

# MINUTES

**TITLE:** Environment & Planning Subcommittee  
**DATE:** Thursday, 6 May 2010  
**TIME:** 9.00 am  
**VENUE:** Council Chamber, 189 Queen Street, Richmond.

**PRESENT:** Crs S G Bryant (Chair), B F Dowler and E J Wilkins

**IN ATTENDANCE:** Principal Resource Consents Advisor (J Butler), Subdivision Officer (R Shirley), Transportation Manager (G Clark), Executive Assistant (V M Gribble)

## 1. FAIRFIELD ORCHARDS LTD, STATE HIGHWAY 60, RIWAKA APPLICATION - No. RM090618

The application seeks to subdivide the land to create Lot 2 of 58.2 hectares and Lot 3 of 2360 square metres in the Rural 2 Zone and a balance area of 16.2 hectares in the Rural 1 Zone. It is proposed to cancel the two licensed crossing places not currently used and create a shared licensed crossing place to serve both allotments.

The application site is located at State Highway 60, Riwaka, being legally described as Pt Section 37 Square 9 and Pt Sections 76 - 78 District of Motueka (CT NL1A/1361) and Lot 1 DP 6348 (CT NL1A/1360).

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.

## RESOLUTION TO EXCLUDE THE PUBLIC

**Moved Crs Bryant / Dowler**  
**EP10-05-24**

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

Fairfield Orchards 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:**

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

**CARRIED**

**Moved Crs Wilkins / Dowler  
EP10-05-25**

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

**CARRIED**

**2. FAIRFIELD ORCHARDS LTD, STATE HIGHWAY 60, RIWAKA APPLICATION -  
No. RM090618**

**Moved Crs Dowler / Wilkins  
EP10-05-26**

**THAT pursuant to Section 104B of the Resource Management Act, the Committee GRANTS consent to Fairfield Orchards Ltd 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 6 May 2010**

**Site visit undertaken on 29 April 2010**

**Hearing closed on 6 May 2010**

A Hearings Committee ("the Committee") of the Tasman District Council ("the Council") was convened to hear the application lodged by **Fairfield Orchards Ltd** ("the Applicant"), to subdivide land described as CT NL1A/1360. The application, made in accordance with the Resource Management Act 1991 ("the Act"), was lodged with the Council and referenced as RM090618.

**HEARING COMMITTEE:** Cr Stuart Bryant, Chairperson  
Cr Eileen Wilkins  
Cr Barry Dowler

**APPLICANT:** Mr Nigel McFadden (Counsel for applicant)  
Mr David Petrie (Traffic Engineer - Traffic Design Group)

**CONSENT AUTHORITY:** **Tasman District Council**  
Mr Ross Shirley (Consent Planner, Subdivision)  
Mr Gary Clark (Transportation Manager)

**SUBMITTERS:** Mr Michael Weir (Principle Planner - NZTA)  
Mr Peter Kortegast (Senior Projects Manager - Opus  
International Consultants)

**IN ATTENDANCE:** Mr J Butler (Principal Resource Consents Adviser) - Assisting  
the Committee  
Ms V Gribble (Committee Secretary)

**1. SUMMARY**

The Committee has **GRANTED** a resource consent, subject to conditions, to subdivide land.

## 2. DESCRIPTION OF THE PROPOSED ACTIVITY

Fairfield Orchards has applied to the Council to subdivide their property located at the base of the Takaka Hill, at Riwaka. The property contains some 82 hectares in one title and is bisected by State Highway 60 and the Riwaka Valley Road. The land to the south of the State Highway is zoned Rural 1 and contains a productive orchard and packing shed. That land area is 16.2 hectares and is shown on Sheet 1 of the application plan as "balance area".

The land to the north of the State Highway is zoned Rural 2 and is hilly land in pasture and bush and used for grazing of sheep. That land area is 58.8 hectares and is shown as Lot 2 on Sheet 1 of the application plan.

In addition, the applicant owns a small residential property on the northern side of the State Highway, being Lot 1 DP 6348 CT NL1A/1360.

There is an existing subdivision consent (RM080593) to subdivide off the land contained between the State Highway and Riwaka Valley Road. This land is shown as Lot 1 on Sheet 1 of the application plan and contains 7.9 hectares.

The State Highway, up to the junction with Riwaka Valley Road, is designated a limited access road. The land to the north of the highway has three licensed crossing places, as shown on Sheet 2 of the application plan.

- LCP64 - authorised farm gate access, although also currently used as access to the existing dwelling;
- LCP65 - authorised vehicle access to dwelling, not currently used for safety reasons;
- LCP66 - authorised farm gate access.

The proposal is to subdivide the land to create separate titles for:

- balance area of 16.2 hectares, being all the productive Rural 1 land south of the State Highway;
- Lot 2 of 58.8 hectares, being all the Rural 2 hill land north of the State Highway;
- Lot 3 of 2360 square metres, being the residential title containing the Drummond house, with some minor boundary adjustment to recognise the existing occupation.

The application includes a proposal to surrender LCP65 and LCP66 and to upgrade LCP64 in order to provide a mutual access for proposed Lots 2 and 3, with a right-of-way in favour of proposed Lot 3 as shown on Sheet 2 of the application plan.

## 3. TASMAN RESOURCE MANAGEMENT PLAN ("TRMP") RULE(S) AFFECTED

The subdivision creating both the balance area and Lot 2 are controlled activities for all matters in the Rural 1 and Rural 2 zones respectively, except that they do not comply with the TRMP transport rules (Rule 16.3.5.1(h) Rural 1 and Rule 16.3.6.1(f) Rural 2).

The transport rule for both zones requires compliance with the transport standards and terms in Schedule 16.3B. In turn, Schedule 16.3B requires every allotment to have access to a formed legal road other than a limited access road unless written consent is given by the authority controlling the limited access road. Such authority has not been given.

The subdivision creating Lot 3 is a discretionary activity as it does not meet the minimum area needed to be a controlled activity for the Rural 2 Zone.

There are no area overlays affecting the land.

Overall, the proposal must be considered as a discretionary activity.

#### **4. NOTIFICATION AND SUBMISSIONS RECEIVED**

The application was limited notified to the New Zealand Transport Agency (NZTA) on 3 November 2009 pursuant to Section 95B of the Act. The NZTA lodged a submission in opposition.

The NZTA submitted that restricted sight distances affecting LCP64 would adversely affect the safe and efficient operation of the State Highway.

#### **5. PROCEDURAL MATTERS**

There were no procedural matters which required a ruling.

#### **6. EVIDENCE HEARD**

We heard evidence from the applicant, expert witnesses, submitter, and the Council's reporting officers. The following is a summary of the evidence heard at the hearing.

The only matter considered to be at issue relates to road safety. It was common ground between all parties that the subdivision is a boundary adjustment that has positive effects on land productivity. The subdivision proposal is supported by the policies and objectives of the TRMP that relate to productivity matters. Therefore we focus on the road safety considerations in this decision.

##### **6.1 Applicant's Evidence**

###### **Mr Nigel McFadden (Counsel for applicant)**

Mr McFadden said that it is surprising that the NZTA is opposing the application as two legal crossing places, including the most dangerous, will be closed voluntarily.

Mr McFadden said that the relevant document to be considered is not the NZTA Planning Policy Manual, it is the TRMP which is a public document. He said that the sight distances exceed the requirements of the TRMP and that the crossing is safe.

Mr McFadden said that the access requirements of Section 106 of the Act are satisfied by the provision of any access. He suggested that it is not entirely clear what steps are required to get approval under Land Transport legislation should consent be granted. But he asked that that processes be kept separate.

### **Mr David Petrie (Traffic Engineer - Traffic Design Group)**

Mr Petrie said that the NZTA has collected a week of data on numbers and speeds of vehicles travelling in both directions past the proposed access using dual tubes on the road. Traffic Design Group has itself monitored speed using a speed gun. The 85<sup>th</sup> percentile speeds are identical in both directions. He adopted 60 km/h for the purposes of his analysis.

Mr Petrie determined the minimum stopping distances available to be 65 metres to the west (uphill) and 75 metres to the east (downhill). He said that the traffic volume generated by the subdivision proposal will be less than 10 vehicles per day (vpd).

Mr Petrie said that the TRMP requires a minimum sight distance of 65 metres for a residential access, or 105 metres for all other activities.

In response to a question Mr Petrie said that in a local context it is a busy road, but in a state highway context, it has low traffic volumes.

Mr Petrie accepted that agricultural vehicles would be defined as “other activities” under the TRMP. But he said it is not intended there will be any change to the agricultural block as in strict terms the use of that block is not changing. The only change is the potential for an extra dwelling.

## **6.2 Submitter’s Evidence**

### **Mr Michael Weir (Principle Planner - NZTA)**

Mr Weir said that the potential activities on the proposed Lot 2, in addition to a dwelling, include forestry and various other farming activities.

Mr Weir said that the closing of LCP65 and LCP66 makes no difference to the appropriate visibility standards for a new lot that will have a dwelling and other rural activities. He pointed to objectives and policies in the TRPS and the TRMP which seek to increase road safety.

Mr Weir confirmed that he sought that the application be declined.

### **Mr Peter Kortegast (Senior Projects Manager - Opus International Consultants)**

Mr Kortegast said that on State Highways the modal split of vehicles differs from local roads. There are more trucks, commercial vehicles and tourist vehicles on the State Highway.

Mr Kortegast said that the Safe Intersection Sight Distances (SISD) from the AUSTROADS 2009 standards for the crossing would be 131 metres to the west and 116 metres to the east (the distance differ because of the road gradient). SISD is the minimum standard required for major road intersections.

Mr Kortegast said that the lesser visibility requirements known as Approach Stopping Distances (ASD) in the same document would be 74 metres and 58 metres respectively for cars and 95 metres and 74 metres for trucks. These are the minimum distances required for minor road approaches.

Mr Kortegast considered the SISD standards more appropriate. Overall he considered the shortfall to be 51 metres and 46 metres.

Mr Kortegast noted that the Takaka Hill is prone to ice and therefore stopping sight distances are even higher than those calculated.

Mr Weir said that LCP66 is not used and that the NZTA has the power to close crossing places.

The Committee asked if there would be any advantage in moving the entranceway further down the hill, say 10 to 15 metres, and if that would that would satisfy the NZTA's concerns. Mr Kortegast said the NZTA is not willing to allow intensification of the use of the access.

### **6.3 Council's Reporting Officer's Report and Evidence**

#### **Mr Ross Shirley (Consent Planner, Subdivision)**

Mr Shirley referred to Chapter 11 of the TRMP which deals with land transport effects. The thrust of the chapter is to provide a safe and efficient transport system. Evidence to hand when the report was written was that the crossing complied with all standards in the TRMP so in no way was it contrary to the provisions.

Having heard the evidence presented by the parties, Mr Shirley amended his recommendation to include a strong recommendation for approval, subject to conditions. He said that recommended Condition 11.2 (regarding the upgrade of the entrance) should be replaced with Mr Petrie's volunteered condition.

#### **Mr Gary Clark (Transportation Manager)**

Mr Clark said that this road is not a high speed environment. The Takaka Hill Road is a windy, narrow road and stopping distances used in guideline calculations are conservative. He said that he is inclined to accept Traffic Design Group's measurement of speed over NZTA as a speed gun can be more accurate as tube counts may have up to 10% error in volume and also errors in recorded speeds.

Mr Clark said that SISD and ASD are guidelines for measuring stopping measurements for different environments. SISD typically applies to major roads or minor roads with high volumes. It is not appropriate to use such high standards for what is residential access onto a road with low volumes. He considered the ASD standards to be appropriate.

Mr Clark said that the ASD standards will be met for cars. Trucks, however, will not be travelling at the same speed as cars and he expected their speed to be less than 50 kph because of hairpin curves and they will be under engine braking coming off the hill. He expressed concern with Mr Kortegast's evidence regarding the lack of factual information. Mr Clark did not consider this to be a high risk road. Overall, Mr Clark said that the speed environment is 60 kph and vehicles are able to stop

quickly at this speed. He said that the guideline values have a significant margin of error. He said that while trucks will take longer to stop, they are travelling slower. He expected that they would have a similar stopping distance to cars.

Mr Clark expressed surprise that the NZTA has not attempted to close LCP65 and LCP66.

Mr Clark disagreed with Mr Kortegast's suggestion that if the application is granted, it could contribute to a serious harm road crash. He said that there is sufficient sight distance for a vehicle to stop safely and if the driver fails to stop for whatever reason the impact will be minor.

#### **6.4 Applicant's Right of Reply**

Mr McFadden said that Mr Kortegast has presented a new set of requirements which neither he nor the staff nor the Committee have seen. He said that it is, therefore, inappropriate that they must comply with them. He asked how the AUSTROADS document could be of any relevance.

Mr McFadden said that the evidence included sensationalisms, such as a statement that the public have an expectation of being able to travel at 100kph. He said that it is well known that there are hidden accessways and that people drive to conditions.

### **7. PRINCIPAL ISSUES AND OUR MAIN FINDINGS**

The principal issues that were in contention and our main findings on these issues are:

**a) What standards for sight visibility and stopping distances are most appropriate for us to consider? To what extent is this a high risk road at the subject location?**

We agree with Mr McFadden and the Council officers that the sight distances in the TRMP are most appropriate as they have been through a public process. We are mindful that our role is not to remove *all* risk, but to minimise risk and strike a balance between that risk and also the provision of the outcomes specified as the purpose of the Act.

We therefore agree with Mr Clark who said that trucks will drive slower than cars as they know the risks and terrain of the Takaka Hill. In contrast to Mr Kortegast's opinion, that people may not be at their peak driving performance as they are tired or alcohol impaired, we consider that people tend to be concentrating harder when driving the Takaka Hill.

**b) How will the proposed subdivision change the use of the lots and change the type of traffic using the accessway?**

We agree that the creation of a new residential lot (Lot 2) will lead to more residential traffic. Mr Petrie has said that technically there will not be any more movements of agricultural vehicles over and above what could happen as of right now. Technically he is right, although we would expect some intensification of the use of the hillside lot. We think that the increase in non-residential traffic using the accessway will be negligible.

**c) What benefit is gained by the volunteered closure of LCP65 and LCP66?**

This is the positive tradeoff that the applicant is volunteering. Currently the applicant is legally authorised to use two more dangerous accessways. The most likely to be used is LCP66 which serves the rural hill land. While usage of the entrance way is likely to be rare, it still exists. We consider there to be considerable benefit in the closure of this entrance.

## **8. RELEVANT STATUTORY PROVISIONS**

### **8.1 Policy Statements and Plan Provisions**

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

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

### **8.2 Part 2 Matters**

In considering this application, 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.

## **9. DECISION**

Pursuant to Section 104B of the Act, we **GRANT** consent, subject to conditions.

## **10. REASONS FOR THE DECISION**

### **Effects on the Environment**

We find that the added risk from the proposal is very low for the following reasons:

1. The numbers of vehicles exiting and entering the accessway (at LCP64) will be low;
2. Of the vehicles entering and exiting there is only a very small chance that there will be a problem such that the vehicle will end up stalled or stationary in one or both lanes;
3. Low vehicle numbers on the State Highway mean that there is only a moderate chance that in the short period when a vehicle is stationary on a lane another vehicle will approach.

If circumstances 1 to 3 do coincide then the evidence presented to us indicates that the actual operational traffic speeds (50-60 kph) and available sight distances will enable approaching traffic to stop safely.

Further, we consider that the closure of the other two crossing places will be a positive effect that will, to a large extent, offset the slightly increased risk caused by the combined use of LCP64.



### **Objectives and Policies of the TRMP**

For the reasons outlined above where we discuss the effects on the environment we are satisfied that the proposal from a road safety point of view is not inconsistent with the Objectives and Policies of the TRMP. The proposal meets the stopping distances set out in the rules of the TRMP.

### **Other Matters**

The AMS figures in the AUSTROADS 2009 document are relevant but must be adapted to the site. While we do not have specific data for trucks we agree with Mr Clark that truck drivers on the Takaka Hill are aware and responsible. They simply cannot travel at high speeds, particularly in this section of the hill where there are narrow and steep sections of road.

### **Purpose and Principles of the Act**

Adopting a broad overall judgement approach to the purpose of the Act, we are satisfied that the proposal is consistent with Part 2 and achieves sustainable management of natural and physical resources as set out in Section 5 of the Act.

The Act requires us to provide for people's "*social, economic, and cultural wellbeing and for their health and safety*". There is a clear balance in this case between providing for a subdivision that in all other respects complies with the controlled activity standards in the TRMP, versus protecting the safety of those entering the state highway. As stated above the Environment Court has found on many occasions that we are not expected to minimise all risk; simply it must be balanced against other benefits and effects. In this case we consider the risk to be very low.

## **12. LAPSING OF CONSENT(S)**

Section 125(2) of the Act makes particular provision for the lapsing of subdivision consents. This consent is given effect to when a Survey Plan is submitted to the Council for the subdivision under Section 223 of the Act. Once the Survey Plan has been approved by the Council under Section 223 of the Act, the consent lapses three years thereafter unless it has been deposited with the District Land Registrar as outlined in Section 224 of the Act.

Issued this 2<sup>nd</sup> day of June 2010



Cr Stuart Bryant  
**Chair of Hearings Committee**



## RESOURCE CONSENT

**RESOURCE CONSENT NUMBER:** RM090618

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

**Fairfield Orchards Limited**  
(hereinafter referred to as “the Consent Holder”)

### ACTIVITY AUTHORISED BY THIS CONSENT:

Subdivide CT NZ1A/1360 into three lots.

### LOCATION DETAILS:

Address of property:	177 and 206 Takaka Hill Highway
Legal description:	Pt Sec 77 Motueka DIST and Lot 1 DP 6348
Certificate of title:	NL1A/1361 and NL1A/1360
Valuation number:	1931061700 and 1931061600
Easting and Northing:	2507040E and 6816895N

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

### CONDITIONS

1. That the subdivision shall be in accordance with the plans entitled “*Proposed subdivision of CT NL1A/1361 and Lot 1 DP 6348 (CT NL1A/1360)*” prepared by Nikkel Surveying, dated May 2009, and attached as Appendices 1 and 2, respectively.
2. That LCP65 and LCP66 be physically closed and cancelled.
3. That LCP64 be upgraded to comply with the plan entitled “*Fairfield Subdivision, State Highway 60, Riwaka, Proposed Type 1 Crossing Upgrade*” dated 3 May 2010 (attached as Appendix 1).

#### Advice Note

Conditions 2 and 3 above require an authority from NZTA to undertake works on a state highway. If that authority is arbitrary or unreasonably withheld, the two conditions are deemed to be complied with.

4. That the proposed Right-of-way over Lot 2 for the benefit of Lot 3 be duly granted or reserved by reference in Council’s Section 223 recital.

5. That a financial contribution be paid as provided for by Chapter 16.5.5 assessed at 5.5% of the 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 Council's Administration Officer (Subdivision). The valuation shall be undertaken by Council's valuation provider at Council cost.

If payment of the financial contribution is not made within two years of the date of this consent and a revised valuation is required as provided by Rule 16.5.5(d) of the Tasman Resource Management Plan, the cost of the revised valuation shall be paid by the Consent Holder.

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

## **ADVICE NOTE(S)**

### **Development Contributions**

1. 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.

2. Any activity not covered in this consent (e.g. earthworks) shall either comply with:
  - a) comply with all the criteria of a relevant permitted activity rule in the Tasman Resource Management Plan (TRMP);
  - b) be allowed by the Resource Management Act; or
  - c) be authorised by a separate resource consent.
3. Access by the Council's Officers or its Agents to the property is reserved pursuant to Section 332 of the Act.
4. Monitoring of this resource consent is required under Section 35 and 36 of the Act, and a deposit fee is payable at this time. Should monitoring costs exceed this initial fee, the Council will recover the additional amount from the resource consent holder. Monitoring costs are able to be minimised by consistently complying with the resource consent conditions.
5. Council draws your attention to the provisions of the Historic Places Act 1993. In the event of discovering an archaeological find during the earthworks (e.g. shell, midden, hangi or ovens, garden soils, pit depressions, occupation evidence, burials, taonga,

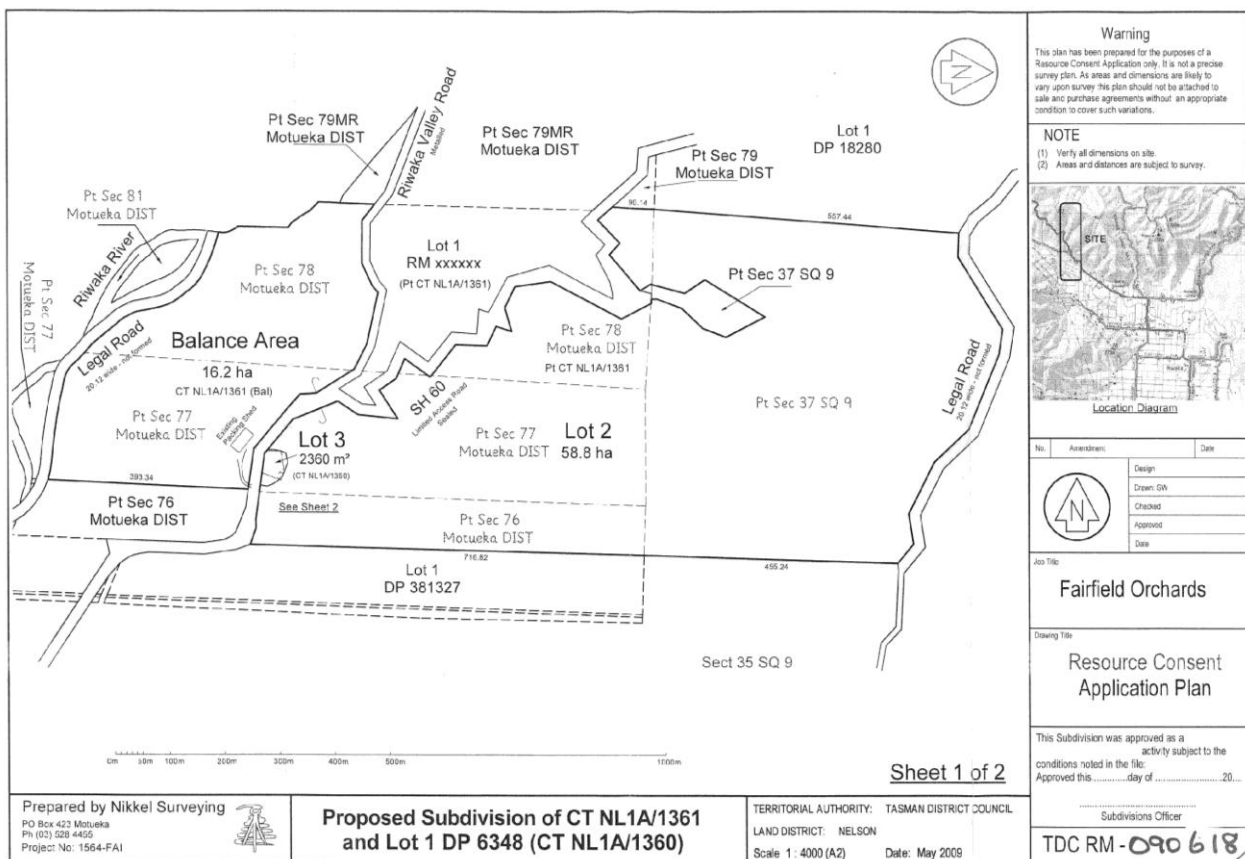
etc) you are required under the Historic Places Act, 1993 to cease the works immediately until, or unless, authority is obtained from the New Zealand Historic Places Trust under Section 14 of the Historic Places Act 1993.

Issued this 2<sup>nd</sup> day of June 2010

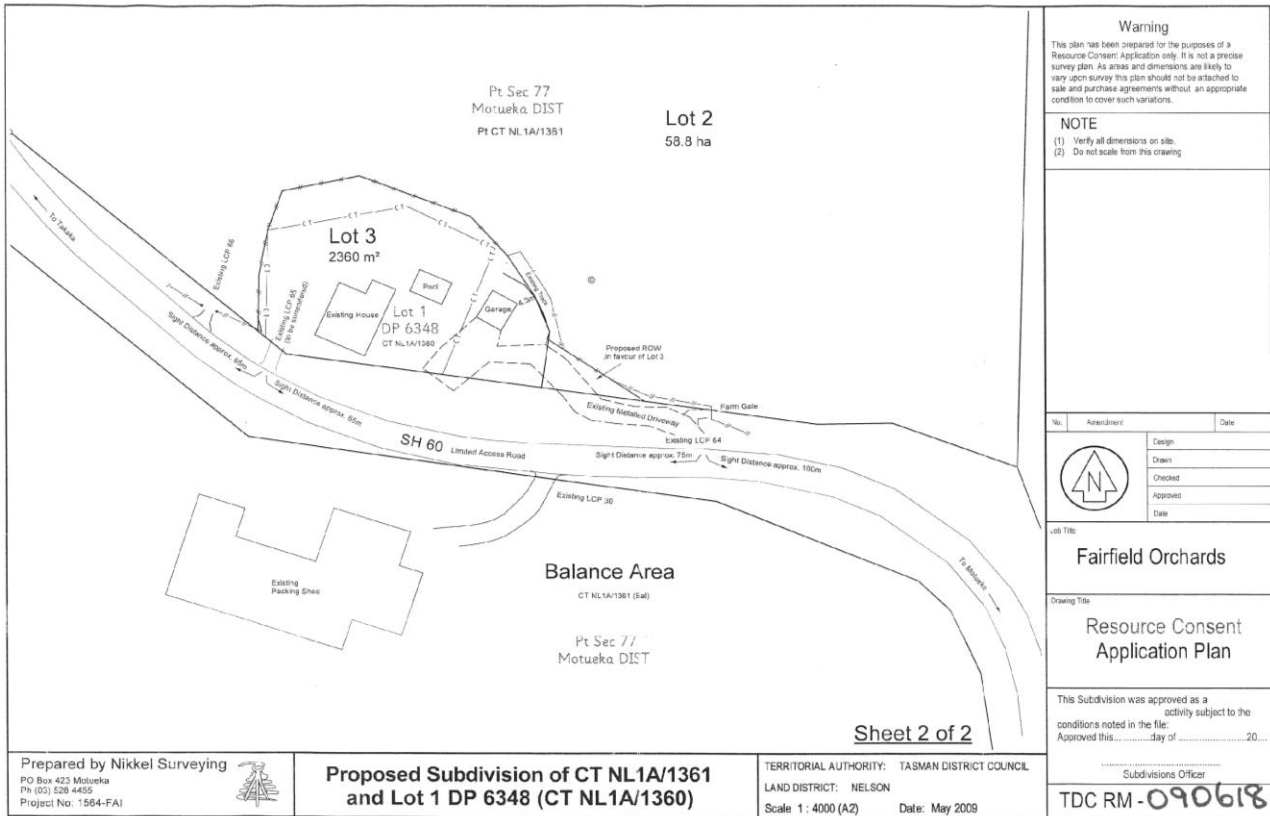


Cr Stuart Bryant  
Chair of Hearings Committee

**APPENDIX 1**



## APPENDIX 2



## APPENDIX 3



Date Confirmed:

Chair: