

MINUTES

TITLE: Environment & Planning Subcommittee
DATE: Monday 19 November 2007
TIME: 9.30 am
VENUE: Council Chamber, 189 Queen Street, Richmond

PRESENT: Hearings Committee
Crs T B King (Chair), Crs N Riley and S G Bryant

IN ATTENDANCE: Principal Resource Consents Adviser (R Askew), Co-ordinator, Subdivision Consents (M D Morris), Community Services Planner (R D Squire), Resource Scientist, Land (A S Burton), Administration Officer (B D Moore).

1. THAWLEY ORCHARD COMPANY LTD - APPLICATION RM060558, APPLE VALLEY ROAD EAST, MAPUA

1.1 Proposal

The applicant sought consent to subdivide a 4.65 hectare property in the Rural 3 Zone at 3 Apple Valley Road East, Mapua, being Pt Lot 1 DP 1572, CT NL55/117. This will create two additional titles, resulting in one additional title to be used for residential purposes. Lot 1 will be 1 hectare and Lot 2 will be 2.7 hectares. Lot 3 of 0.34 hectares will be created as esplanade reserve and located between Lot 2 and the Waimea Inlet. The property contains two principal dwellings: a dwelling at the top end of the property on proposed Lot 1 and a large farm accessory building at the lower end about 50 metres from Mean High Water Springs on proposed Lot 2. Proposed Lot 4 will be 0.47 hectares of road.

The Committee proceeded to hear the application, presentation of submissions and staff reports as detailed in the following report and decision.

The Committee reserved its decision at 12.45 pm.

RESOLUTION TO EXCLUDE THE PUBLIC

**Moved Crs King / Bryant
EP07/11/18**

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

Thawley Orchard Company Ltd

The general subject of the matter to be considered while the public is excluded, the reason for passing this resolution in relation to the matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for passing this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under Section 48(1) for the passing of this resolution
Thawley Orchard Company Ltd	Consideration of a planning application	A right of appeal lies to the Environment Court against the final decision of Council.

**Moved Crs Riley / Bryant
EP07/11/19**

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

**Moved Crs King / Bryant
EP07/11/20**

**THAT pursuant to Section 104B of the Resource Management Act, the Committee GRANTS consent to A Tidswell as detailed in the following report and decision.
CARRIED**

**Report and Decision of the Tasman District Council
through its Hearings Committee Meeting
held in the Tasman Room, Richmond
on
19 November 2007,
commencing at 9.30 am**

A Hearings Committee (“the Committee”) of the Tasman District Council was convened to hear the application lodged by Thawley Orchard Company Ltd to subdivide a 4.65 hectare title of land zoned Rural 3 into a proposed lot of 1 hectare and a proposed lot of 2.7 hectare for rural residential purposes; a proposed lot of 0.34 hectares as a 20 metre wide strip to vest in the Tasman District Council as Esplanade Reserve; and 0.47 hectares to be vested in the crown for road works in connection with the proposed Ruby Bay By-pass. The application, made in accordance with the Resource Management Act 1991 (“the Act”), was lodged with the Tasman District Council and referenced as RM060558.

PRESENT: **Hearings Committee**
Cr T King, Chairperson
Cr S Bryant
Cr N Riley

APPLICANT: Mr N McFadden, McFadden, McMeeken, Phillips, Counsel for the Applicant;
Mr J N Thawley, Director of the Applicant Company;
Mr FC Bacon, Planning Consultant, Bacon Planning Group.

CONSENT AUTHORITY: **Tasman District Council**
Mr M Morris, Co-ordinator, Subdivision Consents;
Ms Ros Squire, Community Services Planning Adviser;
Mr A Burton, Resource Scientist Land.

SUBMITTERS: None appeared at the hearing.

IN ATTENDANCE: Mr B Askew , Principal Resource Consents Adviser –
Assisting the Committee
Mr B Moore – Committee Secretary

1. DESCRIPTION OF THE PROPOSED ACTIVITY

The property is located at 3 Apple Valley Road East, Mapua, and is a 4.9 hectares Rural 3 zoned property, currently used as part of an orchard. There is an existing dwelling at the southern end of the property and an old disused packing shed on the northern side of the property near to the coast.

The legal description for the property is Pt Lot 1 DP 1572 (CT NL55/117)

The proposal is to subdivide the property to create the following:

- Proposed Lot 1 of 1.0 hectares which will contain the existing dwelling;
- Proposed Lot 2 of 2.7 hectares proposed to be used for rural residential purposes;
- Proposed Lot 3 of 0.34 hectares to vest as esplanade reserve;
- Proposed Lot 4 of 0.47 hectares to vest as road.

Note: The amended application also referred to a portion of the State Highway road to be stopped as part of highway realignment with an amalgamation of part of the stopped road with proposed Lot 2 and with 0.9 hectares of the stopped road vested as reserve. This matter is outside the scope of this consent and would need to be subject to a further process pursuant to the Public Works Act 1981.

2. PROPOSED TASMAN RESOURCE MANAGEMENT PLAN (“PTRMP”) ZONING, AREAS AND RULE(S) AFFECTED

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

Zoning: Rural 3

Area(s): Coastal Environment Area (northern part of property), Land Disturbance Area 1 and Wastewater Management Area.

The proposed subdivision is deemed to be a restricted discretionary activity in accordance with Rule 16.3.9D of the PTRMP.

The construction of a new dwelling on proposed Lot 2 within the Coastal Environment Area and a wastewater treatment and disposal system within the Wastewater Management Area will also require resource consent however these activities (apart from the location of the proposed dwelling on Lot 2) are not dealt with under this consent.

3. NOTIFICATION, SUBMISSIONS AND WRITTEN APPROVALS RECEIVED

The application(s) was notified on 7 July 2007 pursuant to Section 93 of the Act. A total of four submissions were received.

The following is a summary of the written submissions received and the main issues raised:

1. New Zealand Fire Commission

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

The submitter wished to be heard but provided a written letter tabled at the hearing advising that they would not be attending the hearing as they supported the condition proposed by the Council reporting officer, should the consent be granted.

2. Graeme Thawley

The submitter supported the application, in the particular the provision of an esplanade reserve, which in time could form part of a coastal walkway. The submitter stated that in view of the major road works involved in the Ruby Bay By-pass, the proposal makes good use of the land in question and also stated that the effects on neighbouring properties would be very slight.

The submitter did not wish to be heard.

3. New Zealand Historic Places Trust (NZHPT)

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

The submitter requested that a special advice note be included in the consent decision, if granted, to ensure that the applicant is aware of their responsibilities under the Historic Places Act 1993 if any archaeological material is encountered during earthworks.

The submitter did not wish to be heard.

4. Andrew H Earlam

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

The submitter did not wish to be heard.

Written Approvals

No written approvals were provided with the application however at the hearing the applicant provided a copy of a letter from Transit New Zealand with their evidence. The letter stated that Transit agreed to provide affected person approval pursuant to section 94 of the Act on the basis of an exchange of correspondence with the applicant's planning consultant confirming that the applicant agreed to closing of the crossing places. Cancellation of existing State Highway Crossing (CP17) was a volunteered condition submitted with the application.

4. PROCEDURAL MATTERS

Counsel for the applicant raised the matter of delays in processing the application and that such delays had resulted in the hearing of the application after the notification of Variation 55 which provided for an amended version of the Design Guide for Rural 3 being included in the PTRMP and that the proposed amendments included in proposed paragraph 4.2.4 a statement for landscape sub-unit 9A (which is the relevant sub-unit for the subject property) that "landscape qualities will be achieved by there being no further subdivision for house sites". The original version of the guideline made no such restriction. The applicant's counsel stated that the provision appeared to make subdivision in the landscape sub-unit a prohibited activity which was contrary to the status under the Rural 3 zone provisions. He also advised the Committee that the applicant had lodged a submission on Variation 55 opposing the proposed wording for the landscape sub-unit. Counsel for the applicant stated that little weight should therefore be accorded to the restrictive provision of the guideline in regards to subdivision of landscape sub-unit 9A.

5. EVIDENCE HEARD

The Committee heard evidence from the applicant, expert witnesses, submitters, and the Council's reporting officer. The following is a summary of the evidence heard at the hearing.

5.1 Applicant's Evidence

Mr N McFadden, counsel for the applicant, tabled and read an opening submission. Mr McFadden expressed the applicant's concern that the application was lodged on 30 June 2006 followed by a request for further information two months later by the Council. He said that following consultation with Transit New Zealand regarding re-routing of the Ruby Bay Bypass, a revised application was lodged with Council on 8 June 2007. The application was notified on 1 September 2007 but on 28 July 2007 Council notified Proposed Plan Variation 55 to introduce the Coastal Design Guide into the Plan, incorporating landscape sub-areas and particular development statements.

Mr McFadden said that had the statutory time limits been complied with by Council, it is extremely likely that there would have been no Variation 55 in place at the time of this Committee's determination of this application. He noted that Variation 55 is still very much in the early stages of the statutory process and can be given extremely little weight because it has not yet gone through the submission hearing process.

Mr McFadden said that this subdivision application is a restricted discretionary activity under Rule 16.3.9D of the Proposed Tasman Resource Management Plan and discretionary under Rule 16.4.2, as the site is adjacent to the coastal marine area and the proposed allotment adjacent to the marine area is less than 4 hectares.

Mr McFadden then addressed the principal issues raised by Mr Morris in his report. These included the consistency of the proposed development with the Rural 3 Design Guide and the appropriateness of the scale of this development.

Mr McFadden said that the applicant and their planner would show that the development will be able to achieve and maintain an acceptable level of rural character and amenity that is in keeping with the surrounding area. He also said that evidence would be produced to show that this development will not have an adverse effect on the productive values or the productive potential of this site in any significant way.

Mr McFadden referred to the physical constraints on the use of the subject land, which makes it less able to be used as part of the existing orchard operation.

Mr J N Thawley read a statement of evidence about how the applicant company carries on business as a pipfruit grower and packhouse operator on a property situated predominantly at Nile Road, Mahana to the west of State Highway 60. The subject site of 4.65 hectares is situated to the east of State Highway 60. He said that the apple trees on the subject site are not the preferred variety and these trees will be removed and the block not replanted. He explained that it would cost \$30,000 per hectare to replace those trees and it would not be viable to carry out the redevelopment work. The subject site is limited in water supply, as the small dam on the site has insufficient storage. About half a hectare of the subject site has been taken for roading. The site is difficult to service, with sprayers and tractors having to cross the State Highway and the applicant company would have to pay \$100,000 to provide an underpass. Transit New Zealand has required the applicant to close the two crossing points on the State Highway as soon as apple production ceases. The proposed Ruby Bay Bypass will run along the course of the existing road adjacent to the subject site and it is likely that traffic volumes will increase.

Mr F C Bacon, resource management consultant, read a statement of evidence. He used a series of nine photographs attached to his evidence to explain the existing and potential impact on rural character and visual amenity of the existing packhouse building and any potential replacement structure such as a dwelling would have. Mr Bacon explained that the application was made with full regard to the coastal development guidelines available at the time of preparation and the application was accepted for notification on this basis. He said that two house sites are proposed for Lot 2 as alternative options and one is located where the former packhouse is now positioned and the other is a new building site located higher up the proposed lot. The evidence said that the packhouse site is suggested because its development as a house site would have little, if any, alteration to the existing pattern of built development in the locality. It would therefore be consistent with guideline objectives aimed at maintaining the character and pattern of existing development. The packhouse site is well clear of the coastal margin and allows a full 20 metre wide esplanade reserve to be created. Any new building in this locality can still be 30 metres back from the esplanade reserve.

Mr Bacon said that as an isolated block of land of barely 4 hectares, once land is taken for roadworks, it will be too small for independent operation as an orchard block. It will not be suited for continued operation with the applicant's other holdings, which are across the State Highway. Mr Bacon provided examples of small lots of only 1 or 2 hectares, which support productive activity, either as a full-time or part-time productive enterprise.

In conclusion, Mr Bacon said that the proposal will have an absolutely minimal effect on landscape or productive values. He said the subdivision presents an opportunity to move closer towards completion of a continuous esplanade reserve around the estuary margin, giving benefits for habitat enhancement, ecological protection and enhanced public access. Mr Bacon said it was appropriate to waive the requirement for a new building to be set back 100 metres from Mean High Water Springs. He said it is desirable that the pond be retained, both as habitat for aquatic birds and as a source of water for any productive use of Lot 2. Consideration could be given to widening the esplanade reserve at the rear of the pond to provide more space for public access and fencing of the pond.

5.2 Submitter's Evidence

No additional submitters were present to speak at the hearing. A letter of 14 November 2007 regarding the New Zealand Fire Service submission was tabled in lieu of the submitter's attendance. The letter recommended that a consent notice be imposed on the proposed titles requiring compliance with the New Zealand Fire Service Code of Practice for Fire-fighting Water Supply.

5.3 Council's Reporting Officer's Report and Evidence

Ms R Squire, Community Services Planner, supported the vesting of the 20 metre wide local purpose esplanade reserve and sought that the existing pond be infilled for amenity and safety reasons. She sought the imposition of conditions requiring the existing vegetation adjoining the coastal margin to be replaced with locally indigenous species. In addition, she sought a condition requiring a landscaping planting plan having the prior approval of the Reserves Manager and said that those proposed conditions are to be carried out at the applicant's cost.

Mr A Burton, Resource Scientist, spoke about the main physical factors influencing the subject site, including climate, topography and soils. He said that the low rainfall can be minimised by irrigation and that the generally rolling slopes can be worked by a full range of orchard equipment. He described the Class B land on the subject site as Mapua Sandy Loams and being suitable for a variety of crops, ranging from pastoral and production forestry, through to orchard and viticulture production.

Mr M Morris, Co-ordinator Subdivision Consents, spoke to his report contained within the agenda. He said that the proposal has not sought to retain the productive land in one unfragmented allotment, which is anticipated by the Rural 3 Design Guide. Mr Morris said in his report that the productive areas of the site have been fragmented into two rural-residential allotments. There is a dwelling site in the middle of the main productive area, thereby compromising the long-term productive potential of the land. The report said it is considered that the features listed in Section 2 of the Proposed Tasman Resource Management Plan that define rural character will not be achieved by this proposal. Mr Morris considered the proposal to be contrary to the policies and objectives of the Proposed Tasman Resource Management Plan. He

said that in particular it is contrary to those that seek to maintain and enhance rural amenity and character values and avoid the adverse effects of fragmentation of highly productive land.

Mr Morris said that the applicant had not provided a comprehensive Rural 3 Design Guide analysis of the site and surrounding area and how the development complies with the Design Guide and site-specific landscape subunit requirements. Mr Morris claimed that the proposal will not retain productive land for long-term productive use in unfragmented holdings. He said that the proposal will instead fragment productive land into smaller rural-residential lots, which will effectively be lost to any long-term productive use.

5.4 Applicant's Right of Reply

Mr N McFadden responded for the applicant and confirmed that the applicant's proposal is as shown on Cotton & Light plan R661 of April 2007. He said that although the Council Planner says that the 4 hectare block is more likely to be used for productive purposes, the Proposed Tasman Resource Management Plan does not define "productive purposes". He said that a Rural 3 zone (with its provision for residential activities) is different to a Rural 1 zone (or Rural 2 zone). He said that he noted a trend towards larger rural blocks, together with smaller allotments for specialist activities, where the quantity of production seems to be increasing.

Mr McFadden noted that the status of the Design Guide has been elevated by the Council Planner and reminded the Hearing Panel that the applicant provided five pages of assessment in terms of the Design Guide. He noted that Council staff did not make a Section 92 request in this regard for additional information.

Mr McFadden said he had observed an increase in situations where new subdivisions are being covenanted to restrict activity by landowners. He said that this subdivision will create opportunity.

He repeated that the applicant's land is separated by the State Highway and reduced in area by roading and road reserve, making production difficult.

He said if Council was to decline the application, it would lose the potential esplanade reserve along the estuary.

Mr McFadden said that a Rural 3 cluster effect would occur if the house is built where the packhouse site is currently located.

He referred to the Council Planner's claim that the applicant had not provided written consent from any affected parties but that a Council letter of 13 August 2007 listed the affected parties and that Sections 93 and 94 of the Resource Management Act 1991 are used to notify the public.

Mr McFadden said that sustainable management is achieved by consent to this application. He said that the applicant acknowledged that the irrigation pond could be filled in if necessary. He said that this application has significant differences and benefits when compared to other applications and that the community has agreed to this application (by the lack of submissions opposing the application but two submissions supporting it).

6. PRINCIPAL ISSUES

The principal issues that were in contention were:

- a) Is the proposed development consistent with the Rural 3 zone Design Guide?
- b) What weight, if any, should be given to the design guide as amended by Variation 55?
- c) Will the development be able to achieve and maintain an acceptable level of rural character and amenity that is in keeping with the surrounding area?
- d) Will the development have an adverse effect on the productive values or the productive potential of the site?
- e) Will the subdivision and development meet the purpose and principles of the Resource Management Act 1991?

7. MAIN FINDINGS OF FACT

The Committee considers that the following are the main facts relating to this application:

- a) The property will be subject to boundary modification as a result of the proposed realignment of State Highway 60 as a consequence of the development of the proposed Ruby Bay By-pass. This will remove 0.47 hectares of land from production.
- b) The current State Highway segregates the subject property from the main orchard and the anticipated By-pass is likely to increase vehicle traffic on the highway exacerbating access issues associated with crossing it.
- c) Transit New Zealand will not assist with any underpass to link the two properties and the applicant stated that the cost of such an underpass, estimated at around \$100,000, would not be economically viable for their orchard business.
- d) There is a medium sized building existing on proposed Lot 2 which was a former packhouse. This building is subdued by the neighbouring former packhouse when viewed from the State Highway heading towards Richmond just north of the termination of the Lawson Cypress hedge that screens the property.
- e) There is a range of existing allotment sizes on the peninsular where the property is located with the smallest property having an area of 1.27 hectares.
- f) There were no submissions opposing the application but there were two submissions supporting the proposal. The applicant also tabled a letter from Transit New Zealand at the hearing advising that they would be "pleased to issue Transit's affected party approval pursuant to section 94 of the Resource Management Act". (This approval was based on confirmation by the applicant to "agree to closing of crossing places").

- g) The land has moderate productive capabilities confirmed by the existing orchard on the property and adjoining vineyard that had been developed on Lot 1 DP 315786.
- h) The subdivision will provide for a 20 metre esplanade strip which will provide for public access along the coastline. The maintenance and enhancement of public access to and along the coastal marine area is a matter of National importance identified in Section 6 of the Resource management Act 1991.

8. RELEVANT STATUTORY PROVISIONS

8.1 Policy Statements and Plan Provisions

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

- a) Tasman Regional Policy Statement (TRPS);
- b) the Transitional Regional Plan (TRP);
- c) the Proposed Tasman Resource Management Plan (PTRMP);
- d) the Design Guide for Subdivision and Development in the Coastal Tasman Area, Tasman District (as amended and proposed to be included as Part of the PTRMP pursuant to Variation 55).

8.2 Part II Matters

In considering this application, the Committee has 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.

9. DECISION

Pursuant to Section 104C of the Act, the Committee **GRANTS** consent subject to conditions.

10. REASONS FOR THE DECISION

The property is currently 4.65 hectares in area and has produced both apples and pears. The applicant stated that the types of fruit grown were older varieties that have a limited demand and that the trees would be pulled out as they became less economically viable and that this would cost \$30,000 per hectare to replace the crop.

The property is clearly segregated from the main orchard block by State Highway 60 and that with the development of the Ruby Bay By-pass, it is anticipated that this segregation will become more of an issue with expected increases in traffic movements. An option to install an underpass has been considered but without assistance from Transit New Zealand the costs of providing such an underpass were considered by the applicant to be prohibitive and this was accepted by the Committee.

The property would also have reduced area following the proposed taking of 0.47 hectares of the land for the proposed realigning the intersection of Apple Valley East Road with State Highway 60. The Committee therefore, on the evidence given, considered that continued use of the block by the applicant as part of its orchard was impracticable in the long term.

The site although has an irrigation pond but this was, according to the applicant, of insufficient capacity to ensure adequate irrigation for the orchard crop.

The topography of the site was stated by the applicant to reduce options for more intensive, trained, dwarf varieties of fruit.

Although the above factors were, according to both the applicant and Council's Resource Scientist (Land), having some minor limitations, Council staff stated that the existing and potential productivity of the land was a significant issue.

The applicant stated that the productivity of the land would not be compromised by the proposed subdivision and that there was a demand for small, 'hobby type' farms in the district.

The applicant brought to the Committee's attention that the PTRMP has defined the following terms:

- **Productivity** – in relation to land, means the inherent or existing ability to produce any type of plant or animal biomass over a given period and area.
- **Productive Value** – in relation to land, means the inherent or existing ability of the land to produce plant or animal biomass, arising from its natural and physical features, and includes measures of productivity and versatility.

The applicant stated that there was no criterion in the PTRMP to require any specific type of soil based productivity from the land and that there was no reference to the economic viability of the productivity.

The Committee, on hearing the evidence and visiting the site, concluded that the land did have moderate productive capabilities confirmed by the existing orchard on the property and adjoining vineyard that had been developed on Lot 1 DP 315786.

The Committee considered that the proposed subdivision and additional dwelling on the site would not compromise the potential productivity of the land and that the versatility of the soil based productive uses would also not be compromised.

The Committee heard that the current trend in land productivity was either for large commercial farming blocks or for smallholdings where productivity could be enhanced by rural residential development. A number of examples of small rural lots having high productivity were brought to the Committee's attention.

The applicant also stated that productivity was dependant on the land owner/occupiers intentions and that this would be the case irrespective of the lot size.

In regards to the rural character the Committee noted the smaller rural residential blocks existing on the same peninsula as the subject property and considered that the development was not out of character with the neighbouring rural environment.

The Committee considered that the placing of any new dwelling on the existing packhouse site for Lot 2 would reduce the physical and visual impact of the built environment within the rural landscape. The new dwelling would replace the existing building thereby reducing the effects associated with that development. The Committee noted that the site was several metres above Mean High Water Springs.

The Committee also considered that the existing packhouse location, in respect to its less dominant location and clustering with the adjoining, more dominant building, on Lot 1 DP 315786 would maintain the existing rural character and would be consistent with the Design Guide for Subdivision and Development in the Coastal Tasman Area.

The Committee was reminded by the applicant that the Design Guide does not provide for additional Rules in the Plan and is intended to assist applicants in achieving a good outcome for subdivision and development in the Rural 3 zone. The Committee also noted that submissions to Variation 55 have yet to be heard and acknowledged that the applicant had lodged a submission opposing the wording to landscape sub-unit 9A to provide for some limited subdivision.

The Committee, during its deliberations 'in committee', undertook a full appraisal of the proposal against the Rural 3 Design Guide and considered that, overall the development was in keeping with the Guide.

In particular the Committee considered:

- That the productivity of the site from the existing older variety of fruit trees required significant investment and that this coupled with the segregation of the block from the main orchard by the existing State Highway and with the reduction of productive land area and increased traffic caused by road works in developing the Ruby Bay By-pass meant that consideration of alternative opportunities for use of the land was a relevant factor.
- That the potential productivity of the site, subsequent to the proposed subdivision and development, would not be compromised and matters of cross-boundary effects from adjoining properties were addressed by the location of the proposed new dwelling on Lot 2.
- That, by using the area of the existing packhouse building, any new dwelling would have a lower impact on productive land availability as the packhouse area has a formed concrete pad which would be unlikely to be reverted to any soil based production.
- That by requiring any new dwelling on the existing former packhouse site would mitigate the effects of a building within 100 metres of Mean High Water Springs and that the location provided more positive effects in respect to its lower elevation and associative clustering with a large neighbouring building
- That the proposed esplanade reserve and volunteered riparian planting would enhance the coastline and provide for public access and future walkway around the peninsula. The provision of public access along the coastal margins is a matter of national importance under the Act.

- That the closure of the existing access from the State Highway would improve safety in respect of access to both the subject property and the adjoining property which has a ROW easement from that access.
- That wastewater and potable water matters could be satisfied and that these matters can be considered at the time of application for building consent for any new dwelling on the site.
- That the proposed subdivision will be in keeping with the existing land use and development for the peninsula and would maintain the existing rural character and rural amenity values of the area.
- That the development in the proposed building location area will not have a significant adverse effect on productivity and that any new dwelling on the land will not be highly visible and the land will remain uncluttered with the same perception of openness as currently exists.

Overall the Committee considered that the proposal meets the purpose and principles of the Resource Management Act 1991 in that it will achieve sustainable management of the property whilst avoiding, remedying or mitigating any adverse effects on the environment.

The vesting of the esplanade reserve and subsequent riparian planting achieves a matter of national importance in regards to enhancing the natural character of the coastline, replacing indigenous vegetation along the coastline and providing public access along the coastline.

11. COMMENTARY ON CONDITIONS OF CONSENT

The applicant accepted the conditions as recommended by the Council's reporting officer with the exception of the recommendation regarding the alternative location of the proposed dwelling site for Lot 2 (Location 1), the applicant preferring the site of the former packhouse (Location 2).

The Committee, following hearing all the evidence, and after conducting a site visit to consider the impact of views as well as the proposed development on-site, considered that the option to build a new dwelling on the site of the former packhouse (Location 2) would be the more appropriate site. The reasons for this decision were:

- The Committee considered that the packhouse was an established building within the rural and coastal environment and that the replacement dwelling would therefore have a reduced impact at this location being the replacement of one building for another.
- A dwelling on Location 2 also formed a cluster with the adjoining former packhouse on the neighbouring property and which is the more dominant building of the two.
- Location 2 is much lower elevation than Location 1 and would therefore have a lower visual impact generally despite the fact that Location 2 is within 100m of Mean High Water Springs.

- Location 2 being at a lower elevation would experience less road traffic noise than Location 1.

The applicant requested retaining the existing irrigation pond as a water feature for the proposed esplanade reserve however it indicated at the hearing that they would accept the proposed condition to fill the pond should that be the decision of the Committee. The Committee considered that whilst the pond may have some positive features such as attracting wildlife, the risks to the public from access to the pond persuaded the Committee to require the pond to be filled

Issued this 3rd day of December 2007

Cr T King
Chair of Hearings Committee

RESOURCE CONSENT NUMBER: RM060558

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

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

ACTIVITY AUTHORISED BY THIS CONSENT

To subdivide a 4.65 hectare title of land into proposed Lot 1 of 1 hectare and proposed Lot 2 of 2.7 hectare for rural residential purposes; proposed Lot 3 of 0.34 hectares as a 20 metre wide to vest in the Tasman District Council as Esplanade Reserve ; and proposed Lot 4 of 0.47 hectares to be vested in the crown for road works.

LOCATION DETAILS

Address of property: 3 Apple Valley Road East, Mapua
Legal description: Pt Lot 1 DP 1572
Certificate of Title: NL 55/117

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

General

1. The subdivision shall be undertaken in general accordance with the information submitted with the application for consent and in particular with the plan entitled “Proposed Subdivision for Thawley Orchard Co ” Job No. R661, dated April 2007, prepared by Cotton & Light Ltd, and attached to this consent. If there is any conflict between the information submitted with the consent application and any conditions of this consent, then the conditions of this consent shall prevail.

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

Building Location Area – Lot 2

4. The location of any new buildings on Lot 2 shall be on the site of the existing former packhouse building, which shall be demolished and which is shown as “Pack House Indicative Building Site” on subdivision plan, reference R661, drawn by Cotton and Light Limited, Surveyors, (copy attached to this consent as Plan A – RM060558. The building location area shall not be closer to MHWS or the legal boundary of Lot 1 DP 315786 than the existing former packhouse building footprint. The building location area shall be shown on the survey plan which is submitted for the purposes of Section 223 of the Act.
5. Certification that the building location area on Lot 2 is suitable for the erection of a residential building shall be submitted from a chartered professional engineer or geotechnical engineer experienced in the field of soils engineering (and more particularly land slope and foundation stability). The certificate shall define on Lot 1 within the building location area, the area suitable for the erection of residential buildings and shall be in accordance with Appendix B Section 11 of the Tasman District Engineering Standards and Policies 2004.

Advice Note

The building location area should provide an indicative building area no larger than 600 square metres.

Easements

6. Easements shall be created over any services located outside the boundaries of the lots that they serve as easements-in-gross to the Tasman District Council for Council reticulated services or appurtenant to the appropriate allotment.

Easement to be Extinguished

7. The existing right-of-way easement reserved by transfer 21144 in respect of part of which the subject land is the dominant tenement shall be extinguished.
8. The survey plan which is submitted for the purposes of Section 223 of the Act shall include reference to easements to be created and extinguished.

Power and Telephone

9. The Consent Holder shall provide written confirmation from the relevant utility providers that power and telecommunication services are available to Lot 2.
10. Power and telephone services shall be provided to the boundary of proposed Lot 2 and all new services shall be underground.

Access to Lot 2

11. Engineering Plans shall be provided to the satisfaction of Transit New Zealand for the proposed access crossing to Lot 2, prior to the commencement of any works.
12. If the Apple Valley Road realignment, as part of the Ruby Bay By-pass, has not been completed, a 3 metres wide metalled access shall be provided from Apple Valley Road, through Lot 4 to the boundary of Lot 2 prior to a completion certificate being issued pursuant to Section 224(c) of the Act.

Advice Note

Written confirmation should be provided from Transit New Zealand, that the Lot 2 access works have been completed in accordance with the approved engineering plans.

Esplanade Reserve Planting

13. An indigenous vegetation buffer strip at least 20 metres wide shall be planted within the esplanade reserve (Lot 3) prior to a completion certificate being issued pursuant to Section 224(c) of the Act ("the completion certificate"). The indigenous vegetation shall comprise species that are commonly found in the local area.
14. The existing pond on the esplanade reserve shall be filled in prior to the completion certificate being issued.
15. The Consent Holder shall prepare a Planting Management Plan for the plantings referred to in condition 13 of this consent, which shall be submitted to Council's Reserves Manager and shall be to this officer's satisfaction, prior to the commencement of any works. The Planting Management Plan shall provide details of the removal of gorse, pampas grass and the filling of the pond within the esplanade reserve.
16. The Consent Holder shall be responsible for maintenance of the esplanade reserve plantings and implementation of the Planting Management Plan for a period of two years following the issue of the completion certificate.
17. The planting required by the Planting Management Plan shall be fully completed or shall otherwise be bonded as required by condition 17 of this consent as agreed with the Council prior to the issue of the completion certificate.

Advice Note

Confirmation that the plantings have been fully completed in accordance with Planting Management Plan referred to in condition 12 of this consent should be in a written statement provided to the Council's Environment and Planning and Reserves Manager, from a suitably qualified landscaping professional.

18. Prior to issue of the completion certificate, the Consent Holder shall enter into an agreement with Council, which shall be to the satisfaction of Council's Reserves Manager, to provide a cash or bank bond to cover the maintenance works over this two year period. If, prior to the issue of the completion certificate, some of the landscape plantings have not been completed, then the Council may agree that such

plantings occur at a later date, which shall be confirmed in writing, and the amount of the bond shall take into consideration the plantings which have not been undertaken.

Financial Contributions

19. The Consent Holder shall pay a financial contribution for reserves and community services in accordance with following:
 - a) The amount of the contribution shall be 5.5 per cent of the total market value (at the time subdivision consent is granted) of a notional 2,500 square metre building site within Lot 2.
 - b) The Consent Holder shall request in writing to the Council's Consent Administration Officer (Subdivision) that the valuation be undertaken. Upon receipt of the written request the valuation shall be undertaken by the Council's valuation provider at the Council's cost.
 - c) If payment of the financial contribution is not made within two years of the granting of the resource consent, a new valuation shall be obtained in accordance with (b) above, with the exception that the cost of the new valuation shall be paid by the Consent Holder, and the 5.5 per cent contribution shall be recalculated on the current market valuation. Payment shall be made within two years of any new valuation.

Advice Note:

A copy of the valuation together with an assessment of the financial contribution will be provided by the Council to the Consent Holder.

Advice Note:

This consent will attract a development contribution on one allotment in respect of roading.

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

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

Consent Notices

20. The following consent notices shall be registered on the certificate of title for Lot 2 pursuant to Section 221 of the Resource Management Act. The consent notices shall be prepared by the Consent Holder's solicitor and submitted to Council for approval and signing. All costs associated with approval and registration of the consent notices shall be paid by the Consent Holder.
 - i) That the construction of buildings on Lot 2 shall be restricted to the building location area shown on Title Plan DPand buildings shall be fully contained within the area identified. All utility services to buildings on Lot 2 shall be underground.

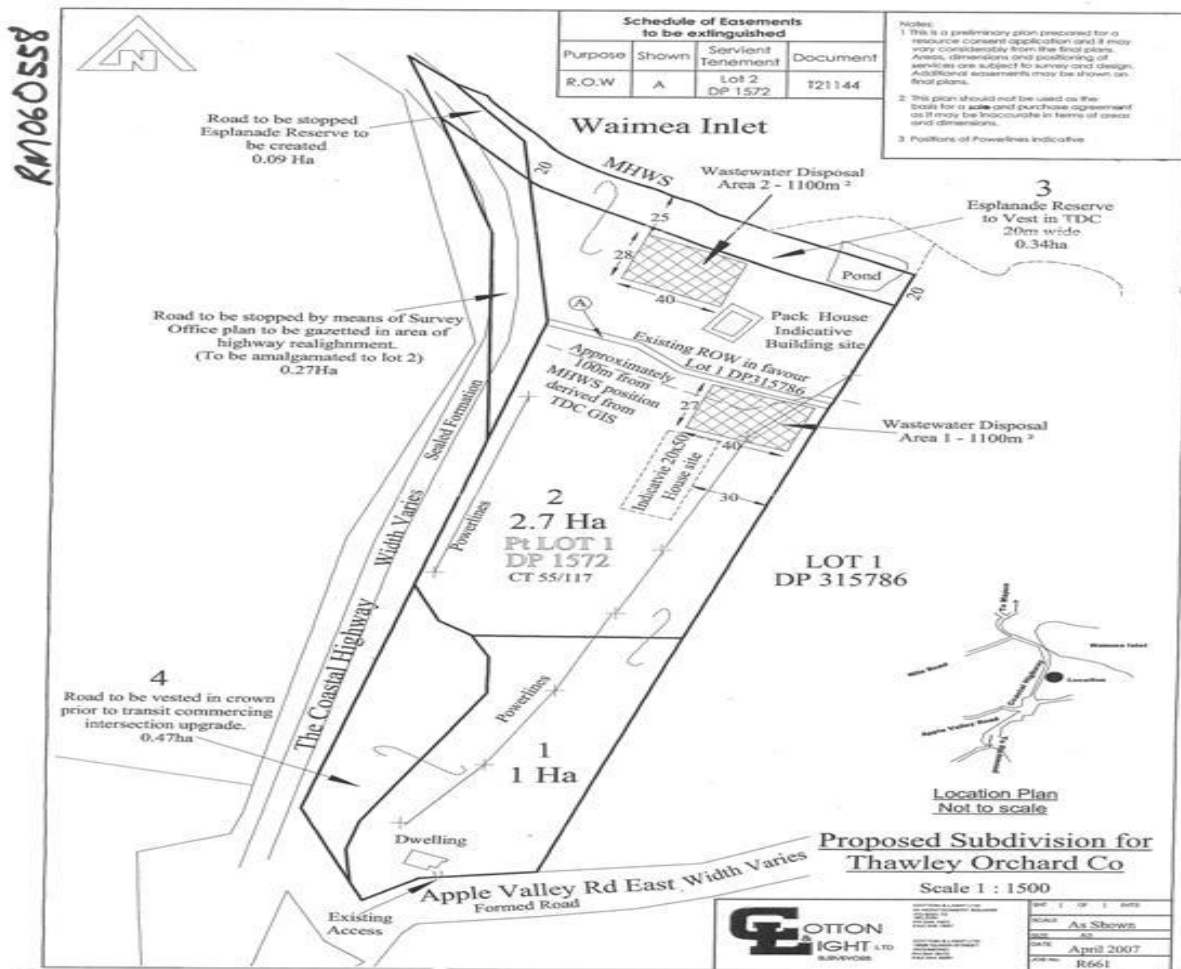
- ii) Any new dwelling on Lot 2 shall comply with the New Zealand Fire Service Code of Practice for Fire Fighting Water Supply SNZ PAS 4509:2003.
- iii) A resource consent is required for any new building (dwelling) on Lot 2 and resource consent is required for any new discharge of domestic wastewater. Such resource consent for wastewater discharge will require a full site and soil assessment prepared by an approved person that is experienced in the design of such systems.
- iv) The resource consent for a new building will require a full assessment, by a suitably qualified landscape design professional, of the proposed dwelling and associated landscaping against the Design Guide for Subdivision and Development in the Coastal Tasman Area, Tasman District set out in Part II – Appendix 3 of the Proposed Tasman Resource Management Plan.
- v) The existing shelter belt, or replacement if it has to be removed for Ruby Bay By-pass works, along the State Highway boundary with Lot 2, shall be retained and maintained in perpetuity by the landowner to ensure that the Lot 2 dwelling is adequately screened when viewed from the State Highway.

GENERAL ADVICE NOTES

1. The Consent Holder should meet the requirements of Council with respect to all Building Bylaws, Regulations and Acts.
2. This consent is granted to the abovementioned Consent Holder but Section 134 of the Act states that such land use consents “attach to the land” and accordingly may be enjoyed by any subsequent owners and occupiers of the land. Therefore, any reference to “Consent Holder” in the conditions shall mean the current owners and occupiers of the subject land. Any new owners or occupiers should therefore familiarise themselves with the conditions of this consent, as there may be conditions that are required to be complied with on an ongoing basis.
3. This resource consent only authorises the activities described above. Any matters or activities not referred to in this consent or covered by the conditions must either:
 - a) comply with all the criteria of a relevant permitted activity rule in the Proposed Tasman Resource Management Plan (PTRMP);
 - b) be allowed by the Resource Management Act; or
 - c) be authorised by a separate consent.
4. Access by the Council officers or agents to the property is reserved pursuant to Section 332 of the Resource Management Act 1991.
5. Pursuant to Section 127 of the Resource Management Act 1991, the Consent Holder may apply to the Consent Authority for the change or cancellation of any condition of this consent.

6. Council draws your attention to the provisions of the Historic Places Act 1993. In the event of discovering an archaeological find during the earthworks (eg, shell, midden, hangi or ovens, garden soils, pit depressions, occupation evidence, burials, taonga, etc) you are required under the Historic Places Act 1993 to cease the works immediately until, or unless, authority is obtained from the New Zealand Historic Places Trust under Section 14 of the Historic Places Act 1993.
7. Plans attached to this consent are reduced copies and therefore will not be to scale and may be difficult to read. Originals of the plans referred to are available for viewing from the Tasman District Council on request.
Copies of Council Standards and Documents referred to in this consent are available for viewing from the Tasman District Council on request.

PLAN A - RM060558



Issued this 3rd day of December 2007

Cr T King
Chair of Hearings Committee

Date Confirmed: _____

Chair: _____