MINUTES

TITLE:	**Environment and Planning Subcommittee**
DATE:	**Monday 27 June 2011**
TIME:	**9.30 am**
VENUE:	**Tasman Council Chamber, 189 Queen Street, Richmond.**
PRESENT:	Cr B W Ensor (Chair), G A Glover, C M Maling
IN ATTENDANCE:	Consent Planner - Subdivision (P Webby), Principal Resource Consents Officer (J Butler), Resource Scientist - Land (A Burton), Executive Assistant (V M Gribble)

1. APPLICATION No. RM110277 - WAKATU INCORPORATION, WHAKAREWA STREET, MOTUEKA

The application seeks to subdivide 6.9305 hectares of land as follows:

1. Lot 1 with an area of 2.3 hectares containing an existing dwelling and coolstore complex.
2. Lot 2 with an area of 4.6 hectares.

The land has a Rural 1 zoning according to the Tasman Resource Management Plan.

The application site is located at 278 Whakarewa Street, Motueka, being legally described as Lot 1 DP 11124 and Lot 1 DP 11632 (CT NL7A/241).

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 Ensor/Maling
EP11-06-02

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

Wakatu Incorporation

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
Wakatu Incorporation	Consideration of a planning application	A right of appeal lies to the Environment Court against the final decision of Council.

CARRIED

Moved Crs Glover/Maling
EP11-06-03

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

2. APPLICATION No. RM110277 - WAKATU INCORPORATION, WHAKAREWA STREET, MOTUEKA

Moved Crs Ensor/Maling
EP11-06-04

THAT pursuant to Section 104B of the Resource Management Act, the Committee GRANTS consent to Wakatu Incorporation 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 27 June 2011
Site visit undertaken on 24 June 2011
Hearing closed on 1 July 2011

A Hearings Committee ("the Committee") of the Tasman District Council ("the Council") was convened to hear the application lodged by **Wakatu Incorporation** ("the Applicant"), to subdivide land at 278 Whakarewa Street into two lots: proposed Lot 1 of 2.3 hectares containing an existing coolstore, and a balance area (proposed Lot 2) of 4.6 hectares. The application, made in accordance with the Resource Management Act 1991 ("the Act"), was lodged with the Council and referenced as RM110277.

HEARING COMMITTEE: Brian Ensor, Chairperson
Glenys Glover
Kit Maling

APPLICANT: Graham Thomas (Applicant's consultant)
Mr Mike Ingram (Property Manager, Wakatu Incorporation)
Mr Martyn King (CEO, Ngātahi Horticulture)

CONSENT AUTHORITY: **Tasman District Council**
Ms Pauline Webby (Consent Planner, Subdivisions)
Mr Andrew Burton (Resource Scientist, Land)

SUBMITTERS: Mr Peter Canton

IN ATTENDANCE: Mr Jeremy Butler (Principal Resource Consents Adviser - Assisting the Committee)
Mrs Valerie Gribble (Committee Secretary)

1. SUMMARY

The Committee has **GRANTED** the resource consent to subdivide land with amendments to the lot boundaries, and subject to conditions.

2. DESCRIPTION OF THE PROPOSED ACTIVITY

The subdivision application proposed dividing an existing 6.9 hectare title to create a 2.3 hectare allotment encompassing the existing dwelling and the coolstore (proposed Lot 1), leaving a balance area of 4.6 hectares (proposed Lot 2)[1]. Proposed Lot 2 has 66 kV Electricity Transmission Line bisecting the allotment. The property is located at 278 Whakarewa Street with a vehicle crossing and separate access from Whakarewa Street formed to service the property in accordance with the requirements of RM090063 which includes the Environment Court Consent order requirements.

The balance of the property is planted and set up for hop production and is currently under lease by Northwood Hops.

The application site is legally described as Lot 1 DP11124 and Lot 1 DP11632 (CFR NL7A/241)

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 1
Area(s): Land Disturbance 1, 66 kV Electricity Transmission Lines

The proposed activity is assessed as a discretionary activity under Rule 16.3.5.2 as both Lots 1 and 2 have areas that are less than the minimum size of 12 hectares specified in the controlled activity rules 16.3.5.1.

4. NOTIFICATION AND SUBMISSIONS RECEIVED

The application was notified on 23 April 2011 pursuant to Section 93 of the Act. Submissions closed on 24 May 2011. Three submissions were received. The following is a summary of the written submissions received and the main issues raised:

[1] This layout was amended in the hearing so that the existing dwelling was included in proposed Lot 2.

Neutral submissions

Submitter	Reasons
Transpower	Potential effects that may arise from further development on proposed Lot 2 in terms of their 66Kva Electricity Transmission Lines.

Submissions in opposition

Submitter	Reasons
Mr P Canton	Fragmentation loss of site amenity, and commercial reasons.
Mr M Whittaker	• Inappropriate subdivision in terms of Part II 6(f) of the RMA, in terms of the historic building on the adjoining property at 276 Whakarewa Street, with comments in support from NZ Historic Places Trust. • Using RMA to improve land value. • Public safety in terms of access.

5. PROCEDURAL MATTERS

The day after the public part of the hearing was adjourned we received a written communication from Mr Martin Whittaker who was overseas at the time of the hearing. We understand that the written communication represents the submission that Mr Whittaker may have made if he had been able to attend the hearing. As the communication was received after the close of the public hearing, and in fairness to the other participants, we are unable to accept it as part of the hearing proceedings. However, we are satisfied that it is relevant for Mr Whittaker to comment and we may have regard to his communication as an "Other Matter" under Section 104 of the Act.

6. EVIDENCE HEARD

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

6.1 Applicant's Evidence

Mr Graham Thomas

Mr Thomas explained that Ngātahi Horticulture is a partnership of two Māori entities: Wakatu Incorporation and Ngati Rarua Atiawa Iwi Trust (NRAIT).

Mr Thomas said that the coolstore facility on proposed Lot 1, and the land between the coolstore buildings and Whakarewa Street, has been sold to A R Fraser and I M Wilde who will continue to operate the coolstore.

Mr Thomas provided a list of historical resource consents that have been granted to allow packhouses and coolstores to be subdivided off from the surrounding land. He argued that there is a strong precedent to allow such subdivisions to occur.

Mr Thomas said that fragmentation of the land has already occurred due to the presence of the coolstore complex. He also said that the existing rural use (hops) on the remainder of Lot 1 is protected by a commercial lease.

Mr Thomas then said that the applicant now sought to amend the proposal so that the new boundary would run between the dwelling and the western wall of the coolstore complex. This would mean that the existing dwelling would be on Lot 2 and therefore no further dwelling could be constructed on that Lot without further consent.

Mr Thomas submitted that, overall, the subdivision is not creating any adverse effects on productive values over and above what has resulted from previous consents.

In addressing rural amenity, Mr Thomas said that the application does not change the existing amenity or character values. He said that concerns about a new residential lot are unfounded given volunteered consent notices that restrict further residential development.

Mr Thomas did not consider there would be any adverse effect on the adjoining historic house owned by Mr Whittaker, or that Section 6(f) of the Act would be relevant to the decision.

Regarding the electricity transmission lines, Mr Thomas provided an email from Mr Brian Warburton of Transpower which accepted that the volunteered consent notice on proposed Lot 2 would address its concerns and the condition sought in its submission would not be necessary.

Mr Thomas sought that Financial Contributions be waived as there will be no increases in demand for community services as a result of the subdivision.

Cr Glover asked whether the company has complied with requirements within the Environment Court decision. Mr King said all obligations have been met.
Cr Glover asked why the company decided to include such a large area of land with the coolstore lot. She asked if they had considered some of that area being part of Lot 2. Mr Thomas said that he did not know the reason behind the design of the subdivision, but that from a productivity point of view it should not be a problem as a lease ensures the continuation of its current use.

Cr Maling noted that the gap between the corner of the house and the coolstore property was only 2 to 3 metres which meant there would only be a 1.5 metre gap on that corner. Mr Thomas agreed that would be so, unless more land was put with the coolstore.

Cr Ensor, looking at Mr Thomas's Appendix D, noted that most similar subdivisions have been for much smaller areas that have been subdivided off with coolstores. Mr Thomas said the location of the coolstore is not ideal but is historical. He said that drawing boundaries close around it will create more problems.

6.2 Submitters' Evidence

Mr Peter Canton

Mr Canton said that the Motueka community is largely centred around fishing and horticulture. Therefore he was concerned and opposed to the subdivision of an "above-average piece of rural land".

He said that a subdivision, even with restrictive covenants, will still create demand for ancillary buildings.

Mr Canton pointed out that in other examples where coolstores have been subdivided, the balance area of land is still high and productive, whereas this application leaves a much lesser area. He said that if the land were to be amalgamated with another adjoining title then his concerns would be alleviated, but that is not the case.

Mr Canton considered that the future of Motueka's horticultural and agricultural industry is already under threat from expansion of Motueka and subdivision for non-rural purposes.

Overall, he sought that the decision made should put a primacy on protecting land from fragmentation and preservation of rural amenity.

6.3 Council's Reporting Officer's Report and Evidence

Ms Pauline Webby (Consent Planner, Subdivisions)

Ms Webby said that the applicant's proposal to realign the proposed boundary so that the dwelling is in proposed Lot 2, as well as the volunteered consent notice for Lot 1 that there would be no further residential activity, does go some way to allay her concerns. However, she felt that the residential house next to the coolstore complex could have an impact on authorised coolstore activities in the future and she still recommended rural emanations on the titles.

Cr Glover asked, in consideration of the other coolstore subdivisions, if Ms Webby thinks that this subdivision creates a precedent, or is it similar to the other examples. Ms Webby said it does create a pattern, but it is up to the panel to determine the weighting. Ms Webby agreed the area of land proposed to go with the coolstore complex in this case is bigger than the others listed. She said that there has been a historical trend towards coolstores and packhouses being separate from the productive part of the land.

Mr Andrew Burton (Resource Scientist, Land)

Mr Burton said it was difficult to determine what the effects of the subdivision would be. He said that when blocks get smaller they take on other values and it is unlikely that it will continue to be used productively. He said when blocks get down below 3 to 2 hectares the values rise as they become appealing for lifestyle block purposes.

Cr Ensor asked about the viability of the existing approximately 6 hectare block. Mr Burton said that the economics of horticulture change from season to season and decade to decade, and viability changes. The issue is around fragmentation; the smaller a block is the less likely it is to be used for intensive growing.

Cr Ensor asked about the quality of this land. Mr Burton said it is top of the scale. He said the Riwaka soil is one of the highest values, and the climate is extremely good.

6.4 Applicant's Right of Reply

Mr Thomas recognised the concerns we raised about building setbacks from a boundary between the coolstore complex and the dwelling. He said that prior to release of the Section 224 certificate, compliance with Building Act must be shown. If any upgrading works are needed they will be done.

Mr Thomas acknowledged the concerns about rural emanations and accepted easements.

Mr Thomas said that they (as applicant) have "no authority" to reduce the area of the coolstore title. He did not believe that the Council has the ability to reduce the area of Lot 1. He said that the application has been put forward and should be considered on those grounds. He said that the fact that there is a lease makes it different from other coolstore applications. Also, the consent notices being offered that restrict buildings and dwellings will give greater control.

6.5 Other Correspondence

Mr Whittaker's concerns are summarised thus:

- The application ignores the planning framework by seeking to subdivide Rural 1 land;
- The subdivision will not benefit local farming or horticulture and will encourage fragmentation;
- Approving this application will cement this facility in place; and
- Intensification of activities at the application site will erode the value and liveability of Mr Whittaker's adjacent heritage property.

Mr Whittaker sought that the application be declined.

7. PRINCIPAL ISSUES AND OUR MAIN FINDINGS

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

a) Is the separation of the coolstore from the surrounding productive land appropriate?

Mr Thomas presented little evidence in the hearing as to what the benefits of the subdivision are. Instead his evidence was limited to the facts that it has been done before (precedent) and the fact that it is a contractual obligation of the applicants to apply for consent.

While Mr Thomas is not obliged to elaborate on the reasons for the subdivision we are forced speculate that there is benefit in allowing the facility to be managed and owned separately from the surrounding productive land. It seems to be the modern way that packhouse and coolstore operations are more centralised and take fruit from around the Motueka area.

From the evidence presented to us we accept that there has been a trend towards subdivision of such facilities and, in principle, we do not necessarily see this as inappropriate.

b) Is the inclusion of approximately 1.5 hectares of land with the coolstore complex on proposed Lot 1 appropriate? To what extent will the proposal adversely affect the rural land resource and land productivity?

We heard uncontested evidence from Mr Burton that the land is amongst the highest quality in the District due to the quality of soil, the flat gradient, the sunshine hours, the rainfall and water availability.

Mr Thomas disputed the proposition that the inclusion of land with the coolstore in proposed Lot 1 will result in fragmentation of the rural land resource. Mr Thomas said that "*development of buildings on land is … fragmentation - as is recognised by Council."*

The definition in the TRMP of Land Fragmentation is:

> *Any increase over time in the number of separately developed properties in any area, through successive land subdivision to form new land parcels and associated land development activities such as buildings and roads.*

While buildings and roads are mentioned, they are clearly in association with subdivision. Therefore, we consider that subdivision is by far the main mechanism by which land is fragmented. In the case of this site the land is not fragmented, part of it is simply used for a different purpose (viz. a coolstore complex).

It is the proposed subdivision that will cause land fragmentation as it is defined in the TRMP. However, Mr Thomas suggested that regard must be had to the lease with Northwood Hops Ltd. We disagree. The lease tabled by Mr Thomas - effective until 2018 at the latest - does nothing to remedy or mitigate the fragmentation of land caused by this subdivision. Deterioration of the productive land resource is an issue on a timescale far greater that.

Overall, we agree with Mr Burton and Mr Canton and consider that this proposal will cause a more than minor fragmentation of land of high productive value.

d) What is the most appropriate alignment of the boundary in relation to the existing dwelling?

We agree that the boundary alignment between the coolstore complex and the residential dwelling is the most appropriate, but only if the matters of fire risk and cross-boundary reverse-sensitivity effects are appropriately dealt with. This alignment will reduce the chance of an additional residential activity being established on Lot 2.

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 but with a reduced area of Lot 1, and subject to conditions.

10. REASONS FOR THE DECISION

Effects on the Environment

We are satisfied that there is good reason and minimal adverse effect caused by the subdivision of the coolstore complex from the surrounding productive land. However, we certainly do not agree with the inclusion of an additional 1.5 hectares of land of high productive value with that coolstore complex due to resulting fragmentation caused.

We are aware that in his right of reply Mr Thomas explicitly said that he did not want us to reduce the size of Lot 1; he wanted us to consider the application as it was proposed to us. This has put us in a difficult position because, whilst Mr Thomas has clearly stated the applicant's preference and we can see and agree with the intent to separate the complex from the land as discussed above, it must be made clear that Mr Thomas, Mr Ingram and Mr King gave us no evidence or information about why the additional land was needed with the coolstore complex. The question was asked several times and either they chose not to tell us or chose not to find out the information before the hearing. As a result we have no reason, justification or positive effect before us that may have enabled us to make a different decision.

In the interests of efficiency, we prefer not to decline outright an application that is unacceptable to us (which we certainly would have done had we only considered the application as it was proposed) and thereby force the applicant back to "square-one" when there is a solution that is clear to us and we think could (or should) be palatable to the applicant.

We disagree with Mr Thomas and consider that we are entitled to grant a reduced lot size, much like granting an application "in part". We see Lot 2 as being the residual lot and Lot 1 as being the lot that is being "subdivided off", and therefore we are satisfied that we have a mandate to reduce the size of Lot 1 in the same way that if we were considering an application for say 10 new lots, we would be entitled to grant only six of those lots if we saw fit to do so.

In terms of other parties, we are satisfied that what we have granted is a reduction in scope and effect compared to what was proposed, and therefore no other party who did not submit is prejudiced. Similarly for Mr Whittaker who chose not to be represented at the hearing. In identifying the alignment of the new southern boundary of Lot 2 we have been cognisant of the need not to be too restrictive and to provide some room for the coolstore complex to improve its vehicle circulation. It is desirable for B-train trucks to be able to negotiate the corners particularly on the southern side. More space will increase the likelihood that traffic and activity will be concentrated away from Mr Whittaker's property which is desirable. Overall, while this decision may not alleviate all of Mr Whittaker's concerns, it certainly addresses them in part such that he also is not prejudiced by our decision.

Despite Mr Thomas's statement, the applicant may, if it chooses, treat this decision as a decline of the consent that it sought. The applicant may simply surrender it or let it lapse if it chooses. Indeed the applicant may rethink its plans and reapply if it chooses, however it should be aware that we, as a subcommittee of the Council, do not accept the original proposal.

Objectives and Policies of the TRMP

Ms Webby identifies the key objectives and policies relating to rural land productive values that she sees as relevant[2]. We agree with her assessment of the provisions that are relevant. Overall, the policy direction is to protect land and soils that are of high productive capacity. We consider that the proposed application is inconsistent with that direction. Policy 7.2.3.2 allows for the use of land for rural industrial purposes, but we find that this can only be supported for the existing coolstore complex if productive land is not included in the future allotment.

We also agree with Ms Webby's assessment of the provisions relating to rural amenity[3]. We find that not including the surrounding land in Lot 1 will reduce the likelihood that the area will develop a more built-up environment and will therefore better meet these provisions.

[2] Section 6.1 of Officer's Section 42A Report
[3] Section 6.2

Similarly for the heritage considerations, we agree with Ms Webby on the provisions that are relevant and on her assessment[4]. We find that the proposal is not inconsistent with these TRMP considerations. However, in reducing the area of Lot 1 we are mindful that enough room is needed for vehicle manoeuvring on the south side of the coolstore complex so as to avoid the need for vehicles to pass close to Mr Whittaker's heritage property.

Mr Thomas sought that the requirement for Financial Contributions be waived. In considering Section 16.5 of the TRMP we do not think this is appropriate, particularly since the dwelling on the site is now proposed to be separated from the coolstore. This means that the dwelling will be independent from the coolstore and may be developed into a more substantial residential activity. Therefore, we see a Reserves and Community Services Financial Contribution as appropriate. However, given that no additional units of demand will be created, development contributions will not be payable for this subdivision.

Other Matters

We understand Mr Whittaker's concerns about the development but we do not agree that the proposed subdivision will have any adverse effect on him or his heritage building. We have kept his concerns in mind in considering the application and we find that, if anything, the amendments we have made to the boundary should at least partially address his concerns.

We have considered the situation of the boundary that will, as a result of this consent, lie between the existing coolstore building and the existing dwelling from a procedural point of view. We have sought advice on the legal situation in relation to building setbacks.

Rule 17.5.3.1(i) of the TRMP states that: Construction or alteration of a building is a permitted activity if it is set back at least 5 metres from internal boundaries. After this consent has been given effect to this will not be the case as both buildings will be much closer. However, the rule is written such that the requirement to meet this standard only applies at the time building work occurs. If the building pre-dates the boundary line, as is the case here, then we accept that the rule does not apply (as no new building work is taking place that would trigger the rule) and that the reduced setback is inherently authorised by this subdivision consent.

Purpose and Principles of the Act

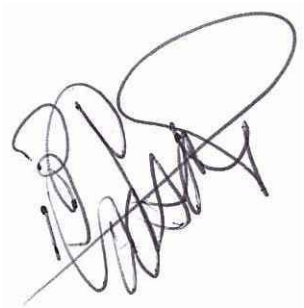
There are no matters of national importance that are relevant to this application. We do not consider Section 6(f) to be relevant as we do not see any effect on the adjacent heritage property.

In making our decision we have had particular regard to Sections 7(b) and (g). We do not consider that granting the application without modification as was sought by Mr Thomas is appropriate when considered in the terms of these relevant clauses of Section 7. However, the amended boundary alignment that we have given consent to will be consistent with these provisions.

[4] Section 6.3

Adopting a broad overall judgement approach to the purpose of the Act, we are satisfied that the proposal, with a reduced size of Lot 1, is consistent with Part 2 and achieves sustainable management of natural and physical resources as set out in Section 5 of the Act. We are also clear that the original boundary alignment that was sought did not meet the Section 5 test. Thus, consent is only granted to the amended boundary alignment.

Issued this 22nd day of July 2011



Councillor Brian Ensor
Chair of Hearings Committee

RESOURCE CONSENT

RESOURCE CONSENT NUMBER: RM110277

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

Wakatu Incorporation
(hereinafter referred to as "the Consent Holder")

ACTIVITY AUTHORISED BY THIS CONSENT:
To subdivide land into two allotments

LOCATION DETAILS:

Address of property:	278 Whakarewa Street, Motueka
Legal description:	Lot 1 DP 11124
Certificate of title:	NL7A/241
Valuation number:	1933061500
Easting and Northing:	2508517E 6010345N

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 information submitted with the application, and in particular with amended Plan A dated July 2011 (attached). 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.

   Advice Note:
   For the avoidance of doubt, Plan A referred to in this condition shows amended boundary locations. It is the amended boundary locations shown on this Plan that are authorised by this consent.

Easements

2. Easements shall be created over any services located outside the boundaries of the allotments that they serve as easements in gross to the appropriate authority or appurtenant to the appropriate allotment. The survey plan which is submitted for the purposes of Section 223 of the Act shall include reference to easements.

Rural Emanations Easement

3. A reciprocal rural emanations easement in favour of Lots 1 and 2 DP XXX shall be registered on the title of proposed Lots 1 and 2 DP XXX and the memorandum granting the easement is to be generally in the form attached as Appendix A.

Financial Contributions

4. 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 of 2,500 square metres (rural)(at the time subdivision consent is granted) of Lot 2;

   (b) the Consent Holder shall request in writing to the Council's Consent Administration Officer (Subdivision) that the valuation be undertaken. Upon receipt of the written request the valuation shall be undertaken by the Council's valuation provider at the Council's cost;

   (c) if payment of the financial contribution is not made within two years of the granting of the resource consent, a new valuation shall be obtained in accordance with (b) above, with the exception that the cost of the new valuation shall be paid by the Consent Holder, and the 5.62 per cent contribution 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.

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

Consent Notices

5. The following consent notice shall be registered on the certificate of title for Lot 1 DPXXX pursuant to Section 221 of the Resource Management Act. This consent notice shall be prepared by the Consent Holder's solicitor at the Consent Holder's expense and shall be complied with by the Consent Holder and subsequent owners on an ongoing basis. All costs associated with approval and registration of the consent notice shall be paid by the Consent Holder.

(a) No dwellings or residential activities shall be established, unless the zoning of the land becomes "Residential" or an equivalent residential status.

6. The following consent notices shall be registered on the certificate of title for Lot 2 DPXXX pursuant to Section 221 of the Resource Management Act. These consent notices shall be prepared by the Consent Holder's solicitor at the Consent Holder's expense and shall be complied with by the Consent Holder and subsequent owners on an ongoing basis. All costs associated with approval and registration of the consent notice shall be paid by the Consent Holder.

(a) No building or structure shall be constructed outside of the "Dwelling Curtilage" that is bounded by right-of-way B (ROW B) as shown on Plan A dated July 2011 (attached).

(b) All land use activities, including the construction of new buildings/structures, earthworks (filling and excavations), the operation of mobile plant and/or the construction of fences on Lot 2 must comply with the New Zealand Code of Practice for Electrical Safe Distances (NZECP 34:2001).

(c) All trees/vegetation planted or established in the vicinity of any transmission line are limited to those which at a mature height will not encroach upon the relevant growth limit zone [or notice zone] for the line, as defined in the Electricity (Hazards from Trees) Regulations 2003.

Advice Notes:

1. For Condition 6 above the following are the most relevant considerations:

(a) A minimum clearance of 4 metres is required between mobile plant and overhead transmission lines (Clause 5.2.1 of NZECP 34:2001);

(b) A minimum clearance of 6.5 metres is required between the ground and the conductors on the Stoke - Upper Takaka A transmission line at all times (Table 4 in NZECP 34:2001);

(d) Clause 2.2.1 of NZECP 34:2001 outlines restrictions on excavations within 5 metres of a pole or associated stay wire; and,

(e) Clause 2.3 of NZECP 34:2001 outlines restrictions on erection of conductive fences on, or within, 5 metres of a pole.

2. Transpower NZ has a right of access to its existing assets situated on Lot 2 under s23 Electricity Act 1992. Any development on Lot 2 must not preclude or obstruct this right of access. It is an offence under s163(f) Electricity Act to intentionally obstruct any person in the performance of any duty or in doing any work that the person has the lawful authority to do under s23 of the Electricity Act 1992.

Vehicle Crossing to Lot 2

7. A vehicle crossing permit for a new vehicle crossing to Lot 2 shall be required from Council's Engineering Department with all conditions of this permit to be completed before the signing of the Section 224 certificate.

GENERAL ADVICE NOTES

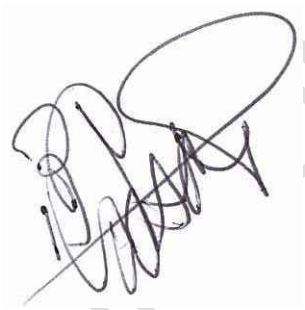
1. This is not a building consent and the Consent Holder shall meet the requirements of Council with regard to all Building and Health Bylaws, Regulations and Acts.

2. 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: 1) comply with all the criteria of a relevant permitted activity rule in the Tasman Resource Management Plan (TRMP); 2) be allowed by the Resource Management Act; or 3) be authorised by a separate resource consent.

3. This consent is granted to the abovementioned Consent Holder but Section 134 of the Act states that such land use consents "attach to the land" and accordingly may be enjoyed by any subsequent owners and occupiers of the land. Therefore, any reference to "Consent Holder" in the conditions shall mean the current owners and occupiers of the subject land. Any new owners or occupiers should therefore familiarise themselves with the conditions of this consent, as there may be conditions that are required to be complied with on an ongoing basis.

4. As no additional units of demand are created by this subdivision, no development contributions will be payable.

Issued this 22nd day of July 2011



Councillor Brian Ensor
Chair of Hearings Committee

APPENDIX A

Right to Emit Noise from Hail Cannons and Other Farming Activities/Equipment, Odour from Farming Activities, and Drift from Agricultural and Horticultural Sprays

1. **Definition**

In this easement the term "authorised farming activities" means all rural activities, including farming and horticultural crop production (and in particular, odour and noise from farming activities, the spraying for weeds and horticultural pests and diseases and the use of hail cannons to protect against hail damage to fruit crops) together with any other activity permitted under the relevant District Resource Management Plan for the time being in force and any existing uses and any activity permitted by any resource consent(s). The term "authorised farming activities" shall also include any other activity ancillary to the activities already defined or necessary therefore.

2. **Rights and Powers**

The owners or occupiers from time to time of the Dominant Tenement shall have the full, free, uninterrupted and unrestricted right, liberty and privilege for themselves and their respective servants, tenants, agents, licensees and grantees from time to time to emit noise from hail cannons and other farming practices and equipment, odour from farming activities, and drift from agricultural and horticultural sprays 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 rural purposes with the intent that such aforementioned rights shall run with the Servient Tenement and be forever appurtenant to the Dominant Tenement.

3. **Terms, Conditions, Covenants, or Restrictions in Respect of the Above Easement**

(a) The owners or occupiers from time to time of the Servient Tenement shall allow authorised farming activities to be carried out on the Dominant Tenement without interference or restraint.

(b) All noise emitted from hail cannons, and farming practices and equipment shall not exceed the maximum level permitted in any relevant District Resource Management Planning document.

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 cost of;

any 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 farming activities by the owners or occupiers from time to time of the Dominant Tenement.

(c) The owners or occupiers from time to time of the Dominant Tenement shall at all times use sprays in accordance with usual agricultural and horticultural practices in the District.

Plan A - RM110277
July 2011

Date Confirmed: Chair: