

# MINUTES

**TITLE:** Environment & Planning Subcommittee - Commissioner Hearing  
**DATE:** Monday 29 November 2010  
**TIME:** 12.59 pm  
**VENUE:** Council Chambers, 189 Queen Street, Richmond

**PRESENT:** Cr S G Bryant (Chair) and Cr B W Ensor

**IN ATTENDANCE:** Resource Consent Manager (P Doole), Consent Planner – Subdivision (W Horner), Consent Planner – Forward Reserves (R Squire), Administration Officer (J A Proctor)

## **APPLICATION – P Warren, Pigeon Valley Road, Wakefield**

A Section 357 objection to Condition 9 (Financial Contribution for Reserves and Community Services) of RM100507 that seeks the deletion of Condition 9.

The application site is located at 253 Pigeon Valley Road, Wakefield, being legally described as Part Section 1 Block 3 District of Waimea South.

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

### **Decision of the Tasman District Council through Hearing Commissioners**

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

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

**COMMISSIONERS:** Cr Stuart Bryant (Chairperson)  
Cr Brian Ensor

**APPLICANT:** Mr Paul Newton (Registered Professional Surveyor)  
Mr Peter Warren (Applicant/Objector)

**REPORTING OFFICERS:** Mr Wayne Horner (Consents Planner, Subdivisions)  
Ms Ros Squire (Reserves Planner)

**IN ATTENDANCE:** Assisting the Commissioners:  
Mr Phil Doole (Resource Consents Manager)  
Ms Julie Proctor (Administration Officer)

## 1. BACKGROUND TO THE OBJECTION

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

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

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

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

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

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

## 2. THE OBJECTION

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

## 3. PROCEDURAL MATTERS

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

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

#### **4. REPORT AND EVIDENCE HEARD**

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

##### **4.1 Officer's Report - Mr Wayne Horner**

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

##### **4.2 Applicant's Evidence - Mr Paul Newton**

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

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

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

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

### **4.3 Consent Officer - Mr Wayne Horner**

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

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

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

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

### **4.4 Reserves Planner - Ms Ros Squire**

In response to our questions, Ms Squire stated that there were significant differences between tourist accommodation and residential accommodation. She said that residential use rights meant that holders could enjoy the use of District assets in perpetuity. She used public libraries as an example.

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

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

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

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

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

## **5. PRINCIPAL ISSUES AND FINDINGS**

The principal issues that were in contention were:

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

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

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

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

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

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

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

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

## 6. RELEVANT STATUTORY PROVISIONS

### 6.1 Plan Provisions

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

### 6.2 Part II Matters

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

## 7. DECISION

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

**DISMISS** the objection to Condition 9 of Consent RM100507; and

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

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

### **“Local Government Act 2002 Development Contributions**

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

## 8. REASONS FOR THE DECISION

- a) The financial contribution condition has been lawfully imposed on the one additional allotment.
- b) Requiring a reserves and community services levy on additional allotments that have existing dwellings at time of subdivision is consistent with Council practice and implementation of the TRMP rules.
- c) Requiring the maximum reserves and community services levy (being 5.62% of the land value of a notional 2500 square metre building site on the additional allotment) is consistent with Council practice and implementation of the TRMP rules.
- d) The requirement to pay a financial contribution for reserves and community services at time of subdivision has not substantially changed since 1990 when the dwelling on proposed Lot 1 was built.
- e) It is reasonable and equitable to impose the full levy as defined by the 5.62% of land value quantum because the impact of the dwelling on proposed Lot 1, with

regard to reserves and other community services, will differ from the existing tourist accommodation activity.

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

Issued this 20<sup>th</sup> day of December 2010

A handwritten signature in black ink, appearing to read 'S Bryant', written in a cursive style.

Cr S Bryant  
**Hearings Commissioner (Chairperson)**



## RESOURCE CONSENT DECISION

**Resource Consent Number:** RM100507

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

**Peter Maurice Warren and Alison Margaret Warren**

(hereinafter referred to as “the Consent Holder”)

**Activity authorised by this consent:** To subdivide the land described as Part Section 1 Block 3 District of Waimea South (NL82/114) to create Lot 1 containing an area of 1.6 hectares and Lot 2 containing an area of 8.4 hectares with a right-of-way over Lot 2 to provide access to Lot 1.

### Location Details:

Address of property: 253 Pigeon Valley Road, Wakefield

Legal description: Part Section 1 Block 3 District of Waimea South

Computer Freehold Register: NL82/114

Valuation number: 1937005000

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

### CONDITIONS

#### General

1. The subdivision shall be undertaken in accordance with the scheme plan prepared by Newton Survey, titled *Lots 1 and 2 being Proposed Subdivision of CFR NL82/114, 253 Pigeon Valley Road*, dated 30 July 2010 and attached to this consent as Plan A. If there is conflict between the information submitted with the consent application and any conditions of this consent, then the conditions of this consent shall prevail.



## **Easements**

2. Easements are to be created over any services located outside the boundary of the allotment that they serve in relation to power and telephone services. Reference to easements is to be included in the Council resolution on the title plan and endorsed as a Memorandum of Easements.
3. Easements shall be created over any right-of-way and shall be shown in a Schedule of Easements on the survey plan submitted for the purposes of Section 223 of the Act.

Easements shall be shown on the land transfer title plan and any documents shall be prepared by a solicitor at the Consent Holder's expense.

4. The survey plan that is submitted for the purposes of Section 223 of the Act shall include reference to easements and define the sight line covenant area.

## **Sight Lines**

5. The vegetation and/or structures within the sight line visibility area required for vehicles exiting Lot 2 shall be removed, to the satisfaction of Council's Engineering Manager.

## **Access**

6. The vehicle crossing from Pigeon Valley Road for Lot 2 shall have a minimum carriageway width of 5.0 metres and shall be designed and constructed in accordance with attached Plan B with:
  - (a) a formed and sealed surface between the edge of the seal of the carriageway of Pigeon Valley Road to at least 10.0 metres from the edge of the carriageway;
  - (b) the first 6.0 metres in from the vehicle access carriageway formation from the sealed part of Pigeon Valley Road shall have a maximum grade of not more than 1-in-9;
  - (c) a minimum 375 millimetre diameter culvert drain shall be provided where the vehicle crossing is over a roadside drain;
  - (d) vehicle crossings shall be permanently surfaced with chip seal (minimum Grade 4 chip first coat, followed by a Grade 6 void fill second coat), asphaltic concrete or concrete;
  - (e) a Vehicle Access Crossing Permit is shall be applied for from Council's Engineering Department prior to any construction works taking place on the crossing for Lot 2.

## Engineering Works

7. All works shall be constructed in strict accordance with the Tasman District Council Engineering Standards 2008, or to the Tasman District Council Engineering Manager's satisfaction.

## Consent Notices

8. The following consent notices shall be registered on the certificates of title for Lots 1-2 pursuant to Section 221 of the Resource Management Act. The consent notices shall be prepared by the Consent Holder's solicitor and submitted to the Council for approval and signing. All costs associated with approval and registration of the consent notices shall be paid by the Consent Holder.
  - (a) The sight line protection areas identified on the Land Transfer Plan for Lot 1 DP.....and Lot 2 DP.....shall be maintained to be clear of landscape plantings.
  - (b) No new building shall be constructed on Lot 1 for use as a residential dwelling unless approved by resource consent.
  - (c) The owners of Lot 1 DP.... and Lot 2 DP.....shall not call upon the Tasman District Council to carry out any works within Right-of-way A.

## Financial Contributions

9. 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 5.62 per cent of the total market value (at the time subdivision consent is granted) of a notional 2500 square metre building site within Lot 1;
  - (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 5.62 per cent contribution, less the value of the public access easement, shall be recalculated on the current market valuation. Payment shall be made within two years of any new valuation.

## Advice Notes:

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

[deleted]

## ADVICE NOTES

### Council Regulations

1. This resource consent is not a building consent and the Consent Holder shall meet the requirements of Council with regard to all Building and Health Bylaws, Regulations and Acts.

### Other Tasman Resource Management Plan Provisions

2. Any activity not covered in this consent shall either comply with: 1) the provisions of a relevant permitted activity rule in the Tasman Resource Management Plan; or 2) the conditions of separate resource consent for such an activity.

### Resource Management Act 1991

3. Access by the Council's officers or its agents to the property is reserved pursuant to Section 332 of the Resource Management Act 1991.
4. 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.

### Local Government Act 2002 Development Contributions

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

## REASONS FOR THE DECISION

### Background to Proposed Activities

In 1990 a dwelling for tourist accommodation was constructed as a permitted activity in conjunction with the existing dwelling on the current title. No resource consent was required for this tourist accommodation dwelling as it was a permitted activity under the Waimea Transitional Plan, Section 501.10. There is no requirement for the tourist dwelling to be on a site occupied by an existing dwelling. Existing use rights for the tourist dwelling will be withdrawn once Lot 1 changes ownership. No new building that is a dwelling will be constructed on Lot 1 without resource consent approval.

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

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

Zoning: Rural 2 Zone  
Area(s): Land Disturbance Area 1

No person may subdivide land within Tasman District as a permitted activity according to the TRMP. The subdivision authorised by this resource consent is deemed to be a discretionary activity under Rule 16.3.6.2 of the TRMP.

## **Principal Issues (Actual and Potential Effects on the Environment)**

The principal issue(s) associated with the proposed activities involve the actual and potential effects on the environment. For this application these include:

### ***Rural Land Fragmentation Patterns***

The current title contains Class D Soils with a variable contour so the loss of productivity as a result of this proposal is not considered to be significant.

### ***Access***

The proposed right of way will be in the same location as the existing access. There has been some vegetation clearance to provide improved sight line visibility. Council's Development Engineer has advised that the required sight line visibility is 115 metres along this part of Pigeon Valley Road.

The applicant has requested that the existing access formation be accepted by Council in this case. While the existing formation is narrow, it is short and straight with good visibility over its length. There will be room for vehicles to pass at the new entrance with 5.0 metres of sealed width required, and at the end of the right-of-way. With only two lots served by this right-of-way traffic conflict should not be significant.

### ***Visual Effects***

At present the majority of Lot 1 is covered in mature landscape vegetation that obscures the existing tourist accommodation building. As a permitted activity the tourist accommodation building may be altered to be up to 7.5 metres in height and the landscaping removed. This would make the existing building more visible to the surrounding neighbours. The applicant has volunteered to relinquish the existing use rights for the tourist dwelling on Lot 1 once there is a change of ownership and therefore this building will become the dwelling for Lot 1.

### ***Reserve Fund Contribution***

As the dwelling for visitor accommodation will become the dwelling for Lot 1 there will be an increase in the level of occupancy for the dwelling and also demand for recreational services in the surrounding area. Therefore, it is considered appropriate to apply the requirements of Rule 16.5.2.1 for the creation of this new title and require a reserve fund contribution.

The Council considers that the adverse effects of the activity on the environment will be no more than minor for the following reasons:

- (a) the existing use rights for the tourist accommodation dwelling have been specifically withdrawn and the tourist accommodation dwelling will become the residential dwelling for Lot 1;
- (b) no additional building development rights are being gained by this subdivision and therefore there will be no additional visual effects as a result of this subdivision;

- (c) there may be additional traffic using Pigeon Valley Road as a result of this subdivision. However, these additional traffic effects would be less than minor in this case.

### **Relevant Statutory Provisions**

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

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

Most of the objectives and policies contained within the TRPS are mirrored in the TRMP. The activity is considered to be consistent with the relevant objectives and policies contained in Chapters 5 and 7 of the TRMP.

### **Part II Matters**

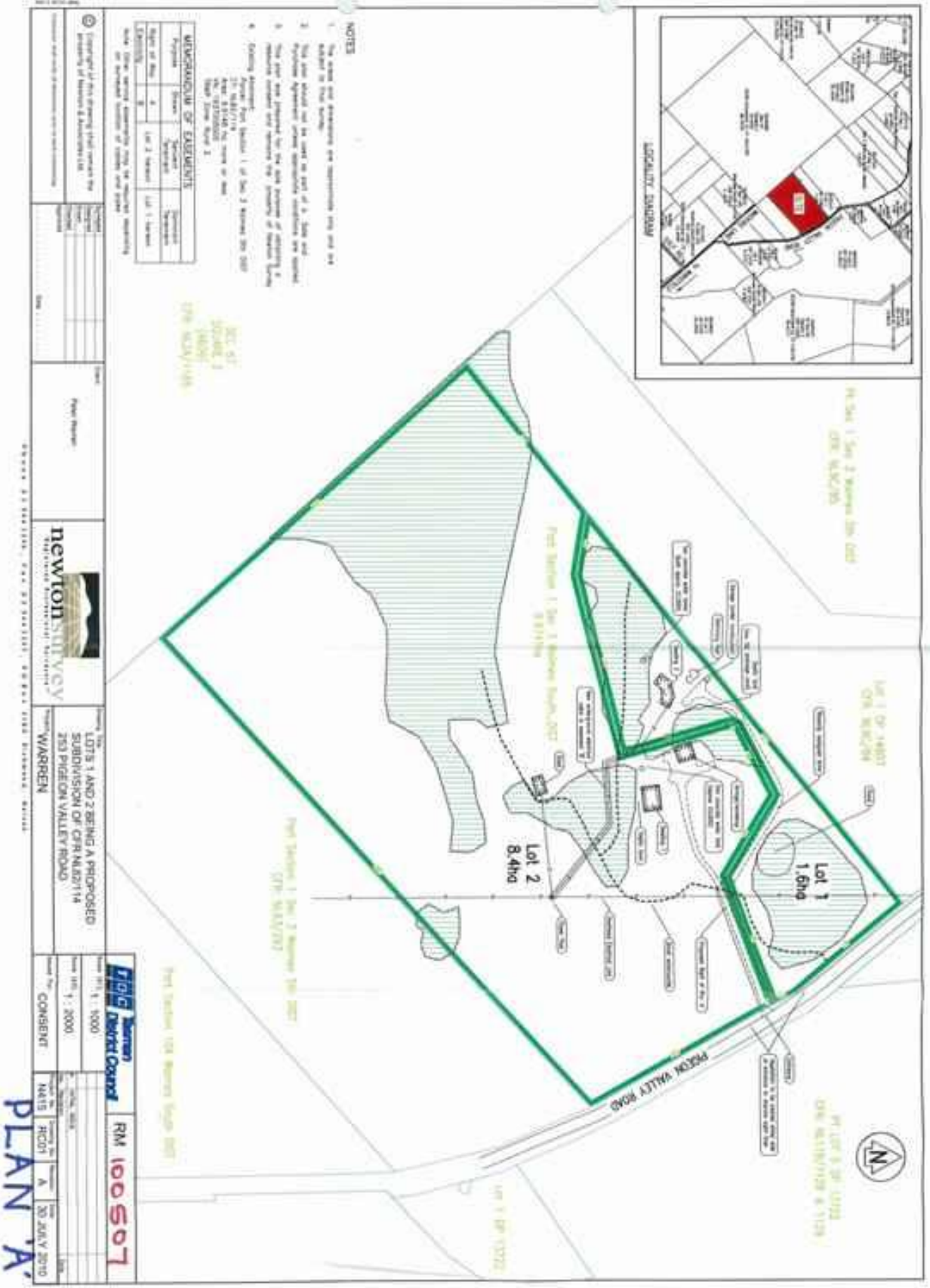
The Council has taken into account the relevant principles outlined in Sections 6, 7 and 8 of the Act and it is considered that granting this resource consent achieves the purpose of the Act as presented in Section 5.

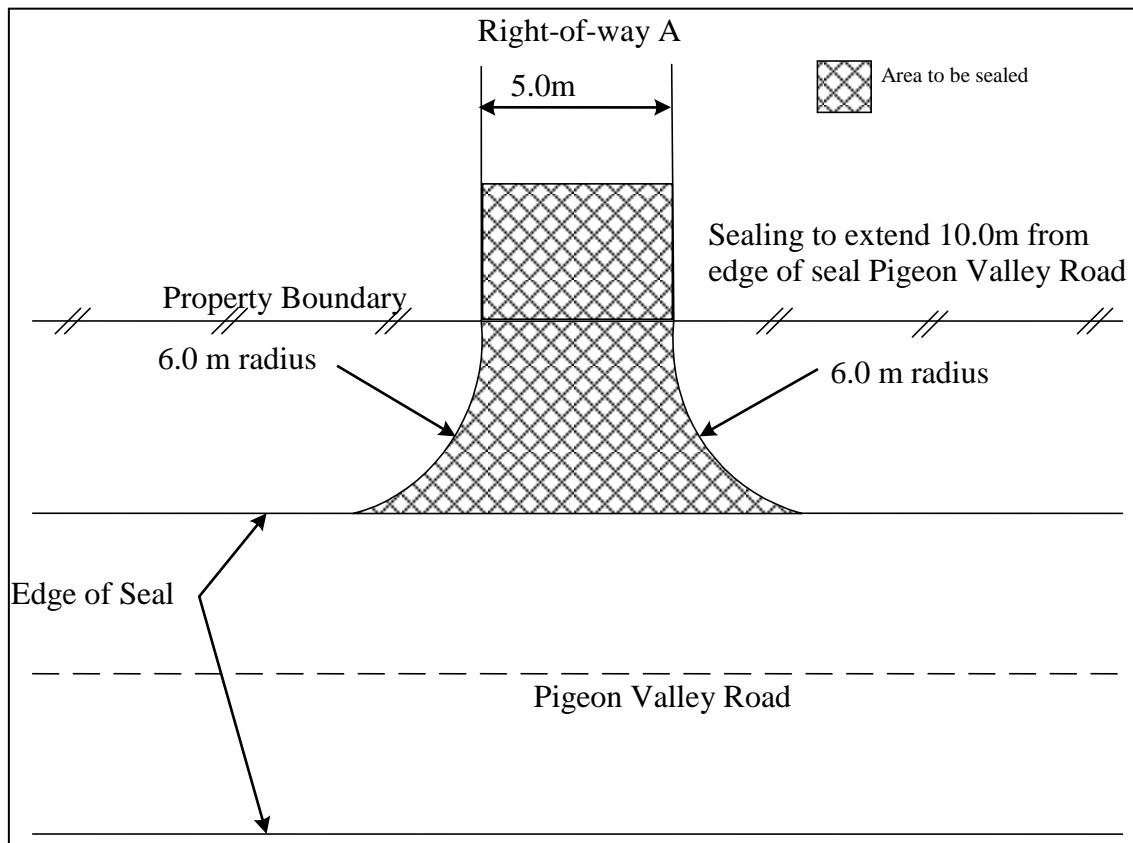
### **Notification and Affected Parties**

The adverse environmental effects of the activity are considered to be no more than minor. The Council's Resource Consents Manager has, under the authority delegated to him, decided that the provisions of Section 95 of the Act have been met and therefore the application has been processed without notification.

This consent is granted on 7 October 2010 under delegated authority from the Tasman District Council by:

Wayne Horner  
**Consent Planner, Subdivision**





Date Confirmed:

Chair: