

MINUTES

TITLE: Environment & Planning Subcommittee
DATE: Monday, 9 August 2010
TIME: 9.06 am
VENUE: Council Chamber, 189 Queen Street, Richmond

PRESENT: Cr N Riley (Chair), Crs Ensor and Edgar

IN ATTENDANCE: Principal Resource Consents Advisor (J Butler),
Co-ordinator – Subdivision Consents (M Morris),
Development Engineer (D Ley), Administration Officer
(J A Proctor)

1. N J and S GUTHRIE, GARDEN VALLEY ROAD, BRIGHTWATER - APPLICATION No. RM100199

The application seeks to subdivide an existing 21.76 hectare property (CT 100963) into two allotments:

- Lot 1 of 15.0 hectares (with an existing dwelling);
- Lot 2 of 4.6 hectares.

The property is zoned Rural 2 under the Tasman Resource Management Plan.

The application site is located at 250 Garden Valley Road, Brightwater, being legally described as Lot 1 DP 20561 and Section 1 Survey Office Plan 15517.

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 Edgar/Ensor
EP10-08-24**

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

N J and S Guthrie

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
N J and S Guthrie	Consideration of a planning application	A right of appeal lies to the Environment Court against the final decision of Council.

CARRIED

**Moved Crs Ensor/Edgar
EP10-08-26**

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

CARRIED

**2. N J and S GUTHRIE, GARDEN VALLEY ROAD, BRIGHTWATER - APPLICATION
No. RM100199**

**Moved Crs Riley/Edgar
EP10-08-25**

THAT pursuant to Section 104B of the Resource Management Act, the Committee GRANTS consent to N J and S Guthrie 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 9 August 2010
Site visit undertaken on 5 August 2010
Hearing closed on 9 August 2010**

A Hearings Committee ("the Committee") of the Tasman District Council ("the Council") was convened to hear the application lodged by **N J and S Guthrie** ("the Applicant"), to subdivide an existing 21.76 hectare property (CT 100963) into two allotments. The application, made in accordance with the Resource Management Act 1991 ("the Act"), was lodged with the Council and referenced as RM100199.

HEARING COMMITTEE: Cr Noel Riley, Chairperson
Cr Brian Ensor
Cr Judene Edgar

APPLICANT: Mr Nigel McFadden (Counsel)
Mr John Guthrie (Applicant)
Mrs Sandra Guthrie (Applicant)

- CONSENT AUTHORITY:** **Tasman District Council**
Mr Dugald Ley (Development Engineer)
Mr Mark Morris (Coordinator Subdivision Consents)
- SUBMITTERS:** Ms Heather Arnold (Nelson Forests Ltd)
Mr Dean and Mrs Theresa Greer
Mr Alastair Grant
- IN ATTENDANCE:** Mr Jeremy Butler (Principal Resource Consents Adviser) -
Assisting the Committee
Ms Julie Proctor (Committee Secretary)

1. SUMMARY

The Committee has **GRANTED** a resource consent subject to conditions to subdivide land on Garden Valley Road.

2. DESCRIPTION OF THE PROPOSED ACTIVITY

The applicant has applied for subdivision consent to subdivide an existing title of 21.76 hectares to create the following:

- Proposed Lot 1 comprising approximately 16 hectares, including Right-of-Way A, which provides access to Lot 1 DP 20519 and the proposed Lot 2;
- Proposed Lot 2 comprising 4.6 hectares with access being provided over Right-of-Way A.

This site is located at the head of Garden Valley. The 21 hectare property is mainly covered in regenerating native bush with small areas of rough pasture along the eastern boundary of the property. The property has an existing dwelling which is close to the eastern boundary of the property and is on the dominant ridge line that runs through the property.

The dwelling is accessed via a right-of-way from Garden Valley Road that also provides access to Lot 1 DP 20519 (Mr and Mrs Greer).

In 2009 the applicant relocated a "cottage" to the property. That cottage is located in the north eastern corner of the proposed Lot 2. The building does not have resource consent either for the relocation or for the erection of a second dwelling; and it does not have building consent. The Council has issued an abatement notice prohibiting any residential use of the building until the relevant consents have been obtained.

In 1994 the applicant applied for consent (RM940475) to subdivide their property (which at that time was 30 hectares) into four allotments. This was publicly notified on 22 October 1994 and seven submissions were received. However, a hearing for that application was initially adjourned and then on 8 September 1995 the application was formally withdrawn.

At the time the application would have been non-complying under the Transitional District Plan (Waimea Section) which made any subdivision into allotments of less than 20 hectares, a non-complying activity.

In 1997 a two lot subdivision was applied for (RM970502) which was approved on 4 December 1997 and resulted in the creation of Lot 1 DP 20519 (now owned by the Greers). The subdivision created the existing right-of-way, which is being used to provide access to the proposed Lot 2.

3. TASMAN RESOURCE MANAGEMENT PLAN (“TRMP”) ZONING, AREAS AND RULE(S) AFFECTED

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

Zoning: Rural 2

Area(s): Protected Ridgeline

The application is considered to be a Discretionary Activity under subdivision rule 16.3.6.2 in that the proposal involves allotment areas less than the Controlled Activity standard of 50 hectares. The application is fully discretionary and Council may have regard to the Assessment criteria in Schedule 16.3A which sets out 53 separate matters that can be used in assessing the subdivision.

4. NOTIFICATION AND SUBMISSIONS RECEIVED

The application was notified under the limited notification provisions of Section 95B of the Act on 23 April 2010 to five parties. Five submissions were received. All the submissions oppose the application and wish to be heard, except one of the submitters (Van Oeveren) has stated that they would be neutral on the proposal if specific conditions are imposed on the consent.

Submitter	Reasons
T Sowman	<ul style="list-style-type: none"> • The applicant has progressively subdivided their land, thereby reducing the usability of their land and then using this to justify further subdivision. • QEII protection of the bush can be done without the need for a subdivision. • The subdivision and QEII covenant will not solve the weed management problem (e.g. old man’s beard) on the property. • At the top of the valley noise is amplified so even normal conversation can be heard across the valley. • Because of the steep topography and the formation of the right-of-way there are problems with debris runoff into my property. • The construction of the right-of-way is such that it would be difficult to maintain a reasonable surface and vehicles regularly skid as they travel up the right-of-way. An additional user will only exacerbate the existing problem. • My property and another neighbour have the right to draw water from a spring on the Guthrie property pursuant to a registered easement. Concerned that further development will affect this right and that water supply could be affected by septic tank systems for another dwelling. • Further urbanisation will have an effect on the number of native birds in the area. • The building described as a “cottage” has been erected without Council consent. This illegal structure is now being used as reason to justify the further subdivision of the property.

Submitter	Reasons
	<ul style="list-style-type: none"> • The application plan states in 2.5 there are two potential building sites on Lot 2, and then 3.6 notes that there is no nominated building site for Lot 2. There appears to be conflict between these two statements. • The application states that a future dwelling will not be in the neighbours view. I find it difficult to accept that any dwelling would not be a visual intrusion in the area. • The status of the “relocated building” should be clarified.
Nelson Forests Limited (NFL)	<ul style="list-style-type: none"> • NFL has 163 hectares of forest adjacent to the applicant’s property. It is anticipated that 115,000 tonnes of wood will be harvested from the adjoining block in the period 2016-2018. • NFL has concerns over the reaction of any subsequent purchasers when harvesting begins as there will be a short term increase in rural noise levels during road construction and harvesting operations. • The application is contrary to the policies and objectives of the Proposed Tasman Resource Management Plan, in particular Chapter 7 (Rural Environment Effects). • Approval of rural residential subdivisions of this type will put pressure to curtail existing permitted rural activities such as forestry, which is reverse sensitivity. • The application is contrary to sections 7(b), (c) and (g) of the Act. • NFL wishes the application to be declined: however if it is approved, it requests that “rural activities” easement be imposed on both titles of the subdivision.
D and T Greer	<ul style="list-style-type: none"> • The existing right-of-way does not comply with the Council’s Engineering standards, with most of the right-of-way not complying with the minimum gradient of 1 in 6 for an unsealed formation. This makes it very difficult for two wheel drive vehicles to access the site. It is extremely difficult to turn right from the right-of-way entrance on to Garden Valley Road. • Request that if the subdivision is approved, that the right-of-way be upgraded to comply with the Council’s Engineering standards. • The “cottage” described in the application is an unauthorised structure with no building consent or resource consent. Request that, prior to the approval of any subdivision consent, the cottage be brought up to the required standard to comply with the current Building Act. • If the cottage is retained as the dwelling for Lot 2, it is requested that the cottage be screened from the right-of-way and that if another building site is chosen that the building style blends in with natural environment and that it not be visible from neighbouring land. • Request that if any water is taken from the spring-fed stream, that the easement only allow water to be taken, downstream from the existing water takes. Also request that a condition be imposed on the subdivision consent protecting the spring water from contamination from septic tanks and stormwater runoff. • Request that no new overhead power lines be used to supply the subdivision. • The application plan implies that all the remaining remnant podocarp forest will be protected by QEII covenant. Request that all the forest areas be protected by QEII covenant and that a condition of consent be imposed that the all covenant areas be fenced with a sheep proof fence. • The road access on Garden Valley Road is an unsealed rural access road with a 5.4 metre wide carriageway width. If the proposed subdivision was approved, then road should be sealed at the applicant’s and the Council’s cost. • Garden Valley is characterised by farm allotments of varying sizes, with a low density of built form and structures. The overall character is of productive

Submitter	Reasons
	<p>farming an forestry. We disagree with the statement that the subdivision will not contribute to a cumulative adverse effect on the rural landscape of the area.</p> <ul style="list-style-type: none"> • In October 2004, The Nurse subdivision application In Garden Valley was declined for several reasons including: 1) loss of rural character; 2) the cross-boundary effects and 3) effects on the rural infrastructure including the roading network.
H and M Van Oeveren	<ul style="list-style-type: none"> • Want to see a condition imposed, that water is only taken from the point below the existing designated water takes. • Want a condition imposed that any septic tank system is only installed unless a suitably qualified consultant can confirm that there is no risk of contamination of the spring water. • Want a condition imposed that no new overhead lines be installed to service the new title. • Support the QEII covenant to protect the bush, but there also needs to be effective weed control as part of the QEII covenant. • Want a condition imposed that the site of the current sleep out on Lot 2 be the only designated building site for Lot 2. • If the above conditions are imposed on the consent, we would be neutral to the granting of consent.
A N and K H Grant	<ul style="list-style-type: none"> • Concerned about the close proximity of the proposed subdivision to existing farming activities and future logging activities which are permitted under the district plan. • Concerned that as population increases in the area will lead to increased opposition to permitted farming and logging activities. • Concerned about the statement that one additional allotment under a discretionary activity subdivision does not justify the upgrading of the Garden Valley Road, when already our property could be subdivided into two titles as a controlled activity and the NFL block could be subdivided into three lots. • We would question the statement that the new allotment will be rural rather than residential in character. • As part of the previous subdivision in 1997, the affected parties were advised that QEII covenant was going to protect the bush on the entire property. In the end a much smaller area of bush was protected. • Recent real estate advertising has advised that the property has potential to be subdivided into 4 lots. • The proposed subdivision is contrary to the policies and objectives of the Proposed Tasman Resource Management Plan in particular Objective 7.3.0 and Policies 7.3.2 and 7.3.4.

5. PROCEDURAL MATTERS

There were no procedural matters that required consideration or a ruling.

6. EVIDENCE HEARD

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

6.1 Applicant's Evidence

Mr Nigel McFadden (Counsel)

Mr McFadden introduced the application and said that the applicant has volunteered a condition for a large block of podocarp forest, containing the rare plant *Teucrium parvifolium*¹(Figure 1), to be subject to a QEII covenant.

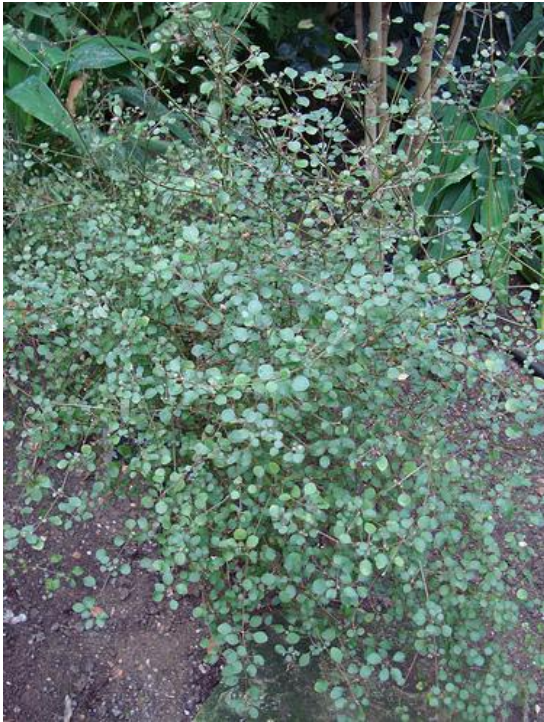


Figure 1: *Teucrium parvifolium*

Mr McFadden said that the Guthries have been good stewards of the forest and have protected it and encouraged its regeneration. He said that a cottage has been moved onto the site, is not being used for residential purposes, but is in the best location for a new building site. The site is well removed from residential and other properties.

Mr McFadden said that the application only creates one new lot which adjoins only one other landowner (the Greers).

With regard to effects, Mr McFadden summarised them as follows:

- Only positive effects on natural and ecosystem values through the proposed covenant;
- No more than minor effects on land productivity as the land is Class F; the lowest in the District;
- Only minor reverse sensitivity effects given the distance between the site and the surrounding land uses;

¹ Mr McFadden erroneously referred to this plant by the common name of "stink horn". In fact, stink horn is an interesting fungus (*Aseroe rubra*) that also occurs in the forest but is not particularly rare (pers. comm. Phillip Lissaman). *Teucrium parvifolium* is a small leaved divaricating shrub. For the purposes of this decision we will refer to "*Teucrium*" to avoid confusion.

- Only a minor effect on rural character and amenity given the separation distances and the screening of the new building site;
- Negligible adverse effects on Garden Valley Road as a result of the increase in users (only one household);
- Only minor residential effects as there will be no overhead powerlines and the site will be well screened;
- No cumulative effects given the small scale of the subdivision.

Mr McFadden then discussed the TRMP and said that the proposal is in keeping with the relevant objectives and policies. He also said that the protection of significant indigenous vegetation and significant habitats of indigenous fauna are national priorities and will be achieved through this application.

With some modifications, Mr McFadden largely supported the recommended conditions. However, he opposed the recommended condition which imposed a consent notice prohibiting further subdivision as he considered it to be ultra vires.

Mr McFadden volunteered a forest emanations easement to address the concerns of Nelson Forests Ltd and some of the concerns of Mr Grant. He tabled the suggested wording for the easement.

Mr John Guthrie (Applicant)

Mr Guthrie said that they were given the cottage for free and they have upgraded it and applied for a certificate of acceptance for it.

Mr Guthrie said that he currently grazes about 30 sheep in the areas around his house at the top of the hill.

Mr Guthrie said that the right-of-way that serves his and Mrs Guthrie's house and that of Mr and Mrs Greer is 3.5 metres wide and formed to an all weather metal surface with water tabling.

Mr Guthrie said that he accepted all of the recommended conditions except that he recommended some changes to Condition 4 (upgrade of the right-of-way) and objected to Condition 10D (no further subdivision).

6.2 Submitters' Evidence

Ms Heather Arnold (Nelson Forests Ltd)

Ms Arnold said that the forest in Garden Valley is due for logging between 2016 and 2018. Once clear felling commences there will be approximately 10-12 truck and trailer loads of logs per day per work crew; and there may be three or so work crews in the valley.

She said that the hours are likely to be long with considerable noise and disturbance. She said that Garden Valley Road is narrow and with limited to no opportunities to safely pull off the road to allow other traffic to pass.

Ms Arnold sought that a forest emanations easement be imposed on the titles of the lots. She accepted the wording of the easement put forward by Mr McFadden.

Mr Dean and Mrs Theresa Greer

Mr Greer said that they share the right-of-way with the Guthries.

Mr Greer said that they consider that the application should be declined as it will have similar effects to the Nurse application (RM040263) which was declined; because Garden Valley Road is substandard and effects will be exacerbated when Nelson Forests Ltd begin their harvest; and because there are many titles in Garden Valley which have not yet been developed but at some point may be.

Mr Greer sought that, in the event that the consent is granted, the entire length of the right-of-way that borders the proposed Lot 2 be upgraded to the Council's standards as the eventual owner of proposed Lot 2 will want to gain access to the upper part of their property beyond the cottage. He also sought that all of the native bush be included in the QEII covenant.

Mr Alastair Grant

Mr Grant explained the operation of his sheep and beef unit. He said that it involves a wide range of potential impacts on other residents including dogs barking, top dressing, aerial spraying and use of heavy machinery outside of normal working hours.

Mr Grant said that he is concerned about the proximity of the proposal to his business and the potential for reverse sensitivities resulting from objections and complaints from new residents about farming and logging activities.

Mr Grant said that there are several titles which have not yet been built on as they are being used for other purposes such as forestry. At some point it is likely that they will be built on and this will increase the numbers of residents using the road.

Mr Grant then raised a concern with the previous 1997 consent which created the lot currently owned by the Greers. He said that he understood that all of the forest was to be covenanted at the time of that subdivision and this was not done. Mr Morris commented that the file indicates that this was not the case and that Mr Grant provided his written approval accordingly. There is no record of any promise that all of the valuable vegetation was to be covenanted at that time.

6.3 Council Reporting Officer's Report and Evidence

Mr Dugald Ley (Development Engineer)

Mr Ley stated that original discussions with the applicant concerned subdividing the land into four lots. The application is now for one additional dwelling and therefore, it is unnecessary to upgrade the road. Mr Ley provided an explanation of the Council's policy regarding sealing rural low traffic roads. He estimated that upgrading the road would cost approximately \$160,000.

Mr Ley advised that page 25 of the agenda report should be amended to read "...from chainage 100 to chainage 850...". He said that the right-of-way leading to Mr Greer's property did not require sealing from 850 to 1020 chainage as it was reasonably flat.

Mr Ley confirmed that condition 16 volunteered by Mr Guthrie in his evidence was acceptable. Mr Ley advised that any work undertaken would require engineering plans to be submitted to the Council for approval first.

Mr Ley considered that the access point to the cottage was not ideal as it was on a sharp corner and visibility was an issue.

Mr Ley stated that adequate side and cross-falls were required to shed water sideways and add to the pavement's longevity. Mr Ley explained that roads could be sealed in strips but termination points on the uphill extent needed to be designed and constructed correctly to avoid erosion from water.

Mr Ley stated that areas that were steeper than 1:6 should be sealed. However, if the applicant regraded the road and it was less than 1:6 then sealing was not required. He continued that the Council did not want a patchwork quilt of sealing as it is more prone to erosion and requires more maintenance; it is preferable that the whole section (100 to 850 metres) be sealed.

Mr Ley advised that sealing should only be done during the summer months and that a two coat chip seal was better than asphalt. Broomed concrete would be a "belt and braces" approach.

Mr Mark Morris (Coordinator Subdivision Consents)

Mr Morris spoke about the "Nurse" application - a recent and nearby subdivision application that was declined. The proposed allotments were close to the road and quarry, therefore the amenity effects of that proposal were different to this application. He said that the upper and lower parts of Garden Valley Road were very different and each application was looked at afresh; previous decisions did not determine outcomes. He said that an important circumstance of this application was that a large area of native bush was being offered to be set aside under a QEII covenant, and also the building site is well screened.

Mr Morris advised that some applicants had volunteered that a condition be placed on titles not to subdivide the land further; this was not the case here.

Mr Morris confirmed that the proposed forestry easement was sufficient as it covered the biggest potential cross boundary impact.

Mr Morris advised that the 1997 subdivision consent did have a condition requiring a reserve fund contribution based on the valuation of a 250 m² building site. He said that it is a standard condition, so there was no waiver for covenanting QEII land.

6.4 Applicant's Right of Reply

Mr McFadden stated that the Queen Elizabeth National Trust had surveyed the area and deemed which areas of the bush were suitable for covenanting.

Mr McFadden stated that landowners had an obligation to ensure that activities did not lead to unnecessary noise disturbance. He continued that the forestry emanation covenant be extended to Mr Grant on the condition that it did not restrict the consent. The appropriate course of action would be to provide Mr Grant with a set period of time to take up the offer of the easement.

Mr McFadden advised that previously he had spoken with Mr Ley regarding sealing the road. Mr Ley's report states that the road should be sealed from 100 - 850 metres and that there were a number of ways to seal it. Mr McFadden suggested that the condition should state that the ends of the sealed sections should be competent and to the Council's standards.

Mr McFadden stated that it would be inappropriate for a "no further subdivision" condition to be imposed. However, he volunteered a condition that restricted further subdivision unless such an activity became permitted or controlled or it was for a minor boundary adjustment that did not create any additional titles.

7. PRINCIPAL ISSUES AND OUR MAIN FINDINGS

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

a) To what extent will the proposed subdivision affect the natural and rural character of the site and Garden Valley?

We are satisfied that the proposed lot and building location will have a negligible effect on the rural amenity and character of Garden Valley. We are conscious of incremental change in this regard. However, given the very low productive potential of the land, as well as the existence of the significant podocarp forest we are satisfied that it is unlikely, and indeed undesirable, for the land to be used in a productive fashion. Therefore, the reduction in lot size is not of great moment from a productive point of view, nor from the perspective of concern about setting a precedent for the widespread subdivision of Rural 2 land.

b) To what extent will the development of a small rural residential allotment cause conflicts with existing permitted farming and forestry activities?

In this respect we agree with Mr McFadden in his evidence and right of reply. Forestry certainly has the potential to catch many prospective owners of such an allotment off guard. Many are likely to be unaware of the intensity and duration of adverse effect during a period of logging. Therefore we see the volunteering of a forest friendly covenant on the title as being important.

We also agree that many of the other effects that may be brought to bear on the eventual purchasers of the new allotment, as described by Mr Grant, are part of the rural New Zealand environment. We are confident that any new owners that buy in such a location will be aware and accepting of such activities. We do not anticipate that Mr Grant's legitimate activities will be curtailed given the nature and location of the building site.

c) To what extent will the creation of an additional allotment cause adverse effects on traffic on Garden Valley Road?

We are somewhat concerned by the narrowness of Garden Valley Road as it was explained to us by Mr Greer and others. We understand that the road is substandard; passing is difficult and pulling off to allow others to pass may be treacherous in the winter.

We understand that there will only be one additional household and that, in due course, there will be improvements made to the road. Nevertheless we do have some concerns about the increasing intensification of the use of such rural roads. Overall, however, we consider the effects of additional traffic movements from one additional household to be minor.

d) Can the proposed allotment be provided with adequate access?

We are satisfied that with considerable upgrades adequate access can be provided. The right-of-way is steep and in general requires a four-wheel drive or at least a heavy two-wheel drive vehicle as well as good driving skills.

However, we are satisfied that with a comprehensive upgrade of the right-of-way the access can be made satisfactory.

e) To what extent can the offer of a QEII covenant be applied as a positive effect of a subdivision?

Initially we shared some submitters' concerns that Mr Guthrie's offering of the QEII covenant **only** as part of a subdivision application was a slightly cynical use of the natural qualities of his property, when it is something that could be done entirely independently of a subdivision. However, we are mindful of Mr Morris's advice to us that it is an appropriate and legitimate action to offer positive effects to balance negative effects.

While it is not a matter of any contention in the case, it is worth recording that we accept the significance of the vegetation and consider the positive effect of the registering of the QEII covenant to be considerable.

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) 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 are satisfied that the proposal will not have any effects on the natural and rural character of Garden Valley that are more than very minor. It is worth recording here that, during our deliberations, we were careful not to give any credence to the fact that there is a cottage illegally on the site. We understand the concern of some submitters that we may take the approach that “there is a cottage there and it seems to look alright so we will grant the consent to legitimise it”. We have been careful not to do this, and have put the cottage entirely from our minds when deciding on the effects and appropriateness of the subdivision.

While the new lot itself is not of a productive size, we do not consider this to be a significant adverse effect given the presence of the native vegetation and the size and productivity of the existing parent lot. Just as importantly, however, we do not consider that the proposal will cause other landowners (i.e. Mr Grant and Nelson Forests Ltd) to be limited in what they can legitimately do due to reverse sensitivity impacts or as a result of intensifying residential use of the surrounding properties.

The most compelling reason for granting the consent is the proffered QEII covenant. We consider that the long-term protection of the native forest and the rare *Teucrium parvifolium* is an excellent outcome and more than offsets any loss in amenity and character of the valley. Several submitters sought that if the consent is granted that we require, as a condition of consent, all of the native vegetation to be covered by a QEII covenant. It is our understanding that we cannot do this. It is the QEII trust which decides what vegetation is worthy of covenanting and it is beyond the power of the Guthries, or indeed ourselves, to make the Trust accept more. In setting the conditions of consent we are bound by Mr Lissaman’s assessment of the area that will be accepted by the QEII Trust.

We accept Mr Ley’s advice that the traffic situation on Garden Valley Road is acceptable. Ongoing intensification may change this in the future but, at this time, the addition of another household and the associated traffic will not cause significant adverse effects.

With a considerable upgrade of the right-of-way we are satisfied that the access will be improved for all users.

Objectives and Policies of the TRMP

We accept and, pursuant to Section 113(3), adopt Section 6.2 of Mr Morris’s report which considers the relevant objectives and policies of the TRMP.

Other Matters

We had some concerns that Lot 1 of this subdivision that is to be retained by the Guthries will be of little value and will be attractive for further subdivision in the future. We consider that Garden Valley is a relatively remote rural environment and should be retained as such. Ongoing subdivision is unlikely to be conducive to this.

Therefore, in reaching our decision we are heartened by the applicant's volunteering of a "no subdivision" condition. We believe this is important in ensuring that the current subdivision is not just part of a gradual intensification of the site, or "subdivision by stealth", but that the consented layout of the site be assured for the long-term.

Purpose and Principles of the Act

We accept and, pursuant to Section 113(3), adopt Section 5.1 of Mr Morris's report which considers the matters relevant under Sections 6 and 7 of the Act. We agree with Mr Morris that the proposal gives effect to the matters of national importance and we have considered the relevant other matters.

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.

11. COMMENTARY ON CONDITIONS OF CONSENT

Condition 4 requires a relatively comprehensive upgrade of the right-of-way. We believe that this upgrade is necessary given its steepness and moderate to low state of repair. We recommend to the consent holder that this upgrade should be done properly and thoroughly. A high-quality access that requires little maintenance is likely to be a considerable asset for the both properties and add substantially to their values.

In the hearing Mr McFadden accepted Mr Morris's recommendation that buildings be limited to the site of the existing cottage. In consent notice A we have identified an area that seems appropriately sized for a future home that may be bigger than the existing cottage.

12. LAPSING OF CONSENT(S)

Pursuant to Section 125(1) of the Act, resource consents, by default, lapse in five years unless they are given effect to it before then.

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 27th day of August 2010



Cr Noel Riley
Chair of Hearings Committee



RESOURCE CONSENT

RESOURCE CONSENT NUMBER: RM100199

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

John and Sandra Guthrie
(hereinafter referred to as “the Consent Holder”)

ACTIVITY AUTHORISED BY THIS CONSENT:

Subdivide an existing 21.76 hectare property (CT 100963) into two allotments, being Lot 1 of 15.0 hectares and Lot 2 of 4.6 hectares.

LOCATION DETAILS:

Address of property:	250 Garden Valley Road
Legal description:	Lot 1 DP 20561
Certificate of title:	100963
Valuation number:	1937054103
Easting and Northing:	2517975E 5976134N

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

CONDITIONS

Subdivision Plan

1. The subdivision and development shall be carried out generally in accordance with the application plan prepared by Planscapes New Zealand Limited, titled “Proposed Subdivision of Lot 1 DP 20561 and Sec 1 SO 15517”, and attached to this consent as **Plan A - RM100199**.

Easements

2. Easements are to be created over any services located outside the boundaries of the lots that they serve as easements-in-gross to the Council for Council reticulated services or appurtenant to the appropriate allotment.
3. Reference to easements is to be included in the Council resolution on the title plan at the section 223 stage.

Forestry Emanation Easement

4. A forestry emanations easement shall be registered over Lot 1 in favour of Computer Freehold Register 407478 (Part Section 4, 10-12, 61 Square 44 and Section 2 Survey Office Plan 15517). This easement shall be in general accordance with the wording set out in Appendix 1 attached to this consent.
5. The consent holder shall offer in writing the same forest emanations easement wording as is provided for in Condition 4 and in Appendix 1 to Mr Alistair Grant to apply to Computer Freehold Register NL 9A/903 (Lot 1 DP 14156), Computer Freehold Register NL 11B/375 (Lot 1 DP 17207) and Computer Freehold register NL 11B/376 (Pt Lot 2 DP 14156). Evidence of the written offer shall be kept by the consent holder. The offer shall be made within a period of three months of the date when this consent commences (i.e. when it can legally be given effect to) and Mr Grant shall have a further period of three months to accept or decline the offer. In the event that Mr Grant accepts the offer then the easement shall be registered over Lot 1 in favour of his property as listed in this condition.

Access Formation, Right-of-Way A

6. The access shown as Right-of-Way A shown on Plan A - RM100199 shall be formed as follows between the chainage of 100 to 850 metres:
 - (i) A minimum lane width of 3.5 metres;
 - (ii) A maximum gradient of 1:5;
 - (iii) A two coat chip, asphaltic concrete, or concrete sealed surface where the gradient is 1:6 or steeper;
 - (iv) Any gaps between sections of seal that are required by point (iii) above that are less than 30 metres in length shall also be sealed to the same standard.
 - (v) 500 millimetre wide side drains with approved culverts;
 - (vi) Two 500 millimetre wide metal shoulders (one each side);
 - (vii) Compacted basecourse where the gradient is gentler than 1:6, subject to point (iv) above.

Advice Note:

It is intended that steep sections (steeper than 1:6) be sealed and that for any sections which are close together (i.e. less than 30 metres) that the seal shall be continuous. It is accepted that there may be some outlying sections between which there are breaks that are greater than 30 metres which are surfaced with metal. It is also advised that asphaltic concrete should be used with caution where there is a risk of ice or frost accumulation which may cause vehicle slippage.

Engineering Plans

7. Engineering plans detailing the right-of-way formation are required to be submitted to the Council's Engineering Manager for approval prior to the commencement of any works. All engineering details are to be in accordance with the Council's Engineering Standards and Policies 2008.

Commencement of Works and Inspection

8. The Council's Engineering Department shall be contacted five working days prior to the commencement of any engineering works.
9. No works shall commence on-site until the engineering plans have been approved by the Council's Engineering Manager.

Engineering Works

10. All works shall be constructed in strict accordance with the Council's Engineering Standards and Policies 2008, or else to the Council's Engineering Manager's satisfaction.

Engineering Certification

11. At the completion of works a suitably experienced chartered professional engineer or registered professional surveyor shall provide the Council's Engineering Manager with written certification that the works have been constructed in accordance with the approved engineering plans, drawings and specifications and any Council approved amendments.

Consent Notices

12. The following consent notices shall be registered on the certificate of title for the relevant allotments pursuant to Section 221 of the Resource Management Act.

The consent notices shall be prepared by the consent holder's solicitor and submitted to the Council for approval and signing. All costs associated with approval and registration of the consent notices shall be paid by the consent holder.

Consent notices in accordance with conditions of this consent shall be placed on the allotments as they are created:

A. Building Location Restrictions

For Lot 2 all buildings shall be located within the Building Location Area shown in **PLAN B, RM100199 - Building Location Area** attached.

B. Spring Water supply

No water supply shall be taken from the spring that feeds into the water easement D, E and F, created by transfer 5053722.2 on the CT 100963, except where it is taken downstream from the existing water take.

C. Building Colour

The exterior of all new buildings (including water tanks) on Lots 1 and 2 shall be finished in colours that are recessive and which blend in with the immediate environment.

Buildings shall be finished in colours that meet the following standards:

Colour Group	Walls	Roofs
Group A	A05 to A14 and reflectance value < 50%	A09 to A14 and reflectance value < 25%
Group B	B19 to B29 and reflectance value < 50%	B23 to B29 and reflectance value < 25%
Group C	C35 to C40 and reflectance value < 50%, and hue range 06-16	C39 to C40 and reflectance value < 25%, and hue range 06-16
Group D	D43 to D45 and reflectance value < 50%, and hue range 06-12	Excluded
Group E	Excluded	Excluded
Finish	Matt or Low-Gloss	Matt or Low-Gloss

* Based on BS5252:1976 (British Standard Framework for Colour Co-ordination for Building Purposes). Where a BS5252 descriptor code is not available, a sample colour chip equivalent to acceptable BS5252 colours is satisfactory.

The exterior surfaces of all buildings shall be non-reflective.

D. No further subdivision of Lots 1 and 2

There shall be no further subdivision of Lot 1 or Lot 2 unless:

- (i) the subdivision is a minor boundary adjustment where no additional titles are created;
- (ii) the Tasman Resource Management Plan (or subsequent relevant planning document) changes such that the proposed subdivision is either a permitted or controlled activity; or
- (iii) the subdivision is for the sole purpose of creating a separate title for a network utility to be used by a network utility operator (as defined in Section 166 of the Resource Management Act 1991).

For the purposes of this consent notice "subdivision" has the same meaning as that set out in Section 218 of the Resource Management Act 1991.

E. Residential Building on Lot 2

Lot 2 shall contain no more than one residential building.

F. Water Storage for Fire fighting

Any residential building on Lot 2 shall be provided with a fire fighting water supply system that complies with SNZ PAS 4509:2008 - The NZFS Fire Fighting Water Supplies Code of Practice." This system shall be maintained.

G. Services

Power and telephone cables within Lot 2 shall be laid under ground to the dwelling site.

QEII Trust Covenants

13. The covenant areas of native bush shown on Plan A, as agreed to by the Queen Elizabeth II Trust, shall be protected by way of an Open Space covenant administered by the Queen Elizabeth II National Trust.

The covenant documentation shall be completed prior to the issue of the Section 224(c) certificate.

All costs shall be met by the applicant.

Cottage on Lot 2

14. All relevant building consents and resource consents (where required) shall be obtained for the cottage on Lot 2 prior to the issuing of the Section 224 (c) certificate, or alternatively; the building removed from the site. A report shall be provided to the satisfaction of the Council's Environment & Planning Manager confirming that the effluent disposal system can function without adversely affecting the receiving environment.

Financial Contributions

15. Payment of financial contributions assessed as follows:

Reserves and Community Services

5.5% of the assessed market value of the area of one notional 2,500 square metre area within a notional building Site on Lot 2 as identified on Plan A - RM100199.

The valuation will be undertaken by Council's valuation provider within one calendar month of Council receiving a request for valuation from the Consent Holder. The request for valuation should be directed to the Consents Administration Officer at Council's Richmond office. The cost of the valuation will be paid by Council.

If payment of the financial contribution is not made within two years of the date of this consent, a revised valuation will be required and the cost of the revised valuation shall be paid by the Consent Holder.

Advice Note - Development Contributions

Council will not issue the Section 224(c) certificate 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 which are the amount to be paid and will be in accordance with the requirements that are current at the time the relevant development contribution is paid in full.

This consent will attract a development contribution for one new lot in respect of roading.

GENERAL ADVICE NOTES

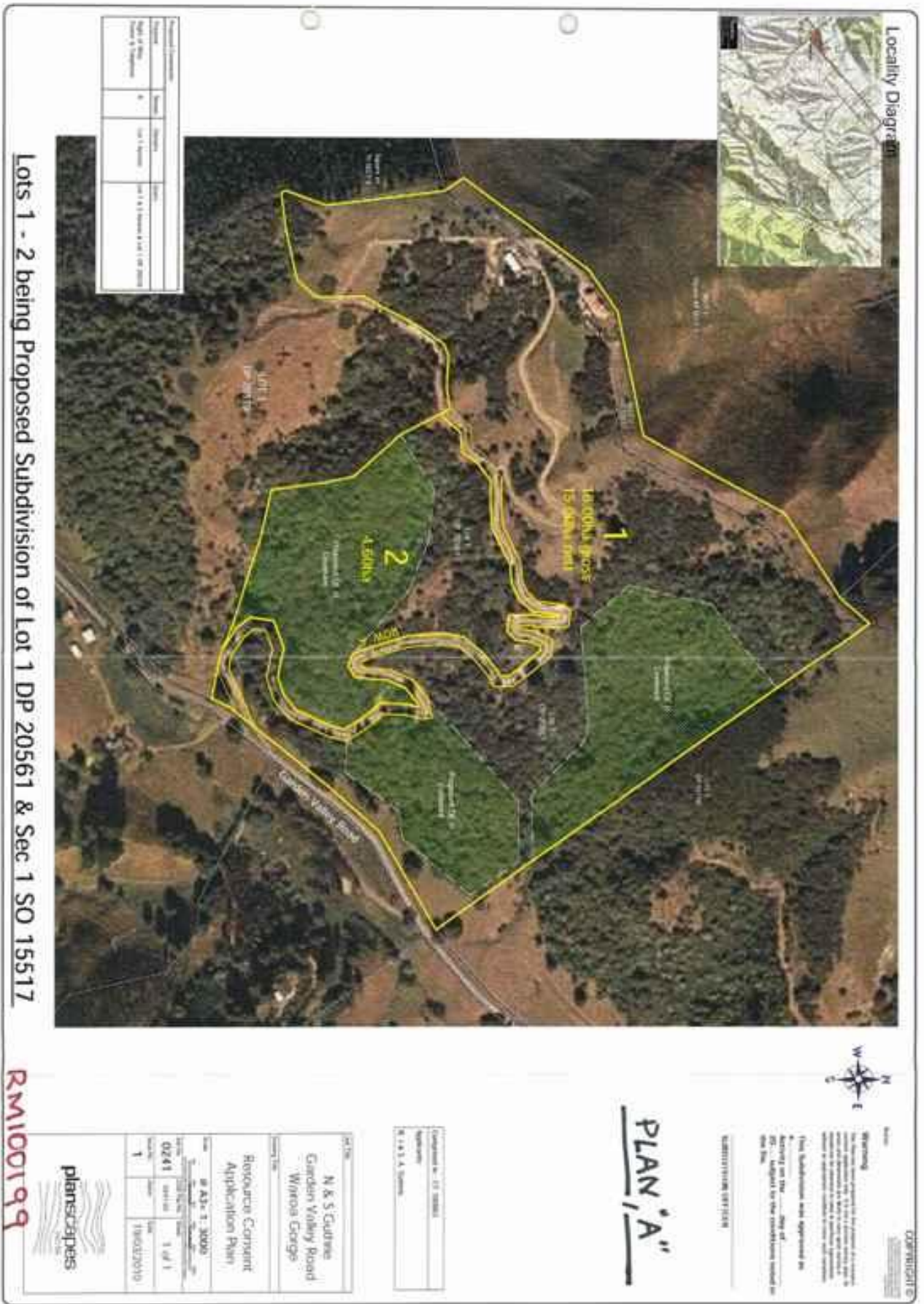
1. Officers of the Council may also carry out site visits to monitor compliance with resource consent conditions.
2. The Consent Holder should meet the requirements of the Council with regard to all Building and Health Bylaws, Regulations and Acts.
3. Access by the Council or its officers or agents to the property is reserved pursuant to Section 332 of the Resource Management Act.
4. All reporting required by this consent should be made in the first instance to the Council's Co-ordinator Compliance Monitoring.
5. Council draws your attention to the provisions of the Historic Places Act 1993 that require you in the event of discovering an archaeological find (eg, shell, midden, hangi or ovens, garden soils, pit, depressions, occupation evidence, burials, taonga) to cease works immediately, and tangata whenua, the Tasman District Council and the New Zealand Historic Places Trust should be notified within 24 hours. Works may recommence with the written approval of the Council's Environment & Planning Manager, and the New Zealand Historic Places Trust.
6. This resource consent only authorises the activity 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 Tasman Resource Management Plan (TRMP);
 - b) be allowed by the Resource Management Act; or
 - c) be authorised by a separate resource consent.
7. If the removal or destruction of indigenous vegetation does not comply with Permitted Activity Rule 17.6.5.1, additional resource consent will be required.

Issued this 27th day of August 2010



Cr Noel Riley
Chair of Hearings Committee

PLAN A, RM100199 - Scheme Plan



Lots 1 - 2 being Proposed Subdivision of Lot 1 DP 20561 & Sec 1 SO 15517

RM100199

<p>planscapes</p>	
<p>Project No: 0241</p>	<p>Scale: 1 of 1</p>
<p>Date: 11/03/2010</p>	<p>Project Name: N.S. S. Gaudine Garden Valley Road Wairoa Gorge</p>
<p>Resource Consent Application Plan</p>	<p>Project No: 0241</p>
<p>Scale: 1 of 1</p>	<p>Date: 11/03/2010</p>

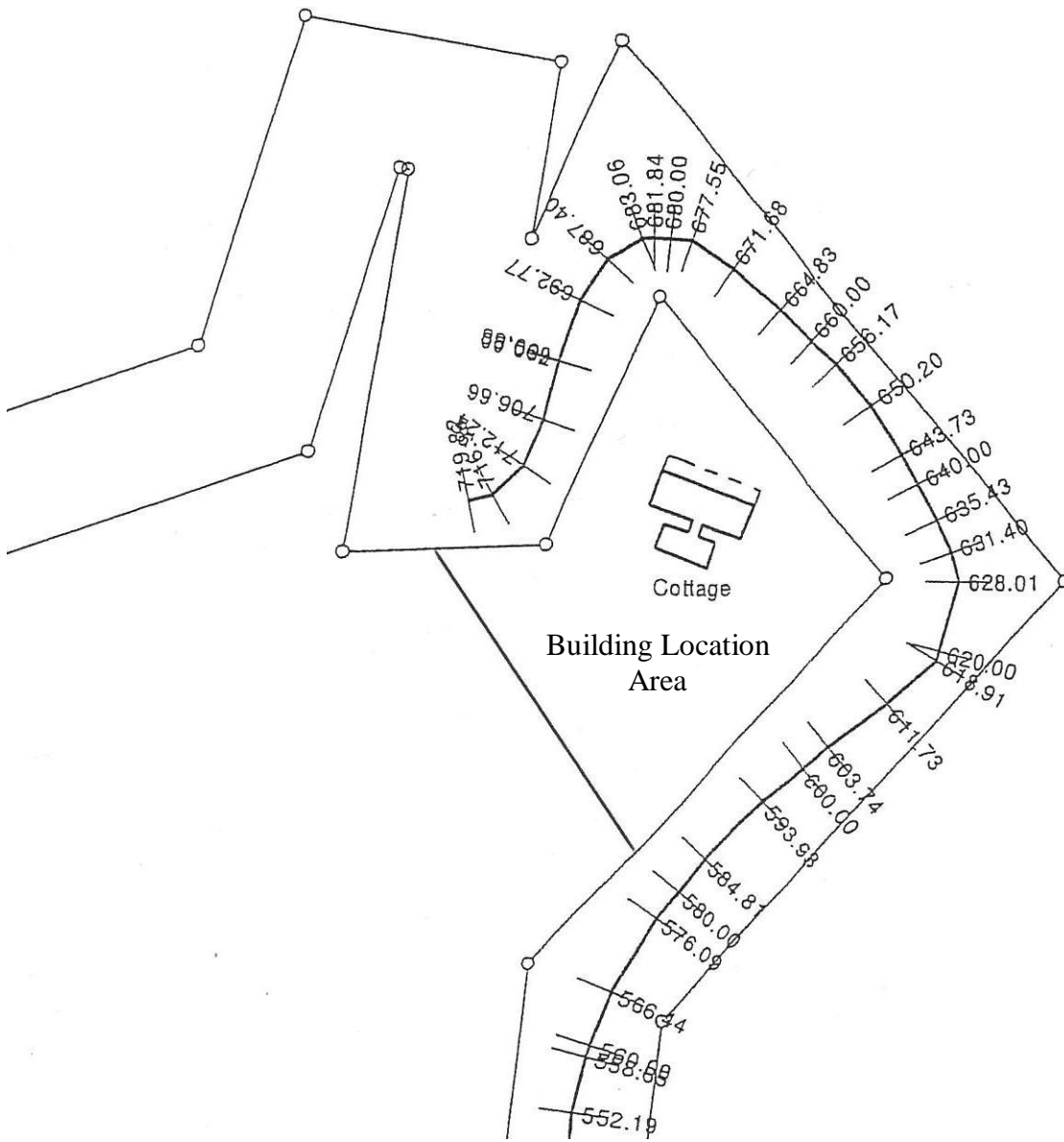
<p>Project No: 0241</p>
<p>Scale: 1 of 1</p>

PLAN 'A'

This Subdivision was approved by the Resource Consent Authority on the 11th day of November 2010. Subject to the conditions stated in the Plan.

SUBMITTED TO THE COUNCIL

PLAN B, RM100199 - Building Location Area



APPENDIX 1 Forestry Emanations Easement

Right to Emit or Discharge Noise and Drafts from Silviculture, Logging and Forest Produce Transportation Operations:

1. The Grantee shall have the full, free, uninterrupted right, liberty and privilege for themselves and their respective servants, tenants, agents, licensees, and grantees from time to time to emit or discharge noise from the silviculture, logging, transportation and ancillary activities, emissions from logging and transportation operations and drifts and discharge from silviculture activities and to allow such emanations to escape, pass over or settle on the Servient Tenement in the course of the use of the Dominant Tenement for forestry purposes (authorised activities) with the intent that such aforementioned rights shall run with the Servient Tenement and be forever appurtenant to the Dominant Tenement.
2. Terms, conditions, covenants or restrictions in respect of the above easement:
 - a) All noise and drifts emitted from the silviculture, logging and transportation activities shall not exceed the maximum level permitted in any relevant District Resource Management Planning document.
 - b) The owners or occupiers from time to time of the Servient Tenement shall not:
 - i) make or lodge; nor
 - ii) be party to; nor
 - iii) finance nor contribute to the costany submission, application, proceeding or Appeal (either pursuant to the Resource Management Act 1991 or otherwise) designed or intended to limit, prohibit or restrict the continuation or recommencement of the authorised activities by the owners or occupiers from time to time of the Dominant Tenement.
 - c) If the Grantee carries out on the Dominant Tenement all authorised activities in accordance with the Resource Management Act 1991 or any statutory amendment or replacement thereof, and in accordance with any other legislative requirement affecting authorised activities, then the Grantor shall not at any time make any claim or demand or take any action or proceedings or be a part to or otherwise support in any way or allow or permit any action or proceedings for damages for negligence, nuisance or interference of any nature (including damage or nuisance arising out of negligence of the Grantee or any of its employees) directly or indirectly in any way arising out of authorised activities.

Date Confirmed:

Chair: