

MINUTES

TITLE: Environment and Planning Subcommittee
Commissioner Report

DATE: Monday 11 July 2011

TIME: 9.30 am

VENUE: Tasman Council Chamber, 189 Queen Street,
Richmond.

PRESENT: Commissioners S G Bryant (Chair), M L Bouillier and
D Sissons

IN ATTENDANCE: Subdivisions Officer (W Horner), Principal Resource
Consents Officer (J Butler), Landscape Architect (T Carter),
Co-ordinator Natural Resources Consents (L Pigott),
Consent Planner (R Squire), Executive Assistant
(V M Gribble)

**1 APPLICATION NO RM080459, RM100548 – G D WYLLIE, A J WYLLIE
AND D G BEATSON, KAIHOKA LAKES ROAD, WHANGANUI INLET**

The application seeks the following:

Subdivision Consent RM080459

To subdivide a 74.52 hectare title to create the following:

- proposed Lot 1 comprising 4.2 hectares including a right-of-way;
- proposed Lot 2 comprising 12.0 hectares including a right-of-way, with no esplanade reserve or strip adjoining the foreshore;
- proposed Lot 3 comprising 2.1 hectares;
- proposed Lot 4 comprising 36 hectares to be amalgamated with the balance of CFR NL1A/711 and Section 4 Block II Pakawau Survey District (CFR NL32/168), with no esplanade reserve or strip adjoining the foreshore;
- proposed Lot 5 comprising 9000 square metres to vest in Council as esplanade reserve 10 metres wide adjoining proposed Lot 3;
- proposed Lot 6 comprising 1.4 hectares to vest as seabed;
- proposed Lot 7 comprising 1.0 hectare to vest as seabed;

and to amalgamate Section 3 Block II Pakawau Survey District (CFR NL123/154), Section 5 Block I Pakawau Survey District (CFR NL29/116) and Section 2 Block II Pakawau Survey District to create one title.

Land Use Consent RM100548

To erect a dwelling and undertake earthworks in the Coastal Environment Area on each of Lots 1 – 3 of the subdivision application described above (Application RM080459).

The subject land is zoned Rural 2 and part of the property is within the Coastal Environment Area according to the Tasman Resource Management Plan.

The application site is located at 441 Kaihoka Lakes Road, Whanganui Inlet, being legally described as Part Section 40 Square 15 (CFR NL1A/711).

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

THAT pursuant to Section 104B of the Resource Management Act, the Commissioners GRANTS consent to G D Wyllie, A J Wyllie AND D G Beatson as detailed in the following report and decision.

Report and Decision of the Tasman District Council through a Panel of Commissioners

**Meeting held in the Fire Service Rooms, Takaka on 11 July 2011
Site visit undertaken on 5 July 2011
Hearing closed on 1 August 2011**

A panel of Commissioners was convened on behalf of the Tasman District Council ("the Council") to hear the applications lodged by **G D Wyllie, A J Wyllie and D G Beatson** ("the applicant") to subdivide land at Kaihoka Lakes Road and to construct dwellings on new lots. The application, made in accordance with the Resource Management Act 1991 ("the Act"), was lodged with the Council and referenced as RM080459 (subdivision) and RM100548 (land use).

HEARING COMMISSIONERS:

Commissioner Stuart Bryant, Chairperson
Commissioner Martine Bouillir
Commissioner David Sissons

APPLICANT:

Ms Victoria Chisnall (Counsel for applicant)
Mr Jock and Mrs Joyce Wyllie (applicant)
Mr Rory Langbridge (Landscape Architect)
Ms Jane Bayley (Consultant Planner)

CONSENT AUTHORITY:

Tasman District Council
Mr Wayne Horner (Consent Planner, Subdivisions)
Mr Tom Carter (Consultant Landscape Architect)
Ms Ros Squire (Forward Planner, Parks and Reserves)
Mr Leif Pigott (Co-ordinator, Natural Resources Consents)

SUBMITTERS:

Mr Bruce Collings
Ms Joy Warren
Mr Bill Wallace
Mrs Jo-Anne Vaughan
Mr Alan Vaughan
Royal Forest and Bird Protection Society (Mr Murray Gavin)
Friends of Golden Bay (Ms Heather Wallace & Dr Don Mead)
Mr Joe Bell

IN ATTENDANCE:

Mr Jeremy Butler (Principal Resource Consents Adviser) -
Assisting the Commissioners
Mrs Valerie Gribble (Minutes Secretary)

1. SUMMARY

The Commissioners have **GRANTED** resource consents, subject to conditions, to subdivide land at Kaihoka Lakes Road and to construct dwellings on the new allotments.

2. DESCRIPTION OF THE PROPOSED ACTIVITY

The site of the application is on the coastline of Whanganui Inlet approximately eight kilometres from Pakawau Township and 2.5 kilometres from the intersection of Dry Road and Kaihoka Lakes Road.

The applicant owns large areas of land around the northern shore of the Whanganui Inlet and much of this has been developed into pasture. Part of the applicant's land holdings, however, is vegetated in regenerating kanuka forest and coastal podocarp forest.

The applicant proposes to create three new lots that can be described as rural residential in character. Proposed Lot 1 will be 4.2 hectares in area, proposed Lot 2 will be 12.0 hectares in area and proposed Lot 3 will be 2.1 hectares in area. The location of the new rural residential lots is on a headland within the regenerating forest areas described above.

Lots 6 and 7 will vest as seabed as they are below MHWS and proposed Lot 5, being 9000 square metres in area, is proposed to vest in the Council as esplanade reserve with a width of 10 metres¹.

Amalgamations of four existing titles are also proposed; the result being that there will be no increase in the total number of titles. Two large titles, containing 182 hectares and 256 hectares of land that is currently in productive use, are proposed.

Consent is also sought for construction of buildings within the Coastal Environment Area (CEA) within proposed Lots 1 to 3. Stormwater disposal, wastewater disposal and earthworks are associated matters to be considered in this regard.

A comprehensive package of conditions has been volunteered by the applicant in an effort to mitigate the effects of the proposed subdivision and new buildings. Notable amongst this package are:

- Clearance of wilding pines in the area of the building locations on proposed Lots 2 and 3 and poisoning of the remaining pines on all three lots.
- Restricted clearance of vegetation to the Building Location Areas (300 square metres on proposed Lots 2 and 3) and in the view shaft areas;
- Recessive colours for buildings; and
- Specified maximum building heights and areas.

¹ The applicant later volunteered a 20 metre wide esplanade reserve.

A new vehicle crossing and access track is required for proposed Lot 3 with proposed Lots 1 and 2 gaining access from an existing track that is proposed to be upgraded to a right-of-way. There is an existing rough access track to the building area within proposed Lot 1.

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): Coastal Environment Area (in part)

The subdivision application is considered to be a discretionary activity under subdivision rule 16.3.6.2 in that the proposal has allotment areas less than the Controlled Activity standard of 50.0 hectares. The subdivision application also is a restricted discretionary activity under rules 16.4.2.1 and 16.4.2.2 in relation to the creation of esplanade reserves due to the creation of lots both greater and less than 4 hectares adjoining the coastal marine area.

The land use application is a restricted discretionary activity under Rule 18.11.3.2 in relation to the construction of buildings in the CEA.

The clearance of indigenous vegetation in the CEA is a discretionary activity due to non-compliance with Rules 17.6.5.3, 17.6.5.4 and 17.6.5.5.

Overall these applications are together considered to be a Discretionary Activity.

4. NOTIFICATION AND SUBMISSIONS RECEIVED

The application was notified on 6 April 2011 pursuant to Section 95 of the Act. A total of 16 submissions were received. The following is a summary of the written submissions received and the main issues raised:

Submitter	Reasons	Decision Sought
B C Collings	Supports the proposed subdivision as being appropriate in this location.	Grant
E D Wilson	Limited visual effects and therefore supports the proposal.	Grant
C Wyllie	Limited effect on productivity, positive effects from provision of esplanade and improve a wasteland	Grant
L M Henderson	No reason not to grant consent	Grant
Department of Conservation	DOC is satisfied that the proposal is not likely to have significant effect on the adjacent National Park and Wildlife Reserve. Seeks consideration of New Zealand Coastal Policy Statement 2010 and Marine and Coastal Area Act 2011 and the imposition of the volunteered conditions.	Neutral
PJ Miller	Will have limited effects on land productivity, or on the wider environment due to a lack of intensive development.	Grant
W J & L M Wallace	Limited vegetation disturbance and visual impacts with	Grant

Submitter	Reasons	Decision Sought
	amalgamated titles to improve productivity	
K H & N M Hunter	Supports the proposed subdivision if the immediate neighbours approve and supports more lifestyle block development.	Grant
J A Vaughan	Seeks specific conditions, should consent be granted, to minimise potential effects on the Whanganui Inlet and other conditions to enhance the existing vegetation and wildlife.	Decline
NZ Fire Service Commission	The New Zealand Fire Service seeks a fire fighting sprinkler systems for each new dwelling that complies with the New Zealand Standard SNZ PAS 4509:2008 and NZS 4517:2010	Seeks Condition
A Vaughan	Seeks that the processing of this consent be delayed until Council has finalised a Plan change resulting from a landscape assessment of Golden Bay. Also considers that the subdivision is not consistent with NZCPS.	Decline
D Phillipps & F Bassett	Does not believe the visual effects will be significant, with the consolidation of land in larger titles to have positive effects and supports the mitigation package proposed.	Grant
The Royal Forest & Bird Protection Society of New Zealand	Seeks to confirm that the amalgamations will be part of the subdivision consent process, restrict the keeping of cats and dogs (with some exceptions), requests an approved indigenous planting list be included in any conditions of consent.	Neutral
J & B Warren	Supports the application due to rationalising the land holding.	Grant
Friends of Golden Bay	Seeks delay of this application until the landscape planning currently underway by TDC is complete. There may be precedent effect, cumulative effects, servicing structures, wastewater effects and stormwater effects.	Decline
J Bell	Seeks delay of this application until the landscape planning currently underway by TDC is complete. Suggests that the Crown should purchase this land and suggests alternative land uses apart from subdivision. Potential for road upgrading with more users.	Decline

5. PROCEDURAL MATTERS

Only one minor procedural matter arose that required our specific consideration. The Council's lead reporting officer, Mr Horner, stated towards the end of the hearing that there was an additional condition that he saw necessary to recommend based on the evidence presented by submitters. The condition related to pest control and the formulation of a Pest Management Plan.

Mr Horner stated that he needed more time to consider and draft the condition. We agreed that this was appropriate as long as the proposed wording was circulated to all parties prior to the applicant submitting its written right of reply.

6. EVIDENCE HEARD

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

6.1 Applicant's Evidence

Ms Victoria Chisnall (Counsel for applicant)

Ms Chisnall presented the applicant's case. She stated that the land owned by the applicant is over 1200 hectares contained in 13 Certificates of Title. She confirmed that, as a result of the subdivision there would be no additional Certificates of Title. She also said that the applicant's motivation for the subdivision was to free up capital from unproductive areas to assist with their farming activities.

Ms Chisnall submitted that the main issue for determination can be broadly categorised as the landscape effects, including effects on natural and coastal character.

Ms Chisnall concluded that the landscape architects, Mr Langbridge and Mr Carter were not opposed to the application. Ms Chisnall referred to the case *Arrigato Investments Ltd and Evensong Enterprises Limited v Rodney District Council (A115/99)* which granted consent for coastal dwellings. Following the *Arrigato* case, Ms Chisnall asked us to consider the long-term protection of vegetation and removal of wilding pines.

Ms Chisnall continued that effects are to include positive effects. She referred to *Just One Life Limited v Queenstown Lakes District Council (C163/2001)* and concluded that positive effects can be taken into account to offset negative effects.

Turning to the provisions of Part 2 of the Act Ms Chisnall submitted that "protection" is generally sought by Section 6 and that this does not amount to absolute preservation. She submitted that it allows for some development. In referring to Section 6(a) which makes the preservation of the natural character of the coastal environment a matter of national importance, she said that the Environment Court has stated that preservation is not to be achieved at all costs and that it is subordinate to achieving sustainable management.

Mr Jock and Mrs Joyce Wyllie (applicant)

Jock described the history of the block and pointed out the work they are doing to reduce the environmental impact of their farming operations by fencing off wetlands and the Inlet.

He said that in an effort to reduce debt he and Joyce offered the Harvey's Creek block of land to the Department of Conservation (DOC) but the offer was refused.

He stated his desire for the land to remain open to the public but to remain as a viable farming operation.

Mrs Wyllie emphasised their strong environmental and social track-record.

She emphasised the support that the proposal has from both landscape architects who have prepared evidence. She urged that the application be considered not only from an environmental point of view but also the economic, cultural and social considerations.

Mr Rory Langbridge (Landscape Architect)

Mr Langbridge stated his opinion that the Whanganui Inlet and Kaihoka Lakes area generally is an outstanding natural landscape such that Section 6(b) of the Act applies. However, within that broader context the landscape is not pristine due to a level of human occupation and development.

Mr Langbridge said that the large pines contrast with the regenerating forest.

Mr Langbridge generally agreed with Mr Carter's assessment of the proposal against the New Zealand Coastal Policy Statement 2010 (NZCPS). He also found that it would not offend the objectives and policies of the TRMP.

In addressing certain recommended conditions, Mr Langbridge found that water tanks could be located beyond the BLA without significant effects. He also sought a refinement of the limit of reflectivity of the houses.

On the matter of protection of native bush on the balance of NL1A/711, Mr Langbridge said that bush located elsewhere on the property is not impacted by what is proposed. He also said that a large part of the balance area is protected by Rule 17.6.5.3 of the TRMP, and the area not protected is steep and not under threat.

Mr Langbridge recognised the sensitivities and vulnerabilities of the site and wider area, but he considered that the nature of the development proposed would be appropriate and consistent with Section 6(b) of the Act, the NZCPS, the TRMP and also the 2005 Boffa report.

Mr Langbridge concluded by saying that the development that is likely would have an impact that is not perceived within the wider landscape and locally would result in an impact that is less than minor. He said that the benefits will be the removal of the wilding pines, *and* the long term protection of vegetation adjoining Kahurangi National Park.

Commissioner Sissons asked why Mr Langbridge considers pines to be weeds. Mr Langbridge said it is clear that there is evidence of wilding pines regenerated in native bush. He said that they have the ability to survive and spread.

Commissioner Sissons explored the level of damage that can be done to the vegetation on the lots outside of the BLAs with the proposed condition stating that vegetation shall not be "cleared". Mr Langbridge said that the term would require that vegetation outside view cone areas would remain. He considered that the terminology would depend on the outcome sought. Mr Langbridge said the intention is for the bush to remain as regenerating forest. Commissioner Sissons said his concern was that any buyer does not worry about intention. They may interpret "no clearance" as "we can leave a few standing".

Commissioner Sissons asked about the visibility of proposed Lot 1 from other parts of the applicant's property. Mr Langbridge said that a roof may be seen but it would be fleeting.

Commissioner Bouillir asked what other features could be put in the view cone and therefore could be seen from other vantage points. She asked what would stop someone putting up a clothesline with white nappies. Mr Langbridge said technically nothing would stop this and signs of occupation would be evident but he did not see that as adverse. He said that there will be glimpses of houses and activities but they will not be dominant.

Commissioner Bryant asked if glimpses of activities affected the sense of isolation. Mr Langbridge said that they enhance it.

Ms Jane Bayley (Consultant Planner)

Ms Bayley outlined the suite of restrictions on the development which will minimise the visual impact of the houses and development. Amongst the measures is the protection of the vegetation on proposed Lots 1 to 3 and the felling of pines within the BLAs and the poisoning of pines outside of the BLAs. She considered that the latter is a contribution to the restoration of the natural character of the coast.

In considering the NZCPS she found that the development is not inappropriate and therefore meets the policy direction of the document. Overall, she also considered that the proposal is not contrary to the objectives and policies of the TRMP.

Ms Bayley commented on submitters' calls for a prohibition on cats and dogs in the houses. She considered that monitoring of cats is difficult and dogs may be necessary as the owners may well be workers on the applicant's farm and require working dogs.

In relation to the esplanade reserve around proposed Lot 3, she considered a 10 metre width to be sufficient so that the wilding pines are included in proposed Lot 3 and to ensure access and conservation outcomes.

Ms Bayley sought the deletion of the recommended protection of the vegetation on proposed Lot 4 and the balance of NL1A/711 as the existing vegetation clearance rules adequately protect the vegetation.

Commissioner Sissons suggested that the applicant is not offering any revegetation and that most of the vegetation to be protected is already protected by a rule in the TRMP. Ms Bayley said the application provides surety that there will not be further applications for clearance within the CEA, and outside the CEA it protects areas that could be cleared over time.

Commissioner Sissons said that the Act effectively requires 20 metres wide esplanade reserve unless there is good reason. He asked if Ms Bayley's reason was that it is just not needed. Ms Bayley said that one reason is to allow for the maintenance of the wilding pines. The other reason relates to the practicality of a public walkway around the coast. Further the volunteered restriction on clearance of the site means that a 20 metre width is not needed for conservation purposes.

Commissioner Sissons asked how difficult it is to get rid of pines. He asked if piece by piece deconstruction by an arborist has been considered. Mr Langbridge said deconstruction is one option around BLAs but not more widely due to the cost.

Commissioner Sissons asked about the precedent of this matter. Ms Bayley said it is a unique case and is essentially a boundary adjustment. She said it is not a straight forward subdivision as there are circumstances and mitigating factors that have been offered. Circumstances include restriction of buildings to BLAs and removal of wilding pines.

6.2 Submitters Evidence

Mr Bruce Collings

Mr Collings said he is familiar with the location and the family. He confirmed his support for the proposal and he hoped that it would bring more permanent residents into the area as he considered proliferation of bach owners to be destructive to communities.

Mr Collings said that he can not see that dogs would be a problem and they would be helpful for farm work.

Ms Joy Warren

Mrs Warren spoke in support of the application as she considered it would create more opportunities for development. She considered there will be environmental gain with the conditions imposed.

Mr Bill Wallace

Mr Wallace supported the application and considered the subdivision sites to be appropriate. He tabled photographs which showed the potential impact of buildings. He did not believe that the subdivision will impinge on the conservation values of the area.

Mr Wallace did not agree with the landscape experts that the site was a outstanding natural landscape as he considered it was not as visually outstanding as other landscapes.

Mrs Jo-Anne Vaughan

Mrs Vaughan said that she was not entirely opposed to the application but sought some important amendments. She said that the adjacent estuary is a Wildlife Management Reserve and that the rules of the Reserve would prevent cats and dogs being kept because of the ease with which they can stray onto the estuary.

Mrs Vaughan also sought restriction on the plants that can be planted on the lots to natives derived from the location itself.

Mrs Vaughan emphasised the importance of the Inlet. She said that it supports rare, endemic species in serious decline elsewhere, including bittern, fern bird, marsh crake and banded rail. She said it also records the highest number of fish species compared with any other estuary in New Zealand with all the major feeding types being represented. She referred to the works of four experts who can attest to its importance.

Mrs Vaughan summarised by saying that if there is a durable way through to ensure that future occupiers will exercise kaitiakitanga then the proposal has her support.

Commissioner Bouillir asked if a domestic vegetable garden would be acceptable to Mrs Vaughan. Mrs Vaughan disapproved of this.

Commissioner Bouillir asked if working dogs would be any different and more acceptable. Mrs Vaughan said that any dog with access to the estuary would be against the rules of a Wildlife Management Reserve and not acceptable.

Commissioner Bryant asked if the Wildlife Management Reserve has a rule that actually prohibits dogs and cats. Mrs Vaughan said no flora or fauna can be damaged within the Wildlife Management Reserve which would be the way to exclude dogs and cats. She also said that she would like people living there to catch and destroy wild cats.

Mr Alan Vaughan

Mr Vaughan said that the NZCPS is the most relevant when it comes to subdivision in this coastal area and it seeks that development be concentrated rather than sporadic.

He did not have confidence that the effects would be very minor and he referred to Commissioner Bouillir's washing line example as an adverse visual impact. He said that all parties must accept that we (the commissioners) have no way of guaranteeing human behaviour.

Royal Forest and Bird Protection Society (Mr Murray Gavin)

Mr Gavin opposed what he saw as de facto rezoning through the resource consent process.

Mr Gavin considered that 20 metres esplanade reserve width is needed to allow for movement of indigenous plants to higher elevations on the property as a result of sea level rise. Mr Gavin also sought that the public be excluded from the headwater area to the east of the causeway so as to protect banded rail habitat from possible public walking traffic.

Mr Gavin also favoured the use of terminology "plant material and plants" and "destruction or removal" in the conditions/consent notices that restrict impacts on the vegetation on the lots.

Regarding the keeping of animals, Mr Gavin sought a restriction on cats and dogs due to the disturbance of banded rail and marsh crake. He referred to a recent decision at Pakawau where consent notices prohibiting cats and dogs were imposed.

Mr Gavin opposed the construction of any future seawalls or coastal protection at this location.

Commissioner Sissons asked if the pines in the regenerating forest are considered weeds. Mr Gavin considered them to be a weed and he said that he appreciated the applicant volunteering to remove them.

Commissioner Bryant asked how Mr Gavin saw the prohibition on dogs and cats being enforced. Mr Gavin said that any prospective purchaser of a property would be alerted to the requirement prior to purchasing and that this would be a good first step in achieving compliance.

Friends of Golden Bay (Ms Heather Wallace and Dr Don Mead)

Ms Wallace stated that the Friends considered this development to be unplanned and inconsistent with planning documents. She emphasised Section 6 of the Act and Policies 3, 4 and 6 of the NZCPS.

Ms Wallace said that under the TRMP the remaining land in the property could be subdivided down to 50 hectare blocks. She said that the TRMP seeks to consolidate development and dwellings into efficient areas and therefore the development is inappropriate in this location.

The Friends consider this area to be an outstanding and sensitive landscape that should not be subdivided. Ms Wallace referred to several other reports and sources of information that emphasised the importance of the estuary and the landscape.

The Friends agreed that the pine trees detract from the landscape and should be removed but did not consider poisoning to be the appropriate option.

Ms Wallace then addressed the ecological values of the site. She said that the vegetation is regenerating native forest following logging and its location adjacent to the coast and also adjoining Kahurangi National Park makes it of particular significance. Ms Wallace said that the NZCPS seeks to avoid the effects of development on the coast with Policy 11 relating to indigenous biological diversity and Policy 13 seeking to preserve the natural character of the coastal environment.

Ms Wallace said that cats and dogs are the major predators of banded rail. She also said that the clearance of view cones and for the BLAs will cause adverse effects on vegetation and open up the canopy for wind throw.

Dr Mead said that the amount of podocarps on the site is surprising as the original forest was beech dominated. He said that there is hardly any beech on site now.

Ms Wallace said that the native snail *Powelliphanta gillesi* (probably *P. gillesi subfusca*) is present on the site and with no scientific survey it is difficult to know how common they are. The Friends consider that they will be further threatened by this subdivision.

Dr Mead said the wilding pines should be removed and it could be effectively done by good tree doctors.

Mr Joe Bell

Mr Bell said that the land is significant as it forms a forested link from the coast to the ridgelines of Kahurangi National Park, and the Inlet is nationally important and features a Wildlife Management Reserve at its northern arm.

He said that there is very little development adjacent to the Inlet, apart from at Rakopi, and the current application will change that. Mr Bell did not consider that the application will preserve the natural and coastal character, nor is it compatible with the NZCPS, TRMP or the Act.

Mr Bell said that the NZCPS discourages sporadic subdivision, which he considered this to be. Given the setting and importance of the land he said that it should qualify for protection from sporadic subdivision.

He said that in addressing the effects the applicant had focussed on mitigating the effects rather than avoiding them. He saw that avoidance of effects would be achieved by not proceeding with the development.

Mr Bell considered that the balance area is under increased threat of development as a result of this proposal and, overall, considered that consent should be declined.

Commissioner Bouillir asked Mr Bell about his opinion on the esplanade reserve. Mr Bell agreed that the reserve should be 20 metres in width, but that it should be closed to public access.

6.3 Council's Reporting Officer's Report and Evidence

Ms Ros Squire (Forward Planner, Parks and Reserves)

Mr Squire sought a 20 metre wide esplanade reserve around the coastal margin of proposed Lot 3. She said that the Act and the TRMP essentially say that the Council "shall take" an esplanade reserve on areas less than 50 hectares adjoining coastal margin unless there is good reason not to. She said that it provides for a more diverse range of opportunities and provides protection for conservation values. She said that public access opportunities justify taking 20 metres.

Regarding the effect of the reserve on the management of the wilding pines, she said that these pines would need to be removed or killed prior to the vesting of the reserve. Before vesting the land has to be free of any weed species and structures pursuant to Chapter 12 of the Council's Engineering Standards and Policies 2008.

Regarding closure, as sought by Mr Bell, Ms Squire did not consider this to be appropriate as the intent is to provide future opportunities for access. She said that the Council is aware of the matter of public access and to potential for the disturbance of birds.

Mr Leif Pigott (Co-ordinator, Natural Resources Consents)

Mr Pigott said that he was satisfied that the stormwater discharges, wastewater discharges and earthworks could be undertaken as a permitted activities.

He said that the most important issue is the wastewater systems. Details of the systems will be needed for each site to ensure that it is appropriate for the building and the site. He said that in difficult circumstances a mound could be constructed to treat and discharge the wastewater. Such a mound may be appropriate for proposed Lot 1 where the soils appear to be thin. He said that the mound would be about 900mm high.

Vegetation clearance to construct a mound would depend on the location. He said that there would be a lot of growth on the mound and it can be used as a landscaping feature. He said that there are lots of options for indigenous locally-sourced plants.

Given the limitations on BLA and house sizes, Mr Pigott said that he is confident that a wastewater system could be designed and constructed for any house. However, if accommodation such as a backpackers was proposed then it may be more difficult.

Mr Tom Carter (Consultant Landscape Architect)

Mr Carter said that Mr Wallace incorrectly referred to the assessment as a visual assessment. Mr Carter said that it is not purely visual. The landscape resource involves the physical and the perceptual.

Mr Carter said that the approach of the applicant was to look at how three houses can be put on the landscape in an appropriate way and meet the NZCPS framework. He emphasised that this appropriateness did not just relate to their visibility. Given the restrictions on the buildings he did not think there would be significant views of the houses from the northwest.

Regarding the ridgeline on proposed Lot 1, he said that the wind will be a driver for getting off the ridge.

Regarding the vegetation protection he said that buildings will be limited in scale and carefully located in the strong vegetation framework. He envisaged that the vegetation framework will remain and be enhanced by removal of pines. Mr Carter's opinion was that protection of about 54 hectares of vegetation with the existence of these three buildings is a significant positive outcome. He did not consider that removing the protection on the vegetation in proposed Lot 4 was appropriate, as the mitigation for the clearance of roads and BLAs and the creation of three residential activities would not be sufficiently offset by environmental gains.

Mr Carter agreed that there should be no dogs and cats. He understood the vulnerabilities of the habitat and species present and considered that such domestic animals were not appropriate. He said that there only needs to be one incident to do significant damage.

Mr Carter said that the distinction in Policy 15 between 15(a) and 15(b) in the NZCPS recognises that there are different levels of natural character in relation to the coastal environment. The policy provides a higher threshold for consideration of effects in areas that are considered to be of outstanding natural character. In those areas you need to avoid adverse effects (as opposed to avoiding significant adverse effects in other non-significant areas). He said that both Mr Langbridge and he agree that the natural landscape values are really high and that creates a difficulty for the applicant in that they are subject to the high standard specified in Policy 15(a). He considered that with the suite of conditions and consent notices recommended that is what has

been achieved. Therefore, he considered that the development would be consistent with Policy 15(a).

Mr Carter was satisfied that the 50% clearance of the view cones would strike the right balance between admitting sunlight, providing for views, and appropriately screening the houses.

Commissioner Sissons said the applicant is not happy with the Council staff recommendation for areas A and B² and they have said it is already protected because it is within the CEA. He put it to Mr Carter that the applicant is proposing to protect the area of proposed Lot 1 that is outside of the 200 metre line, and therefore a wedge of land from coast to the Kahurangi National Park will be protected but that this will not go so far as protecting all of proposed Lot 4; part of this wedge is not currently protected and will be under the applicant's proposal. Commissioner Sissons asked if this would be sufficient.

Mr Carter said that even within the 200 metre CEA an application can still be made and he did not think this is appropriate. He maintained that protection of the indigenous forest on proposed Lot 4 and the balance lot is also necessary for him to support the application.

Mr Wayne Horner (Consent Planner, Subdivisions)

Mr Horner said that all native vegetation within 200 metres of coast gets the automatic protection of not being able to be cut down without resource consent. However, outside the 200 metre buffer it could be removed over time or planted with forestry species. He thought that additional protection should be considered for the forest outside of the 200 metre buffer, without protecting low value areas or constraining normal farming activities.

Mr Horner indicated where the other amalgamated titles will be and said that they are open to be sold as individual titles and each would be entitled to a dwelling as of right. However there is an existing dwelling that will be in the balance area once the amalgamation is completed.

Mr Horner still supported the findings in his report, but considered that more thought needed to be given to pest and weed control in the conditions; he saw an opportunity to be more proactive with weed protection rather than just a prohibition on damage or removal. The need for more pest control was highlighted by the various submissions expressed during the hearing as well as Commissioner Sissons' comments about weeds, particularly hakea. He said that a comprehensive package of mitigation is being offered and this would be the most comprehensive in terms of mitigating visual effects that he has come across.

In summary Mr Horner felt that if the right owners who have a heart for the environment are brought in then the development could have a very positive outcome.

Mr Horner produced an additional recommended condition for our consideration:

²

Mr Carter's Annexure B Sheet 2, identified as Plan F in the staff report.

A Pest Management Plan shall be developed and submitted to Council's Environment and Planning Manager for Lots 1 - 3 following a site visit by a Bio-Security Officer from Tasman District Council. The Pest Management Plan shall confirm:

- a) pest plants for Lots 1 - 3;*
- b) pest animals for Lots 1 - 3;*
- c) a control strategy for pest animals, that may include trapping and or poisoning and any trigger points for control to be undertaken;*
- d) a control strategy for pest plants;*
- e) The form of an annual report to Council on pest weed and pest animal control undertaken by each lot owner for the previous 12 month period;*
- f) The keeping of cats is not permitted.*

Pest plants would include prickly hakea and wilding pines and pest animals would include possums, stoats, ferrets, weasels, feral cats, domestic cats and rats. However there may be other pests identified following a site inspection.

The Pest Management Plan is required to be submitted and approved by Council prior to any application being made for s224 approval.

Advice Note: *The site visit and advice from Council's Bio-Security Officer to aid the applicant in preparing the Pest Management Plan would not be charged for.*

6.4 Applicant's Right of Reply

Ms Chisnall accepted the creation of 20 metre wide esplanade reserve and strips.

Regarding the visibility of the houses, Ms Chisnall said that the higher visibility of the houses from the applicant's property was not a consideration as no such effects on the applicant could be taken into account. The position of the BLA on proposed Lot 1 which faces the applicant's property is preferable to being visible from the south.

Ms Chisnall accepted the recommended prohibition on keeping cats and dogs on the proposed lots.

Regarding the protection of indigenous forest on proposed Lot 4, Ms Chisnall said that this vegetation is not under threat and that the mitigation package offered will address and avoid potential adverse effects of the subdivision and development. She did not consider it necessary to have the vegetation on proposed Lot 4 expressly protected. Indeed she submitted that as there is no threat to the coast-to-mountains sequence of vegetation on proposed Lot 4 then there is no justification for its protection.

Ms Chisnall addressed Mr Horner's recommended Pest Management Plan condition. She said that the applicants are "not at all happy" with the proposed condition. She submitted that it is an unreasonable requirement on the applicant and future landowners.

Turning to the overall consideration of the proposal, Ms Chisnall submitted that opposing submitters had failed to acknowledge the benefits achieved by the subdivision in respect of the protection of indigenous vegetation, removal of wilding pines, vesting of land as esplanade reserve and provision of an esplanade strip, the vesting of land in the Crown as seabed and the amalgamation of land to create larger more productive units.

7. PRINCIPAL ISSUES AND OUR MAIN FINDINGS

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

a) What are the positive effects that arise out of the proposal?

A considerable range of positive effects arise from the conditions and commitments proffered by the applicant through the course of the application and the hearing. In some cases these positive effects were considered insufficient by Council staff, and in other cases more was sought by submitters.

Wilding pine trees

We start with the removal and poisoning of the wilding pines as it is an obvious positive effect that was volunteered. We sought direction from the witnesses for the applicant, many of the submitters and the Council staff as to the magnitude of the positive effect that resulted from this commitment. In all cases the response was that the killing of the pines is a significantly positive initiative. In volunteering to do this the applicant proposed to fell the pines within the BLA and to poison the rest and leave to biodegrade. Dr Mead questioned the need to leave standing tree "skeletons". He saw it as appropriate that the trees be carefully dismantled by an arborist.

Based on the unanimity of opinion at the hearing we conclude that the removal of the pines is a significant and desirable positive outcome which would arise from a grant of consent. We shared Dr Mead's concerns about the appropriateness and desirability of leaving standing dead pines from a landscape point of view.

We heard no evidence about the length of time it would take for the pines to be reduced to a state of negligible visual impact (e.g. just a standing trunk or similar). We gave some consideration to whether, in the event that consent is granted, that we consider it necessary for the applicant to dismantle trees as the stand so as to remove them from the landscape but not significantly damage the surrounding regenerating forest. To gauge this necessity we took the liberty of seeking comment from a representative³ of the Marlborough Sounds Restoration Trust whom we are aware has done a considerable amount of work poisoning wilding pine trees in the Marlborough Sounds. We were told that a large "old man" pine tree will usually take around 15 years to entirely disappear into regenerating forest in a windy environment such as the Sounds.

³ No information was given about the context of the query. Questions were simply asked about the decomposition of poisoned pines. Therefore, we consider that no bias on the part of the representative is possible.

We were also told that younger trees (less than 20 years old) will disappear "much more quickly". We are conscious that the application site is also windy and is also likely to be wetter than the Marlborough Sounds which, we assume, will increase the natural rate of decay.

The other consideration in this matter is that a pine seed bank undoubtedly exists on the ground beneath each mature pine and also in the cones on the branches. Felling the trees in place may well allow a large number of seedlings to germinate and thrive better than leaving the tree standing dead and allowing the regenerating bush to gradually fill the growing light gap as the tree degrades.

Living Environment

It almost goes without saying, and in fact the applicant's case hardly stated, that consent would enable three households to occupy particularly attractive dwelling sites. This should not be overlooked however, because it has to be kept in mind when coming to an overall conclusion on whether this proposal would meet the purpose of the Act.

However, on reviewing the application we find that we have some concerns with the practicality and workability of the volunteered 300 square metre restriction on the BLAs on proposed Lots 2 and 3. We consider the restriction on total building area being set at 200 square metres to be appropriate. But this leaves little area to provide for on site amenity, nor for the three metres of defensible space offered by the applicant. For a nominal 200 square metre house, say 16 by 12.5 metres, plus 3 metres all round for defensible space, this makes a BLA of at least 22 by 18.5 metres, which is 407 square metres. With most houses not being simple rectangular boxes (as is used in the above calculation) and with a need to have an outside area for car parking and turning and an entrance to the house, we do not consider that 300 square metres is sufficient area for the BLAs.

In the event that consent is granted we will give consideration to increasing their size, but also ways to avoid increasing the gap that is made in the canopy and the chance of increasing the visual impact of the buildings from nearby vantage points.

Esplanade Reserve and Strips

Following the applicant's acceptance of a 20 metre wide reserve, there is now little contest between parties on this matter. We find that 20 metres is the appropriate width for both reserve and strips. In addition to the reasons given by Council staff and submitters - which we agree with - we also note that with the very gentle gradient of the shore of the inlet means that part of the esplanade reserve and strips will be within the tidal area between the lines of Mean High Water Springs and the maximum tide level experienced.

There appeared to be no disagreement that the formation of the reserve and strips was a necessary step. However there were two submitters who had concerns about the level of public access that is appropriate.

There were calls from some submitters that the esplanade reserve be closed to public access for conservation purposes. We accept Ms Squire's position that there is a tension between provision of public access to and along the coast and protection of conservation values in sensitive areas. Access to and along the coast is a matter of national priority and we see no good reason why both outcomes cannot be met with thoughtful and sensitive development of public access at some point in the future.

However, we consider that Mr Gavin for the Royal Forest and Bird Protection Society made a good point when he sought that the esplanade strip on the Harvey Creek side of the causeway be closed to public access. From the evidence heard, the mouth of Harvey Creek and the uppermost embayment of the estuary undoubtedly contain very important habitat, and rare and shy birds. With the presence of the road causeway providing public access along the coast we see no compelling reason why the public would or should want to traverse the margins of this small embayment and we agree that conservation purposes would be better served by closing these margins to public access.

However, the above consideration raises a further issue. If public access to the Harvey Creek embayment is not appropriate and the vegetation around the embayment is protected by a covenant (volunteered by the applicant for proposed Lot 2 and still under consideration for proposed Lot 4) then for what purpose would an esplanade strip be needed at all on the margins of proposed Lots 2 and 4? Our findings on this question will be influenced by the result of our considerations over the protection or otherwise of the indigenous forest on proposed Lot 4 and so we shall come back to this matter.

Overall, we find that the provision of the esplanade reserve and esplanade strips to be a positive outcome. It is unclear whether or not there will be demand or a will to create public access along the coast in the future but we suspect that it is more likely than not. The provision of 20 metres width provides more opportunity for very pleasant coastal walks to be experienced in attractive regenerating forest, whilst minimising any impact on the birds that inhabit the margins of the Inlet.

Consolidation of Farmland

Mr and Mrs Wyllie essentially told us that they are seeking to free up capital that is tied up in areas of their land that are of no use to them in their farming operations. The financial aspects of this motive are of no relevance or interest to us in our consideration of the application. However, the amalgamation of land and resulting concentration of the applicant's farming activity is an efficiency issue that we are required to have particular regard to in Section 7(b).

We are aware that under the TRMP the applicant or a subsequent landowner has the right (as a controlled activity) to subdivide existing titles down to 50 hectare titles. We have looked into the sizes of existing titles and find that there are currently titles that are less than 50 hectares in size that will be part of the amalgamations. For example, Section 5 Block I Pakawau SD (CT NL29/116) and the relatively small usable area of Part Section 40 Square 15 (CT NL1A/711).

Therefore, if there was to be a further subdivision of the amalgamated titles created as a result of this proposal there would still be a net gain as there could not be a return to the sub 50 hectare titles that currently exist.

Therefore, the consolidation of productive rural land is real positive effect even in the event that the landowner exercises his or her right to subdivide to a minimum of 50 hectares. We agree with the applicant and find that this amalgamation of titles and divestment of land that is not useful for farming is a positive gain for the efficient use and development of natural and physical resources.

Protection of Regenerating Native Forest

The applicant has volunteered to protect all of the indigenous vegetation in proposed Lots 1, 2 and 3. This is certainly a positive effect of the subdivision, but the explicit protection of the existing regenerating native forest on the balance area of CFP NL1A/711 and proposed Lot 4 is the single most divergent matter between the applicant and Council officers. Submitters in opposition did not explicitly mention the matter but generally emphasised the importance, as they saw it, of the natural ecological values of the regenerating forest. The need or otherwise to protect these additional areas of regenerating forest is driven by our findings below on whether the subdivision is sporadic development and what the landscape character effects will be.

Therefore, until such matters are fully explored (below) we simply record the “baseline” positive effect of the protection of native vegetation on proposed Lots 1, 2 and 3 and we shall return to the matter of the protection of the balance lot and proposed Lot 4.

b) With reference to Policy 6 NZCPS, is the proposed subdivision “sporadic” development?

Mr Bell and others opposed the application because they considered it to be sporadic subdivision.

Policy 6(c) of the NZCPS encourages settlement in a consolidated pattern to contribute to the avoidance or mitigation of sprawling or sporadic settlement.

Our consideration is that this development is clearly sporadic development. We are of course aware that there are houses to the north as part of the applicant’s farm, but three new dwellings in the proposed locations must be considered sporadic development southwards into regenerating native forest. However, we have limited ability in this hearing to encourage the houses to be built at existing nearby settlements such as Pakawau or Rakopi.

c) What effects (positive or adverse) will the proposal have on landscape character?

Both of the landscape experts at the hearing agreed that the landscape is outstanding for the purposes of Section 6(b) of the Act and the relevant Objectives and Policies of the TRMP.

There was no dispute that the proposal lies within the coastal environment for the purposes of Section 6(a) of the Act, the NZCPS and the TRMP. We accept this and do not propose to address it any further.

Both of the landscape experts also supported the suite of measures proposed to mitigate the visual impact of the three houses on the proposed lots. Submitters who presented in opposition were less satisfied with the level of visual integration into the landscape. Many were concerned about the house that would be built on proposed Lot 1. However, we feel that it is fair to say that most opposing submitters more based their opposition on the residential activities that would accompany the physical structures of the dwellings and on their opinions that the development will be inconsistent with the NZCPS and the TRMP.

From a purely visual point of view, we find that the houses will be reasonably discreet, due in large part to the restrictions volunteered by the applicant. However, we are aware that much of this discreetness also arises from assumptions about the type of people who are likely to buy and build in such locations. In the event that we grant consent a challenge will be balancing the liveability of the houses (as we have discussed in Section 7(a) above) with the necessity of minimising their visual impact. Whether or not this balance can be achieved will be an important factor in making a decision on this application.

The “residential activity” is another aspect of the landscape character assessment and includes the recognition that people live there, the presence of the driveways and possibly letterboxes, the occasional noise from the dwellings etc. Many submitters expressed opposition to the simple fact of bringing people into an environment that gives the impression and feel of being untouched, spectacular, remote and tranquil.

Mrs Wyllie said that “*credit must go to the farmer [for the] regenerating bush and healthy wetlands*” and we agree. The fact that this site can accurately be described as outstanding and command the respect given to it by the submitters, whilst at the same time bordering an extensive farm, is exemplary. The environment is not untouched; we would describe it as a human-influenced environment that has been cared for.

The only real contest between the landscape experts at the hearing was their divergence in opinion over the necessity for the protection of the existing regenerating native forest on the balance area of CFP NL1A/711 and proposed Lot 4.

The regime in the TRMP for the protection or otherwise of the vegetation on the site is particularly relevant. To recap:

- In the area that is within 200 metres of the coastal marine area (see Mr Langbridge’s “Context Plan” for the 200 metre line) woody indigenous vegetation cannot be destroyed or removed without a resource consent (discretionary activity).
- In the area outside of that buffer, any indigenous vegetation that is not forest may be destroyed or removed, and indigenous forest may be destroyed or removed at a rate of 2000 square metres per site every three years.

- There is no restriction on the planting of exotic vegetation in either of these areas

The applicant, Ms Bayley and Mr Langbridge consider that protection by way of consent notice of all of the vegetation on proposed Lots 1 to 3 is a sufficient positive effect to warrant the grant of consent (alongside all of the other considerations). They say that this will strengthen the protection of the indigenous vegetation within the 200 metre buffer and will entirely the rest of proposed Lot 3. They also say that much of the vegetation on the balance title is adequately protected by the TRMP rules.

Mr Carter and Mr Horner say that what is proposed by the applicant is only a minor positive effect, and that protection of a larger area of indigenous forest is necessary to offset the effects of the proposal. Under close questioning during the hearing Mr Carter was very clear that he did not see the protection of the vegetation of just proposed Lots 1 to 3 as sufficient to offset the creation of three new houses and three new residential activities.

We find that we agree with Mr Carter on this matter for several reasons.

We agree that there are threats to the indigenous forest on the balance title that are not fanciful or far-fetched. For example, the forest beyond 200 metres could be eroded over time as a permitted activity, consent could be obtained for more rapid removal, or it could be under-planted with Tasmanian Blackwood trees⁴. Protection within the 200 metre buffer is better, but still not certain.

Given the qualities and sensitivities of the site we find that significant mitigation is needed. Much has already been achieved by the suite of measures volunteered by the applicant, but we agree with Mr Carter's assessment that the protection of the wider landscape of indigenous forest (to a total of roughly 50 hectares) is needed to offset the creation of house sites and residential activities. This wider landscape currently exists in the form of the vegetation in the Harvey Creek catchment and around the coast, and we need certainty that this vegetation will remain and be allowed to continue to regenerate for perpetuity. We consider that a protected forest of approximately 19 hectares - all that is guaranteed without the protection on the balance title - is not enough.

We find support for this position in the *Just One Life* case that the applicant referred us to. In that case the proposal was to erect one residence within an outstanding natural feature, with strict design to ensure that it blended in to its lakeshore setting, and to offset its adverse effects with some positive effects by protecting and restoring some 80ha of indigenous vegetation around it⁵. The effect that it was to offset was not the visual effect of the residence so much as the residential activity, and the area of land offered to offset or balance the effect of the activity was considerable.

It is also supported in the *Arrigato* decision, which the applicant also brought to our attention. In that case, which was within the coastal environment and had a remote character, but was considered not to be an outstanding landscape, the balancing of positive consequences against adverse effects was "finely poised"⁶.

⁴ Planting in gaps within existing forest is a technique for avoiding split leader trees.

⁵ *Just One Life* paragraph 25.

⁶ *Arrigato* paragraph 6.

The Court “viewed the matter holistically” and concluded that the proposal to allow 9 residences on a high ridge and to revegetate and manage some 80 hectares of degraded coastal escarpment below them, in combination, would achieve the purposes of the Act⁷.

d) What effects (positive or adverse) will the proposal have on native birds on the margins of the Inlet and land-based fauna, including native snails?

Several submitters presented evidence of the existence of vulnerable and shy species of bird in the Inlet immediately adjoining the site. However, there was no evidence of the impact that the proposal would have on these species. We expect the effects to be minor and mostly related to a slight increase in residential activity albeit at a distance from the shoreline. We consider domestic animals to be of considerable concern, however the applicant has accepted the prohibition of the keeping of cats and dogs and we consider this an appropriate measure in this location.

The most likely impact on birdlife in the Inlet comes from the possible future creation of a coastal walkway which will be made possible by the vesting of an esplanade reserve and the creation of an esplanade strip. As already discussed we accept as appropriate the slight tension between access and disturbance of birdlife. However, we accept Mr Gavin’s suggestion that, in the event that the consent is granted, no public access should be granted into the part of the estuary that is to the east of the road causeway. This is on the basis that access is simply not needed to gain passage along the coast (the causeway allows the Harvey Creek mouth and embayment to be avoided) and the banded rail habitat in this area is particularly sensitive.

Regarding native snails, once again the presence and rarity of these organisms was established by Ms Wallace and Dr Mead but no persuasive evidence was presented demonstrating that there would be an actual adverse effect. We accept that there is a possibility of some direct impact from the creation of the access roads and the clearance and settlement of the BLAs, but apart from this all vegetation is to remain.

This is particularly so on the large area of native forest on the balance title. If we are to grant consent and to require the protection of the vegetation on the balance title - bringing the total to over 50 hectares - as we have indicated above that we are likely to do, then this proposal would actively protect tens of hectares of native forest in the Harvey Creek catchment that could otherwise be destroyed, removed or interplanted.

We find that, on balance, this would be sufficient to outweigh the effect of the clearance and use of the three accessways and three small BLAs in the coastal environment.

e) What effects (positive or adverse) will the proposal have on native forest health and regeneration?

A principal issue here is biosecurity. Several submitters expressed concern about the infiltration of weed species and the pollution of the local genetic stock

⁷ *Arrigato* paragraphs 32-3 and 102.

of native plants. We understand and agree that there have to be tight controls on aspects such as the importation of potential weed species and this would be reflected in the conditions of consent, should consents be granted. However, we see the magnitude of the effect from the introduction of three residential activities as minor. We do not see the need for overly draconian measures such as the prohibition of vegetable gardens or lemon trees.

f) Is a requirement for active pest management appropriate?

As a result of hearing the presentation of submissions, Mr Horner considered that a more proactive stance on pest plants and animals could and should be taken by the applicant and the future owners of the lots. He circulated an additional recommended condition which required the formulation of a Pest Management Plan and the implementation of that Plan by way of a consent notice on the titles of proposed Lots 1 to 3.

Ms Chisnall for the applicant opposed the condition.

We have considered the matter and, on this point we agree with Ms Chisnall. We do not consider that a compulsory requirement for an ongoing pest management regime is appropriate to address the effects of the proposal. That is not to say that we do not have admiration for Mr Horner's approach; and we agree that there were persuasive submissions seeking such measures. However, there is simply not the evidence that the application will cause the kind of effects that justify such a condition.

g) What kind of a precedent would a grant of consent establish?

We remind all parties that establishing a precedent is not necessarily adverse. A future applicant is only able to refer to or rely upon a previous decision if the circumstances are quite similar and the same or very similar conditions are applied. Therefore, if a good decision is made and a balance of positive effects is achieved, then replicating that positive outcome elsewhere may be a positive thing. If the same circumstances do not apply or the positive effects are not available then it follows that a precedent does not apply.

In this case it is worth considering the circumstances of the application which must be considered:

- The amalgamation of titles so that there is no increase in the total number of titles;
- The removal of a large number of wilding pines;
- The protection of valuable native forest that is positioned between a very significant Inlet and a National Park and has high natural character values within an outstanding natural landscape;
- The creation of a significant length of esplanade reserve and strip; and
- A comprehensive suite of conditions to mitigate the visual effect of buildings and residential activity.

8. RELEVANT STATUTORY PROVISIONS

8.1 Policy Statements and Plan Provisions

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

- a) the New Zealand Coastal Policy Statement 2010 (NZCPS);
- b) Tasman Regional Policy Statement (TRPS); and
- c) 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

From our consideration of the principal matters earlier in this decision it is clear that the effect on landscape character is the most significant potential adverse effect for us to consider. That effect, as well as any other lesser ones, must also be considered against the relevant provisions of the TRMP and the NZCPS.

As we have heard from several submitters, the bar is set high in a coastal outstanding natural landscape.

NZCPS Policy 6 is, inter alia, to “*encourage the consolidation of existing coastal settlements ... where this will contribute to the avoidance or mitigation of sprawling or sporadic patterns of settlement ...*”. In this case we consider that the proposal is undoubtedly sporadic development along the coast.

NZCPS Policies 13 and 15 require the avoidance of adverse effects of activities on natural character and natural landscapes where the character and landscapes are outstanding. Mr Carter emphasised the point that these policies are inclusive of all adverse effects, not just significant ones. Further, other objectives and policies of the NZCPS as well as Section 6(b) of the Act broadly seek the avoidance of inappropriate development.

Therefore, our task is to decide whether the adverse effects have been avoided and whether the development is inappropriate.

The visibility of the houses will be low, the driveways off Kaihoka Lakes Road will be discreet and many aspects of the residential activity are minimised through the recommended consent notices. In reaching our opinion on the effects on natural character and landscape values we have allowed for an increase in the areas of the BLAs on Lots 2 and 3 to 450 square metres as we flagged earlier in this decision. By way of reference or comparison, the minimum residential lot size is 450 square

metres⁸ and we consider this to be the minimum area necessary to accommodate buildings (up to 200 square metres) defensible space around the house, room for parking and turning, and possibly some space for a small vegetable garden, composting area, lemon tree etc. We are of the opinion that overly restricting the ability of purchasers to use the property we are most likely forcing them into a state of non-compliance as it is likely that they would clear space to make their property more liveable. We consider this to be unsatisfactory and see it as preferable that people be given the necessary space to make the living environment successful.

By not allowing the extra 150 square metres of area to be provided “forwards” (i.e. into the view shafts) and with the house no doubt closer to the front of the BLA we are satisfied that the extra area will have a negligible effect on the visibility of the houses.

Overall we find that, although the natural character is high and the landscape is outstanding, the development of the houses has been proposed in such a way that the adverse visual effects on landscape character are largely mitigated. However, as we have seen above, the effects being “largely mitigated” is not enough to satisfy Policies 6, 13 and 15 of the NZCPS.

Furthermore, in taking a holistic approach to the proposal, we find that the extent of protection of native forest offered by the applicant is not sufficient to avoid the adverse effects of the activity in terms of Policies 6, 13 and 15 of the NZCPS.

We agree with Mr Carter that a much wider area of regenerating vegetation must be actively protected in order to ensure that the net adverse effect of the development, assessed holistically, is avoided. Protection of the regenerating forest on the balance title (including proposed Lot 4), in addition to Lots 1, 2, 3 and 5, will provide certainty that the intrinsic qualities of the encompassing native forest link between the National Park and the inlet will be retained as a viable natural ecosystem into the foreseeable future. We see this level of protection as a significant positive effect compared to the present level of protection under the rules of the TRMP, and we find that protection of this regenerating forest, along with the other positive effects identified and mitigation measures proposed, will be sufficient to offset and thereby avoid the adverse effects of the proposal.

We accept and agree with the imposition of a consent notice restricting the keeping of cats and dogs. We consider this to be appropriate and necessary given the extensive evidence given to us about vulnerable species in the area and the objective of fostering a healthy regenerating forest ecosystem and an Inlet that is rich in birdlife. We make further comment on the practicality of such a consent notice in our commentary on the conditions of consent in Section 11 below.

We have not required an esplanade strip around the inland embayment and the mouth of Harvey Creek. While we did not venture in there on our site visit, the area could accurately be described as “tiger country” and likely to be good habitat for birds such as banded rail. With the causeway allowing access from south to north we see no reason to allow public access into the margins of this embayment, and with our decision to entirely protect all vegetation around the margins there is no need to require an esplanade strip.

⁸ Except in some situations in Motueka or Richmond where 350 square metres is allowed but with an average lot area of 450 square metres.

In summary, assessing the effects and merits of this proposal has been complex. We have found that, with appropriate conditions, it is possible to ensure that the positive effects will balance the negative. We would urge all people who are a party to this application to carefully consider all of the components of this decision when deciding whether to take matters further. While allowing the introduction of residential activity, the decision, significantly, returns a headland in the northern part of the Inlet to a more natural state through the removal of substantial pine trees, ensures that a large area of strongly regenerating native forest in a pivotal location between the coast and Kahurangi National Park should never be at risk from clearance or forestry, and strengthens the protection of the coastal margin of the Inlet northward from the National Park boundary.

Objectives and Policies of the TRMP

Rural Environment Effects

We find the following objectives and policies to be particularly relevant to our consideration:

Objective 7.1.2

Avoid the loss of potential for all land of existing and potential productive value to meet the needs of future generations, particularly land of high productive value.

Policy 7.1.3.4

To require land parcels upon subdivision to be of a size and shape that retains the land's productive potential, having regard to the actual and potential productive values, the versatility of the land, ecosystem values, the management of cross-boundary effects, access, and the availability of servicing.

Policy 7.1.3.5

To facilitate the amalgamation of land parcels and relocations of the boundaries of land parcels in rural areas where this would enable a greater range of soil-based production activities.

Objective 7.2.2

Provision of opportunities to use rural land for activities other than soil-based production, including papakainga, tourist services, rural residential and rural industrial activities in restricted locations, while avoiding the loss of land of high productive value.

Policy 7.2.3.2

To enable sites in specific locations to be used primarily for rural industrial, tourist services or rural residential purposes (including communal living and papakainga) with any farming or other rural activity being ancillary, having regard to:

- (a) the productive and versatile values of the land;*
- (b) natural hazards;*
- (c) outstanding natural features and landscapes, and the coastal environment;*
- (d) cross-boundary effects, including any actual and potential adverse effects of existing activities on such future activities;*
- (e) servicing availability;*

- (f) *the availability of specific productive natural resources, such as aggregates or other mineral sources;*
- (g) *transport access and effects;*
- (h) *potential for cumulative adverse effects from further land fragmentation;*
- (i) *maintaining variety of lot size;*
- (j) *efficient use of the rural land resource;*
- (k) *cultural relationship of Māori to their land.*

We find that there is general support for the proposal in these relevant objectives and policies. The proposal allows for the amalgamation of productive rural titles.

Margins of Rivers, Lakes, Wetlands and the Coast

We find the following objective and policies to be particularly relevant to our consideration:

8.1.2 Objective

The maintenance and enhancement of public access to and along the margins of lakes, rivers, wetlands and the coast, which are of recreational value to the public.

Policy 8.1.3.1

To maintain and enhance public access to ... the coast while avoiding, remedying or mitigating adverse effects on other resources or values, including: indigenous vegetation and habitat ...

Policy 8.1.3.4

To set aside or create an esplanade reserve, esplanade strip or access strip at the time of subdivision of land adjoining ... the coastal marine area, where there is a priority for public access.

Policy 8.1.3.7

To ensure that adequate public access is available to outstanding natural features and landscapes in the coastal environment ..., except where the impact of such access is incompatible with the duty to protect these areas ...

We consider that the esplanade reserve and esplanade strip proposed are supported in this location. Coastal access is certainly a priority and we do not consider that access will be incompatible with the coastal values if the access is created in a sensitive way. However, in consideration of how Policy 8.1.3.7 relates to the creation of an esplanade strip in the Harvey Creek embayment to the east of the causeway, again we find that these two considerations may be in conflict. We heard evidence that this area is arguably the most sensitive of the estuarine areas as far as shy birds go, therefore we agree that public access to this embayment is inappropriate and unnecessary.

Landscape

We find the following objective and policies to be particularly relevant to our consideration:

Objective 9.1.2

Protection of the District's outstanding landscapes and features from the adverse effects of subdivision, use or development of land and management of other land, especially in the rural area and along the coast to mitigate adverse visual effects.

Policy 9.1.3.3

To ensure that structures do not adversely affect:

(a) visual interfaces such as skylines, ridgelines and the shorelines of lakes, rivers and the sea;

(b) unity of landform, vegetation cover and views.

Policy 9.1.3.4

To discourage subdivision developments and activities which would significantly alter the visual character of land in outstanding landscapes (including adjoining Abel Tasman, Nelson Lakes and Kahurangi national parks).

Policy 9.1.3.7

To ensure that land disturbance including vegetation removal and earthworks does not adversely affect landscape character and rural amenity value in the Coastal Environment Area in locations of public visibility, particularly where there are distinctive natural landforms.

In considering this objective and these policies we agree with and adopt Mr Carter's assessment provided in paragraphs 51 and 52 of his report.

We accept the evidence given from Council officers about traffic, stormwater, wastewater and earthworks matters. We record that we have no particular concerns about these issues, subject to wastewater coming under careful scrutiny at building consent time.

Overall, we find a broad level of support in the objectives and policies of the TRMP. This support stems from the amalgamation of productive land titles which, even if subsequently subdivided as provided for in the rules of the TRMP will still have the lasting effect of expunging some small existing titles. It also stems from our confidence that the proposal will (in the words of Objective 9.1.2) still protect one of the District's outstanding landscapes from the adverse effects of subdivision.

Other Matters

In Section 7(g) above we provided some discussion on the matter of precedent. We find that, due in part to the conditions of consent, no adverse precedent is created as a result of the granting of these consents, as the activity has been considered in the light of the sensitive design of the subdivision and the conditions proposed.

However, we find that without Mr Carter and Mr Horner's recommended condition requiring the protection of vegetation we would likely have found that any precedent created would have been undesirable. Simply put, the applicant's proposal was to create three new dwellings for the protection of around 19 hectares of regenerating native forest. As we have already stated we do not consider that this is appropriate. We would not want other landowners who had 19 hectare blocks of similar forest to think that they may be able to argue for the creation of three new lots. We find that a development of this sort and in this location needs to be balanced by protection of a

substantial area of the extensive vegetative framework that absorbs the development and maintains the ecological integrity of the largely undeveloped landscape.

Protection of approximately 50 hectares (as is a condition of consent) is appropriate as this ensures that the residential activity is an insignificant part of that greater undeveloped landscape.

Any further application that sought consent on the basis of a precedent created by this decision would have, in our opinion, some very high hurdles to jump, given the amalgamations of productive blocks (meaning no further titles are created) and the protection of approximately 50 hectares of native vegetation in a strategic position between an important Inlet and a National Park. Further, if those hurdles could be overcome by a future application then it is likely that positive effects would result from that application.

Purpose and Principles of the Act

We consider the following Section 6 Matters of National Importance to be relevant to this application:

- S.6(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development.
- S.6(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development.
- S.6(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers.

We have also had regard to the following Section 7 “Other Matters” in making our decision:

- S.7(b) the efficient use and development of natural and physical resources.
- S.7(c) the maintenance and enhancement of amenity values.
- S.7(d) intrinsic values of ecosystems.
- S.7(f) maintenance and enhancement of the quality of the environment.
- S.7(g) any finite characteristics of natural and physical resources.

We are satisfied that all relevant Section 6 matters are provided for by granting this application.

We are also satisfied that the subdivision and development in the sites proposed is not inappropriate in the context of an outstanding natural landscape. This is firstly due to the substantial mitigation of the effects of the development itself, and secondly due to the gains springing from the pine removal and the enhanced protection of native forest between the National Park and the inlet.

Section 6(d) is also clearly provided for and a width of 20 metres allows more flexibility for the establishment of sensitive public access that allows greater appreciation of the Inlet without disturbing its wildlife.

Section 7(b) is actively provided for by this decision through consolidation of farmland.

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

Restriction on cats and dogs

As stated above, we have imposed a consent notice that restricts the keeping of cats and dogs (and other potentially feral animals). There remains some uncertainty about the effectiveness of such a consent notice given the lack of a monitoring mechanism. However, we find that a consent notice of this type is still very much worthwhile and likely to be effective for the following reasons:

First, consent notices are (generally) carefully checked by a prospective purchaser's solicitor. Any such items will come to the attention of the purchaser so that we can be confident that they will be aware of the restriction when the property is purchased. Given that most people in society will obey such rules we believe that a high level of compliance will result.

Second, this consent notice, the physical nature and location of the properties, and the other consent notices imposed mean that there is a very high likelihood that environmentally conscious people will be the purchasers. Such people will be aware that all three properties have restrictions on the keeping of animals and therefore we anticipate a level of peer pressure, or at least an awareness that keeping a cat or allowing a dog to run on the estuary will not go unnoticed. Further, neighbours who become aware of such activities will then be able to make a complaint to the Council who will then be able to take enforcement action.

View shafts

We have attempted to refine some basic criteria for the 50% clearance of view shafts from the dwellings on Lots 2 and 3. With these criteria we are satisfied that there is little room for abuse of this mechanism.

12. LAPSING OF CONSENT(S)

Section 125(2) of the Act makes particular provision for the lapsing of subdivision consents. In the case of the subdivision consent (RM080459), 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.

Land Use Consent, (RM100548 for the construction of dwellings) will lapse five years after the issue of each of the certificates of title for the respective allotments (Lots 1 to 3) inclusive. This is a pragmatic approach to ensure that delays with the subdivision do not compromise the effective “life” of the land use consent for the dwellings to be erected on the titles created by the subdivision.

Issued this 22nd day of August 2011

A handwritten signature in black ink, appearing to read 'Stuart Bryant', is written on a light-colored rectangular background.

Commissioner Stuart Bryant
Chair of Hearings Commissioners

UNCONFIRMED MINUTES



RESOURCE CONSENT

RESOURCE CONSENT NUMBER: RM080459

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

G D Wyllie, A J Wyllie and D G Beatson
(hereinafter referred to as “the Consent Holder”)

ACTIVITY AUTHORISED BY THIS CONSENT:

To subdivide a 74.52 hectare title to create the following:

- Lot 1 comprising 4.2 hectares including a right-of-way;
- Lot 2 comprising 12.0 hectares including a right-of-way;
- Lot 3 comprising 2.1 hectares;
- Lot 4 comprising 36 hectares to be amalgamated with the balance of CFR NL1A/711 and Section 4 Block II Pakawau Survey District (CFR NL32/168);
- Lot 5 comprising 9000 square metres to vest in Council as esplanade reserve 20 metres wide adjoining proposed Lot 3;
- Lot 6 comprising 1.4 hectares to vest as seabed;
- Lot 7 comprising 1.0 hectare to vest as seabed;

and to amalgamate Section 3 Block II Pakawau Survey District (CFR NL123/154), Section 5 Block I Pakawau Survey District (CFR NL29/116) and Section 2 Block II Pakawau Survey District to create one title.

LOCATION DETAILS:

Address of property:	441 Kaihoka Lakes Road
Legal description:	Part Section 40 Square 15
Certificate of title:	CFR NL1A/711
Valuation number:	1860003200
Easting and Northing:	2478868E 6071841N

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 plans prepared by Rory Langbridge Landscape Architects and the plan prepared by Gowland Surveyors, titled *Proposed Subdivision of Part Section 40 Square 15*, and attached to this consent as **Plans A -E, RM080459** except as modified by Conditions 7, 8 and 9 below. Where there is any inconsistency between the application and plans, and the conditions of consent the conditions shall prevail.

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 Tasman District Council for Council reticulated services or appurtenant to the appropriate allotment.
3. 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. The Building Location Areas shown on **Plan B RM080459** and **Plan C RM080459** for Lots 1, 2 and 3 shall be shown, with contours, on the Land Transfer title plan.

Notwithstanding the plans referred to in this condition, the Building Location Areas on Lots 2 and 3 shall have a maximum area of 450 square metres in each lot and the south-west edge of the Building Location Area on Lot 1 shall be at least 8 metres from the centre of the existing historic access track.

The extra 150 square metres to be added to each of the Building Location Areas on Lots 2 and 3 shall not be extended in the direction of the view shaft shown on the plans referred to above. In addition, the extra 150 square metres shall be added to the Building Location Areas shown on the plans in a way that is sensitive to the landforms and minimises any increase in the potential visibility of the buildings to be constructed.

Advice Note:

Plans B and C referred to in this condition show the Building Location Areas on Lots 2 and 3 as being 300 square metres in each lot. For the avoidance of doubt these size restrictions have been increased to 450 square metres.

4. Reference to easements is to be included in the Council resolution on the title plan at the section 223 stage.

Amalgamations

5. That Lot 4 hereon and Part Section 40 Square 15 (balance CFR NL1A/711) and Section 4 Block II Pakawau Survey District (CFR NL32/168) be held in one Computer Register.

6. That Section 3 Block II Pakawau Survey District (CFR NL123/154), Section 5 Block I Pakawau Survey District (CFR NL29/116) and Section 2 Block II Pakawau Survey District (CFR NL22/49) be held in one Computer Register.

LINZ consultation reference: **1002616**

Esplanade Strip

7. An instrument shall be registered over the balance of CFR NL1A/711 adjoining the coast between Kaihoka Lakes Road and the unformed legal road to the west of the peninsula. The instrument shall provide for the creation of an esplanade strip in favour of Tasman District Council in accordance with the following:

An esplanade strip 20 metres wide shall be created over the balance of CFR NL1A/711 between Kaihoka Lakes Road and the unformed legal road to the west of the peninsula. The purpose of this strip is to contribute to the protection of conservation values and enable public access to and along the coast and to enable public recreational use of the strip and the coast. All the prohibitions of Clause 2 of the Tenth Schedule apply to the strip; Clauses 3, 4 and 7 shall not apply, Clauses 5 and 6 shall apply.

No structures shall be erected within the esplanade strip without the written approval of Councils Reserves Manager. Approval may be granted subject to conditions.

Advice Notes:

An esplanade strip has not been required on lots 2 and 4 of the subdivision since it has been determined that public access around that section of coastline is not appropriate nor necessary. An esplanade strip for conservation purposes only is not necessary as a consent notice on the title of these two lots prevents any destruction or removal of vegetation.

Prior to Section 224 approval the Consent Holder shall provide documentation confirming the registration of the esplanade strip instrument adjoining the identified area of coastline on the balance title.

Compensation including registration costs will be paid.

Esplanade Reserve

8. The Esplanade Reserve to vest shown as Lot 5 on **Plan A - RM080459** shall be 20.0 metres in width from MHWS and shall be shown on the scheme plan prior to Section 223 approval. All pines shall be removed from the Esplanade Reserve area prior to the issue of a completion certificate pursuant to Section 224(c) of the Act.

Road to Vest

9. The areas where the formation of the Kaihoka Lakes Road formation extends into Lots 1 to 3 shall be shown as a separate allotment as Road to vest on the scheme plan prior to section 223 approval

Right-of-Way

10. The Right-of-Way shown on **Plan A - RM080459** shall be formed as follows:
 - a) A minimum lane width of 5.0 metres;
 - b) A maximum gradient of 1:6;
 - c) Two 1.0 metre side drains with concrete culverts;
 - d) Two 500 mm wide metal shoulders; and
 - e) Compacted basecourse surface.

Access to Building Location Areas

11. The access to the Building Location Areas within Lots 1, 2 and 3 as shown on **Plan A - RM080459** shall be formed as follows:
 - a) A maximum gradient of 1:5;
 - b) Compacted basecourse surface;
 - c) One side drain;
 - d) Concrete culverts;
 - e) Erosion protection at culvert outlets; and
 - f) Total carriageway width of 3.5 metres.

The design and location of the accesses shall minimise the need for removal of mature trees forming part of the canopy as determined by a person with an appropriate horticulture qualification.

12. Any disturbed areas caused by earthworks associated with the formation of the right-of-way and accesses to Building Location Areas shall be replanted with native plants of local provenance.

Wilding Pines

13. The wilding pine trees identified on **Plan C RM080459** shall be felled in stages so as to minimise damage to the existing indigenous vegetation. Where these pine trees are close to the building location areas they should be felled in stages into the Building Location Areas.
14. All pine trees that are not the subject of Condition 13 within Lots 1 - 3 shall be poisoned. Verification that all pine trees on Lots 1 - 3 are dead shall be provided by a qualified and/or experienced arborist.

Fencing

15. Prior to the issuing of a completion certificate pursuant to Section 224(c) of the Act, the boundaries between pasture and the areas on **Plan F RM080459** identified as A, B and B1 shall be permanently fenced so that stock are excluded from the vegetated areas.

Vehicle Crossing Applications

16. Prior to any works being undertaken the applicant shall arrange to meet a representative of the Council's Engineering Manager to carry out a site inspection to confirm the location of the access crossing for Lot 3 and to confirm the extent of bank cutting and or vegetation removal required to provide sight line visibility.

Engineering Plan

17. An engineering plan showing the location and heights of any bank cutting required within the Kaihoka Lakes Road reserve, the extent of vegetation removal required by Condition 16, the location of the accesses onto Kaihoka Lakes Road, scour protection at the outlet of the culverts, an erosion and sediment control plan and construction details for the right-of-way shall be submitted to Council's Engineering Manager for approval.

Engineering Works

18. 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

19. 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

20. The following consent notices shall be registered on the certificate of title containing Lots 1 to 3 and the balance of CFR NL1A/711 pursuant to Section 221 of the Act.

The consent notices shall be prepared by the applicant'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. Cats, Dogs and Potentially Feral Animals

No cats, dogs (except for guide dogs) or any other animal that may become a pest should it escape may be kept or housed by any of the owners, occupiers, guests or users of any of the buildings on Lots 1 - 3. For the avoidance of doubt, this advice note was agreed to by the applicant at the time of subdivision.

B. Building Location Restrictions

For Lots 1, 2 and 3 all buildings shall be located within a Building Location Area identified on the Land Transfer Plan, except for water storage tanks which may be outside the Building Location Area.

Notwithstanding the plans referred to in this condition, the Building Location Areas on Lots 2 and 3 shall be a maximum area of 450 square metres in each lot and the south-west edge of the Building Location Area on Lot 1 shall be at least 8 metres from the centre of the existing historic access track.

The extra 150 square metres to be added to each of the Building Location Areas on Lots 2 and 3 shall not be extended in the direction of the view shaft shown on the plans referred to above. In addition, the extra 150 square metres shall be added to each of the Building Location Areas shown on the plans in a way that is sensitive to the landforms and minimises any increase in the potential visibility of the buildings to be constructed.

Advice Note:

Plans B and C referred to in this condition show the Building Location Areas on Lots 2 and 3 as being 300 square metres in each lot. For the avoidance of doubt these size restrictions have been increased to 450 square metres.

No buildings or structures (including washing line or other such visible structure) shall be constructed or positioned closer than the front line of the house to the view shafts identified on Plan C RM080459, Plan D RM080459 and Plan E RM080459.

C. Building Area Restrictions

The total area of all buildings constructed on Lots 2 and 3 shall not exceed 200 square metres in each lot. This coverage shall not include water tanks that are outside of the Building Location Area and any wastewater disposal field.

D. Building Height Restrictions

The maximum height of buildings on Lots 1 - 3 shall be 5.0 metres above ground level.

E. Building Foundations

The maximum depth of any cut and or fill to create a slab on ground foundation shall be 1.2 metres for Lots 2 and 3 with no earthworks taking place beyond the formed access and Building Location Area.

F. Engineering Conditions

Any recommendations listed within the engineering site certification required by Condition 24.

G. Native Vegetation Protection on Lots 1 - 3

Destruction or removal of any native vegetation is prohibited on Lots 1 - 3 except as required for:

- a dwelling, 3 metres defensible space and curtilage, all of which are to be within the Building Location Area;
- the location of water tanks or for the maintenance of the right-of-way or accessways.
- minor clearance of undergrowth necessary for installing underground services;
- seed collection for onsite and local area revegetation purposes;
- harvesting of standing deadwood for firewood use at the dwelling on the same lot;
- formation and maintenance of foot-tracks used for any trapping of feral exotic mammals, but not including the estuary rush/shrub margin;
- unavoidable collateral damage associated with the destruction or removal of exotic plants; and
- thinning within an authorised view shaft (see below) to not less than 50% remaining canopy cover.

The view shafts identified on **Plan C RM080459**, **Plan D RM080459** and **Plan E RM080459** may be established by allowing removal of up to 50% of the existing canopy, once the wilding pine trees have been removed in accordance with Condition 13 of resource consent RM080459. The selection of trees to be removed shall be identified on site by a registered landscape architect prior to their removal. The selection of trees shall be guided by the following criteria:

- the 50% canopy removal shall be on the basis of an average over the area of the view shaft.
- There shall be no localised areas of the view shaft that are clear felled.
- The 50% canopy removal shall be based on a horizontal view of the canopy from the approximate location of a dwelling on each lot.

H. Native Vegetation Protection on CFR NL1A/711 (including Lot 4)

Destruction or removal of any native vegetation is prohibited on those parts of the balance area of CFR NL1A/711 (including Lot 4) that are identified on **Plan F RM080459** as A, B and B1, except for:

- seed collection for onsite and local area revegetation purposes;
- formation and maintenance of foot-tracks used for any trapping of feral exotic mammals, but not including the estuary rush/shrub margin; and
- unavoidable collateral damage associated with the destruction or removal of exotic plants.

Advice Note:

It is the intention of this consent notice that the area shown in the plan be protected and be allowed to continue to regenerate into native forest.

I. Fencing on Lots 1 - 3

Construction of fencing on lots 1-3 outside of the Building Location Areas is prohibited.

J. Building Colour

The exterior of all new buildings (including water tanks) on Lots 1 - 3 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 consent holder shall engage the services of a professional to ensure the exterior cladding and colour selection are compatible with the long term durability of the building material in the subject environment and in accordance with the requirements under the Building Act 2004.

K. Plantings

Establishment of exotic plants is prohibited outside the Building Location Areas on Lots 1, 2 and 3, and within the area of protected vegetation on the balance land (including Lot 4). Only those exotic species approved by the Council may be planted within the Building Location Areas. All new native planting and direct seeding on Lots 1 to 3 and the balance lot (including Lot 4) is restricted to plants of local provenance.

L. Water Storage for Fire fighting

At the time of building a dwelling, the owner of Lots 1 - 3 shall provide a minimum storage of 23,000 litres of water, with sufficient water supply for fire fighting purposes in accordance with the New Zealand Fire Service Code of Practice for Fire Fighting Water Supply. The tank is to be fitted with an appropriate connection to enable the local firefighting appliance to connect. Each dwelling shall be provided with sprinklers, and this system shall be maintained.

M. Services

Electricity and telephone reticulation has not been provided as part of the subdivision created by RM080459. Any cabling installed for the provision of electricity and telecommunications services is required to be underground within Lots 1 -3.

N. Cultural Heritage

In the event of Maori archaeological sites (e.g. shell midden, hangi or ovens, garden soils, pit depressions, occupation evidence, burials, taonga) or koiwi (human remains) being uncovered, activities in the vicinity of the discovery should cease. The owner should then consult with the New Zealand Historic Places Trust's Central Regional Office and local iwi, and should not recommence works in the area of the discovery until the relevant Historic Places Trust approvals to damage, destroy or modify such sites have been obtained. It should also be noted that the discovery of any pre-1900 archaeological site (Maori or non-Maori) is subject to the provisions of the Historic Places Act and needs an application to the Historic Places Trust for an authority to damage, destroy or modify the site.

Rural Emanations Easement

21. A Rural Emanations Easement shall be registered over Lots 1 - 3 in favour of the Consent Holder's property, and the three other farming units which access off Kaihoka Lakes Road. The Easement shall be to allow farming activities without interference or restraint, including the right to emit noise, odour and spray from farming activities. In addition, the Easement will include provision to allow noise emissions from an annual motocross event which occurs in the area.

Engineering Site Certification

22. At the completion of works, a suitably experienced chartered professional engineer or registered professional surveyor shall provide the Tasman District Council Engineering Manager with written certification that the works have been constructed in accordance with the approved engineering plans, drawings and specifications and any approved amendments.
23. Prior to any approval under Section 224 of the Resource Management Act 1991, Council requires a statement confirming that those lots which have had earth fill placed on them both as part of this consent and from previous earthworks, and the retaining thereof, are suitable for residential development. The statement shall be made in terms of NZS 4431, Appendix 2. The statement shall include any retaining structures and be accompanied by compaction test results for the area of fill and be certified by geoprofessional.
24. Certification that a site has been identified on each new allotment suitable for the construction of a residential building shall be submitted from a geoprofessional. This certificate shall define on Lots 1 - 3 the area suitable for the construction of residential buildings and shall be in accordance with NZS 4404:2010 Schedule 2A. Any limitations identified in Schedule 2A shall be noted on the consent notice pursuant to Section 221 of the Resource Management Act 1991 prior to the issue of the Section 224(c) certificate, required by Condition 20. 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.

ADVICE NOTE(S)

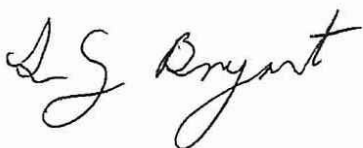
Council Regulations

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.

Other Tasman Resource Management Plan Provisions

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.

Issued this 22nd day of August 2011



Commissioner Stuart Bryant
Chair of Hearings Commissioners



RESOURCE CONSENT

RESOURCE CONSENT NUMBER: RM100548

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

G D Wyllie, A J Wyllie and D G Beatson
(hereinafter referred to as "the Consent Holder")

ACTIVITY AUTHORISED BY THIS CONSENT:

To erect a dwelling, undertake earthworks and remove indigenous vegetation in the Coastal Environment Area on each of Lots 1, 2 and 3 created by subdivision consent RM080459.

LOCATION DETAILS:

Address of property:	441 Kaihoka Lakes Road
Legal description:	Part Section 40 Square 15
Certificate of title:	CFR NL1A/711
Valuation number:	1860003200
Easting and Northing:	2478868E 6071841N

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

CONDITIONS

Commencement Date and Lapsing of Consent

1. The commencement date for this consent shall be the issue date of the certificate of title for Lots 1 - 3 created under subdivision consent RM080459. Lapsing of this consent, subject to Section 125 of the Act, will apply five years after that date.

Cats, Dogs and Potentially Feral Animals

2. No cats, dogs (except for guide dogs) or any other animal that may become a pest should it escape may be kept or housed by any of the owners, occupiers, guests or users of any of the buildings on Lots 1 - 3. For the avoidance of doubt, this advice note was agreed to by the applicant at the time of subdivision.

Building Location Restrictions

3. For Lots 1, 2 and 3 all buildings shall be located within a Building Location Area identified on the Land Transfer Plan, except for water storage tanks which may be outside the Building Location Area. The Building Location Areas on Lots 2 and 3 shall be a maximum area of 450 square metres and the south-west edge of the Building Location Area on Lot 1 shall be at least 8 metres from the centre of the existing historic access track.
4. No buildings or structures (including washing line or other such visible structure) shall be constructed or positioned closer than the front line of the house to the view shafts identified on Plan C RM080459, Plan D RM080459 and Plan E RM080459.

Building Area Restrictions

5. The total area of all buildings constructed on Lots 2 and 3 shall not exceed 200 square metres in each lot. This coverage shall not include water tanks that are outside of the Building Location Area and any wastewater disposal field.

Building Height Restrictions

6. The maximum height of buildings on Lots 1 - 3 shall be 5.0 metres above ground level.

Building Foundations

7. The maximum depth of any cut and or fill to create a slab on ground foundation shall be 1.2 metres for Lots 2 and 3 with no earthworks taking place beyond the formed access and Building Location Area.

Native Vegetation Protection

8. Destruction or removal of any native vegetation is prohibited on Lots 1 - 3 except as required for:
 - a dwelling, 3 metres defensible space and curtilage, all of which are to be within the Building Location Area;
 - the location of water tanks or for the maintenance of the right-of-way or accessways.
 - minor clearance of undergrowth necessary for installing underground services;
 - seed collection for onsite and local area revegetation purposes;
 - harvesting of standing deadwood for firewood use at the dwelling on the same lot;
 - formation and maintenance of foot-tracks used for any trapping of feral exotic mammals, but not including the estuary rush/shrub margin;
 - unavoidable collateral damage associated with the destruction or removal of exotic plants; and
 - thinning within an authorised view shaft (see below) to not less than 50% remaining canopy cover.

The view shafts identified on **Plan C RM080459**, **Plan D RM080459** and **Plan E RM080459** may be established by allowing removal of up to 50% of the existing canopy, once the wilding pine trees have been removed in accordance with Condition 13 of resource consent RM080459. The selection of trees to be removed shall be identified on site by a registered landscape architect prior to their removal. The selection of trees shall be guided by the following criteria:

- the 50% canopy removal shall be on the basis of an average over the area of the view shaft.
- There shall be no localised areas of the view shaft that are clear felled.
- The 50% canopy removal shall be based on a horizontal view of the canopy from the approximate location of a dwelling on each lot.

Fencing on Lots 1 - 3

9. Construction of fencing on Lots 1-3 outside of the Building Location Areas is prohibited.

Building Colour

10. The exterior of all new buildings (including water tanks) on Lots 1 - 3 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 consent holder shall engage the services of a professional to ensure the exterior cladding and colour selection are compatible with the long term durability of the building material in the subject environment and in accordance with the requirements under the Building Act 2004.

Plantings

11. Establishment of exotic plants is prohibited outside the Building Location Areas on Lots 1, 2 and 3, and within the area of protected vegetation on the balance land (including Lot 4). Only those exotic species approved by the Council may be planted within the Building Location Areas. All new native planting and direct seeding on Lots 1 to 3 and the balance lot (including Lot 4) is restricted to plants of local provenance.

Water Storage for Fire fighting

12. At the time of building a dwelling, the owner of Lots 1 - 3 shall provide a minimum storage of 23,000 litres of water, with sufficient water supply for fire fighting purposes in accordance with the New Zealand Fire Service Code of Practice for Fire Fighting Water Supply. The tank is to be fitted with an appropriate connection to enable the local firefighting appliance to connect. Each dwelling shall be provided with sprinklers, and this system shall be maintained.

Services

13. Any cabling installed for the provision of electricity and telecommunications services is required to be underground within Lots 1 -3.

Review of Consent

14. Council may, during the month of August each year, review the conditions of this consent pursuant to Section 128 of the Act, to:
 - (a) deal with any unexpected adverse effect on the environment which may arise from the exercise of the consent;
 - (b) to require compliance with operative rules in the Tasman Resource Management Plan or its successor plan; or
 - (c) when relevant national environmental standards have been made under Section 43 of the Resource Management Act 1991.

ADVICE NOTES

1. Each residential dwelling is required to be serviced by a wastewater treatment and disposal system with stormwater control.
2. The applicant shall meet the requirements of Council with respect to all Building Bylaws, Regulations and Acts.
3. 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.

4. 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.
5. The Consent Holder is liable to pay a development contribution in accordance with the Development Contributions Policy found in the Long Term Council Community Plan (LTCCP). The amount to be paid will be in accordance with the requirements that are current at the time the relevant development contribution is paid.

Council will not issue a Code Compliance Certificate until all development contributions have been paid in accordance with Council’s Development Contributions Policy under the Local Government Act 2002.

This consent may attract development contributions in respect of roading.

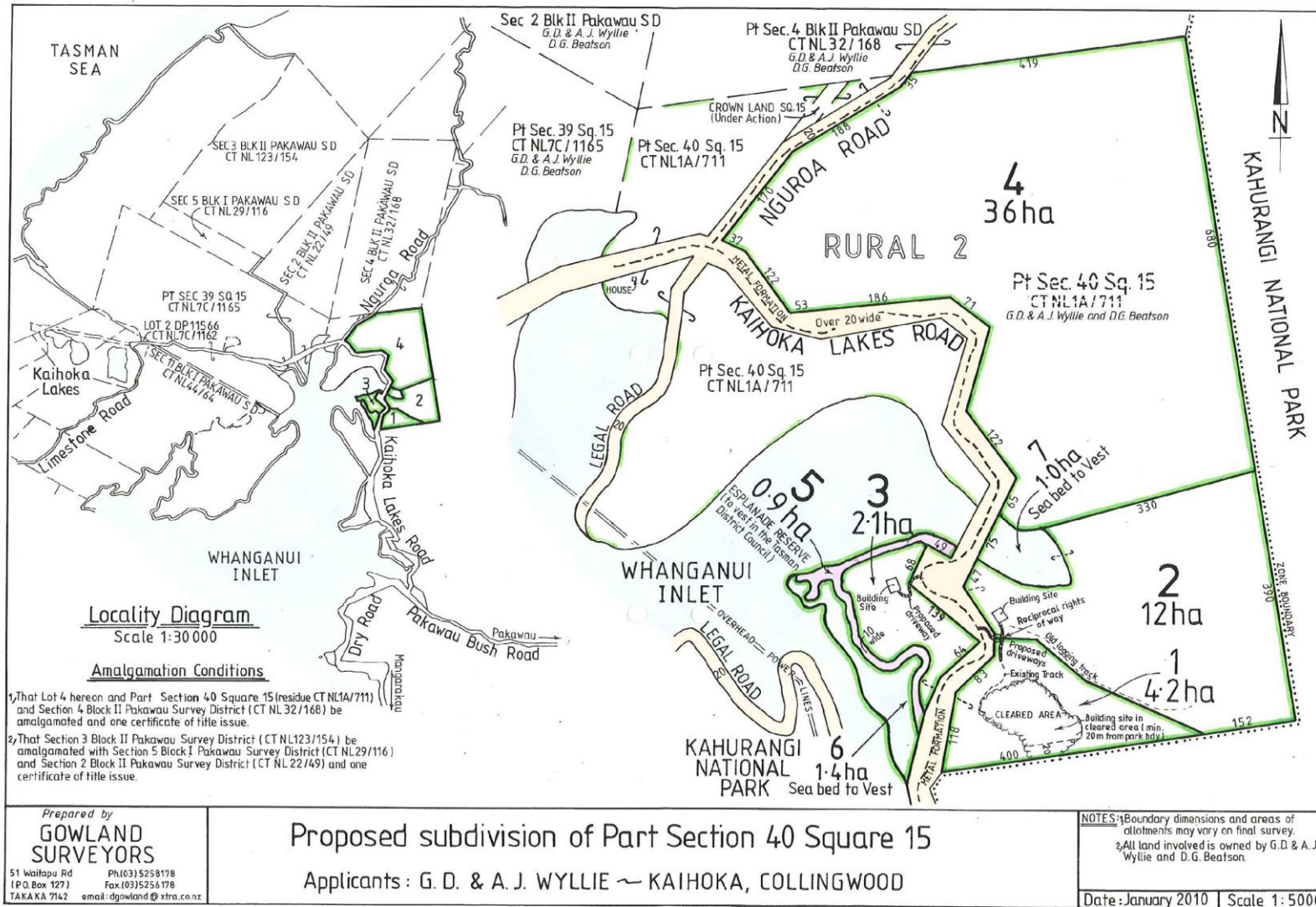
6. In the event of Maori archaeological sites (e.g. shell midden, hangi or ovens, garden soils, pit depressions, occupation evidence, burials, taonga) or koiwi (human remains) being uncovered, activities in the vicinity of the discovery should cease. The owner should then consult with the New Zealand Historic Places Trust’s Central Regional Office and local iwi, and should not recommence works in the area of the discovery until the relevant Historic Places Trust approvals to damage, destroy or modify such sites have been obtained. It should also be noted that the discovery of any pre-1900 archaeological site (Maori or non-Maori) is subject to the provisions of the Historic Places Act and needs an application to the Historic Places Trust for an authority to damage, destroy or modify the site.

Issued this 22nd day of August 2011

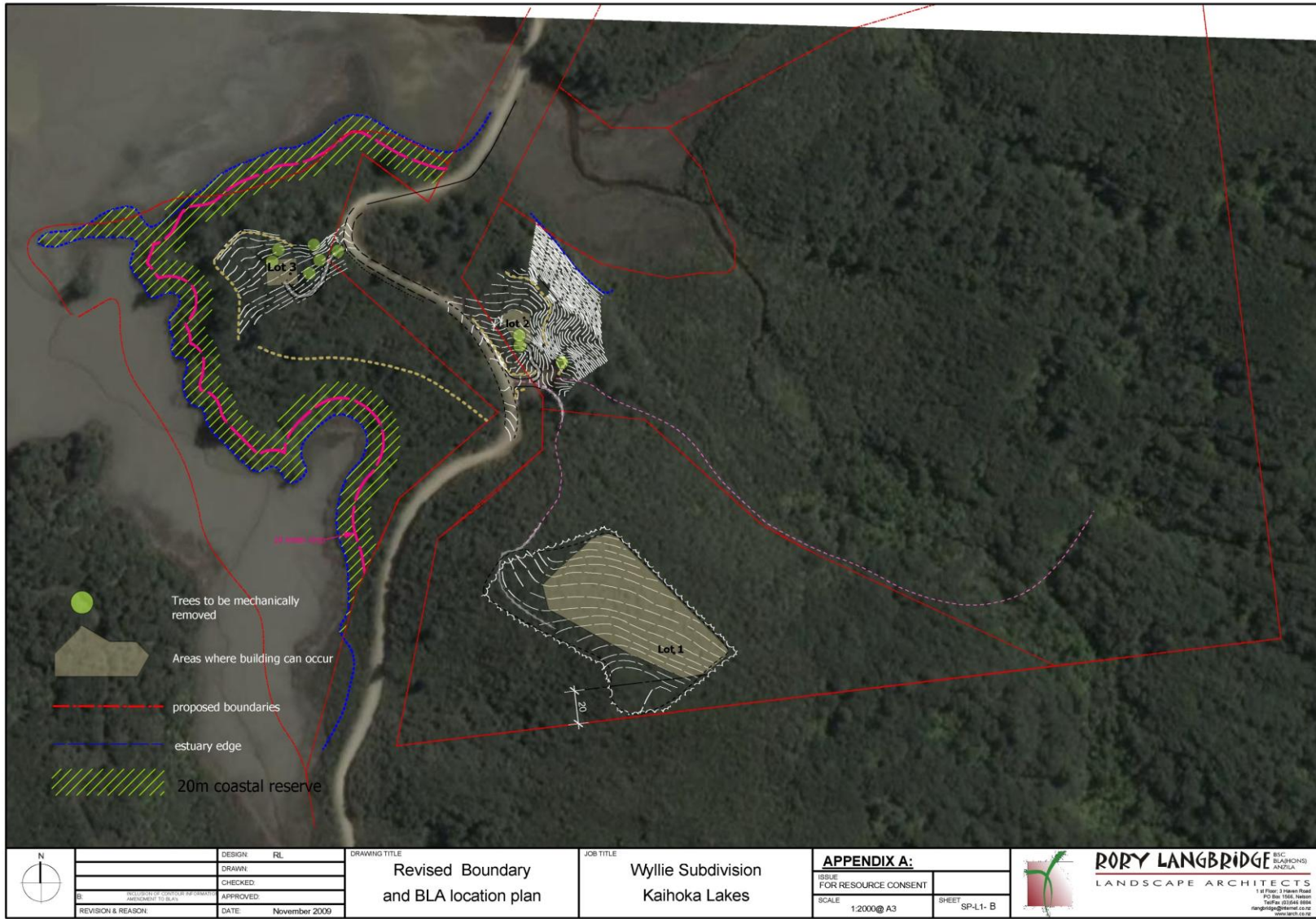


Commissioner Stuart Bryant
Chair of Hearings Commissioners

Plan A - RM080459 and RM100548

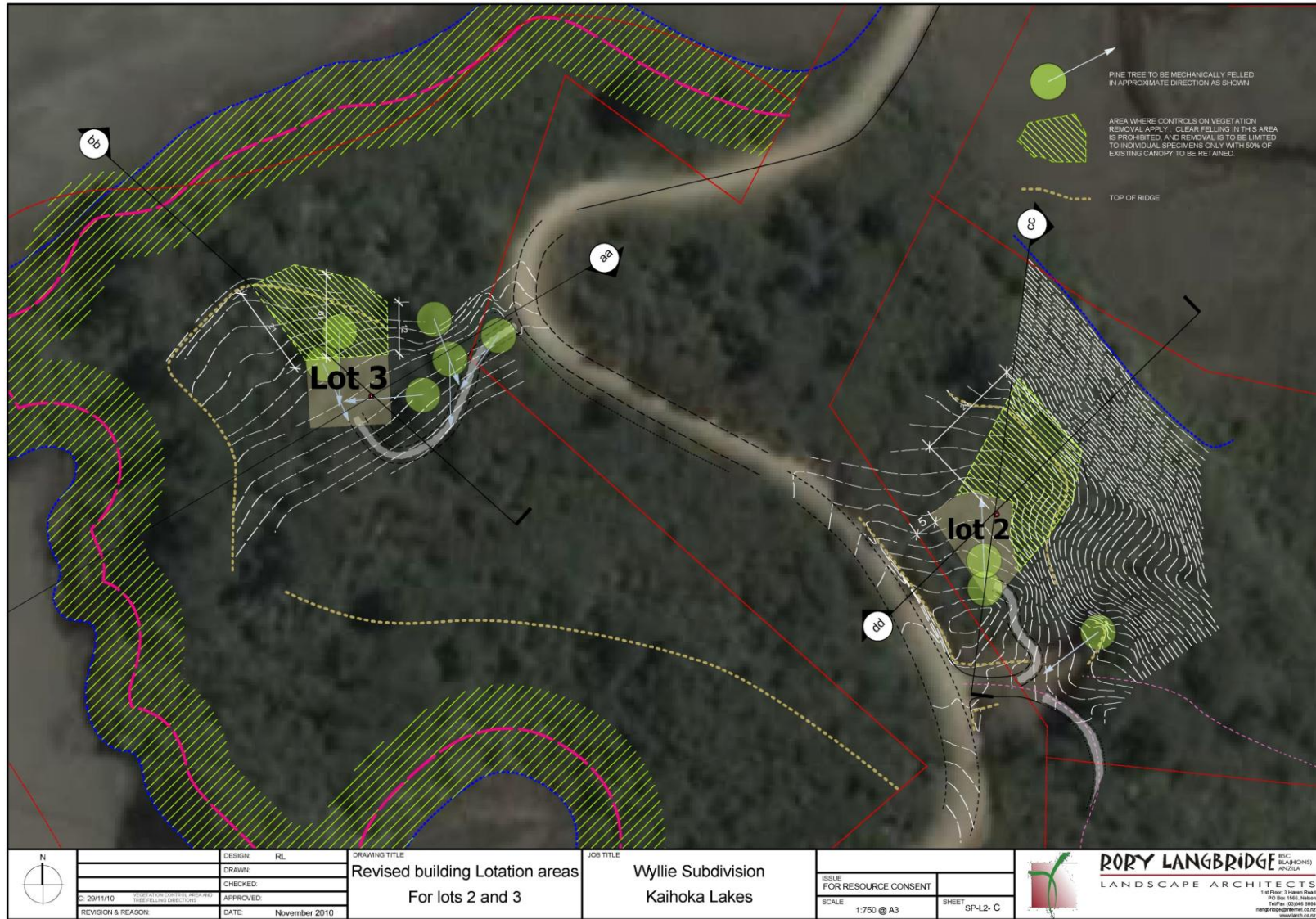


Plan B - RM080459 and RM100548

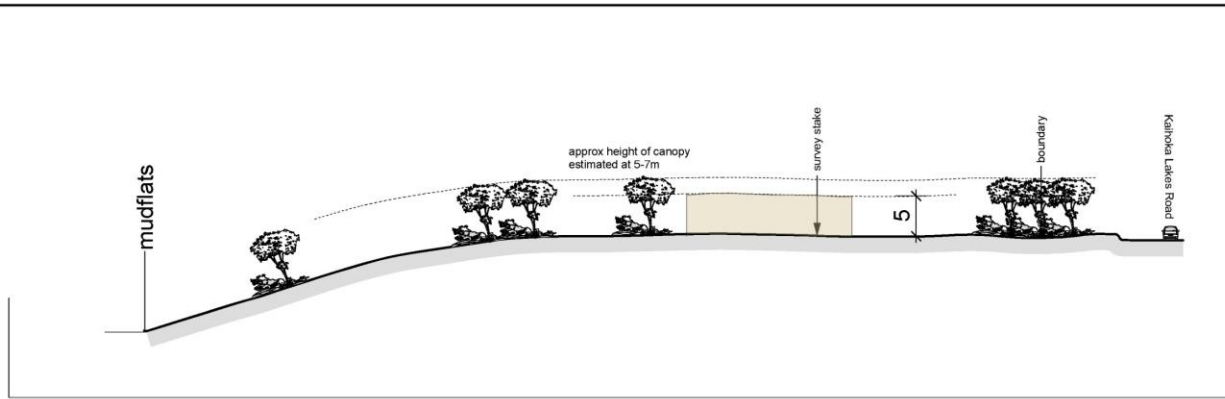


		DESIGN: RL	DRAWING TITLE	JOB TITLE	APPENDIX A:	
		DRAWN:	Revised Boundary and BLA location plan	Wyllie Subdivision Kaihoka Lakes	ISSUE	
		CHECKED:			FOR RESOURCE CONSENT	
		APPROVED:	DATE: November 2009	SCALE: 1:2000@ A3	SHEET: SP-L1- B	
REVISION & REASON	DATE					

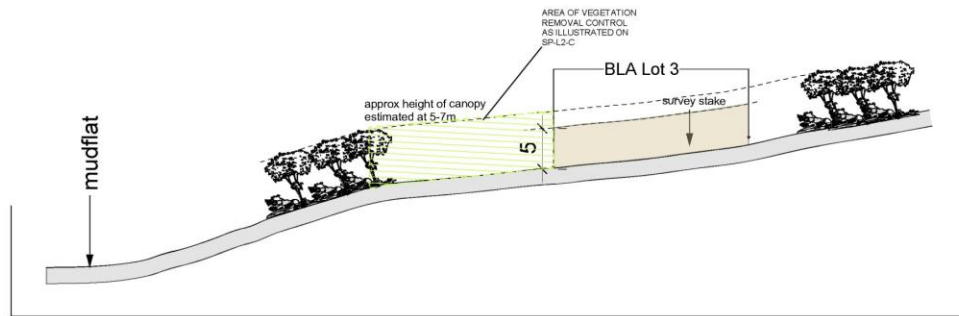
Plan C - RM080459 and RM100548




Plan D - RM080459 and RM100548



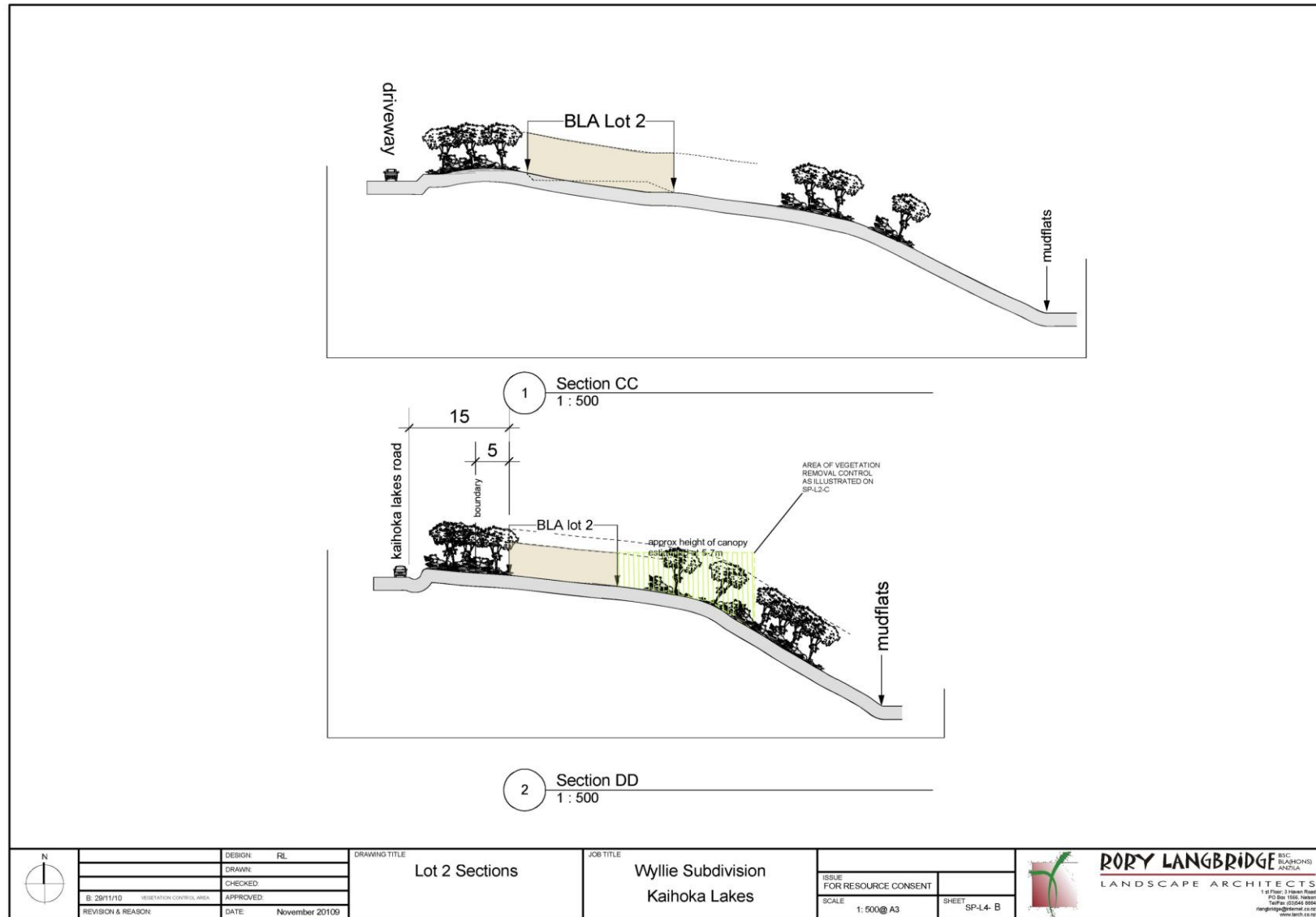
1 Lot 3 Section aa.
1 : 500



2 Lot 3 Section bb
1 : 500

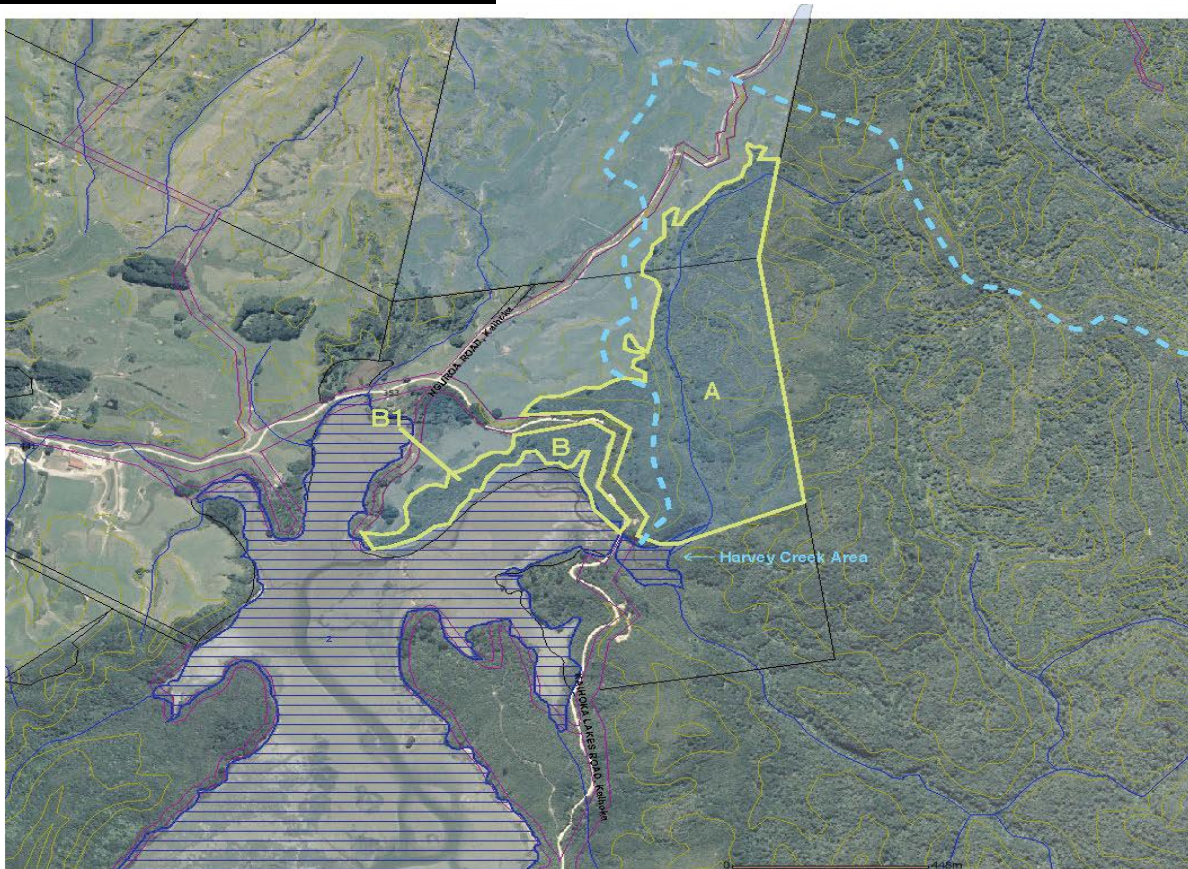
B: 20/11/10 REVISION & REASON:	DESIGN: RL	DRAWING TITLE Lot 3 Sections	JOB TITLE Wyllie Subdivision Kaihoka Lakes	ISSUE FOR RESOURCE CONSENT	SHEET SP-L3- B	 RORY LANGBRIDGE LANDSCAPE ARCHITECTS <small>1111 Popoia Drive, Auckland P.O. Box 1055, Havelock Northland 01004 0104 rlangbridge@xtra.co.nz www.rorylangbridge.co.nz</small>
	DRAWN:					
	CHECKED:					
	APPROVED:					
DATE: November 2010				SCALE: 1: 500@ A3		

Plan E - RM080459 and RM100548



	DESIGN: RL	DRAWING TITLE	Lot 2 Sections Wyllie Subdivision Kaihoka Lakes	ISSUE FOR RESOURCE CONSENT SCALE 1:500@A3	RORY LANGBRIDGE BSC LANDSCAPE ARCHITECTS <small>1st Floor, 31 Mount Road PO Box 5000, Nelson Tel/Fax 03544 0884 rlang@rorylangbridge.co.nz www.rorylangbridge.co.nz</small>	
	DRAWN:	JOB TITLE				SHEET SP-L4-B
	CHECKED:					
	B: 20/11/10 REVISION CONTROL AREA APPROVED: REVISION & REASON: DATE: November 2010/9					

Plan F - RM080459 and RM100548



Legend
A, B & B1 General area subject to Consent Notice
--- Approx. Catchment Boundary

GD & AJ Wyllie and DG Beatson

Annexure B Sheet 2

16 June 2011
Scale as Shown

Date Confirmed: _____

Chair: _____