

MINUTES

TITLE: Environment & Planning Subcommittee
DATE: Monday, 24 September 2012
TIME: 10.30 am
VENUE: Motueka Service Centre, 7 Hickmott Place, Motueka

PRESENT: Cr T B King (Chair), Crs S G Bryant and E J Wilkins

IN ATTENDANCE: Raymond B Molineux - Wakatu Incorporated
Camilla M Owen – Solicitor, Duncan Cotterill

Principal Resource Consents Advisor, TDC (J Butler)
Consent Planner Subdivision, TDC (P Webby)
Development Engineer, TDC (D Ley)

Gregory B Douch & Michelle A Woodford - Submitters
Alistair & Adrienne Read – Submitters
Sue & Graeme Bennett - Submitters

Administration Officer, TDC (G Woodgate)

APPLICANTS: Wakatu Incorporated

WAKATU INCORPORATED ADJACENT TO GREY STREET AND PAH STREET, MOTUEKA - APPLICATION No. RM110351, RM110802, RM110812

The application seeks the following:

RM110351

To subdivide six freehold titles and one leasehold title with a combined area of approximately 12 hectares into 103 residential allotments, with new road entry points from both Pah and grey Streets, includes internal access roads and a 2082 square metre area to be vested with Council as public recreation reserve.

RM110802

To construct dwellings on Lots 37-56, 57-76 which have a higher density than permitted by the residential rules.

RM110812

To undertake limited cut and fill (recontouring) across the development site.

ZONING

Residential and Rural 1 in part.

LIMITATION OF MATTERS

Chairman, Cr Tim King directed that the scope of the Hearing be limited to the following matters:

1. The direct effects of the proposed access locations onto Pah Street and Grey Street on the submitters (eg. traffic, noise, dust, privacy, amenity)
2. Any landscaping or design considerations at the proposed access locations
3. The height of buildings (including dwellings) immediately to the rear of 79 and 81 Pah Street
4. The desired outcome(s) sought by parties in relation to the above matters, including any mitigation measures

5. Construction effects of the subdivision in terms of the access points and loss of amenity for the subdivision.

The Chairman welcomed everyone to the Hearing and introduced the Environment & Planning Subcommittee members as well as Council staff.

The Chairman then outlined the order of the meeting:

1. Applicant's Legal Submissions / Statement of Evidence of Raymond B Molineux
 - Questions from Subcommittee members
2. Submitters Statements
 - Questions from Subcommittee members
3. Staff Reports
 - Questions from Subcommittee members
4. Applicant's Right of Reply.

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

WAKATU INCORPORATED ADJACENT TO GREY STREET AND PAH STREET, MOTUEKA - APPLICATION No. RM110351, RM110802, RM110812

**Moved Crs
EP12-09-21**

**THAT pursuant to Section 104B of the Resource Management Act, the Committee GRANTS consent to WAKATU INCORPORATED as detailed in the following report and decision.
CARRIED**

Report and Decision of the Tasman District Council through its Hearings Committee

**Meeting held in the Meeting Room, Motueka Service Centre on 24 September 2012
Site visit undertaken on 24 September 2012
Hearing closed on 24 September 2012**

A Hearings Committee ("the Committee") of the Tasman District Council ("the Council") was convened to hear the application lodged by **Wakatu Incorporation** ("the Applicant"), to subdivide six freehold titles and one leasehold title into 103 residential lots. The application, made in accordance with the Resource Management Act 1991 ("the Act"), was lodged with the Council and referenced as RM110351.

HEARING COMMITTEE: Cr Tim King, Chairperson
Cr Eileen Wilkins
Cr Stuart Bryant

APPLICANT: Ms Camilla Owen (Counsel)
Mr Ray Molineux (Applicant's Representative)

CONSENT AUTHORITY: **Tasman District Council**
Ms Pauline Webby (Consent Planner, Subdivisions)
Mr Dugald Ley (Development Engineer)

SUBMITTERS: Mr Alistair Read and Ms Sera Marshall (34 Grey Street)
Mr Gregory Douch and Ms Michelle Woodford (81 Pah Street)
Mr Graeme Bennett and Ms Sue Bennett (79 Pah Street)

IN ATTENDANCE: Mr Jeremy Butler (Principal Resource Consents Advisor) -
Assisting the Committee
Mr Garry Woodgate (Committee Secretary)

1. SUMMARY

The Committee has **GRANTED** a resource consent, subject to conditions, to subdivide land between Pah Street, Grey Street and Whakarewa Street.

In particular the Committee has accepted the creation of access roads and their locations and generally in the form proposed in the application, subject to some minor amendments.

2. DESCRIPTION OF THE PROPOSED ACTIVITY

This application seeks to subdivide CFR's NL13C/339, NL10D/1261, and NL 10C/587, NL5A/1272, NI13A/47(LH) and NL5A/1205(FH), NL3D/1110 with a total area of 12 hectares into 103 low, medium and high density residential allotments together with associated roading and a 2082m² recreation reserve to vest with Council.

The application site is zoned residential. This land was zoned residential on 14 August 1999.

Of particular relevance to this hearing are the two access points which the applicant has proposed to form into roads to access the subdivision. The first access road is through an existing residential lot and joins onto Grey Street and is referred to as the "proposed Grey Street road". The second access road is through a currently vacant strip that is part of one of the rear lots to be formed. This road joins onto Pah Street and is referred to as the "proposed Pah Street road".

Importantly, resource consent applications were also lodged with the Council for earthworks for recontouring the site, and to construct dwellings on some proposed lots where bulk and location rules will not be complied with. The processing of those applications is further discussed under Heading 5 below.

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

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

Zoning: Residential and Rural 1 in part
Area(s): Land Disturbance 1

Activity	Relevant permitted rule	Applicable rule	Status
RM110351 - Subdivision in residential zone	Nil	16.3.3.3	Discretionary

Overall the proposal is a discretionary activity.

4. NOTIFICATION AND SUBMISSIONS RECEIVED

Written Approvals

Prior to notification a written approval was received from JT Cunningham, 28 Grey Street, Motueka. Pursuant to Section 104(3)(a)(ii) of the Act we must not have any regard to any effect on that party.

UNCONFIRMED NOTES

Submissions

The application(s) was limited notified on 14 June 2012 pursuant to Section 95B of the Act. A total of three submissions were received. The following is a summary of the written submissions received and the main issues raised:

Neutral submissions

Submitter	Reasons
G M and S G Bennett	Concerns with being overlooked by height of building on new allotments, requiring a suitable fence to mitigate traffic noise and maintain privacy from pedestrians.
G B Douch and M A Woodford	Loss of rural feel to section Traffic noise

Submission in opposition

Submitter	Reasons
A K and A D Read	Traffic noise and safety Dust effects arising from construction effects of subdivision, Loss of privacy

5. PROCEDURAL MATTERS

Prior to the hearing the Chair directed that the scope of the hearing be limited to the following matters that he considered to be in dispute:

1. The direct effects of the proposed access locations onto Pah Street and Grey Street on the submitters (e.g. traffic, noise, dust, privacy, amenity);
2. Any landscaping or design considerations at the proposed access locations;
3. The height of buildings (including dwellings) immediately to the rear of 79 and 81 Pah Street;
4. The desired outcome(s) sought by parties in relation to the above matters, including any mitigation measures; and
5. Construction effects of the subdivision in terms of the access points and loss of amenity for the submitters.

This direction was made under Section 41C(1)(b)(iii) of the Act.

Due to this limitation of matters, which all relate to the subdivision, the other two applications that pertain to this development (earthworks and housing density) have continued to be processed by Council staff under delegated authority and decisions on those will be notified to the applicant along with this decision.

6. EVIDENCE HEARD

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

6.1 Applicant's Evidence

Ms Camilla Owen (Counsel)

Ms Owen introduced the application and stated that the applicant is Wahanga Limited. Ms Owen amended this as the correct applicant is in fact Wakatu Incorporation.

Ms Owen said that the matters submitted on relate to amenity. She said that the applicant largely agrees with the draft conditions recommended in the staff report.

With regard to traffic she noted that the provisions of the Council's engineering standards have been followed both in respect of traffic design and in respect of parking requirements.

A 23.5 metre wide entryway is to be provided at Grey Street which will allow for a 9 metre wide berm from the Reads' northern frontage. In the case of Pah Street an 18 metre road reserve will allow for a 5.5 metre berm on each side of the new road carriageway.

A wooden fence to address noise and privacy was volunteered along the road boundary with each of the three submitting neighbours.

Mr Ray Molineux (Applicant's Representative)

Mr Molineux presented the background to the subdivision and the roading design and layout. He said that the section of the subject property that fronts Grey Street (proposed Lot 1000 between 20 and 22 Grey Street) is too close to Pah Street to service the residential land. Hence the selection of 32 Grey Street for access.

Mr Molineux said that the applicant continues to offer to construct a wooden fence along the boundaries. He presented specifications of the offered fence.

Mr Molineux recognised the concerns about houses being constructed behind the Pah Street submitters but re-emphasised that the land is zoned residential.

To address construction effects Mr Molineux volunteered that all construction traffic, except what would be needed to actually construct the access road themselves, would access the site off Whakarewa Street. He indicated that the effects of construction would be managed in a responsible and successful fashion.

Mr Molineux added that truck movements should not be significant as it is not expected that fill material will need to be either imported or exported.

6.2 Submitters Evidence

Mr Gregory Douch and Ms Michelle Woodford

Mr Douch and Ms Woodford spoke to the concerns raised in their submission:-

They advised that they had not seen any details regarding the proposed wooden fence and had not agreed to it. When shown the standards and photos of a close board timber fence, they advised that they did not like it and preferred something "more substantial".

They questioned the height and size of the proposed cherry trees to be planted along the Pah Street access road. Mr Molineux previously stated that cherry trees can grow up to 5 metres in height, but a previous email from the applicant (Iain Sheves) had advised that they could grow up to a maximum of 8 metres.

They advised that any accessory buildings could be built right on their boundary and up to 7.5 metres in length.

Further traffic control measures were requested such as a nose island in the access road to slow traffic down.

Mr Alistair Read and Ms Sera Marshall

Mr Read and Ms Marshall spoke to the concerns raised in their submission:

They advised that they bought their section off Wakatu in 2005 and felt Wakatu Inc. knew about this subdivision at that time but did not disclose anything about it to them.

They said that Mr Molineux had previously advised that the cost of a plaster fence they had requested would be at least \$30,000 to erect. Mr Read disputed this figure and believed the cost to be more in the vicinity of \$7,500.

Mr Read advised that his property has three corrugated iron fences and that the wooden fence offered would therefore not match.

Ms Marshall advised that they do not want flowering trees in the new subdivision. Ms Marshall said that she and her children have allergy problems and flowering plants will make it worse. They advised that they have a nice garden backing onto the proposed new wooden fence and they want their garden cared for in the construction of any new fence.

Ms Marshall advised that her main concern is the speed of vehicles and the safety of her children as their daughter's bedroom would be near the proposed new road. She added that a timber fence would not be an effective acoustic barrier to traffic noise.

They stated that they do not want new street lighting affecting their property, and that they had not yet seen any plans for street lighting.

Mr Graeme Bennett and Ms Sue Bennett

Mr and Mrs Bennett spoke to the concerns raised in their submission:-

They said that they felt blackmailed by the applicant through the consent process in the lead-up to the hearing.

They thought the proposed wooden fence was very ugly and if it had to be built, they wanted the palings on their side of the fence.

They said that noise from the road was still of concern to them as three of their bedrooms face the proposed new road.

They also advised that they had been informed that cherry trees can grow up to 8 metres in height. They were concerned about the shedding of leaves, lifting of footpaths and the blocking of sunlight. They preferred miniature trees.

One of the Bennetts' significant concerns was the height and privacy impact from new dwellings immediately to the rear of their property. They asked if a restrictive condition could be included in the conditions of consent.

The Bennetts asked if this subdivision, and the new fencing, would affect their rates and were advised by the Chair that their valuation could change but it would be difficult to predict how it may change.

The Bennetts were concerned at the number of carparks required for the new subdivision and the impact that the location of the car parks may have if they wish to subdivide their property in the future.

The Bennetts felt that bollards in the centre, and on the side, of the proposed new roads may encourage slower traffic.

6.3 Council's Reporting Officer's Report and Evidence

Mr Dugald Ley (Development Engineer)

Mr Ley gave additional comments to his Traffic Report. These comments included:

- The proposed subdivision meets all Council engineering standards;
- "Give Way" control is likely to be used at the new intersections;
- Speed humps are not a desirable speed reduction solution;
- Street lights are required at the intersections;
- One access per section is allowed for;
- Council staff are not in favour of bollards and these locations would not be appropriate.

Mr Ley said that under the draft Motueka West Structure Plan - which is in the early planning stages - the further development to the west of the current application site will most likely to be serviced by a major road running between Whakarewa Street and Pah Street, rather than a linkage into the Road 1 of the current subdivision proposal.

Mr Ley was asked about the appropriateness and necessity of the car parks along the throat of the proposed Pah Street road. Mr Ley indicated that changes to the car parking requirements could legitimately be made.

Finally, Mr Ley noted that the Council has a list of trees that are suitable for subdivisions and the flowering cherry trees were chosen from that list.

Ms Pauline Webby (Consent Planner, Subdivisions)

Ms Webby clarified that an "acoustic" fence requires significant noise mitigation, and that the fence being offered by the applicant is not an acoustic fence - just a standard wooden fence.

She said that in relocating all construction vehicles to a Whakarewa Street entrance, it is important to protect against creating new adverse effects on another group of local residents.

Regarding carparks, Ms Webby was of the opinion that we (the panel) could reduce the number of car parks without having to replace them elsewhere if we see fit.

She confirmed that the trees selected by the applicant for the subdivision are on the Council's preferred tree list.

The Chair asked if Ms Webby considered that the provision of a proper acoustic fence is appropriate. Ms Webby did not consider that such fences would necessarily appropriate but that the matter of noise is on the table for a decision.

6.4 Applicant's Right of Reply

Ms Owen advised the following:

- The proposed subdivision meets all of the Tasman District Council's planning requirements;
- The proposed cherry trees are on Council's preferred tree list for subdivisions. However, the applicant is prepared to plant any other trees from that list if that is wanted or they will plant no trees.
- The word "acoustic" should be deleted from all reference to the standard wooden fence - the fence is for amenity. The Nelson City Council standard close board timber fence is volunteered and Note 1 (requiring the palings to be on public access side of the fence) can be deleted to accommodate the Bennetts' concerns. Ms Owen said that the applicant is happy to either provide the fence (to the specifications provided) or else

pay \$120 per metre (including GST) for any neighbour who wishes to build a different type of fence.

- Carparks have been included to the Council's standard and they can be deleted if not wanted.
- To avoid effects on Whakarewa Street residents it was volunteered that the access be no closer than 10 metres to the nearest private lot to provide a buffer zone.

7. PRINCIPAL ISSUES AND OUR MAIN FINDINGS

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

a) To what extent will the proposed access roads adversely affect the amenity of the submitters? Are there any additional road design or structural requirements that are appropriate?

We have carefully considered the evidence and submissions presented to us on the matter of amenity. We discuss the proposed Grey Street and Pah Street roads separately.

Proposed Grey Street road

Mr Read and Ms Marshall could not have anticipated that an access road would be sought along their northern boundary. However it is the applicant's right to apply to create the road in this location.

We find that while the subdivision will create a change in the amenity this change will not necessarily be adverse. The proposal will remove an old house that is very close to the submitters' northern boundary. The removal of the house and the landscaping of the access road will help to visually open up the submitters' property on their northern side.

Balancing this more open outlook will be the potential for more noise through acceleration and deceleration of vehicles using the intersection.

We accept that the applicant's offer of a fence (or alternative payment¹) to the standard proposed by the applicant is an appropriate level of mitigation for the potential privacy and noise effects.

Proposed Pah Street road

In contrast to Mr Read and Ms Marshall's situation, we consider that the proposed subdivision will reduce the amenity of both the Bennetts and Mr Douch and Ms Woodford from what they currently enjoy. However, we are also satisfied that these submitters could reasonably have expected an access road to be created in this location at the time that they bought their properties.

On this basis we are satisfied that the access road servicing the area Residential Zone is also appropriate with the provision of the fence (or alternative payment¹) as is volunteered by the applicant.

Construction Effects

We are satisfied that the construction effects on the submitters have been adequately mitigated by the relocation of the access location to Whakarewa Street. We recognise

¹ We record that we investigated the costs of such a fence with several fencing firms. All three independently corroborated the approximate value of the fence. Estimates ranged from \$95 to \$110 per lineal metre, excluding GST. The firms were not told what figure had been supplied to the committee. The construction details of the fence were given as were the basic details of the sites (i.e. flat land in the Motueka urban area).

that some construction effects will remain from the direct construction of the access roads and some site preparation near the submitters' properties but that these will be relatively minor and necessary to develop the residential land.

However, following the applicant's right of reply in the hearing we have significant concerns that additional adverse effects on residents may be created by the new access location off Whakarewa Street. Ms Owen volunteered that the new access would be a minimum of 10 metres from the nearest private boundary. We consider this to be an entirely inadequate separation distance, beyond the scope of the application and potentially subject to legal challenge by one or more newly adversely affected parties. We agree that it is achievable to create a construction vehicle access off Whakarewa Street but the separation distance will need to be much greater.

b) To what extent will the proposed access roads increase the safety risk to the submitters?

Ms Marshall was particularly concerned about the increased safety risk from the creation of the proposed Grey Street road. We do not accept that there the Read/Marshall property and household will be any more vulnerable to vehicles under steering and leaving the road than any other corner sections within urban centres. We do accept that the relatively wide formation of Grey Street may currently encourage faster speeds but the new entranceway will be relatively narrow and encourage low speeds.

Given the very wide berm available (9 metres from the edge of the road to the boundary of 34 Grey Street), the presence of the kerb and channelling, and no doubt a substantial fence of some sort we do not consider that any further measures are necessary to increase safety.

c) Is it appropriate that restrictions are put on the heights of new houses to the rear of the Pah Street submitters?

The Bennetts in particular, but also Mr Douch and Ms Woodford, were concerned about the loss of privacy from new two-storey buildings to the rear of their properties. Ms Webby gave a very thorough description of the controls that will apply to the new sections to be created as part of the subdivision.

We were not persuaded to place specific limitations on Lots 1 and 94 of the subdivision for the following reasons:

- From the evidence of Ms Webby we consider it very unlikely that a house could be constructed which would significantly intrude it the privacy of the submitters;
- By choosing to purchase in the residential zone the submitters have accepted that houses may be built within the normal residential building envelope rules;
- The application was limited notified to the submitters on the basis of the new access roads. While this does not limit the scope of issues that the submitters may raise, it does mean that there are several other existing residents up and down Pah Street and Grey Street who will have a new residence immediately to their rear. The potential effects on these other properties will be identical to the potential effects on the submitters, therefore we do not see it as appropriate to apply special restrictions to proposed Lots 1 and 94.

d) Are the car parks along the proposed Pah Street entrance appropriate? What provision should be made for entrance to the rear of the submitters' properties?

We see no particular reason for the car-parks to be provided along the proposed Pah Street road as shown on subdivision plans. The Urban Design Panel report for this subdivision said in paragraph 3.5:

“We understand and support Wakatu Incorporation’s intention to provide gateway recognition at the entrance to both Roads 1 and 3. The Road 3 entrance as it is currently shown presents some challenges with carparks and exposed side fences close to the Pah Street intersection. This location would benefit from consideration of street trees and parking closer to the park to improve the amenity.”

And in paragraph 3.7:

“The overprovision of roadside parking should be avoided as this compromises street quality and offers no functional benefit. The approach discussed of distributing street parking around the development within the landscaping berm is supported, providing that the carriageway is narrowed and this is integrated with high quality streetscape design and appropriate tree placements.”

Therefore, with Mr Ley’s stated ambivalence about the fate of the carparks we find that they are not necessary and are unlikely to be used. Further, there are a number of benefits to not having them, such as easier future access to the rear of the submitters’ properties and the removal of a potential source of noise and privacy loss.

e) Are any restrictions to the night lighting or infrastructure facilities (including power boxes) appropriate?

We see such facilities as an essential part of the residential area. We are satisfied that the lighting will be appropriately designed and located. We do not see any particular merit in limiting the extent of street lighting.

Similarly, power boxes, transformers and other such facilities are a normal requirement of the residential zone and we see no good reason to limit them.

f) Are any amendments to the proposed trees at the two entranceways appropriate?

Upon closer examination of the landscaping plan (provided as an attachment to Ms Webby’s report) it is clear that no Cherry “Awanui” trees are proposed along the proposed Grey Street road. These plants along the frontage to the Read/Marshall household are proposed to be olives which, we understand, will not cause problems with shading, leaf drop or allergies.

The submitters expressed concern about the height and impact of the Cherry “Awanui” trees on the Pah Street road. From closer inspections of the plans the trees will be planted approximately 4.2 metres from the boundary of each of 79 and 81 Pah Street. This should provide sufficient separation distance so that the impacts are minimal. However we have sought advice about options from the Council’s Parks and Reserves staff. We have been advised that there are a wide variety of options for flowering cherry trees. Therefore, we consider that a smaller growing variety is appropriate in this instance.

8. RELEVANT STATUTORY PROVISIONS

8.1 Policy Statements and Plan Provisions

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

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

8.2 Part 2 Matters

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

9. DECISION

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

10. REASONS FOR THE DECISION

Effects on the Environment

We are satisfied that the proposed Pah Street and Grey Street roads will only have minor adverse effects on the adjoining landowners who lodged submissions. We consider that the applicant, through volunteering to fence the boundaries that front the new roads, has adequately mitigated what could otherwise be unreasonable adverse effects.

Aside from the amenity affects we do not find any other effects that are more than very minor.

Objectives and Policies of the TRMP

The TRMP provides for the subdivision through the zoning of the subject property as Residential.

Ms Webby outlined the most relevant objectives and policies of the TRMP in Section 6.1 of her report. With the removal of construction traffic and the volunteering of a fence, along with the substantial separation distances involved we are satisfied that the stated objectives and policies will not be compromised by a grant of consent.

Other Matters

A matter that arose during the course of the hearing was the potential of submitters to subdivide their own properties using the access roads that are to be created. Of relevance to the Pah Street submitters is the legal function of the "private road". This is a matter that was not addressed in the written submissions so is outside of the scope of the hearing. However we consider that it is a relevant matter that should be explained in this decision.

We cannot give any indication to submitters about the feasibility of a future subdivision of their properties as this is a matter that will need specific assessment. While the private road will not automatically give legal frontage to the adjoining Pah Street properties, we doubt there will be any objection from the owner of the private road to those properties obtaining frontage. But to avoid future disagreements we have provided further support for this in the subdivision consent conditions.

Due to the limitation of matters to be heard in the hearing (See Heading 5 of this decision) there are a number of matters relating to the subdivision that have been assessed for the notification decision. These matters were included as Appendix E in Ms Webby's Section 42A report by way of a scanned record of her "Notification/Non-Notification Decision Report" that addresses Sections 95A-95E of the Act. That report contains a comprehensive discussion of the other matters that relate to the subdivision. Pursuant to Section 113(3) of the Act, we adopt the reasons given in that assessment.

Purpose and Principles of the Act

We find that there are no matters of national importance under Section 6 of the Act that are relevant to this application.

We find the following other matters to be relevant:

- Section 7(b) the efficient use and development of natural and physical resources.
- Section 7(c) the maintenance and enhancement of amenity values.

We find that the utilisation of the land for the proposed subdivision to be an efficient use of the land. The locations and design of the proposed access roads into the subdivision are appropriate to support this efficient use.

We are satisfied that the amenity values of the submitters will be appropriately maintained by the conditions imposed upon the subdivision consent.

Adopting a overall broad 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

Conditions 1A and 1B have been included in the decision to remove the carparks shown in the subdivision plan and to provide for a lower growing and less bulky flowering cherry at the Pah Street entrance to the subdivision.

Condition 35A has been included to require a separate construction access as volunteered by the applicant. The applicant volunteered a separation distance of 10 metres from the nearest residential boundary. We consider this separation distance to be completely inadequate for avoiding effects on new parties who have not been involved in the process to date. Instead a greater separation distance has been required in line with the location where it is expected that rows of kiwifruit will need to be removed.

Condition 36 has been amended to give effect to our decision to require a fence to be provided, or else a sum of money to be provided for that purpose by the consent holder.

12. LAPSING OF CONSENT(S)

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

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

Issued this 11th day of October 2012



Tim King
Chair of Hearings Committee

RESOURCE CONSENT

RESOURCE CONSENT NUMBER: RM110351

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

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

ACTIVITY AUTHORISED BY THIS CONSENT:

To subdivide six freehold titles and one leasehold title with a combined area of approximately 12 hectares into 103 residential allotments, with new road entry points from both Pah and Grey Streets and a 2082 square metre area to be vested with Council as public recreation reserve.

LOCATION DETAILS:

Address of property: Adjacent to Grey Street & Pah Street, Motueka
Legal descriptions and Certificates of Title: Lot 5 DP1506 (CFR NL3D/1110); Lot 9 DP4437 (CFR NL5A/1205); Lot 9 DP4437 (CIR NL13A/47) (LH); Pt Lot 17 DP1506 (CFR NL5A/1272); Lot 4, Pt Lot 3, Pt Lot 6 and Pt Lot 9 DP1506, Lot 1 DP4776 and Lot 2 DP6532 (CFR NL10C/587); Pt Lot 15 DP1506 (CFR NL10D/1261); and Lot 1 DP20374 (CFR NL13C/339).
Easting and Northing: 2510095E 6010430N

CONDITIONS

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

General

1. The subdivision shall be undertaken in general accordance with the information submitted with the application for consent and in particular with the plans prepared by Woods Engineers, Surveyors, Planners, titled as follows:

Plan A "Grey Street Scheme Plan" drawing no. 001;
Plan B "Wastewater Layout Plan" drawing no. 301;
Plan C "Water reticulation Plan", drawing no. 600;
Plan D "Overall Earthworks Plan", drawing no. 100;
Plan E "Cut /Fill Plan", drawing no. 105;
Plan F "Overall Roding Plan". drawing no. 200;
Plan G "Overall Roding Plan," drawing no. 210;
Plan H "Stormwater Layout Plan" drawing no. 300.

Plans prepared by Rory Langbridge - Landscape Architect, titled as follows:

Plan I "Street Tree Proposal"; and
Plan J "Central Park Concept" both amended December 2011 after discussion with TDC.

If there is any conflict between the information submitted with the consent application and any conditions of this consent, then the conditions of this consent shall prevail.

Amendments to Plans

- 1A. The Plans shall be amended to remove the car parks at the northern end of Road 3.
- 1B. The Cherry "Awanui" trees at the northern end of Road 3 shall be replaced with *Prunus amanogawa*.
- 1C. Lot 902 shown on the subdivision plan as a JOAL shall instead be vested with the Council as road. This amendment has been reflected in Conditions 2 (Stage 3), 6, 14 and 42.

Staging

2. The subdivision is anticipated to be undertaken in four stages, generally as follows:

Stage 1

Lots 16-32, Lots 37-46 and Lot 1001 (Road to vest) and Lot 800 to vest in Council as Recreation Reserve;

Stage 2

Lots 33-36, Lots 47-66 and Lot 1002 (Road to vest);

Stage 3

Lots 1-15, Lots 82-102, Lot 1000, Lots 1004 and 902 (Roads to vest) and Lots 900, 901, 903 (JOALs) and Lot 1005 as a Private Road with ownership remaining with Wakatu with easements in gross for access and services and the DEED of use between Wakatu and Council to be formalised;

Stage 4

Lots 67-81 and Lot 1003 (Road to vest).

Easements

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

Advice Note

This shall include the easements in gross over the access road shown as Lot 1005 (Private Road) and include public access and all services that will be required including but not limited to power, telecommunications, water stormwater and sewer.

Easements in gross will be required over the stormwater attenuation pond to allow for Council maintenance. This easement shall be relinquished when alternative stormwater provisions have been made for residential development and the stormwater attenuation pond is no longer necessary.

4. Easements shall be created over any right of way and shall be shown in a memorandum of Easements on the survey plan submitted for the purposes of Section 223 of the Act. Easements shall be shown on the land transfer title plan and any documents shall be prepared by a solicitor at the Consent Holder's expense.

Soil Testing

5. (a) Prior to Section 223 approval, the Consent Holder shall undertake soil testing to assess any potential soil contamination as set out in the recommendations of the Tonkin and Taylor report on potential ground contamination on areas 4, 6a, 3 and 7 as shown on Tonkin and Taylor Plan Figure 2 and provide a report to Council that shows that the soil is suitable for residential use and any soil contaminants meet the requirements set out in the NES-Contaminated soils. This report is to be based on "*Soil sampling and Assessment guideline for horticultural sites in TDC and NCC, June 2004*", and be carried out by an accredited environmental consultant (list attached as Appendix A).

Advice Note:

Testing is required over the entire residential allotment rather than just the building site.

- (b) Should the soil testing required in (a) show that any areas exceed the NES-Contaminated soils then prior to the issue of Section 223 approval, the applicant shall undertake site remediation to the satisfaction of Council's Resource Scientist, Contaminants.

Roads to Vest

6. The survey plan which is submitted for the purposes of Section 223 of the Act shall show Lots 1001, 1002, 1004, 1003 and 902 as vesting in the Council as Road Reserve at respective stages.

Advice Note:

For the avoidance of doubt, Lot 902 is shown on the subdivision plan as being a JOAL. The consent holder advised that this was an error and sought that this lot be vested as road. This was accepted.

Private Road

7. Prior to Section 223 approval for Stage 3, which includes the Private Road on proposed Lot 1005 that is to remain in Wakatu Incorporation's ownership, Wakatu Incorporation shall enter into a formal deed ("the Deed") with Tasman District Council whereby the Private Road (Lot 1005) will be treated for all intents and purposes as if it were a public road vested in Council. The Deed shall generally encompass the terms outlined in the letters attached to this consent as Appendix A and Appendix B.

In addition to the matters stated above, the Deed shall also ensure that the Private Road will be treated for all intents and purposes as if it were a public road in relation to the administration of the Resource Management Act 1991, the District Plan (Tasman Resource Management Plan) or any future relevant statutes or statutory documents; and the Deed shall also state that the two parties (Wakatu incorporation and Tasman District Council) will not prevent reasonable legal and physical access being provided across proposed Lot 1005 to serve 79 Pah Street (being Lot 1 DP9015 or 81 Pah Street (being Lot 1 DP 5670) and future subdivision of those two properties.

Archaeological

8. (a) A HPA Authority Section 12 is applied for prior to any earthworks commencing on the site.
- (b) the following recommendations included in the archaeological assessment provided by Deb Foster dated May 2009 shall be adhered to:
 - (i) any archaeological deposits identified during excavations are sampled, recorded and assessed according to archaeological practice;

- (ii) That prior to the work commencing on the property, all contractors and subcontractors are briefed on archaeological and cultural issues and advised of procedure;
- (iii) any cultural protocols advised by Tangata Whenua are acknowledged and provided for.

Iwi Monitor

9. The Consent Holder shall engage the services of a representative of Tiakina te Taiao Limited to be present during any earthworks. The Consent Holder shall contact Tiakina te Taiao Limited, PO Box 1666, Nelson (ph (03) 546 7842) at least five working days prior to commencing any earthworks and advise it of the commencement date of the earthworks.

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 shall cease. The Consent Holder shall contact Tiakina te Taiao and New Zealand Historic Places Trust's Central Regional Office (PO Box 19173 Wellington, phone (04) 801 5088, fax (04) 802 5180), and shall 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.

Financial Contributions

10. The Consent Holder shall prior to the issue of a completion certificate pursuant to Section 224(c), pay a financial contribution to Council's Community Services Manager for reserves and community services in accordance with following:
- (a) The amount of the contribution shall be 5.62 per cent of the total market value (at the time subdivision consent is granted) of 97 allotments (credit for six existing Computer freehold registers) less any credit due at Stage 1 for the vesting of Lot 800 in Council as Recreation Reserve.
 - (b) The Consent Holder shall request in writing to the Council's Consent Administration Officer (Subdivision) that the valuation be undertaken. Upon receipt of the written request the valuation shall be undertaken by the Council's valuation provider at the Council's cost.
 - (c) If payment of the financial contribution is not made within two years of the granting of the resource consent, a new valuation shall be obtained in accordance with (b) above, with the exception that the cost of the new valuation shall be paid by the Consent Holder, and the 5.62 per cent contribution shall be recalculated on the current market valuation. Payment shall be made within two years of any new valuation.

Advice Note:

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

Street Names and Numbers

11. Street names shall be submitted to the Council's Environment & Planning Manager, prior to the approval of the survey plan submitted for the purposes of Section 223 of the Act, together with reasons for each option.
12. The street numbers and street names shall be shown on the "as-built" plans.
13. The cost of a nameplate for any new street or private way sign shall be met by the Consent Holder on application to the Tasman District Council.

Roads and Joint Owned Access Lot (JOALs) formation

14. Road 1 and Roads 2-7 and Lot 902; JOALs 900,901 and 903 as shown on attached Plan F "*Overall Roding Plan*" shall be formed in accordance with the design specified on Plan G and all work and material to be in accordance with the Council's Engineering Standards & Policies 2008.
15. Kerb, channels and sumps shall be installed in accordance with Council's Engineering Standards & Policies 2008.

Recreation Reserve to vest

16. Lot 800 (Recreation Reserve to vest) shall be presented prior to vesting in accordance with Section 12.2 of the Council's Engineering Standards & Policies 2008 or to the satisfaction of Council's Reserves Manager and shall be in general accordance with the Rory Langbridge Concept design as per attached Plan J.

Access

17. A formed access crossing shall be constructed to each of Lots 1-103 in accordance with Diagram 616 of the Council Engineering Standards & Policies 2008. Pram crossings shall be provided at the street intersections.

Water Supply

18. Full water reticulation, complete with all mains, valves, fire hydrants and associated fittings shall be installed and a water meter and approved housing box shall be provided for each of Lots 1-103.

Advice Note:

Water connection fees will be payable under the Council's Long Term Community Council Plan for any new water connections prior to the signing of the Section 224(c) Certificate for the subdivision.

Sewer

19. Full sewer reticulation discharging to the Council's reticulated system shall be installed complete with any necessary manholes and a connection to each of Lots 1-103.

Stormwater

20. A full stormwater reticulation system discharging to the Council's reticulated System shall be installed complete with all necessary manholes, sumps, inlets and a connection to each lot, including the design of the stormwater pond that will attenuate stormwater flows across the rural land.
21. Stormwater calculations for the subdivision shall be provided with the engineering plans required by Condition 30 of this resource consent.

Cabling

22. Telephone and electric power connections shall be provided to each lot and all wiring shall be underground to the standard required by the supply authority.
23. Confirmation of compliance with Condition 23 of this resource consent shall be obtained from the relevant supply authority and a copy of the supplier's Certificate of Compliance shall be provided to the Council prior to issue of the Section 224(c) Certificate under the Act.

Electricity

24. Electricity substation sites shall be provided as required by the supply authority. Substation areas shall be shown as "Road to Vest" on the Survey Plan submitted for the purposes of Section 223, if such sites are adjacent to a road or road to vest.

Street Lighting

25. The Consent Holder shall provide street lighting in accordance with the Council's Engineering Standards & Policies 2008.

Engineering Certification

26. 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 to the standards required by the engineering plans required by Condition 31 of this resource consent.
27. Certification that a site has been identified on each of Lots 1-103 that is suitable for the construction of a residential building shall be submitted from a geotechnical engineer (chartered professional engineer) This certificate shall define on Lots 1-103 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 a consent notice pursuant to Section 221 of the Resource Management Act 1991 prior to the issue of the Section 224(c) certificate. 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.

28. Where fill material has been placed on any part of the site, a certificate shall be submitted to the Council's Engineering Manager from a suitably experienced chartered professional engineer, certifying that the filling has been placed and compacted in accordance with NZS 4431:1989.

Environmental Management Plan for construction and earthworks effects

29. The consent holder shall provide an environmental management plan with Engineering plans specifying control and mitigation of construction and earthworks effects that includes those matters identified in the Woods application on pages 28 and 29.

Maintenance Performance Bond

30. The Consent Holder shall provide the Council's Engineering Manager with a bond to cover maintenance of any roads or services that will vest in the Council. The amount of the bond shall be \$1,100 per lot to a maximum of \$23,000, or a figure agreed by the Engineering Manager and shall be held for 2 years after the date of issue of the Section 224(c) Certificate for each respective stage of the subdivision.

Engineering Plans

31. Engineering plans detailing all works and services for each respective stage shall be submitted to the Council's Engineering Manager and approved prior to the commencement of any works on each of Stages 1 to 4 of the subdivision. All plans shall be in accordance with either the Council's Engineering Standards & Policies 2008 or else to the satisfaction of the Council's Engineering Manager. The plans shall include (but not necessarily be limited to):

- (a) all roading and associated works as set out in Conditions 10-16;

- (b) stormwater culverts, stormwater attenuation pond;
- (c) wastewater pump station;
- (d) the engineering plans shall include an Environmental Management Plan for the construction and earthworks effects as required by Condition 29.

32. "As-built" engineering plans detailing all completed engineering works and finished earthworks shall be provided for approval and signing by the Council's Engineering Manager. The "as-built" engineering plan details shall be in accordance with the Council's Engineering Standards & Policies 2008.

A Certificate under Section 224(c) of the Act for the subdivision shall not be issued until the "as-built" engineering plans have been approved and signed by the Council's Engineering Manager.

Commencement of Works and Inspection

33. The Council's Engineering Manager shall be contacted at least 5 working days prior to the commencement of any engineering works. In addition, 5 working days' notice shall be given to the Council's Engineering Manager when soil density testing, pressure testing, beam testing or any other major testing is undertaken.
34. No engineering works shall commence until the engineering plans required under Condition 30 have been approved and signed by the Council's Engineering Manager.

Engineering Works

35. All engineering works referred to in this consent shall be constructed in strict accordance with the Council's Engineering Standards & Policies 2008 or to the Council's Engineering Manager's satisfaction.

Construction Access

- 35A. A construction access shall be formed off Whakarewa Street. All vehicles associated with earthworks or the construction of the subdivision shall use this access and shall not use either Road 1 or Road 3.

The location of the construction access shall be either in line with western edge of the stormwater detention pond shown on the subdivision plan or 60 metres to the west of the western boundary of 92 Whakarewa Street, whichever is the greater. Alternatively the construction access may utilise the existing crossing at 106 Whakarewa Street.

Advice Note:

If a new crossing is formed a Vehicle Access Crossing Permit will be required from the Council's Engineering Department.

Fencing

36. A wooden fence shall be provided along the entire length of the northern boundary of 34 Grey Street, the western boundary of 79 Pah Street and the eastern boundary of 81 Pah Street. The fences shall be in accordance with the NCC Land Development Manual - Plan number 21/315 - Close Board Timber Fence (attached as Appendix D). The palings side of the fences shall face into the private properties stated above. The fences shall be provided at the consent holder's cost.

In the event that this design of fence is not acceptable to the owners of one or more of the above properties then those owners shall organise the construction of a fence of their choice on the relevant boundary and the consent holder shall reimburse the owners to a maximum value of \$120 (including GST) per metre.

Consent Notices

37. The following consent notice shall be registered on the certificate of title for Lots 37-65 and 68-76 pursuant to Section 221 of the Act.
- (a) The definitions specified in Grey Street design standards, pages 1 and 2 attached as Appendix C.
 - (b) Bulk and location standards for high density lots (320m²-399m²) specified in Grey Street design standards, pages 4 and 5 attached as Appendix C.
 - (c) The Architectural Constraints specified in Grey Street design standards, pages 8 and 9 attached as Appendix C.

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

38. The following consent notice shall be registered on the certificate of title for Lots 1, 2, 5, 6, 8-10, 12-15, 19-36, 66, 67, 77-89, 91-98 and 100-102 pursuant to Section 221 of the Act.
- (a) The definitions specified in Grey Street design standards, pages 1 and 2 attached as Appendix C.
 - (b) Bulk and location standards for medium density lots (400m²-499m²) specified in Grey Street design standards, pages 6 and 7 attached as Appendix C.
 - (c) The Architectural Constraints specified in Grey Street design standards, pages 8 and 9 attached as Appendix C.

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

39. The following consent notice shall be registered on the certificate of title for Lots 3, 4, 7, 11, 16, 17, 18, 90, 99 and 1000 pursuant to Section 221 of the Act.
- (a) The definitions specified in Grey Street design standards, pages 1 and 2 attached as Appendix C.
 - (b) The Architectural Constraints specified in Grey Street design standards, pages 8 and 9 attached as Appendix C.

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

40. The following consent notice shall be registered on the certificate of title for Lots 35, 36, 57-76, 77-82, 90-93, 101 and 102 pursuant to Section 221 of the Act.
- (a) The 25 metre setback from the Rural 1 boundary is waived and the setbacks specified for medium or high density allotments shall apply.

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

41. The following consent notice shall be registered on the certificate of title of all allotments pursuant to Section 221 of the Act.

“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 shall cease. The Consent Holder shall then contact Tiakina te Taiao and the New Zealand Historic Places Trust’s Central Regional Office (PO Box 19173 Wellington, phone (04) 801 5088, fax (04) 802 5180), and shall 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.”

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

Amalgamation Conditions

42. (a) Lot 900 hereon (Legal Access) be held as to two undivided one-half shares by the owners of Lots 3 and 4 hereon as tenants in common in the said shares and that individual computer registers be issued in accordance therewith.
- (a) Lot 901 hereon (Legal Access) be held as to five undivided one-fifth shares by the owners of Lots 7, 8, 9, 10 and 11 hereon as tenants in common in the said shares and that individual computer registers be issued in accordance therewith.
- (b) Lot 903 hereon (Legal Access) be held as to two undivided one-half shares by the owners of Lots 98 and 99 hereon as tenants in common in the said shares and that individual computer registers be issued in accordance therewith.

Land Information New Zealand reference: To be advised.

ADVICE NOTES

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.

Consent Holder

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

Development Contributions

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

The Development Contributions Policy is found in the Long Term Council Community Plan (LTCCP) and the amount to be paid will be in accordance with the requirements that are current at the time the relevant development contribution is paid in full.

This consent will attract a development contribution on 97 allotments in respect of roading, wastewater, stormwater and water (103 Allotments with credit given for six existing Computer Freehold Registers).

Issued this 11th day of October 2012

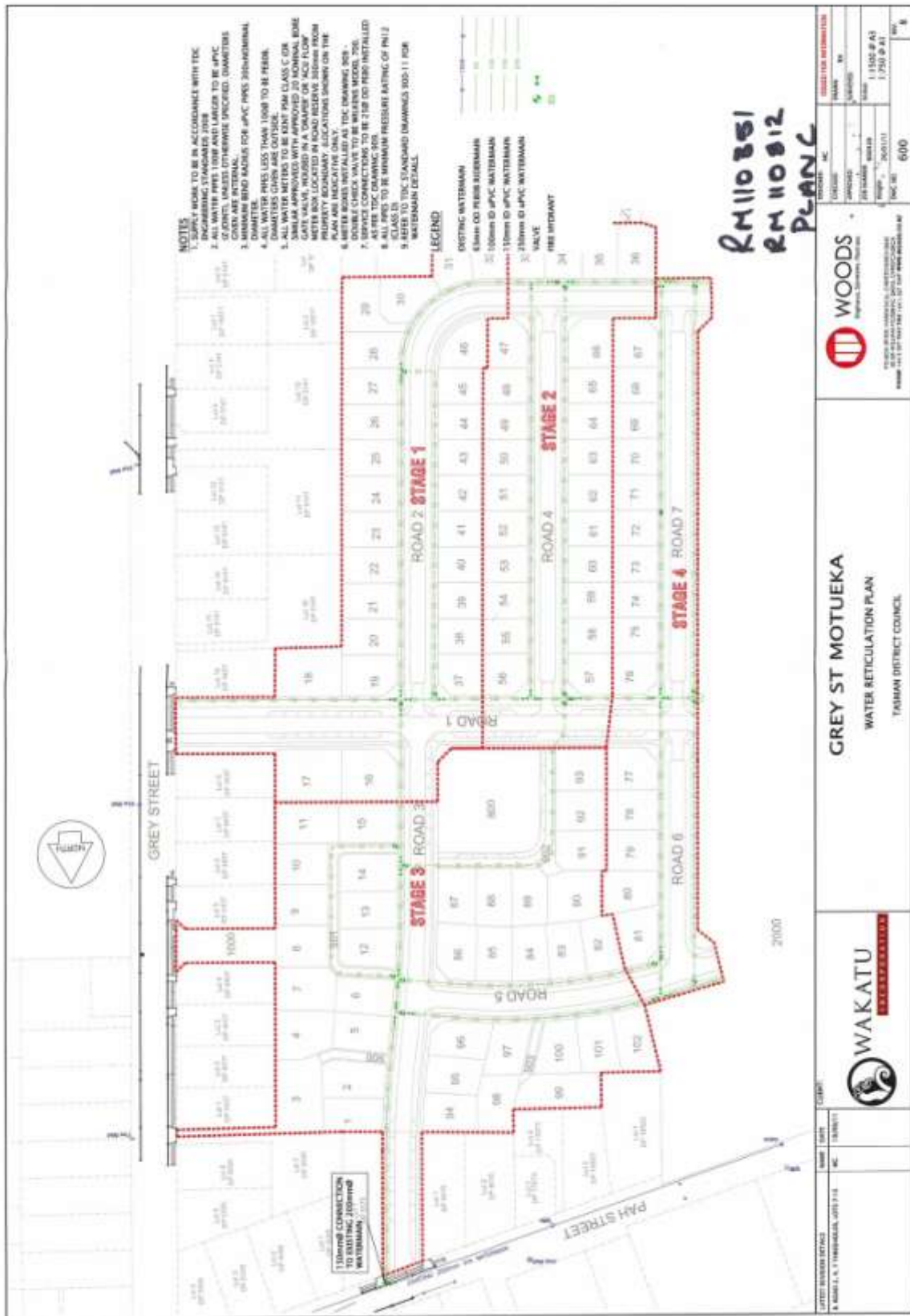


Tim King
Chair of Hearings Committee

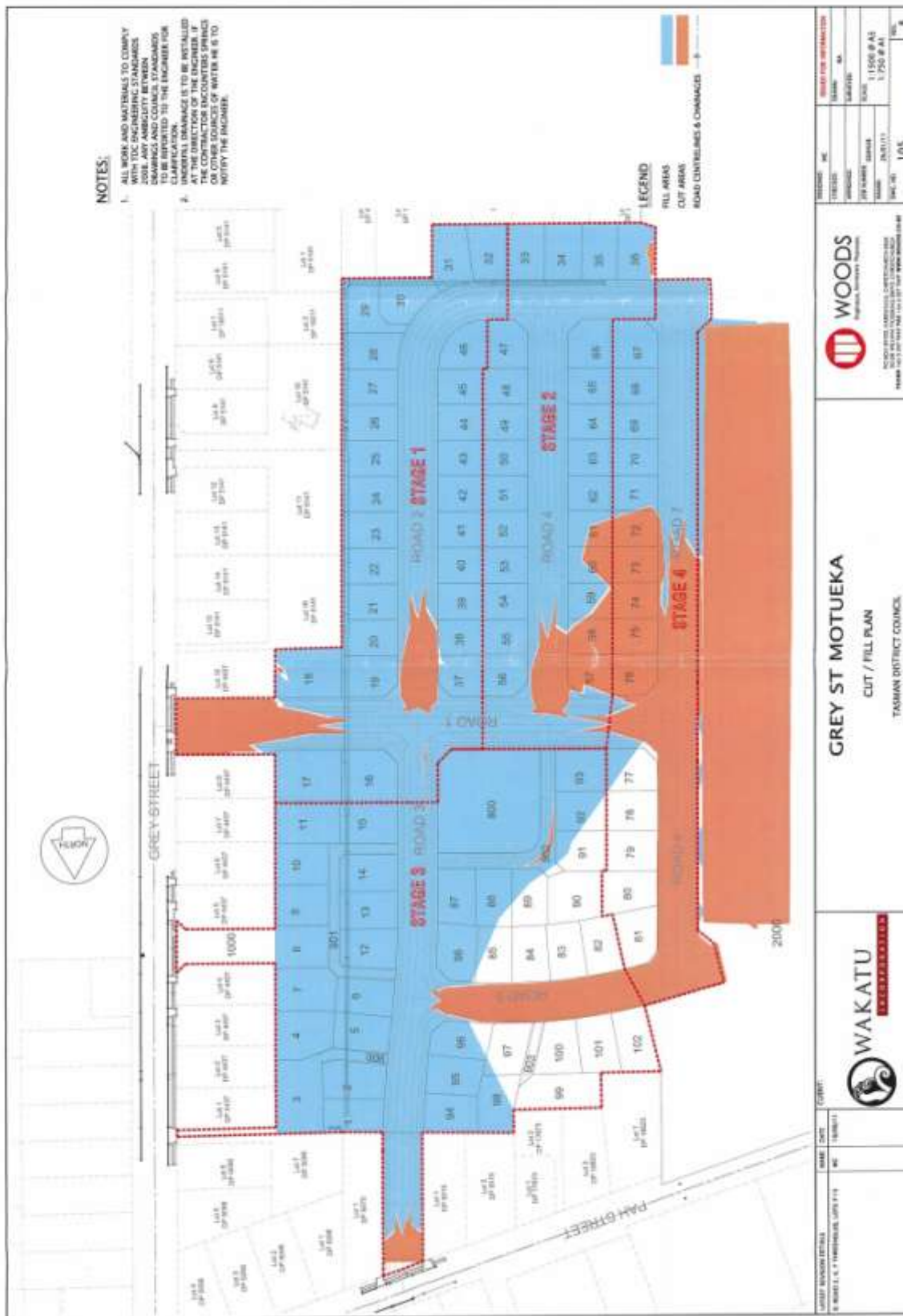


PLAN A RM110851





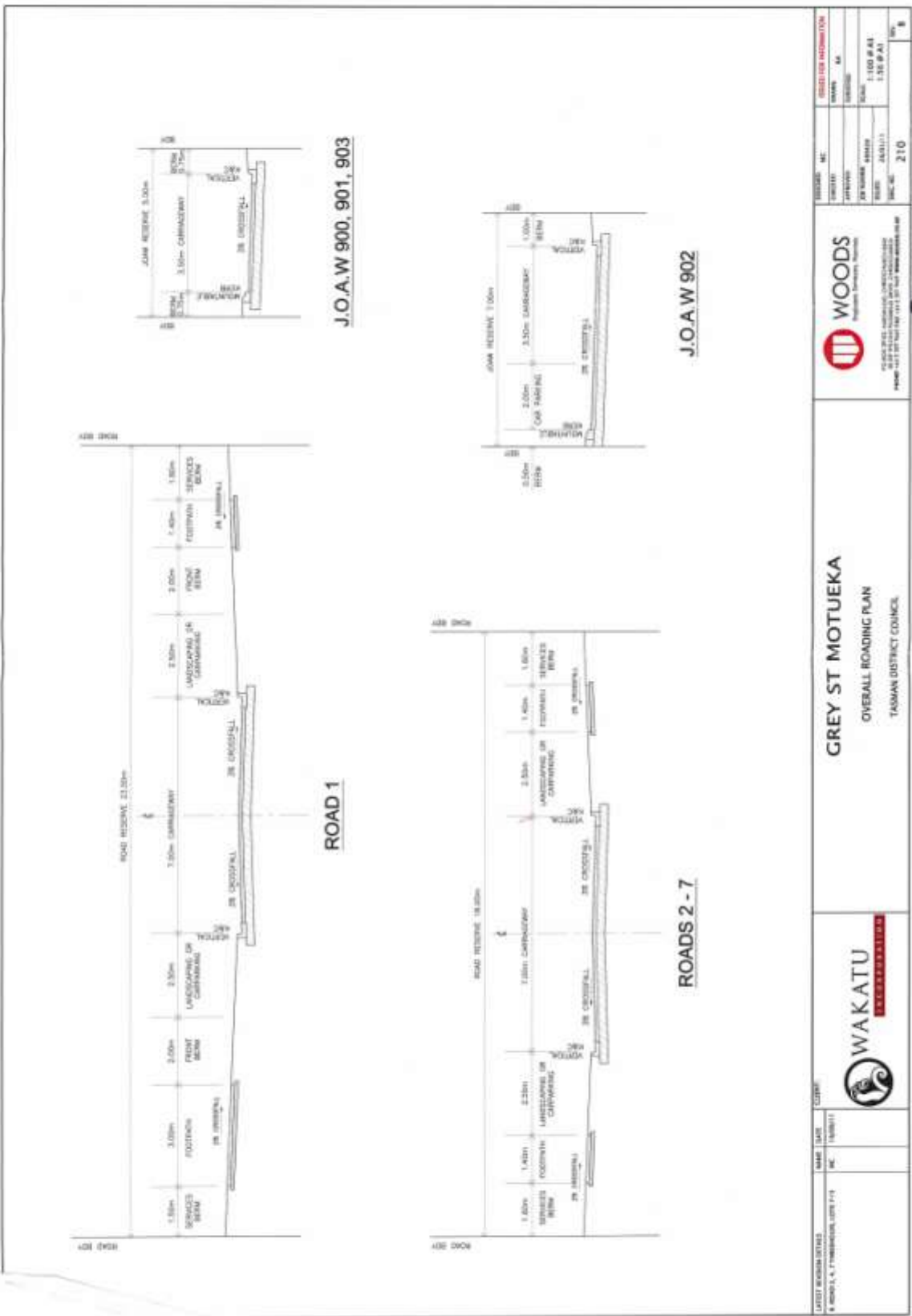




	GREY ST MOTUEKA CUT / FILL PLAN TASMAN DISTRICT COUNCIL		PROJECT NO: 105 DATE: 10/08/12 SCALE: 1:500 @ A3 1:750 @ A1
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RM110851, RM110812
PLAN E











RM 110351 PLAN J



FLETCHER VAUTIER MOORE
LAWYERS

Tasman District Council
Private Bag 4
Richmond
Nelson

Office	Richmond
Author	Stuart Ritchie
Telephone	03 543 8301
Facsimile	03 543 8302
Email	sritchie@fvm.co.nz
Matter No	27321/214

7 March 2012

Attention: Phil Doole

Dear Phil

**WAKATU INCORPORATION - PROPOSED SUBDIVISION AT GREY STREET,
MOTUEKA - PRIVATE ROAD**

1. Thank you for your email of 3 February 2012. We have been asked to comment on a proposal by Wakatu Incorporation (**Wakatu**) to create a private road as part of a 100 lot subdivision at Grey Street, Motueka. It is proposed that the private road will be created over the land shown as Lot 1005 on the Scheme Plan and will provide a road link between Pah Street and the subdivision. Access to the subdivision will also be provided by a road to be vested in the Council, which connects with Grey Street.
2. The proposal to create a private road is mentioned in extracts from Wakatu's application, which have been sent to us by Pauline Webby. The application states:

A private road will link Road 3 to Pah Street. The road is proposed as a private road as it is located in close proximity to a historical Pah site. Wakatu iwi have been consulted with regards to the proposed application and have expressed a preference to retain the road as a private road with a right of way to the public.

3. The application also states that Wakatu Manaaki Board:

'...indicated concern over the alienation of that part of the site which provides a road linkage to Pah Street... As a result, this section of road has been deemed a private road so that Wakatu can maintain ownership of the underlying land. However a public right of way over the land will be provided.

4. Private roads are recognised by the Local Government Act 1974 (**Act**), and defined as 'any roadway, place, or arcade laid out or formed within a district on private land, whether before or after the commencement of this Part, by the owner thereof, but intended for the use of the public generally'. We make the following comments on

Nelson
Level 1, 126 Trafalgar Street, Nelson 7010.
PO Box 90, Nelson 7040, DX WC 70009.
Tel: (03) 548 1469, Fax: (03) 548 2994

Richmond
265A Queen Street, Richmond 7020.
PO Box 3029, Richmond 7050, DX WC 71017.
Tel: (03) 543 8301, Fax: (03) 543 8302

Motueka
12 Wallace Street, Motueka 7110.
PO Box 23, Motueka 7143, DX WC 72002.
Tel: (03) 528 7030, Fax: (03) 528 9120

27321/214/L120217SRR/

Takaka and Havelock by appointment

the proposal to create a private road at the Northern entrance to the Wakatu subdivision:

- (a) The roadway will be situated on private land. It will not be owned by the Council. The Council does not have the same powers with respect to a private road that it exercises over roads vested in the Council. Limited powers under the Act, such as the power to light, apply to private roads but generally the Council will not be able to do anything on a private road unless it has the consent of the landowner. We also point out that the Council's Traffic Control Bylaw will not apply to the private road;
- (b) The Council will require easements for all Council services under the private road. We expect Telecom and Network Tasman will also require easements. We note from the Scheme Plan you sent us that Wakatu intends to grant the Council the right to convey electricity, telecommunications and water, over the private road, together with a right of way. We recommend the right to convey telecommunications includes the right to convey computer media, and that the Council considers whether it will also need the right to drain water and the right to drain sewage over the land;
- (c) Wakatu will need to be contractually bound to allow the public to pass over Lot 1005. We recommend that Wakatu is required to grant the Council a right of way easement over Lot 1005, which provides that the Council has the right to allow the public to pass over the land in vehicles, and on foot, on bicycles, and mobility scooters. This easement can then be registered against the title to Lot 1005. The Council may also need to enter into a deed with Wakatu, as proposed by Pitt and Moore, setting out the rights of the Council in respect of the road that are not contained in the right of way easement;
- (d) Responsibility for maintenance of the roadway will need to be discussed. The Council does not have a statutory obligation to maintain roads so we do not consider the Council should be bound by a contractual obligation to maintain the private road. Furthermore, we do not consider that the Council should be liable to Wakatu for any damage to the land directly or indirectly caused by the public using the land;
- (e) Pitt and Moore mention (at paragraph 2(b) of their letter) that the terms of the easements will need to be such that Wakatu does not have any liability to the grantees (i.e. the Council, Network Tasman and others) in relation to those easements. It is not entirely clear what Pitt and Moore is suggesting, but Wakatu will have some obligations under those easements, and the grantee must be able to enforce those obligations;
- (f) We note that Wakatu does not wish to be charged any rates for the private road. A private road is rateable land. Unless the Council's policy on the remission of rates applies we do not consider the Council can agree that the private road should be exempt from rates;
- (g) Purchasers of properties in the new subdivision are unlikely to check the legal status of the access way to their subdivision, and may be surprised to learn that it is private land. Solicitors for prospective purchasers of lots in the new subdivision are unlikely to check the legal status of the road leading to the

lots. It is not proposed that each of the lots will benefit from a right of way over Lot 1005 so the land owners will have to rely on the rights granted by Wakatu to the Council under the easement and the deed. If the Council agrees to the creation of a private road we recommend that the Council places a note on the property file for each lot in the new subdivision stating that the road link from that property to Pah Road is a private road.

5. We consider the next step is to draft the deed between the Council and Wakatu, and the easement instruments, so that the terms of those documents can be considered and negotiated by the parties. These documents may address the matters set out in paragraphs 3 and 5 of Pitt and Moore's letter but we do not consider the Council should agree to those matters in the meantime. The deed will also need to prohibit Wakatu from granting a mortgage over the land, and selling the land without the transferee entering into a deed on the same terms with the Council. The deed will also need to contain an acknowledgement that the Council owns the improvements on the private road. The Council may also need to consider registering a memorandum of encumbrance against the title to the private road to serve as a reminder to prospective purchasers of that land, and to the Council, that the landowner is bound by the terms of the deed with the Council. If the landowner were wound up or cease to exist the Council may need to have the ability to declare the land road. We expect other matters will come to mind in the course of preparing the deed and the easement instruments.
6. Please call us if you wish to discuss any aspect of this letter. Otherwise, we suggest that the next step is for the Council to instruct us to prepare the draft easement instruments, and deed, and for the Council and Wakatu to be satisfied with the terms of those documents before the Council permits the creation of a private road as part of the subdivision.

Yours sincerely
Fletcher Vautier Moore



Stuart Ritchie
Partner

PITT & MOORE

LAWYERS AND NOTARIES PUBLIC

24 January 2012

HAND DELIVERY

Wakatu Incorporation
Level 2
Wakatu House
Montgomery Square
Nelson

Attention: Ray Molineux

VIABILITY OF PRIVATE ROAD ACCESS TO GREY STREET SUBDIVISION

Introduction and Summary

1. You have asked us to provide you with an opinion as to how a private road might be utilised to allow the 0.1080ha area marked "private road" on the attached plan (the "Access Road") to remain in Wakatu's ownership whilst, in effect, replicating Wakatu's and the Council's respective rights and obligations as if the Access Road were a public road.
2. We think that the following could be used to give effect to the above aim:
 - a. The Access Road should not vest in the Council, but rather should remain in Wakatu's private ownership as a "private road" (as that term is defined under section 315 the Local Government Act 1974). The survey plan which is to be deposited should, as per the attached plan:
 - i. treat the Access Road as a separate parcel of land which is to be the subject of a separate title (and which is to remain in Wakatu's ownership); and
 - ii. record the Access Road as "private road".
 - b. Wakatu should grant appropriate easements in gross over the Access Road granting rights to convey electricity, telecommunications, water, stormwater, sewage and a right of way (as permitted by section 291 of the Property Law Act 2007). The terms of those easements would need to be such that Wakatu would not have any liability to the grantees in relation to the easements. The terms of the right of way should also be such that Wakatu is effectively prohibited from ever building on the Access Road.
 - c. Wakatu and the Council should enter into a formal deed (the "Deed") whereby they both agree to treat the Access Road, for all intents and purposes, as if it were a public road vested in the Council.

78 Selwyn Place, PO Box 42, Nelson 7040, New Zealand
T 64 3 548 8349 F 64 3 546 9153 E mail@pittandmoore.co.nz W www.pittandmoore.co.nz
GC-027833-410-8-V1
Pitt & Moore also in Richmond

LawXLink

3. Provided the Deed is carefully drafted (and in particular provided it covers off each of those matters listed below), we expect that this approach should provide:
 - a. Council with sufficient assurance that the Access Road is permanent and will, for all practical purposes, function exactly like a public road; and
 - b. Wakatu with sufficient assurance that the Access Road will remain in its ownership, but that Wakatu shall have no on-going liability in relation to the Access Road (as if it had vested in Council as a public road).
4. Both parties will however need to appreciate that it is difficult to draft agreements that are guaranteed to remain binding and effective in perpetuity. Legislative changes and various other unforeseen changes may have unforeseeable effects upon the way the Deed may operate in the distant future.

Detailed Description of Deed

5. We would suggest that the Deed should provide as follows:
 - a. Notwithstanding that the Access Road is to remain in Wakatu's ownership, the parties agree that as between themselves the Access Road will be treated for all purposes as if it were a public road vested in the Council.
 - b. To the extent that legislative or other changes have the effect of frustrating the above aim, the parties shall negotiate in good faith to seek to agree a variation to the Deed which best gives effect to that aim.
 - c. The Council agrees not to at any time in the future, without Wakatu's express prior written consent, exercise its right under section 349 of the Local Government Act 1974 (or any similar right under any other or subsequent legislation) to declare the Access Road to be a public road. Council also agrees to not at any time dispute Wakatu's ownership of the Access Road.
 - d. If formally requested to do so by Wakatu and subject to any legislative requirements, the Council agrees to exercise its right under section 349 of the Local Government Act 1974 (or any similar right under any other or subsequent legislation) to declare the Access Road to be a public road.
 - e. Wakatu grants the Council full, free and unrestricted access to the Access Road to undertake any works or do anything on the Access Road which the Council would be entitled to undertake or do if the Access Road were a public road vested in the Council. Wakatu agrees that it has no right whatsoever to prevent the Council from undertaking any such works.
 - f. The Council agrees to comply with all of the maintenance and other obligations incumbent upon the Council in respect of public roads as if the Access Road were a public road.
 - g. The Council agrees not charge Wakatu rates or any other levies in relation to the Access Road.


- h. Wakatu agrees to grant any utility company who requests permission, permission to undertake such works on the Access Road as that utility company would be permitted to undertake were the Access Road a public road.
- i. The parties will each agree to comply with any protocols that existing between the Council, Wakatu and Tiakina te Taiao in regard to any future works within the Access Road.
- j. Each party agrees to indemnify the other for any liability caused by that party's failure to comply with its obligations under the Deed.
- k. The Deed would only be capable of being varied with the prior written consent of both parties. Neither party would have any right whatsoever to unilaterally terminate the Deed. Termination of the Deed would be expressly excluded as an available remedy for any breach of the Deed (so that, for example, if the Council failed to maintain the Access Road Wakatu would not be entitled to terminate the Deed).
- l. For the purposes of the Contracts (Privity) Act 1982, the Deed is intended to be enforceable by potential users of the Access Road.

Next Steps

- 6. If the above proposal is acceptable to Council in principle then the next step will be to prepare a first draft of all of the requisite documentation for approval by the parties.
- 7. This letter is addressed to and is for the benefit of Wakatu Incorporation and may not be relied on by any other person. Pitt & Moore does not accept any liability whatsoever to any other person in relation to the content of this letter.
- 8. Please feel free to contact the writer should you have any questions or comments.

PITT & MOORE

per:


Geoff Caradus
Senior Solicitor

Email: geoff.caradus@pittandmoore.co.nz
Direct dial 03-545 6717
Direct fax 03-546 9153

GC-027833-410-8-V1

WAKATU INCORPORATIONGREY STREET DEVELOPMENTMOTUEKADESIGN GUIDELINES

October 2011

1. DEFINITIONS

All definitions shall be those in the Tasman Resource Management Plan 1996 (as at September 2011) except that:

'Daylight Controls' means the angles within which a complying building must fit in order to allow adequate daylight onto adjoining sites. Daylight indicators limit the envelope of a building in a way that ensures equitable access to daylight on all adjoining properties. Daylight controls also ensure that minimum building separation, open space and amenity are maintained within residential areas.

'Design Guidelines' means the guidelines contained herein. These will form the basis of consent notices on the titles of all high and medium density residential lots forming part of the Grey Street Development.

'District Plan' means the District Plan provisions which applied at the time of preparing these Design Guidelines, this was the Tasman Resource Management Plan as at August 2010.

'Duplex Housing' means houses that are attached to another house along one common wall (may also be referred to as 'semi-detached' housing).

'Garage Door Yard' means an area clear of buildings 5.5m in length, the same width as the garage door and wholly within the boundaries of the site. The garage door yard shall be provided in a line immediately perpendicular (i.e. at a 90 degree angle) and adjacent to any garage door. This is to provide for parking of a standard vehicle in front of the garage and to ensure that garages are set back so as not to dominate the visual appearance of a dwelling from the street.

'High Density Lots' means all lots in the Grey Street Development between 320m² and 399m² in size.

'JOAL' means a Jointly Owned Access Lot.

'Low Density Lots' means all lots in the Grey Street Development that are 500m² or larger.

Wakatu Incorporation – Grey St Development - Design Standards

1

'Medium Density Lots' means all lots in the Grey Street Development that are between 400m² and 499m² in size.

'Production Housing' means a continuous row of more than two houses with an identical design.

'TDC' means Tasman District Council.

'Terrace Housing' means a row of attached houses built in one block of uniform style.

NOTES

High Density Lot Standards (320m²-399m²) ONLY

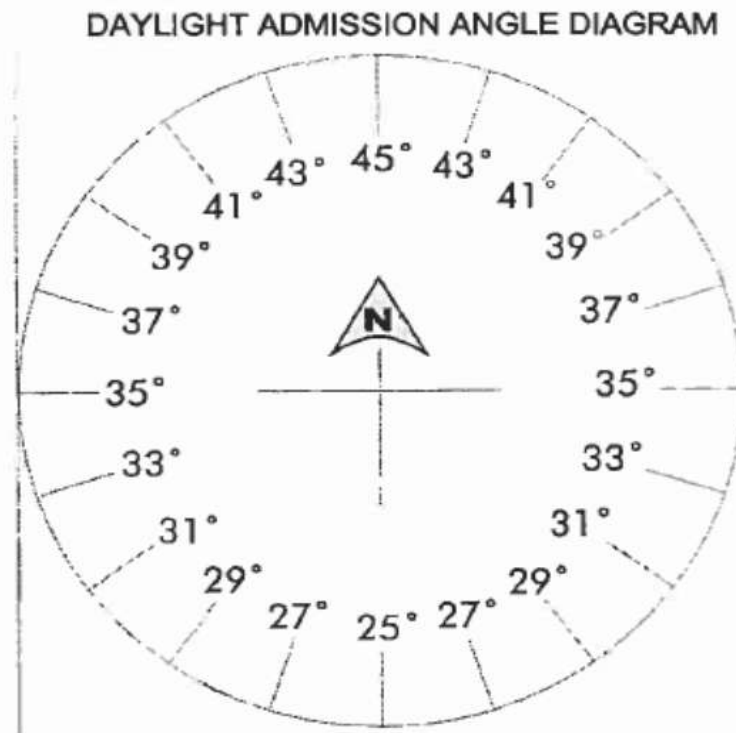
The following bulk and location standards set out in the table below shall be applied to Lots 37-65 and 68-76 (High density (HD) allotments) replacing all the Residential zone standards relating to building construction and alteration (bulk and location) set out in the Tasman Resource Management Plan (TRMP) or any subsequent planning document. For the avoidance of doubt, TRMP rules relating to activities such as home occupations shall continue to apply.

Standard HD1 Maximum Dwellings per Site:	One
Standard HD2 Maximum Building Coverage:	50%
Standard HD3 Maximum Impervious Surface Area	70%
Standard HD4 Minimum setback from Road Boundary:	1.5m
Standard HD5 Minimum Setback from Side and Rear Boundaries:	1.5m, except that: <ul style="list-style-type: none"> a) No setback is required from side or rear boundaries for buildings with a common wall on the boundary along that part of the boundary covered by the common wall; and b) No setback is required along one side boundary providing the dwelling design complies with Standard HD9 (daylight Controls); and c) This setback does not apply to accessory buildings, such as detached garages, which may be built right up to the boundary provided they do not exceed a height of 3.6m and comply with the daylight controls of Standard HD9. (However where a carport or garage is attached to a building by one or more walls, it must comply with the 1.5m side and rear yard standard.).
Standard HD6 Garage Door Yard	5.5m
Standard HD7 Garage Door Offset	Where two double garages are proposed to adjoin one another or where they are less than 3m apart, the front walls of the garages will be offset by a minimum of 1 m.
Standard HD8 Maximum height:	7.5m for dwellings 3.6m for accessory buildings

Standard HD9
Daylight Controls:

Buildings shall not project beyond daylight admission lines commencing from a point 2.5m above ground level on all southern and rear side boundaries and 5m above ground level on all northern side boundaries. The angle to be used for the daylight admission lines is to be determined using the Daylight Admission Angle Diagram below.

Where there is a common wall along the side boundary (i.e. where a duplex or terrace house is proposed), no daylight admission line will apply along that wall. For clarity, the maximum building height along a common wall will be 7.5m.



Standard HD10
Outdoor Living Space:

Each dwelling shall have an area of outdoor living space for the exclusive use of the occupants of that dwelling which:

- a) Has a minimum area of 60m²;
- b) Contains a circle with a diameter of at least 6 metres;
- c) Is located to receive sunshine in midwinter; and
- d) Is readily accessible from a living area of the dwelling

Medium Density Lot Standards (400m² - 499m²) ONLY

The following bulk and location standards set out in the table below shall be applied to Lots 1, 2, 5, 6, 8 -10, 12-15, 19-36, 66, 67, 77-89, 91 - 98 and 100-102 (Medium density (MD) allotments) replacing all the Residential zone standards relating to building construction and alteration (bulk and location) set out in the Tasman Resource Management Plan (TRMP) or any subsequent planning document. For the avoidance of doubt, TRMP rules relating to activities such as home occupations shall continue to apply.

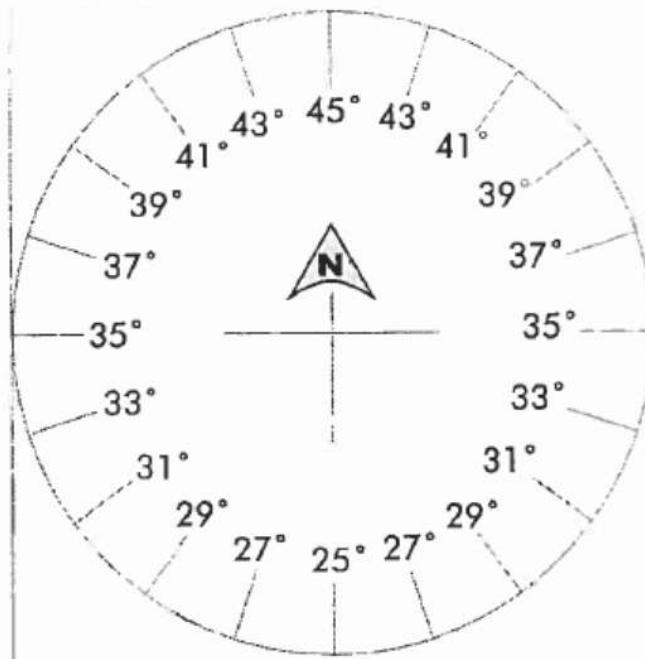
Standard MD1 Maximum Dwellings per Site:	One
Standard MD2 Maximum Building Coverage:	50%
Standard MD3 Maximum Impervious Surface:	70%
Standard MD4 Minimum setback from Road Boundary:	3m
Standard MD5 Minimum Setback from Side Boundaries:	<p>All buildings shall be set back at least 1.5 metres from the internal boundaries on one side boundary and at least 3 metres from all other side and rear boundaries except that:</p> <ul style="list-style-type: none"> a) No setback is required from side boundaries for buildings with a common wall on the boundary along that part of the boundary covered by the common wall; and b) No setback is required along one side boundary provided that the dwelling complies with Standard MD10 (Daylight Controls); and c) This setback does not apply to accessory buildings, such as detached garages, which may be built right up to the side boundary provided they do not exceed a height of 3.6m and comply with the daylight controls of Standard MD10. (However where a carport or garage is attached to a building by one or more walls, it must comply with the 1.5m side and rear yard standard.)
Standard MD6 Minimum Setback from Rear Boundaries:	3m
Standard MD7 Garage Door Yard:	5.5m
Standard MD8 Garage Wall Offset:	Where two double garages are proposed to adjoin one another or where they are less than 3m apart, the front walls of the garages will be offset by a minimum of 1 m.
Standard MD9 Maximum height:	7.5m for dwellings 3.6m for accessory buildings

Standard MD10
Daylight Controls:

Buildings shall not project beyond daylight admission lines commencing from a point 2.5m above ground level on all southern and rear side boundaries and 5m above ground level on all northern side boundaries, excluding Lots 1 and 94 where the height on the northern boundary shall from a point 2.5m above ground level at the boundary. The angle to be used for the daylight admission lines is to be determined using the Daylight Admission Angle Diagram below:

Where there is a common wall along the side boundary (i.e. where a duplex or terrace house is proposed), no daylight admission line will apply along that wall. For clarity, the maximum building height along a common wall will be 7.5m.

DAYLIGHT ADMISSION ANGLE DIAGRAM



Standard MD11
Outdoor Living Space:

Each dwelling shall have an area of outdoor living space for the exclusive use of the occupants of that dwelling which:

- a) Has a minimum area of 60m²;
- b) Contains a circle with a diameter of at least 6 metres;
- c) Is located to receive sunshine in midwinter; and
- d) Is readily accessible from a living area of the dwelling.

Architectural Constraints

In addition to the bulk and location standards, the following architectural constraints shall apply to **all** lots within the Grey Street Development.

5.1 Grey Street Development Design Philosophy

Building designs with an excellent standard of architectural merit are expected. Whilst architectural compatibility (visual accord and formal coherence) between buildings is essential, it is also important to avoid visual monotony in design.

Each property is to be designed to an individual theme expressed in consistent theme detailing, balanced proportions and scale, colour and materials to suit the chosen architectural style.

“Production housing” and associated detailing will be deemed inappropriate.

5.2 Housing Typologies

Duplex, or semi-detached, dwellings are permitted only on the High and Medium Density lots. Where a duplex house is proposed, both adjoining owners must make a concurrent application which demonstrates a compatible design. Second-hand and/or relocated buildings are not permitted.

5.3 Broken Building Form

No building shall present a blank or unrelieved wall facing any road boundary.

5.4 Building Materials

Only quality building materials shall be used. Any of the following exterior materials, finishes and construction methods shall not be used on buildings or fences on any site unless they have architectural merit enhancing the overall design:

- a) Any second-hand or recycled building, roofing or fencing materials;
- b) Unfinished cement board cladding;
- c) Unpainted or uncoated profiled metal cladding;
- d) Reflective or dark-tinted exterior glazing;
- e) PVC/plastic wall claddings;
- f) Imitation woodgrain cladding, or materials finished with stone ships;
- g) Manufactured stone/brick cladding;
- h) Pressed metal roofing;
- i) Unpainted sheet or pressed metal wall or roof claddings; or
- j) Aluminium composite panels.

5.5 Exterior Colours

Exterior wall colours shall avoid obtrusive or overly dominant colours and shall enhance the local vernacular.

5.6 Roof Structures

All roof structures and/or roof accessories, such as satellite dishes, TV aerials, vent pipes, air conditioning units etc, shall be placed on the rear-facing roof slopes, i.e. no roof structures/accessories shall be visible from the road frontage. Solar water heating panels or photovoltaic panels will be permitted on north facing roofs provided that they form part of the overall dwelling design.

5.7 Fencing

Fences along any road boundary shall not exceed a height of 0.9m.

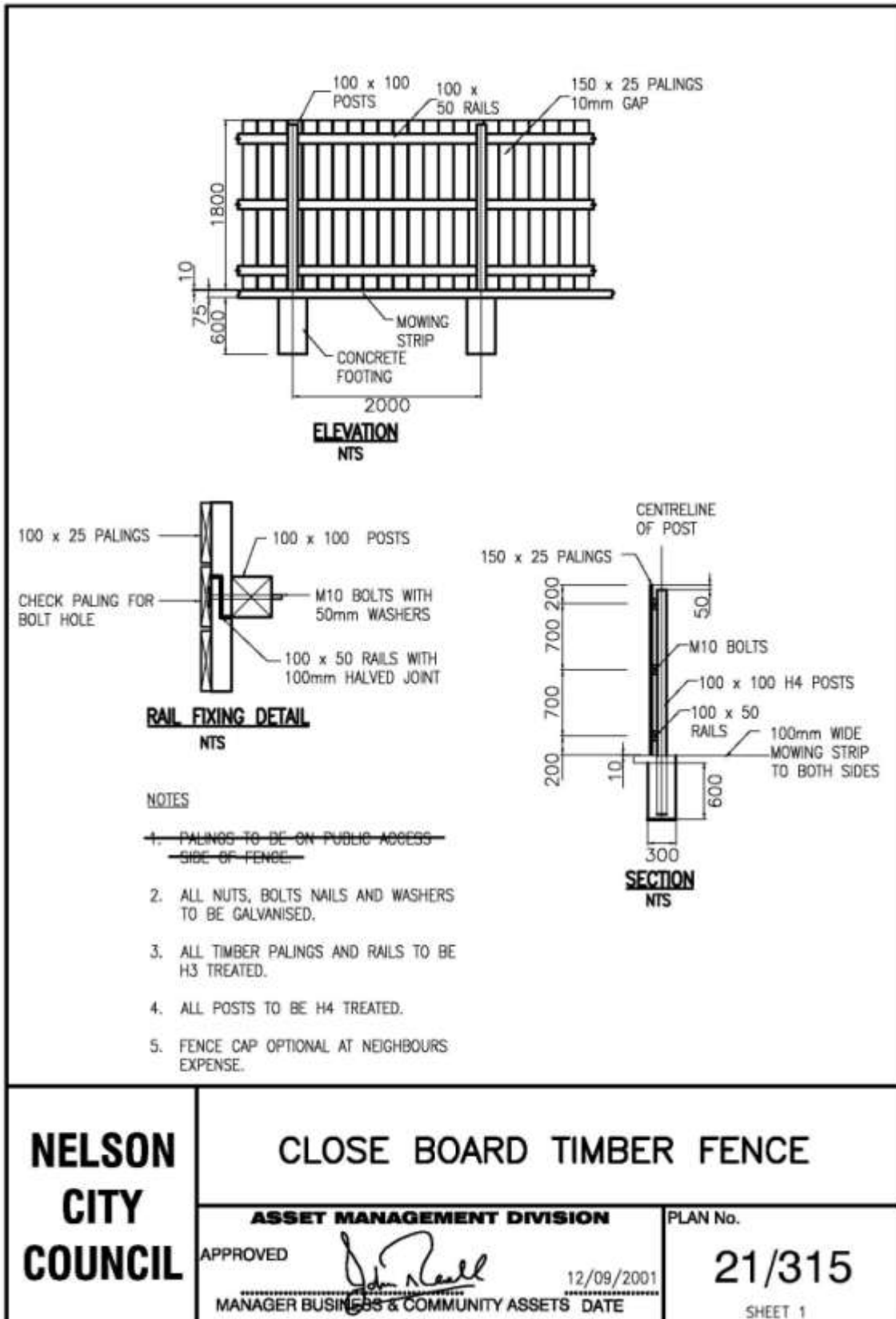
Side boundary fences shall be designed to taper or step from 0.9m at the road boundary up to a maximum height of 1.8m alongside and rear boundaries. The tapered or stepped

section shall extend at least 5m from the road boundary before the maximum height of 1.8m is reached.

Materials and colours of fences are to be consistently themed with the architectural style of the dwelling in terms of colour, materials and/or appearance. Preferred materials include timber or masonry.

The use of hedges in lieu of fencing along the front boundaries is encouraged.

UNCONFIRMED NOTES



Date Confirmed: _____

Chair: _____