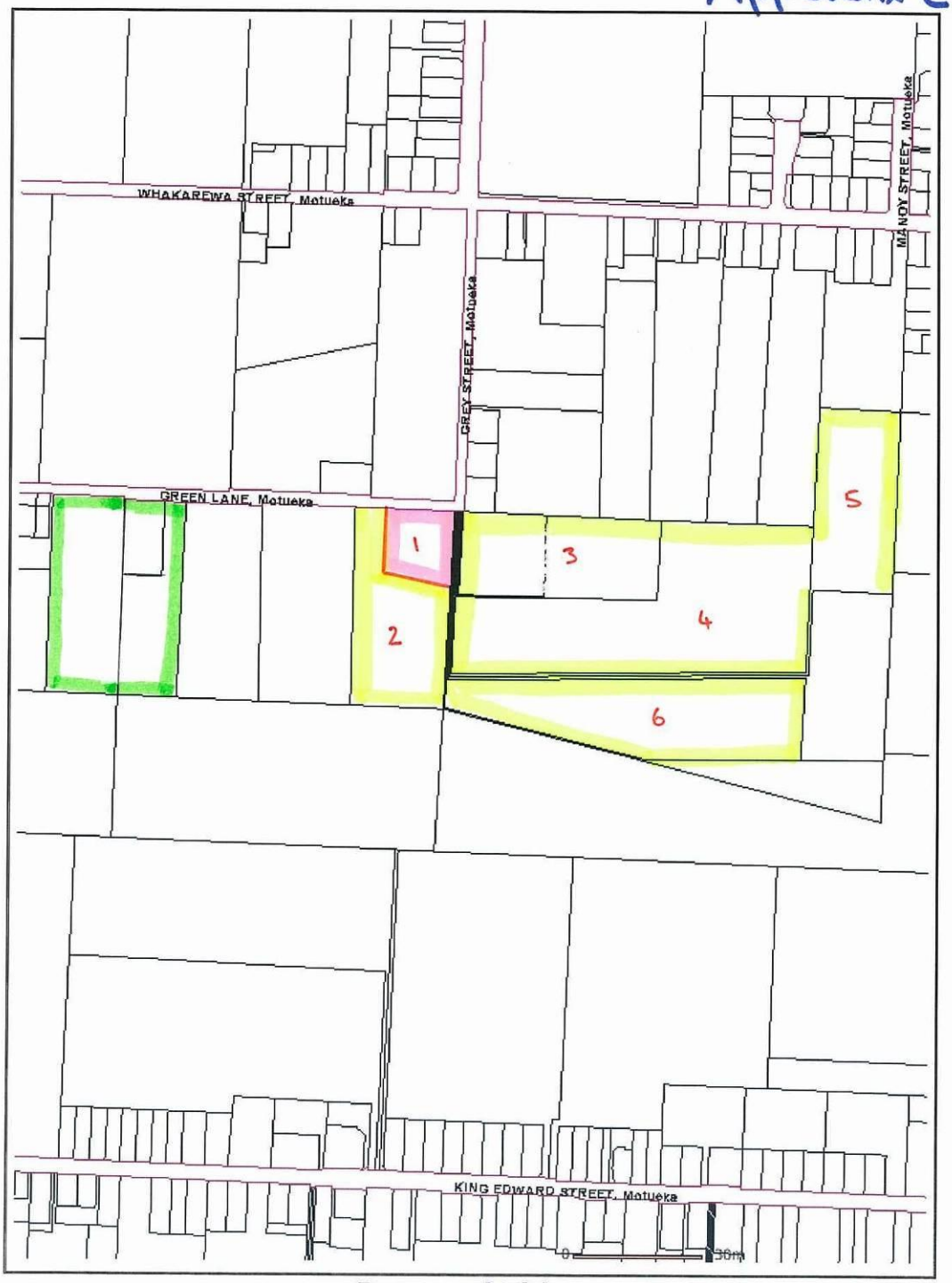
Map Output

Appendix 'C'



Proposed Titles

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GRAHAM THOMAS
RESOURCE MANAGEMENT CONSULTANTS LTD

Appendix 'D'

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Nelson New Zealand
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Mobile 027 491 5882
graham@trm.net.nz
www.tasmanresourcemanagement.co.nz

17 October 2011

RECEIVED
18 OCT 2011
TASMAN DISTRICT COUNCIL

Tasman District Council
Private Bag 4
RICHMOND 7050

ATTN: R SHIRLEY **REF: WAK: 02-03/11**

Dear Ross

RE: RM110463 – WAKATU AND LEPPIEN – 3 GREEN LANE MOTUEKA

I refer to the consent for the above subdivision received on 3rd October 2011.

This is an objection under Section 357A of the Act to Condition 3 and, in so far as it is possible, to the Advice Note that Development Contributions for Roading, Water Reticulation and Stormwater will be payable.

Condition 3 and the Development Contributions Advice Note states:

3 *Financial Contributions*

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

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

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

If payment of the financial contribution is not made within 2 years of the date of this consent and a revised valuation is required as provided by Rule 16.5.2(c) of the Tasman Resource Management Plan, the cost of the revised valuation shall be paid by the Consent Holder.

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

Development Contributions – Advice Note

Council will not issue the Section 224(c) certificate in relation to this subdivision until all relevant development contributions have been paid in accordance with the Council's Development Contributions Policy under the Local Government Act 2002. The power to withhold a Section 224(c) certificate is provided under Section 208 of the Local Government Act 2002.

The Development Contributions Policy is found in the Long Term Council Community Plan and the amount to be paid will be in accordance with the requirements which are current at the time the relevant development contribution is paid in full. This consent will attract a development contribution in respect of roading, water and stormwater.

Reason for Objection

- The purpose for payment of Financial Contributions and Development Contributions is to……

  "shift more of the cost burden for infrastructure services from general ratepayers to developers and new home builders – those who drive the need for new infrastructure".

  … as set out in the Development Contributions information handout.

- With a subdivision that is generally when new titles over and above that which existed prior to the subdivision are created.

- In this instance the subdivision is the reduction in size of an existing leasehold title and the conversion of the smaller leasehold to freehold with the balance of the old leasehold title being included in other existing titles.

- In other words, no extra titles are being created.

- That is also acknowledged in the Reasons for the Decision in the Consent.

The applicant therefore seeks deletion of the requirement to pay any form of Financial Contribution as set out in the consent.

We look forward to advice of the Hearing date – however the applicant is prepared to meet if it is possible to resolve this objection without the need for a Hearing.

Council's fee of $200 for this objection is enclosed herewith.

Yours faithfully

GRAHAM THOMAS
RESOURCE MANAGEMENT CONSULTANTS LTD
Encl
Cc Wakatu Inc – M Ingram

Appendix 'E'

TASMAN DISTRICT COUNCIL

Decision of the Tasman District Council through a Hearing Commissioner

Meeting held in the Richmond Office on 23 June 2010, commencing at 10.00 am
Hearing closed by the Commissioner on 23 June.

The hearing of an objection pursuant to Section 357 of the Resource Management Act 1991 to Council's delegated decision on the Subdivision Application RM071219

PRESENT:	**Hearing Commissioner** Cr Tim King
APPLICANT:	Mr Tony Quickfall (Resource Management Consultant) Mr Shane Stephen (Applicant/Objector)
CONSENT AUTHORITY:	**Tasman District Council** Mr Mark Morris (Consents Coordinator, Subdivisions)
IN ATTENDANCE:	Resource Consents Manager (Mr Phil Doole), Executive Assistant (Mrs Valerie Gribble) assisting the Commissioner.

1. BACKGROUND TO THE OBJECTION

Consent RM071219 was granted in March 2008 to allow the subdivision of Lots 1 and 2 DP 367812, being 31 and 33 Iwa Street Mapua, to create four allotments. There were two existing dwellings on both properties; hence the proposed subdivision would effectively allow each of the four dwellings to have its own separate allotment.

Building consents had been issued for the two second dwellings during the year 2000. At that time second dwellings could be constructed in a residential zone as a permitted activity provided that they complied with the overall site coverage (33%) and other applicable standards.

Financial contributions would also have been payable in accordance with the provisions of Section 16.5 of the Tasman Resource Management Plan (TRMP). It appears from the Council's records that no financial contributions were paid for either of the second dwellings - although the amount payable would have been very small because the value of each of the dwellings was just over $50,000 and the financial contribution was based on 0.5% of the value of the building work over $50,000.

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

2. THE OBJECTION

A Section 357 Objection was received from the applicant on 14 April 2008. The Applicant objected to the imposition of Conditions 2 and 4 on the subdivision consent.

Condition 2 states that: *"Financial contributions are required on two allotments. The following shall apply... Payment of a reserves and community services levy assessed at 5.5% of the value of each of the two allotments..."*

Condition 4 states that *"Lot 1's right to the existing right-of-way EC 7280414.5 shall be extinguished."*

The applicant asked that consideration of the Objection be deferred, and it was put on hold. The two properties were subsequently sold to S and S Stephen who have taken over the subdivision application. The Stephens advised in May 2010 that they wished to proceed with the Objection relating to Condition 2 only.

3. PROCEDURAL MATTERS

Mr Quickfall confirmed that the second part of the objection relating to condition 4 is withdrawn.

4. REPORT AND EVIDENCE HEARD

A report on the matter of objection, being the financial contribution, by the Council's Subdivision Consents Co-ordinator Mr Mark Morris had been circulated prior to the hearing. The Commissioner heard evidence for the applicant, and a response from Mr Morris. The following is a summary of the information presented.

4.1 Officer's Report - Mr Mark Morris

In his report Mr Morris stated that it is usual practice to impose the reserves and community services levy (as a financial contribution) at the subdivision stage, rather than the building stage because the levy is based on land value which can be determined for each of the proposed allotments. His view is that it is exactly the same development with associated effects that is being considered.

Mr Morris stated that it is becoming more common for two dwellings to be built on a residential property, and then be subdivided later. In all cases the reserves levy has been imposed (and paid) on the additional allotments, even though the same argument could have arisen as with the current Objection; viz. the "effects [of residential development] already exist" at time of subdivision.

Mr Morris stated that that there is a link between subdivisions/residential development and demand on Council services; and it should not matter how long the dwelling was built before the subdivision. He recommended that the Objection be dismissed and that Condition 2 on the consent be upheld.

4.2 Applicant's Evidence - Mr Tony Quickfall

Mr Quickfall tabled a statement of evidence. He first sought clarification as to which "two allotments" the financial contribution in Condition 2 applies to. Normal practice is for levies to be applied to the new allotments that are to be created by subdivision.

Mr Quickfall stated that the basis of the Objection to the financial contribution being imposed is very simple: there is an existing dwelling on each of the four allotments that will result from the subdivision, hence there is no additional development proposed and there will be no additional demand on any services or reserves arising, therefore the 5.5% levy is not justified.

Mr Quickfall considered that the timing of the second dwellings being built is a key factor that supports a waiver of the levy in this case. It is unreasonable to say that there will be additional demands on services now 10 years after those dwellings were built. If the TRMP rules allow for dwellings to be erected prior to subdivision without paying reserve contributions, the Council should address that possible "loophole" through a plan change.

Mr Quickfall considered that the provisions for waivers or reductions in TRMP rule 16.5.2.3(c) could apply to any subdivision depending on the circumstances; and he considered that the second of the listed circumstances (16.5.2.3(c)(ii)) is applicable in this case, because there will be no adverse impacts arising from this subdivision 10 years after the dwellings were built.

With reference to case law, Mr Quickfall accepted that the Council can impose financial contributions where there are no additional effects on infrastructure or reserves, but with the proviso that the absence of effects is a relevant factor in determining the amount of the contribution.

While stating that it is unreasonable to require any payment of a levy in this case, Mr Quickfall suggested that if a levy was to remain then a reduced contribution of 1.5% (rather than 5.5%) should apply for each of the additional two allotments taking into account the small size of the dwellings.

I asked, in terms of dwellings being constructed prior to subdivision and drawing the conclusion that later subdivision has no particular effect, is not that the case whether dwellings are built prior to or following subdivision? In your scenario, is the actual time of building the only time it would be reasonable?

Mr Quickfall replied that in this case timing is important because we have different owners - a different owner did the buildings and the Stephens have inherited the subdivision proposal. In his opinion the timing of ten years has relevance, as it is harder to draw a direct correlation between the effects of a subdivision and a reserve contribution ten years later.

In relation to the second preferred option, a reduction in the amount of the levy, I asked whether the size of the dwelling is a common way to assess the reserve levy, higher for five bedroom houses and lower for two bedroom houses, or is it a flat rate.

Mr Quickfall said typically Councils would apply 5.5% as a flat rate. That was a maximum but there is provision to reduce it.

4.3 Reporting Officer

With regard to the question as to "which two allotments" Mr Morris explained that with financial contributions for reserves you get a credit for the existing allotments and the contribution is imposed on additional allotments only. In this case each allotment had an existing dwelling. Generally it would be the rear lots. In terms of clarification, he accepted that in this case it was appropriate for the levy to be assessed on the land value of the two proposed rear allotments.

Mr Morris said that it is often argued that subdivisions themselves are lines on the ground, but generally they are associated with residential development. The issue is that it is the same residential development that has happened before subdivision. Because of that, should they not have to pay a reserve fund contribution? His opinion was that it should not matter whether residential development happens before or after subdivision as it is the same effects that we deal with. The TRMP prescribes that at subdivision stage the Council takes a contribution.

I noted that currently reserve fund contributions are done under the Resource Management Act 1991 ("the Act"), and asked if under those provisions there is any flexibility to collect at time of building or can it only be collected at time of subdivision? Mr Morris said that it could be changed so it is done at building consent stage. It can be up to 7.5% of the land value per additional allotment, but the difficulty would be in working out the land area if there is no subdivision proposal at that stage.

I asked when it is not a subdivision, do you use a notional plot of land? Mr Morris was not sure how it is done, but it is possible under both the Resource Management Act and also the Local Government Act (refer Neal Construction v North Shore decision). The Waitakere decision was under transitional provisions and he understood there was an appeal to the High Court on that decision, but was not sure of the outcome. A previous objection by Hockaday (2005) was upheld, but the objection by Lee and Hart (2001) was not.

I asked, would you not consider that the actual time of effects is when the dwellings are built, not when they are subdivided? Given that it is not uncommon for people to build, should the Council consider having its Plan cover that eventuality?

Mr Morris said that the Council has set out that financial contributions are imposed at subdivision stage. Subdivision is associated with residential development and he did not see whether it happens before or after as being an issue.

4.4 Applicant's Right of Reply

Mr Quickfall asked for clarification of wording to say it is only two lots for which the financial contribution will apply.

Mr Quickfall reiterated his view that there is no association between this subdivision and development that occurred ten years ago. His understanding of the Plan is, if a plan is a permitted activity you can not impose conditions. If it is below minimum site area it triggers land use consent so you may be able to take a financial contribution. The Waitakere case was a declaration by the Environment Court (A10/2000) on the

lawfulness of imposing financial contributions, with the Court declaring the quantum of application is a matter to be considered. The key point is the circumstance that differentiates this application - the timing between building and subdivision. This subdivision is not associated with any development, there is no actual demand from subdivision and it comes down to fairness and reasonableness and whether it is waived completely or partially.

5. PRINCIPAL ISSUES AND FINDINGS

The principal issues that were in contention were:

a) Which allotments does Condition 2 apply to?

The hearing established that Condition 2 should apply to the two rear allotments (i.e. Lots 2 and 4 as shown on the Plan of Subdivision attached to consent RM071219, annotated as Plan A). I envisage that this matter could have been resolved at staff level without need for a hearing if it was the only point at issue.

b) Is Rule 16.5.2.3(c) restricted in its application?

Rule 16.5.2.3(c) sets out circumstances when financial contributions may be waived or reduced. Clause 16.5.3.2(c)(ii) states the circumstance:

ii) where an activity is to be established that will have no adverse impact on the environment, particularly the infrastructure, reserves or community services of the District;

I prefer Mr Quickfall's interpretation of this clause, in that it could be relevant to any type of subdivision, and is not restricted to network utility sites or the like. Rule 16.5.2.3(b) specifically excludes network utility sites from payment of a reserves levy, so I agree with Mr Quickfall that Sub-clause 16.5.3.2(c)(ii) can have wider relevance depending on the circumstances.

Sub-clause (ii) refers to an activity that is to be established as part of, or as an outcome of a subdivision process, and that activity will have no adverse impact. In this case, we are considering the situation where the second dwellings have already been established, so I conclude that Clause (ii) itself does not apply to these situations. However, Rule 16.5.3.2(c) does provide a more general authority to allow waivers or reductions where the Council considers it fair and reasonable having regard to the particular circumstances.

c) Is it reasonable to impose a reserves and community services levy 10 years after the second dwellings were built?

Mr Quickfall accepted that the Council can impose the levy, but he argued that it is unreasonable to impose an impact levy so long after the residential development occurred - that the passage of time and change in ownership of the subject properties justify a waiver of the levy or a substantial reduction of it.

The counter argument from Mr Morris was essentially that the variable time periods between building a dwelling and applying to subdivide later do not alter the basis for charging the reserves levy at time of subdivision, and that practice has been applied consistently within the District.

My finding is that I accept Mr Morris's approach to this matter. The TRMP rules for reserves levies have not substantially changed since the year 2000 when the two second dwellings were built, at which time it would have been known and expected that a reserves levy would be imposed on any later subdivision of these residential properties. In my view the time that elapsed from construction and use of the dwellings to when the subdivision application was lodged in 2007 does not materially alter the reasons for the Council imposing the full reserves levy. Furthermore, the change in applicant and/or property ownership along the way is not, in my view, a relevant factor in determining the quantum of the levy.

6. RELEVANT STATUTORY PROVISIONS

6.1 Policy Statements and Plan Provisions

In considering this objection, I have had regard to Section 108 of the Act and the relevant provisions of the following planning documents:

a) Tasman Regional Policy Statement (TRPS); and
b) the Tasman Resource Management Plan (TRMP).

6.2 Part II Matters

In considering this objection, I have taken into account the relevant principles outlined in Sections 6, 7 and 8 of the Act, as well as the overall purpose of the Act as presented in Section 5.

7. DECISION

Pursuant to Section 357D(1) of the Act, I hereby:

DISMISS the substantial objection to Condition 2 of Consent RM071219; and

UPHOLD the objection in part with regard to clarifying that the financial contribution imposed on Condition 2 applies to the two rear allotments to be created by the proposed subdivision.

8. REASONS FOR THE DECISION

a) The financial contribution condition has been lawfully imposed on two additional allotments.

b) Requiring a reserves and community services levy on additional allotments that have existing dwellings at time of subdivision is consistent with Council practice and implementation of the TRMP rules.

c) Requiring the maximum reserves and community services levy (being 5.5% of the land value of the additional allotments) is consistent with Council practice and implementation of the TRMP rules.

d) The requirement to pay the reserves and community services levy at time of subdivision did not change between the years 2000 and 2007.

e) It is reasonable and equitable to impose the full levy as defined by the 5.5% of land value quantum because the on-going impact of the dwellings, with regard to reserves and other community services, is the same now as it was when they were built.

9. AMENDED CONDITIONS OF CONSENT

Condition 2
"Financial contributions are required on the two rear allotments to be created (i.e. Lots 2 and 4 as shown on Plan A attached to this consent).

Issued this 9th day of July 2010

Cr T King
Hearings Commissioner

Appendix 'F'

tasman district council

Decision of the Tasman District Council through Hearing Commissioners

Meeting held in the Richmond Office on 29 November 2010, commencing at 9.15 am

The hearing of an objection pursuant to Section 357 of the Resource Management Act 1991 to Council's delegated decision on Subdivision Application RM100394 and Land Use Application RM100395.

COMMISSIONERS:	Cr Stuart Bryant (Chairperson) Cr Brian Ensor
APPLICANT:	Mr John Cotton (Land Surveyor) Mr Andrew and Mrs Wendy Lane (Applicant/Objector) Rob Ford (Land Surveyor)
REPORTING OFFICERS:	Mr Wayne Horner (Consents Planner, Subdivisions) Ms Ros Squire (Reserves Planner)
IN ATTENDANCE:	Assisting the Commissioners: Mr Phil Doole (Resource Consents Manager) Ms Julie Proctor (Administration Officer)

1. BACKGROUND TO THE OBJECTION

Consents RM100394 and RM100395 were granted in October 2010 to allow the subdivision of Part Section 5 of 143 Waimea South District and Lot 3 DP 13301 (CT NL8B/183) and Lot 1 DP 420037 (CT 483980), situated at 57 Baigent Road, Wakefield. The property lies within a Rural 1 Zone as defined by the Tasman Resource Management Plan (TRMP) hence a land use consent was also required for establishment of another dwelling in that zone.

The property held in two titles comprises a total of 5.7825 hectares. An existing dwelling straddles the boundary of Part Section 5 and Lot 1 DP 420037. Lot 1 DP 420037 was previously Crown land old river bed. A successful application for possession was made by the previous owner of the adjoining title, resulting in a separate freehold title being issued for the old river bed area in February 2010.

The applications propose to adjust the boundaries of the two existing titles so that the existing dwelling will be on proposed Lot 1 comprising 0.75 hectare, and most of the remaining area of the property will be proposed Lot 2 being 4.1 hectares with a new dwelling site identified on that allotment. The other areas are to vest with Tasman District Council as Wai-iti River bed and esplanade reserve. An esplanade strip will also be created on proposed Lot 2 along the east bank of the Wai-iti River.

Financial contributions for reserves and community services are payable on subdivision as provided for in Section 16.5 of the Tasman Resource Management Plan (TRMP). A full reserve fund contribution for one additional allotment has been imposed by Condition 11 on Subdivision Consent RM100394 which states:

> *"The Consent Holder shall pay a financial contribution for reserves and community services in accordance with [the] following:*
>
> *(a) The amount of the contribution shall be 5.62 per cent of the total market value... of a notional 2500 square metre building site within the Proposed Building Site on Lot 2;..."*

Condition 6 on the Land Use Consent RM100395 requires that the exterior of the new dwelling be finished in colours that are recessive and blend in with the immediate environment; and that details of the proposed colours for the roof and walls be submitted for Council approval prior to applying for building consent. There is a cross-reference to this requirement in Condition 8(b) of the Subdivision consent.

2. THE OBJECTION

An objection to the decision to grant consent was received from the applicant on 26 October 2010. The Applicant objected to the imposition of Condition 11 on RM100394 requiring payment of the reserves contribution; and to Condition 6 on RM100395 and Condition 8(b) on RM 100394 concerning the building colours. (A third matter of objection was withdrawn prior to the hearing).

3. PROCEDURAL MATTERS

This objection raises a procedural matter. The financial contribution rule 16.5.2.3(c) provides that reductions or waivers will be considered "upon request". The application as lodged did not make such a request. Therefore it would not usually be appropriate to consider this as a valid matter of Objection (because Council staff acting under delegated authority cannot consider making a reduction or waiver without a request being made). However, taking account of all aspects of this case we decided that we would continue to determine the matter.

4. REPORT AND EVIDENCE HEARD

A report on the two matters of Objection from the Council's Subdivision Consents Officer, and evidence from the applicant were circulated prior to the hearing. We heard from the applicant, and a response from Mr Horner. We also asked for comment from Council's Reserves Planner Ms Ros Squire. The following is a summary of the information presented.

4.1 Officer's Report - Mr Wayne Horner

In his report Mr Horner referred to TRMP Rule 16.5.2 which states that Council may require a financial contribution for reserves and community services to be paid for each allotment on subdivision, with a credit to be given for any existing certificates of title created by subdivision consent. He set out the circumstances in rule 16.5.2.3(c) when Council may consider a reduction or waiver of the contribution. He elaborated on his assessment of this matter, stating that the title recently issued for Lot 1 DP 420037 did not meet the criteria for a waiver of the reserves and community services financial contribution.

4.2 Applicant's Evidence - Mr John Cotton

Mr Cotton spoke to his submission which had been pre-circulated. He stated that the application was for a boundary adjustment of two existing titles that could be sold separately and that the proposal would not result in any additional effects that would justify the reserves contribution. He referred to other instances in the District where titles have resulted by means other than Council subdivision approval or similar process.

In response to questions, Mr Cotton provided further information relating to his comments in respect of financial hardship. He stated that if the titles were in separate ownership, then a request could be made to demolish the house or make a claim for the land under the Property Law Act. Mr Cotton emphasised his view that the application was not a subdivision but a boundary adjustment.

Mr Cotton stated that Lot 3 had been volunteered to be vested to Council at the time of the application by Mr and Mrs Lane. It was acknowledged that owning this land may have been problematic in terms of maintenance as it was the other side of the river. It could have been sold to a neighbour but as a gesture of goodwill the Lanes volunteered to vest it to Council.

4.3 Applicants Evidence - Mr Andrew Lane

Mr Lane provided an historical account of how the initial resource consent application came about. He said that a pre-consultation meeting with Council took place and the preferred option of a boundary adjustment to include the original homestead was chosen. It was envisaged that the new lot created would be built on. Mr Lane stated that the vesting of Lot 3 to Council as an esplanade reserve was a gesture of goodwill by them to "sweeten" the initial resource consent application. Mr Lane continued that he was builder and could have moved the homestead but it was easier to do a boundary adjustment. At the pre-consultation meeting, Council staff advised that it was possible to proceed with a boundary adjustment. Subsequently, river levels were assessed and the whole property was surveyed at considerable cost.

Mr Lane believed it was unfair to impose the reserve contribution as it had been an extremely costly and stressful exercise to them. Mr Lane reiterated that the initial application was a "win win" situation for all as Council obtained an esplanade reserve and strip, and they would have another title on which to build.

In response to our questions, Mr Lane explained the rationale behind the creation of Lot 1 and stated that it was to ensure that the area of Lot 2 was in excess of 4 hectares. He said that there are several other properties of similar size to Lot 1 in the local vicinity. He advised that the river did not have rock protection but that the land was higher and covered in scrub.

4.4 Council Officers - Mr Wayne Horner and Ms Ros Squire

Mr Horner stated that we should focus on the main issue which was that financial contributions for reserves and community services were payable. He advised that the title for the old river bed had been granted by Land Information NZ to the previous owners who had claimed it via a process that did not involve Council, although Council was aware of it.

Mr Horner referred to Section 16.5.2.1 of the TRMP which recognised that titles would be created through a non subdivision route. At the time of the creation of the title for the old river bed, no contributions were payable to Council. Mr Horner continued that in his view creation of the proposed new titles would mean that further development could take place with an increased demand on Council facilities.

In response to a question from Mr Lane, Mr Horner provided a definition of subdivision.

Mr Horner advised that had been no formal agreement entered into with regards to proposed Lots 3, 4 and 5 being vested to Council. Council staff had accepted the offer made by the applicant and had not sought the land. He advised that Council staff had not taken into consideration any reserve or community values on Lots 3, 4 and 5 as the land vesting had been volunteered by the applicant. He agreed that vesting the land was of benefit to Council as it would provide for public access along the river.

Ms Squire confirmed that Lots 3, 4 and 5 had been volunteered by the applicant during discussions. She continued that it was not unusual to have strips of land in isolation and that Council had adopted the approach of taking reserves when it had the opportunity. She advised that the land would form part of a plan to link Wakefield and that access to the reserve would be in consultation with a neighbouring landowner.

Ms Squire confirmed that there were a number of reserves like this within the District. In response to questions Ms Squire advised that normally compensation was paid when land was vested to Council for Lots over 4 hectares, but as it had been volunteered, then this rule did not apply in this instance.

Mr Horner spoke about the recessive colour condition and advised that it was a tool employed to protect the rural amenity but did acknowledge that the site was not highly visible. In response to questions, Mr Horner advised that the condition was not imposed on every resource consent for a dwelling in Rural 1 zones. In this case the condition would provide limits and was intended to reduce potential impacts of the proposed building.

Mr Lane was asked if they had chosen the colours of the building yet and he advised that he had not. Mr Lane questioned why Council required a colour consultant to be used when submitting their colour choices? Mr Horner advised that that aspect was just an advice note and not a condition of consent.

4.5 Applicant's Right of Reply

Mr Cotton stated that each application should be judged on its own merits and imposing a recessive colour condition was not necessary in this case.

Mr Cotton spoke about the pre-consultation with Council staff and stated that it was informal and was a regular occurrence in his experience. It was an effective way of judging Council's appetite for an application and there was no formal agreement made at that time to vest land to Council. He continued that Council did not like to pay for esplanade reserves and that was why it had been offered by the applicant.

The total amount of land vested was 0.88 hectares which did not include the esplanade strip. Mr Cotton stated that had it not been volunteered and Council had requested it, then compensation would have been paid to the applicant.

Mr Cotton argued that the application was a boundary adjustment and not a subdivision and that the District Plan did not provide a definition of a boundary adjustment. He stated that Section 16.5.2.3 of the TRMP was crucial to this application because the proposal would not have any adverse impact on the environment. Mr Cotton was concerned that Council staff had encouraged boundary adjustments historically and had not imposed the reserves financial contribution in this way.

5. PRINCIPAL ISSUES AND FINDINGS

We consider that the principal issues in contention are:

a) Whether consideration should be given to the fact that there are two existing titles in determining whether reserve and community services financial contribution should be payable?

The applicant argues that the proposal is simply a boundary adjustment, and there is no reason to impose a financial contribution on subdivision because the number of titles will remain the same. The Objection implies hardship on the applicants, however the encroachment of the existing house across the boundary could be simply resolved by amalgamating the two titles, hence it is evident to us that the Lanes took on the risk (including the costs) of purchasing the combined titles for redevelopment as two separate properties.

We accept Mr Horner's interpretation of the financial contribution provisions in the TRMP with regard to how they apply to the subdivision proposal. Although Mr Cotton suggested that other options could be used to overcome the encroachment problem, it is clear to us that the subdivision proposal will enable a rural-residential development opportunity which is currently not practicable with the two titles as they exist now.

Our finding is that the reserves and community services financial contribution rules are applicable to this proposal.

b) Whether consideration should be given to the proposed vesting of esplanade reserve and riverbed in determining what amount of financial contribution should be payable?

We heard that the vesting of proposed Lots 3, 4 and 5 had been volunteered by the applicant, and because of that no consideration had been given to whether some level of "credit" could offset the reserves and community services financial contribution.

Having considered the various factors presented to us we find that a reduction in the contribution should be made in recognition that some community benefit will be gained from the vesting. Further, taking account of the probable land values as mentioned in the Objection, as well as the future land maintenance costs that will fall to Council, we find that a reduction of fifty percent would be fair and reasonable.

6. RELEVANT STATUTORY PROVISIONS

6.1 Plan Provisions

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

6.2 Part II Matters

In considering this objection, we have taken into account the relevant principles outlined in Sections 6, 7 and 8 of the Act, as well as the overall purpose of the Act as presented in Section 5.

7. DECISION

Pursuant to Section 357D(1) of the Act, we hereby:

UPHOLD the objection to Condition 11 on Consent RM100394 **IN PART**; and

UPHOLD the objection to Condition 6 on Consent RM100395 and Condition 8(b) on Consent RM100394.

Condition 11 on Consent RM100394 is hereby amended to read as follows:

> *"11 The Consent Holder shall pay a financial contribution for reserves and community services in accordance with [the] following:*
>
> *(a) The amount of the contribution shall be fifty percent (50%) of 5.62 per cent of the total market value... of a notional 2500 square metre building site within the Proposed Building Site on Lot 2;..."*

Condition 8(b) on Consent RM100394 is hereby amended as shown on the attached copy of the consent document.

Condition 6 on Consent RM100395 is hereby deleted.

Advice Note 5 on Consent RM100395 is hereby amended as shown on the attached copy of the consent document.

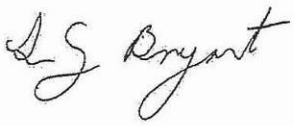
8. REASONS FOR THE DECISION

a) A financial contribution condition has been lawfully imposed on the proposed Lot 2.

b) Reducing the maximum reserves and community services financial contribution by fifty percent is considered to be fair and reasonable having regard to the volunteered vesting of proposed Lot 3 as esplanade reserve and proposed Lots 4 and 5 as riverbed.

c) Although the intent of the conditions relating to exterior colours of the proposed dwelling is acknowledged, we accept the applicant's view that imposing restrictions and the requirement for Council approval is not necessary for the landscape setting of the proposed building site on proposed Lot 2. Therefore Condition 6 on Consent RM100395 has been deleted, but the advice note has been amended to encourage use of colour finishes on the exterior of the dwelling that are recessive and blend in with the immediate environment.

Issued this 20th day of December 2010



Cr S Bryant
Hearings Commissioner (Chairperson)

Appendix G

tasman district council

Decision of the Tasman District Council through Hearing Commissioners

Meeting held in the Richmond Office on 29 November 2010, commencing at 1.00 pm

The hearing of an objection pursuant to Section 357 of the Resource Management Act 1991 to Council's delegated decision on Subdivision Application RM100507.

COMMISSIONERS:	Cr Stuart Bryant (Chairperson) Cr Brian Ensor
APPLICANT:	Mr Paul Newton (Registered Professional Surveyor) Mr Peter Warren (Applicant/Objector)
REPORTING OFFICERS:	Mr Wayne Horner (Consents Planner, Subdivisions) Ms Ros Squire (Reserves Planner)
IN ATTENDANCE:	Assisting the Commissioners: Mr Phil Doole (Resource Consents Manager) Ms Julie Proctor (Administration Officer)

1. BACKGROUND TO THE OBJECTION

Consent RM100507 was granted in October 2010 to allow the subdivision of Part Section 1 Block 3 District of Waimea South, situated at 253 Pigeon Valley Road. The property comprising 10 hectares lies within a Rural 2 zone. It is occupied by a dwelling and a separate self-contained tourist accommodation building. The subdivision proposal will split these two existing buildings onto separate allotments.

The tourist accommodation building has existing use rights dating from when it was first established in 1990. The applicant agreed that this building should be regarded as a dwelling in terms of the permitted activity rights that will pertain to proposed Lot 1, and that the existing use rights for the tourist accommodation will terminate when the subdivision is given effect to. Otherwise, the subdivision would have allowed another dwelling to be built on proposed Lot 1 "as of right" with associated effects on amenity and density of development in the rural locality.

Financial contributions for reserves and community services are payable on subdivision as provided for in Section 16.5 of the Tasman Resource Management Plan (TRMP). A full reserve fund contribution for one additional allotment was imposed by Condition 9 on consent RM100507 which states:

> *"The Consent Holder shall pay a financial contribution for reserves and community services in accordance with [the] following:*

(a) The amount of the contribution shall be 5.62 per cent of the total market value... of a notional 2500 square metre building site within Lot 1;..."

An advice note to Condition 9 indicates that one development contribution (as determined under the Local Government Act 2002) will also be payable for roading.

2. THE OBJECTION

An objection to the decision to grant consent was received from the applicant on 1 November 2010. The Applicant objected to the imposition of Condition 9 requiring payment of a reserves contribution; and to the Advice Note regarding development contributions.

3. PROCEDURAL MATTERS

This objection raises two procedural matters. Firstly, the financial contribution rule 16.5.2.3(c) provides that reductions or waivers will be considered "upon request". The application as lodged indicated that the existing tourist accommodation building would become the principal dwelling for proposed Lot 1, and stated that no relaxation of the financial contribution was being sought with regard to the additional allotment. However, before the consent was granted the applicant was sent a copy of draft conditions. One of their responses to those draft conditions was a request that the financial contribution condition be deleted. That request was not accepted by the processing officer. We accept that in making that response, the applicant did effectively amend their application prior to the granting of the consent and thereby made a request for a waiver of the financial contribution. Therefore the Objection to Condition 9 is lawful and we can consider it.

Secondly, development contributions are determined under the Local Government Act 2002, not under the Resource Management Act 1991(RMA). However, we have considered the issues raised by this Objection in the interests of ensuring that the Advice Note in the consent is correct.

4. REPORT AND EVIDENCE HEARD

A report on the financial contribution aspect of the Objection from the Council's Subdivision Consents Officer, and evidence from the applicant were circulated prior to the hearing. We heard from the applicant, and a response from Mr Horner. We also asked for comment from Council's Reserves Planner Ms Ros Squire. The following is a summary of the information presented.

4.1 Officer's Report - Mr Wayne Horner

In his report Mr Horner referred to TRMP rule 16.5.2 which states that Council may require a financial contribution for reserves and community services to be paid for each allotment on subdivision, with a credit to be given for one certificate of title. He set out the circumstances in rule 16.5.2.3(c) when Council may consider a reduction or waiver of the contribution. He elaborated on his previous assessment of this matter, stating that the conversion of the tourist accommodation to a residential dwelling (with inherent tourist accommodation potential) would increase the demand for reserves and community services including libraries and other community programmes.

4.2 Applicant's Evidence - Mr Paul Newton

Mr Newton read his statement that had been circulated prior to the hearing. He referred to the stated purposes of the financial contribution provisions in the TRMP stating his view that the intention of the policy is to levy new activities that generate adverse effects, and that the proposed subdivision does not allow for any new activity that will have such effects. He questioned a recent Council decision on a similar situation which involved existing dwellings (RM071219 J P Best Estate, July 2010).

In response to our questions, Mr Newton advised that Mr Warren had owned the property for approximately 15 years and was unaware if any contributions had been paid prior to that date. Mr Warren confirmed that the properties shared one entrance onto the highway. Mr Newton was of the view that supplying occupancy rates for the tourist accommodation was irrelevant as there was a right to occupy the dwelling 365 days of the year regardless of actual occupancy.

The applicant accepted that levies were normally charged at the time of subdivision; however Mr Newton was of the view that this case involved an established dwelling with an existing use right and that levies should have been taken when the RMA came into effect.

With regard to development contributions Mr Newton stated that as there are two existing household units of demand (HUDs) then there will be no requirement for new or additional infrastructure assets.

4.3 Consent Officer - Mr Wayne Horner

Mr Horner stated his view that tourist accommodation was not the same as a dwelling because a dwelling has various "as of right" uses and its level of occupancy may be greater than that of tourist accommodation.

Mr Horner advised that reserve fund contributions were collected at the time of subdivision. He continued that the existing building was already having an effect and creating a demand for reserve assets that had yet to be addressed. He stated that there was no reason to exclude this particular proposal from reserve contributions.

Mr Horner referred to Section 16.5.2.3(c) of the TRMP and stated his view that the dwelling did have an existing impact and that a reserve fund contribution was applicable. He tabled Council's recent decision on the J P Best Estate's objection (that Mr Newton had referred to) and asked that we have regard to it when considering our decision.

In response to questions, Mr Horner advised that tourist accommodation was permitted as a home occupation associated with dwelling. There were various conditions to be met which included the provision of suitable wastewater facilities.

4.4 Reserves Planner - Ms Ros Squire

In response to our questions, Ms Squire stated that there were significant differences between tourist accommodation and residential accommodation. She said that

residential use rights meant that holders could enjoy the use of District assets in perpetuity. She used public libraries as an example.

4.4 Applicant's Right of Reply

Mr Newton emphasised that the existing building on proposed Lot 1 was quite a substantial dwelling established under a permitted activity of the time, prior to the introduction of the RMA. It was not possible to collect levies at that stage.

Mr Newton stated that it was difficult to assess who might purchase the property and how it might be used. He advised that once a separate title had been issued, then it would have rights to establish a second dwelling, but that would be subject to obtaining another resource consent. He continued that it was at this point, that the effects on Council's reserves and services could be assessed and a levy applied.

Mr Newton asked that the Commissioners consider the purpose behind Section 16.5.1.3 of the TRMP which is to offset any adverse effects.

Mr Warren stated that there would be no adverse effects on the environment as there would be no real change in the use of the building.

5. PRINCIPAL ISSUES AND FINDINGS

The principal issues that were in contention were:

a) Is Rule 16.5.2.3(c) restricted in its application?

Mr Newton questioned the earlier decision relating to Consent RM071219. Rule 16.5.2.3(c) sets out circumstances when financial contributions may be waived or reduced. Clause 16.5.3.2(c)(ii) states the circumstance "where an activity is to be established that will have no adverse impact on the environment, particularly the infrastructure, reserves or community services of the District". In his decision, Commissioner King determined that "sub-clause (ii) refers to an activity that is to be established as part of, or as an outcome of a subdivision process, and that activity will have no adverse impact" (his emphasis). He was considering the situation where second dwellings have already been established on the allotments proposed to be subdivided, and he concluded that Clause (ii) itself does not apply to these situations. However, he also concluded that Rule 16.5.3.2(c) provides a more general authority to allow waivers or reductions where the Council considers it fair and reasonable having regard to the particular circumstances. We accept Commissioner King's interpretation of Rule 16.5.2.3(c).

b) Will the effects of the use of the building on proposed Lot 1 as a dwelling be the same or similar to its current use as tourist accommodation, in terms of the purposes of the reserves and community services financial contributions ?

Having considered the contrasting views put forward by the applicant and the reporting officers, we find that there are sufficient differences between the existing use and the proposed use of the building it is to become the principal dwelling on proposed Lot 1) to the extent that there is no existing use right with

regard to the reserves and community services financial contribution provisions of the TRMP.

c) Is it reasonable to impose a reserves and community services levy 20 years after the accommodation building was established?

Our understanding is that the requirement for reserves contributions to be paid on subdivisions involving residential development rights have been in place and not substantially changed since before the RMA was enacted in 1991. Therefore at the time when the tourist accommodation was built, it would have been known and expected that a reserves levy would be imposed on any later subdivision enabling residential development. In our view the time that has elapsed from construction and use of the building to the current subdivision application does not materially alter the reasons for the Council imposing the full reserves levy. In that regard, we consider this finding to be consistent with other decisions of Council (as discussed in the decision of the RM071219 Objection referenced above).

d) What is the status of the existing building and use with regard to the development contributions policy?

Development contribution levies are determined with regard to forecast units of demand generated by development and growth of communities. In this case we accept Mr Newton's argument with regard to the existing Household Units of Demand on the property in terms of how the development contributions are calculated - which is a different process and statutory context to that which applies to the reserves and community services financial contributions.

6. RELEVANT STATUTORY PROVISIONS

6.1 Plan Provisions

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

6.2 Part II Matters

In considering this objection, we have taken into account the relevant principles outlined in Sections 6, 7 and 8 of the Act, as well as the overall purpose of the Act as presented in Section 5.

7. DECISION

Pursuant to Section 357D(1) of the Act, we hereby:

DISMISS the objection to Condition 9 of Consent RM100507; and

UPHOLD the objection to the Advice Note pertaining to development contributions.

The advice note under Condition 9 is hereby deleted and replaced with the following new general Advice Note:

"Local Government Act 2002 Development Contributions

5. The building on proposed Lot 1 as shown on the Plan of Subdivision is deemed to be an existing use as a dwelling for the purposes of the Council's Development Contributions Policy under the Local Government Act 2002. Therefore both of the proposed allotments are exempt from payment of the development contribution for roading."

8. REASONS FOR THE DECISION

a) The financial contribution condition has been lawfully imposed on the one additional allotment.

b) Requiring a reserves and community services levy on additional allotments that have existing dwellings at time of subdivision is consistent with Council practice and implementation of the TRMP rules.

c) Requiring the maximum reserves and community services levy (being 5.62% of the land value of a notional 2500 square metre building site on the additional allotment) is consistent with Council practice and implementation of the TRMP rules.

d) The requirement to pay a financial contribution for reserves and community services at time of subdivision has not substantially changed since 1990 when the dwelling on proposed Lot 1 was built.

e) It is reasonable and equitable to impose the full levy as defined by the 5.62% of land value quantum because the impact of the dwelling on proposed Lot 1, with regard to reserves and other community services, will differ from the existing tourist accommodation activity.

f) With regard to development contributions, in this case it is considered appropriate to recognise the "existing use" aspect of the proposal in terms of it not creating any additional Household Units of Demand (HUDs) for roading infrastructure as defined in the Long Term Council Community Plan 2009.

Issued this 20th day of December 2010

L S Bryant

Cr S Bryant
Hearings Commissioner (Chairperson)