



## STAFF REPORT

**TO:** Environment & Planning Committee  
**FROM:** Gary Rae – Consultant Planner  
**REFERENCE:** RM040946  
**SUBJECT:** **THOMAS BROS LTD - REPORT EP05/04/02** - Report prepared for hearing of 11 April 2005

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### 1. APPLICATION SUMMARY - RM040946

#### 1.1 Subdivision

Thomas Bros Ltd have applied for subdivision consent to subdivide land described as Part Section 93 (CT 13B/1146) having a total area of 37.1094 hectares, to create three allotments comprising:

- Lot 1 of 1.32 hectares to be used as a residential ('retirement') block, and
- Lot 2 of 1.24 hectares to be used as a residential ('retirement') block, and
- Lot 3 of 34.4 hectares as the balance lot containing the existing orchard, two dwellings and orchard buildings (including a packhouse).

#### 1.2 Land Use

Thomas Bros Ltd have applied for land use consent to erect dwellings on proposed Lots 1 and 2.

#### 1.3 Location

The property is located in the Riwaka Valley at the end of Dehra Doon Road. A planning map is attached as **Appendix 1**.

#### 1.4 Zoning

Transitional District Plan (Waimea County Section): *Rural C*

Proposed Tasman Resource Management Plan: *Rural 1*

#### 1.5 Resource Consent Type

Transitional District Plan

Subdivision: *Non Complying Activity*  
Land Use: (Not relevant, as proposed plan rules operative)

## Proposed Resource Management Plan

Subdivision: *Discretionary Activity*  
Land Use: *Discretionary Activity*

### 1.6 Submissions

- Transpower NZ Ltd, Oppose
- G C Fry, Support
- B W Brown, Support
- J Littin, Support
- C Scott, Support
- Fred Thomas Snr, Support
- J A Roberts, Support

## 2. INTRODUCTION

My name is Gary Rae. I am a Director of Incite, an environmental and resource management consulting firm, based in Nelson. I have a Bachelor of Science Degree (Geography) and a Diploma in Town Planning, and I am a Member of the New Zealand Planning Institute. I have over 20 years experience in resource management, including the assessment of applications for subdivision and land use in rural areas of Tasman.

I have been engaged by Tasman District Council to prepare the Council officer report, pursuant to Section 42A of the Resource Management Act 1991, on the subdivision and land use application made by Thomas Bros Ltd.

There are no separate technical officer reports. I have discussed the application with the appropriate staff and have included their comments in this report.

These officers have assisted in the formulation of recommended conditions of consent.

## 3. SITE AND NEIGHBOURHOOD

The application site is located at the end of Dehra Doon Road in the Riwaka Valley (refer **Appendix 1**). The property has been in the ownership of the applicant's family since the 1850's.

The property is located on the Riwaka plains and is predominantly flat. However, to the west and southwest it extends towards and includes some of the foothills that bound the Riwaka plains. The Riwaka River bounds the property to the north.

The flat land is used for orcharding, however, the parts of the property that extend to the foothills are considered unsuited for orcharding by the applicant and have been left in pasture. The orcharding business includes two existing dwellings a packhouse and numerous ancillary buildings (sheds, garages, storage etc.) generally clustered around the end of Dehra Doon Road.

The proposal at hand is to subdivide two lots (and construct dwellings) located on the foothills currently in pasture and located adjacent to the western boundary of the property. Access to the proposed lots is to be via a right-of-way to be established along existing orchard access tracks. The building site on proposed Lot 2 is understood to be the site of the original homestead.

Being on the foothills the two proposed dwelling sites are elevated above the existing orchard. I understand that the proposed building sites have not previously been used for productive purposes.

The surrounding land to the north, east and southeast is used for orcharding. The steeper land to the west and southwest is either in pasture or remains undeveloped.

Dehra Doon Road is a sealed road. The Thomas Brothers property is at the end of the legal road in this valley.

#### **4. PROCESSING OF APPLICATION**

The application was first lodged on 5 August 2004 by Graham Thomas Resource Management Consultants Ltd on behalf of Thomas Bros. Ltd. Council then requested that this application be processed by me on Council's behalf so as to manage current Council staff workloads.

Following my preliminary assessment of the application and site visit, and discussions with Council subdivisions staff, I concluded that my Officer's Report would most likely be to recommend that consent be declined. This was on the basis that the Council had deliberately moved away from the practice under the Transitional District Plan of allowing subdivisions of productive farms for 'retirement blocks'. This was conveyed to Graham Thomas on 1 September 2004 and he was asked if the applicants still wished to proceed with the application. It was also noted that for the application to proceed some further information was required, essentially a more accurate and dimensioned plan of the subdivision and proposed building sites.

Mr Thomas confirmed on 29 November 2004, the applicant's wish to proceed with the application. The requested information was also supplied at that time.

The application was publicly notified in December 2004, and the period for submissions closed on 28 January 2005. Submissions were received from seven parties, six in support, and one in opposition.

#### **5. SUBMISSIONS**

The submissions are summarised as follows:

##### **5.1 Submissions in Support**

The following all submitted in support of the application:

- Geoffrey Fry, RD 3, Little Sydney Valley Road, Riwaka
- Brian Brown, 28 Whakarewa Street Motueka

- Joshua Littin, 6 Wadeley Road, Christchurch
- Clive Scott, RD 3, Dehra Doon Road, Riwaka
- Fred Thomas Snr, Rowling Road, Kaiteriteri
- James Roberts, 144 Westbank Road, Motueka

Not all of these submitters commented on their reasons for supporting the application, but those that did noted:

- The proposed sites are on unproductive land and granting of consent will not affect the productivity of the existing orchard, and
- approval will enable the Thomas's to retire on land that they and their family has had a long association with.

Only Messrs Brown and Roberts specifically stated that they do not wish to be heard. The other submitters did not state whether they wanted to be heard or not.

## **5.2 Submission in Opposition**

Transpower NZ Ltd opposed the application in part, and wishes to be heard.

Transpower's concern is that consideration should be given to the potential effects on the transmission line that traverses the site. It has requested that some conditions are attached to any consent that is granted. The conditions are to do with setbacks of buildings from the transmission line conductors and high voltage lines, as well as some restrictions on excavations, and stockpiling of material. Transpower has also requested advice notes be placed on any consent to do with planting of trees, and that the information is to be recorded on the LIMS and consent notices.

## **6. STATUTORY PROVISIONS**

### **6.1 Status of Resource Management Plans**

The relevant plans are the Transitional District Plan (Waimea County Section), the Tasman Regional Policy Statement and the Proposed Tasman Resource Management Plan (TRMP).

The site is zoned Rural C under the Transitional Tasman District Plan (Waimea Section).

The TRMP has reached the stage where most of the references to the Environment Court about its contents have been decided. Council's Policy Manager, Mr Steve Markham, has advised me that there are still three outstanding references on the Rural 1 zone rules, which are close to resolution. These references relate to provisions for workers' accommodation and boundary setbacks from certain activities. None of these references affect Rules 17.4.4(b) and 17.4.6, those being the rules that trigger the need for resource consent (as a Discretionary Activity) for a single dwelling on a site in the Rural 1 Zone. Therefore, the relevant rules in the

TRMP applicable to the proposed land use consent are no longer open to being altered, and in terms of Section 19 of the RMA, these rules can be treated as operative.

However, a reference by Mr Klaus Thoma relating to the effects of rural fragmentation on Class A soils (Rural 1 zone in the TRMP) is still unresolved. Therefore, the subdivision rules from the transitional plan are still relevant (see below).

In terms of weighting of the transitional and proposed plans, the TRMP is clearly to be afforded more weight, given its advanced stage and that it has been formulated under the Resource Management Act.

## **6.2 Relevant Rules**

### **Subdivision**

In terms of the transitional district plan, the proposed subdivision will create an allotment of less than 25 hectares in the Rural C zone, and therefore the application for subdivision is a Non-Complying Activity.

In the TRMP, Rule 16.3.7(a) requires that the minimum lot size for consideration as a Controlled Activity subdivision in the Rural 1 Zone is 12 hectares. This proposal is to create three allotments, two of which are less than 12 hectares. Rule 16.3.7A requires that subdivision in the Rural 1 Zone that does not comply with the standards and terms for a Controlled Activity is a Discretionary Activity.

The application for subdivision is therefore a Discretionary Activity in terms of the TRMP. The relevant assessment criteria are set out in Schedule 16.3A.

### **Land Use**

The land use rules in the transitional plan are not relevant, as discussed above.

Under the TRMP the construction of a dwelling in the Rural 1 Zone requires a resource consent. Where there is only one dwelling it may be constructed as a Controlled Activity only where the lot size is greater than 12 hectares. For lots less than 12 hectares in area, as is the case for proposed Lots 1 and 2, the construction of a dwelling falls to be considered under Rule 17.4.6 as a Discretionary Activity. Council has limited its discretion to a number of matters which are listed in the TRMP.

## **6.3 Section 104 of the RMA**

Section 104 of the Resource Management Act 1991 (RMA) provides that when considering an application for resource consent and any submissions received, the Council is required, subject to Part II, to have regard to:

- any actual and potential effects on the environment of allowing the activity,
- any relevant provisions of:

- a regional policy statement
- a plan or proposed plan, and
- any other matter that is relevant

The Council may disregard an adverse effect if the plan permits an activity with that effect.

Section 104B provides that the Council may grant or refuse an application for a Discretionary Activity or Non Complying Activity, and if it grants the application it may impose conditions under section 108.

Section 104D includes the 'gateway' tests for consideration of a Non-Complying Activity, these being that;

- (a) the adverse effects on the environment will be minor, or:
- (b) the activity will not be contrary to the objectives and policies the relevant plan.

The gateway tests are only relevant for the subdivision application, which is a Non-Complying Activity.

#### 6.4 Part II RMA

Part II contains the purposes and principles of the RMA.

**Section 5** describes the purpose of the RMA as being to promote the sustainable management of natural and physical resources. 'Sustainable management' is defined, and the Panel will be familiar with that.

My assessment of the proposed activity in relation to Section 5 is that it has elements of 'sustainable management of resources', as follows:

- The proposal will provide for the economic well-being of the applicants and their families in the sense that it allows for the two brother's (Fred and Bill's) 'retirement' whilst still being able to contribute to the operation and management of the orcharding business. It will also allow their two sons to reside on the orchard and take over its day to day management.
- There will be no loss of the life-supporting capacity of air, water, soil and ecosystems from this activity, and
- There will be no more than minor actual physical effects on the environment, and such effects are able to be mitigated.

Balanced against this is that the proposal will fragment the land resource for rural-residential use, and there will be adverse cumulative effects. The dwellings to be erected on the proposed Lots 1 and 2 will be prominent, and will change the character of this part of the Riwaka Valley from principally rural, to part rural-residential.

These matters are discussed further below.

**Section 6** contains matters of national importance. In my assessment none of these matters are relevant to this application or to this site. It has no coastal margins, wetlands or lakes. Whilst the Riwaka River and Jordan Creek flows adjacent to the property they are separated from the two proposed lots by the balance lot which contains the existing orchard. There are no outstanding natural features, or known areas of significant indigenous vegetation or significant habitats of indigenous fauna present. The site is modified from its natural state, as is the land around it, which is used for grazing and horticulture, and further to the northwest, exotic forestry.

**Section 7** contains 'Other Matters' for the Council to have particular regard to. The matters of most relevance to this application are as follows:

**(b) The efficient use and development of resources**

The application is to utilise parts of the property not currently used for intensive horticulture (i.e. orcharding). Whilst there is some grazing potential on proposed Lots 1 and 2, this is likely to be more a method to control the grass rather than to realise any productive potential, with resources and effort directed at the orcharding operation which will be retained on the balance lot.

The fragmentation of this property, by creating two residential allotments, may not greatly change the way the property is being used. The existing land use of this property will remain largely as it is now, that is intensive horticulture on the balance lot. In that sense this it could be argued that the subdivision will result in a more intensive use of the land resource. However, the more intensive use is for rural-residential uses on proposed Lots 1 and 2, rather than for rural uses expected by the rural zoning of the land. It is therefore not a more efficient use of the land for farming purposes.

**(c) The maintenance and enhancement of amenity values**

**(f) Maintenance and enhancement of the quality of the environment**

The Riwaka Valley, including the applicant's site, is characterised by intensive horticulture on essentially all of the flat land (alluvial plains), with much less intensive use of the surrounding steeper land of the valley sides. Typically, the surrounding steeper land is in pasture, though there are significant areas that have been left to revert to scrub. Further to the northwest the steeper land is used for exotic forestry. The aerial photograph attached to the application illustrates this. The surrounding steeper land is generally zoned Rural 2.

There are 'pockets' of residential and/or rural residential development across the Riwaka Plains, such as the settlements of Riwaka, Umukuri and Brooklyn. There is a large cluster of dwellings and small holdings on Dehra Doon Road, to the south-east of the Thomas Bros property. However, the applicant's site is clearly separate from that development, and retains its rural character.

This proposal will result in two additional dwellings, in reasonably prominent positions overlooking the river flats (in particular Lot 1 which is at a higher elevation). They will be visible from SH60 as it ascends over the Takaka hill. In my view these dwellings will add to the sense of rural-residential development in the area to the south-east, but which at this stage ends some 600 metres down Dehra Doon Road.

I note that there are no restrictions on building height or size being proposed as part of this application, it is simply relying on the rules for dwellings in the Rural 1 zone to be applied to the new dwellings to be erected on Lots 1 and 2. The Rural 1 zone rules would allow dwellings of 7.5 metres in height to be built, and without restrictions on size/. There is little in the way of existing trees or vegetation to screen the dwellings, and there is no proposal for landscape planting for these sites. Therefore, the potential visual effects of dwellings on this landscape must be assessed assuming dwellings built to the limits of the Rural 1 Zone permitted activity standards. Whilst the applicants may not have any intention of building large or high dwellings on the sites at this time, a subdivision consent will allow, at any time in the future, dwellings to be built up to those limits.

**Section 8** relates to principles of the Treaty of Waitangi. There are no known Treaty issues affecting the site, and none have arisen from the public notification and submission process.

## 6.5 Tasman Regional Policy Statement

The objectives in the Regional Policy Statement considered relevant to this application are as follows:

### **General Objectives**

*Objective 3.1 Maintenance and enhancement of the quality of the Tasman District Environment.*

*Objective 3.3 Avoidance, remedying or mitigation of the adverse effects on the environment and the community from the use, development or protection of resources.*

*Objective 3.4 Efficient use and development of resources.*

*Objective 3.5 Maintenance of economic and social opportunities to use, and develop resources in a sustainable manner.*

The issues raised in these General Objectives have largely been addressed in my discussion on Part II above, and/or are further discussed in sections below.

### **Land Resources**

*Objective 6.1 Avoidance of the loss of the potential for land of productive value to meet the needs of future generations, particularly land with high productive values.*

*Objective 6.3 Avoidance, remedying, or mitigation of adverse cross-boundary effects of rural land uses on adjacent activities.*

The proposed subdivision will not affect the overall use of the land for productive purposes.



Potential 'cross-boundary' effects are unlikely to occur whilst proposed Lots 1 and 2 are owned and occupied by the Thomas brothers with their links to the operation of the existing orchard. However, this could change should these properties, for whatever reason, be on-sold to other parties, particularly as the access to proposed Lots 1 and 2 is goes right through the orchard via the right-of-way access.

### Environmental Hazards

*Objective 11.1      Reduced risks arising from flooding, erosion, inundation and instability and earthquake hazards.*

*Policy 11.1          The Council will seek to reduce risks to communities in relation to land use and development on floodplains that are also subject to flooding.*

The applicant's property is adjacent to the Riwaka River and may be subject to flooding (in part at least) from time to time. However, proposed Lots 1 and 2 (for which a land use consent to construct a dwelling is sought) are on elevated land away from the river such that the flood hazard is considered negligible.

## **6.6 Transitional District Plan**

### ***Retirement blocks***

Ordinance 501.6 of the transitional plan provided for 'retirement home subdivisions'. This provided that, if an owner has owned a property for 10 years, with a minimum area of 10 hectares, that owner could subdivide an allotment of up to 4 hectares for retirement purposes.

The Council deleted that provision in 1995 by introducing Plan Change W22. This was made operative in November 1997. I understand that the provision was deleted because it lead to subdivision on a scale not anticipated by the Council, and this often included repeated subdivisions on the same farm for other family members, and then sections were on-sold to third parties. There is no provision for 'retirement subdivisions' included in the TRMP.

### ***Objectives and policies***

The transitional plan contains eight general rural objectives, of which the following are relevant to this application:

- (ii) to ensure that the better quality soils are used as far as practical exclusively for primary production,*
  
- (viii) to promote the productive use of rural land, to prevent the unnecessary fragmentation of existing land holdings and to avoid actual and potential conflicts between productive and non-productive activities.*

The relevant subdivision policy for the Rural A zone is:

- (i) *“Land fragmentation within the Rural A zone is such that the Council considers that there should not be a great need for further subdivision. However, in order to ensure that growth and development of horticulture in particular is not unnecessarily impeded, a limited amount of subdivision may be permitted.*
- (ii) *New allotments will be of such a size that the future versatility of the land is preserved so that it can be farmed in the most efficient and economic manner prevailing. For this reason, the subdivision of land into allotments having a net usable area of less than 8.5 ha will not be permitted.*

## **Assessment**

As stated in Section 6.1 above, it is appropriate to place little weighting on the Transitional District Plan when assessing this application, as the proposed plan is now clearly the dominant planning document.

As noted above, the previous clause allowing subdivision for retirement purposes lead to many of those subdivided blocks being on-sold to new purchasers at a later date, defeating the purpose of the provision. As a result of this the Council deleted the ordinance and consciously decided not to carry these provisions through to the proposed TRMP. Consequently, no weight can now be given to the clause allowing subdivision for retirement purposes.

From my site visit, and from talking to Fred Thomas, I am convinced that the personal reasons for the Thomas brothers wishing to subdivide their land are genuine, and that they have no intention to create allotments for the purposes of on-selling. However, the personal circumstances of an applicant are not relevant considerations under the RMA. The subdivision rules in the TRMP are therefore framed in such a way that the effects on the environment are addressed rather than the individual landowners' retirement needs.

The provisions of the Transitional District Plan that seek to avoid rural fragmentation and maintain rural productivity are carried through to the proposed TRMP and are addressed later in my report.

## **6.7 Proposed Tasman Resource Management Plan**

The following are, I believe, the most relevant objectives and policies with respect to this application:

### **Chapter 5, Site Amenity Effects**

*Objective 5.1.0      Avoidance, remedying or mitigation of adverse effects from the use of land on the use and enjoyment of other land and on the qualities of natural and physical resources.*

*Policy 5.1.1        To ensure that any adverse effects of... development on site amenity, natural and built heritage and landscape values, and... natural hazard risks are avoided, remedied, or mitigated.*

*Policy 5.1.3 To limit the intensity of development where wastewater reticulation and treatment are not available.*

Objective 5.1.0 and Policy 5.1.1 have been discussed in terms of the Regional Policy Statement. My assessment is that the proposal will result in the loss of rural amenity and adversely affect the character and landscape values of the area.

I would also note that additional effluent disposal facilities will be required for Lots 1 and 2, and the dwellings to be built on these allotments will utilise water from an existing domestic bore on Lot 3.

## **Chapter 7, Rural Environmental Effects**

*Objective 7.1.0 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 7.1.2 To avoid, remedy, or mitigate the effects of activities which reduce the area of land available for soil-based production purposes in rural areas.*

*Policy 7.1.2A To avoid, remedy, or mitigate adverse actual, potential, and cumulative effects on the soil resource and the productive value of the land.*

*Policy 7.1.3 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, access, and the availability of servicing.*

These matters have been discussed earlier in this report.

My assessment is that subdivision of proposed Lots 1 and 2 will not alter the operation of the existing orchard. The loss of some of the steeper land from pasture that may otherwise be available only for grazing is considered minor. The overall land parcel is in good productive use, and the removal of the two house lots from the farm would not significantly affect the potential productive use as these sites are elevated and on less productive soils.

*Objective 7.2.0 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 7.2.1 To enable activities which are not dependent on soil productivity to be located on land which is not of high productive or versatile value.*

*Policy 7.2.3 To enable sites in specific locations to be used primarily for rural industrial 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;*
- (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;*

*Policy 7.2.4 To ensure that activities which are not involved or associated with soil based production do not locate where they may adversely affect or be adversely affected by such activities.*

These policies are given effect to by way of 'Methods of Implementation' listed in 7.2.20, page 7/5 of the TRMP. These include regulatory methods as follows:

- Zones, which have been established to manage the effects of specific types of activities or built development within the rural area,
- Rules that govern lot size, establish on-site amenity standards and other matters,
- Assessment matters to take account of when considering resource consent applications.

The TRMP provides a number of Rural Residential Zones throughout the District. Whilst there are no such zones near the application site, the Council has allowed subdivisions for small lot and rural-residential uses along Dehra Doon Road to the south, where the rural land has already been compromised. The Thomas bothers farm is, however, still in a rural area.

The second point above refers to lot sizes and amenity standards in the zone. The proposed subdivision lot sizes have been previously discussed in my report, and my conclusion is that the proposal will not adversely affect the productive use of the property.

The Rural 1 Zone also addresses amenity standards through controls on the construction of buildings (e.g. controls on the bulk and location of buildings in the zone). Proposed Lots 1 and 2 and their respective building sites are such that the bulk and location rules of the Rural 1 Zone will be able to be met. This includes limits to the maximum building coverage, maximum building height, and that dwellings are to be set back at least 30 metres from the boundary of the adjacent

orchard plantings on the Thomas Brothers farm property. The application states that the corner of the dwelling on proposed Lot 1 will be only 20 metres from the orchard trees on Lot 3, but that a spray belt will be created in accordance with Rules 17.4.5(d)(ii) and 17.4.8(c) and (g).

However, whilst these controls can be met, the application would result in two dwellings on sub-standard lot sizes, and in prominent positions. These will contribute to a loss in rural character in my view, particularly when evaluated against the standard 12 hectare lot size 'benchmark' for development in the zone.

I would acknowledge that the property could be subdivided into three 12 hectare allotments as things stand. However this proposed subdivision would still create two 1 hectare allotments, and would still leave the potential for the balance farm of 34 hectares to be further re-subdivided into two allotments, so I place little weight on the 'permitted baseline' factor.

The third Method of Implementation is applications for resource consent and subdivision may be considered on their merits in terms of the Rural 1 zoning of the application site. The assessment criteria in Rule 17.4.6 can be used as a basis for assessment of the land use activity, and I have addressed the relevant matters in this report (e.g. availability of productive land, effects on rural character and amenity, bulk and location of buildings, nature of adjoining sites, effects on natural character).

In terms of the subdivision application, the criteria in Schedule 16.3A of the TRMP provide a useful basis for assessment, in addition to assessment in terms of Section 5, 6 and 7 of the RMA, and the policy provisions of the RPS and TRMP outlined earlier in my report. I address these criteria later in this report.

My overall conclusion, from assessing those matters, is that the proposal is inconsistent with them and it is inconsistent with the overall policy direction of Objective 7.2.0 and its associated policies.

*Objective 7.3.0      Avoidance, remedying or mitigation of the adverse effects of a wide range of existing and potential future activities, including effects on rural character and amenity values.*

*Policy 7.3.3            To provide for the maintenance and enhancement of local rural character, including such attributes as openness, greenness, productive activity, absence of signs, and separation, style and scale of structures.*

*Policy 7.3.4            To exclude from rural areas, uses or activities (including rural-residential) which would have adverse effects on rural activities, health or amenity values, where those effects cannot be avoided, remedied or mitigated.*

*Policy 7.3.9            To avoid, remedy or mitigate servicing effects of rural subdivision and development, including road access, water availability and wastewater disposal.*

My overall conclusion is that the proposal will result in the loss of rural amenity and adversely affect the character and landscape values of the area, by introducing two new dwellings on prominent positions on this farm property.

### **Schedule 16.3A – Assessment Criteria for Subdivision**

Schedule 16.3.A of the TRMP sets out the assessment criteria to be used when considering the application for subdivision.

The particular matters that are considered relevant to this application, with my brief additional comments, are as follows:

#### ***General***

(1) *The productive value of the land in Rural 1, Rural 2, Rural 3 and 3A zones, and the extent to which the proposed subdivision will adversely affect it and its potential availability.*

This is discussed in 6.5, and 6.6 above. The site already contains an established orchard and the subdivision will not significantly affect its productive potential.

(2) *The potential effects of the subdivision on the amenity values and natural and physical character of the area.*

The subdivision will create rural residential style allotments and dwellings in prominent positions, and these will contrast with the predominantly rural vista.

(8) *The cumulative effects of the subdivision on the District's infrastructure and its efficient use and development, including the capacity and capabilities of the road network and utility services to meet demands arising from the subdivision.*

The existing site is served by a sealed road, which appears capable of accommodating the level of traffic generated to the site.

(9) *The relationship of the proposed allotments with the pattern of adjoining subdivision, land use activities and access arrangements, in terms of future potential cross-boundary effects.*

Cross boundary effects (between Lots 1 and 2 and the balance farm property) are unlikely to arise during the time that the subdivided lots remain in the ownership of the Thomas Brothers. I would not expect cross-boundary effects in relation to the adjacent land, which is on hill slopes and is unlikely to be used for intensive horticulture for instance.

(9A) *Where wastewater disposal will occur within the net area of the allotment, the extent of compliance with NZS 4610 "Household Septic Tank Systems" or any subsequent approved replacement of this Standard. For package wastewater systems, whether an equivalent or better level of service can be achieved.*

See (11) below.

*(10) The adequate provision of potable water and water for fire fighting*

The proposal is for the existing supply from the domestic bore to the existing dwellings to supply the two new dwellings. Easements would be required to protect this arrangement should consent be granted. The applicants can confirm whether the property has water storage sufficient for fire fighting (the normal requirement is that each lot is to provide a 23,000 litre water storage tank which can be used for fire fighting). I understand that the property has suffered the effects of a fire previously, and it would be worthwhile therefore to further consider this issue at the hearing.

*(11) Whether the treatment and disposal of wastewater and stormwater from the proposed allotments is likely to adversely affect water quality, public health or environmental health, or safety, taking into account the provisions of Schedule 16.3C and the powers under Section 220(d) of the Act.*

Natasha Lewis, Consent Planner - Discharges has viewed the application and has commented that effluent disposal systems will need to be designed and installed to achieve the requirements of Rule 36.1.4. The design will need to take into account the sloping nature of the sites, the proximity of the Riwaka River, and proximity of water supply bores.

*(12) Whether the subdivided land has been, or is, subject to contaminants that may be hazardous to the future occupiers of the land and whether sufficient works or other solutions have been undertaken to avoid, remedy or mitigate the hazardous effects.*

Council's records for historic pre 1970's orcharding (which have been associated with elevated agri-chemical use) do not extent to this area. However, it would seem likely that intensive horticulture activity would have been restricted to the flat areas of proposed Lot 3.

*(13) Taking into account local land form, whether allotments are of a regular shape that will maximise the range and efficiency of potential activities that may take place on the land in the future.*

This is addressed under the productivity issue above.

### **Earthworks**

*(18) The extent to which the earthworks will have an adverse visual effect on the surrounding area.*

The earthworks required for the building platform should not be readily visible from public viewing points. The access will be via a right-of-way over the existing drive onto the property. This will be extended over existing farm tracks to proposed lots 1 and 2. Those tracks are proposed to be upgraded to Council's standards with metal surfacing.

However, the access tracks are shown on the application plan as terminating at the eastern extremity of each of Lots 1 and 2. Lot 1 in particular has a steep slope from that point up to the building site, and further tracking would be required. It would be of benefit if the applicant could address this aspect at the hearing, because there

appears to be further tracking required on these lots, and this will potentially create an adverse visual effect.

### **Buildings**

*(20) The ability of any existing or proposed building to comply with this Plan, including avoiding adverse effects on ridgelines shown on the planning maps.*

Dwellings built on the proposed Lots 1 and 2 could readily be designed to comply with the bulk and location controls in the TRMP, however, the fact remains that the proposed 1 hectare sites are well short of the 12 hectare threshold for controlled subdivision in the Rural 1 Zone. The combined effect of two additional dwellings on this property, in prominent locations on the hill slopes, will be detrimental to the existing rural amenity in my view.

The adverse effect could be mitigated to some degree by the imposition of conditions on any consent to limit the height of the dwellings to single level, and to require that the exterior walls and roofs are painted in recessive colours.

### **Transport, Access and Roads**

*(26) The degree of compliance with provisions of the current Tasman District Council District Engineering Standards, or the ability to achieve acceptable standards by alternative means.*

*(26A) The proximity, safety and ease of access between any site and the nearest collector, distributor or arterial road,...*

*(26C) The extent to which an existing road needs to be up-graded to manage effects of traffic generated by the subdivision, taking into account the existing state and use of the road and the construction standards of Chapter 18.10 rules for that particular class of road.*

*(28) The ability to comply with the site access and vehicle crossing requirements of Rule 16.2.2.*

I have discussed the application with Dugald Ley, the Council's Development Engineer. It is noted that Dehra Doon Road is sealed, and it terminates at the Thomas Bros property. The subdivision will utilise the existing access to the site. The road does not carry through traffic, and it has sufficient capacity for any additional traffic as a result of this proposed subdivision. There would, however, be a concern if further small lot subdivision was to occur, resulting in increased traffic along the road, given its narrow, and windy nature.

## **8. ACTUAL AND POTENTIAL EFFECTS**

My earlier assessment of relevant objectives and policies of the RPS and TRMP, and the discussion on the Assessment Criteria for subdivisions, has in essence addressed most of the anticipated actual and potential effects on the environment from the proposed activity. To avoid duplication I will not repeat those matters here.



One additional matter is that raised in the submission by Transpower, to do with the potential adverse effects of the proposal on its high voltage lines which traverse parts of the site. Whilst the overhead lines are not marked on the application plan, it is apparent from the plan attached to Transpower's submission that the building site Lot 1, and the south-west corner of the balance Lot 3, are crossed by the Stoke – Upper Takaka A transmission line.

Transpower has requested a number of conditions to be placed on the location of buildings and structures on Lots 1 and 3, particularly requiring them to be set back specified distances from the lines, and also relating to excavations near the poles, and any planting of trees near the lines. I have read the suggested conditions, and I consider they are reasonable and practicable to protect Transpower's interests in maintaining the existing high voltage transmission lines.

However, Condition 4 specifically relates to issues of access over the applicant's land (i.e. maintaining access for contractors' vehicles to the support towers). I am not aware of any existing access arrangements, and in any event I am not sure that a condition of this kind can be imposed by the Council on this application unless the applicant has agreed to an easement of some kind to enable access over their land to the poles.

One other matter to be addressed is that of esplanade reserves. The property is adjacent to a river whose bed has an average width of three metres or more (i.e. the Riwaka River). The proposed subdivision is therefore a discretionary activity under Rule 16.4.2. The assessment criteria are set out in that rule.

The applicant has stated their case for why the esplanade provisions should not be applied to this site, including:

- The alignment of the Riwaka River does not follow the title boundaries.
- The orchard has been developed right down to, or within a short distance of, the banks of the Riwaka River.
- Access to the river is currently over private land, and there are no esplanade reserves/strips on adjoining upstream and downstream properties.

I have requested a report from Council officers on this issue, but have been told that given the recommendation to decline the applications it would not be in the applicant's interests for officers to undertake a special site visit, and to compile a separate report on the issue of esplanade reserves. If the application is declined this would be an unnecessary additional cost for the applicant.

I can, however, comment that it is the public interest for there to be access along the banks of the Riwaka River for fishing and recreation. Whilst there may not currently be esplanade reserves in place on either side of the property, opportunities for esplanade reserves may arise in the future, and therefore this opportunity should not be overlooked.

I would however agree with the applicants that a 20 metre wide esplanade reserve strip would unnecessarily impact on the operation of the orchard. I would recommend that a 5 metre esplanade strip be imposed, this being sufficient for walking access along the river bank.

## **9. OTHER RELEVANT MATTERS**

### **Precedent**

Case law (such as *Dye v Auckland Regional Council and Rodney County* (CA86/01), has established that the granting of consent for one application may well have an influence on how another application should be dealt with. The extent of influence will depend upon the extent of similarities.

The current application has arisen as a result of the applicant seeking to provide for the retirement needs of family members on their rural property. My concern is that there are no particular distinguishing characteristics of this site that would set it apart from many other properties elsewhere in the Riwaka area and in parts of the wider rural zoned land.

It is a not untypical orchard property where there are pockets of land not developed, for whatever reason, for intensive horticulture. The size of the site and its land use capability appear similar to many other properties in Riwaka area. The proposal is to subdivide, for what is openly stated as a 'retirement subdivision' (page 6 of AEE), on the basis that parts of the parent lot are not used for intensive horticulture.

The Council has consciously and deliberately deleted the retirement block provisions from the transitional district plan, and they have deliberately not been carried through to the TRMP. Any approval in this instance is likely to encourage further applications for subdivisions of similar properties in my view.

## **10. CONCLUSION**

My assessment is that subdivision of proposed Lots 1 and 2 will not materially alter the operation of the existing orchard. The loss of some of the steeper land from pasture that may otherwise be available to grazing is considered minor. The overall land parcel is currently, and has for many years, been put to good productive use, and this will not be affected by the proposed subdivision.

The main concerns regarding this proposal are:

- It will result in additional dwellings built on residential scale allotments, and in these locations on hill slopes will cause a reduction in rural amenity and landscape values of this area.
- The approval for two 'retirement blocks' in this manner will almost certainly encourage similar applications to be made on other long established farming operations in the Rural 1 Zone.

In relation to the second point, the Council has consciously deleted previous provisions in the transitional plan which allowed for retirement block subdivisions, on the basis that changing circumstances will inevitably lead to properties being on-sold and used entirely for residential purposes, which is contrary to the policy direction now inherent in the TRMP.

My overall recommendation is for these applications to be declined. Having said that, I wish to acknowledge that the Thomas brothers appear to me to be quite sincere and genuine in their intentions to have these proposed allotments remain in the overall family holdings, and my recommendation in no way denigrates from that.

## **11. RECOMMENDATION**

That pursuant to Section 104(B) and 104(D) of the Resource Management Act 1991, the Tasman District Council declines consent to the applications by Thomas Bros Ltd for land use consent (RM040946), as detailed in the application and supporting documents as lodged.

In discussion with Council officers, it has been determined that in line with the recommendation to decline consent, and in the interests of the applicant in terms of additional staff time and costs, a list of final comprehensive conditions has not been compiled.

Should the Panel determine that consent should be granted, a list of detailed conditions and advisory notes can be prepared by officers. These would need to address the following specific matters:

### **Subdivision**

- That the development be in accordance with the plans and information submitted with the application, and specifically the Resource Consent Application Plan prepared by Nikkel Surveying, dated November 2004.
- Development impact levies as set down in sections 16.5.2 and 16.5.5 of the TRMP are required on two allotments – Council will not issue the section 224(c) certificate in relation to this subdivision until all development contributions have been paid in accordance with Council's Development Contribution Policy under the Local Government Act 2002, and in the Long Term Council Community Plan (LTCCP). The amount to be paid will be in accordance with the requirements which are current at the time the relevant development contribution is paid in full. This consent will attract a development contribution in respect of Roding.
- Esplanade reserves – my recommendation is for a 5 metre esplanade reserve along the Riwaka River.
- The specific conditions requested by Transpower in relation to set back of buildings from lines and poles, excavations and plantings.
- Rights of way for access to Lots 1 and 2.
- Easements for water supply to Lots 1 and 2.

- Live telephone and electric power connections shall be provided to Lots 1 and 2 and all wiring shall be underground to the standard required by the supply authority.

### **Land Use**

- Height of dwellings on Lots 1 and 2 to be limited to single level (requires a volunteered condition as this is more onerous than the TRMP rules).
- Dwellings (including roofs) to be painted in recessive colours.
- Review clause under Section 128(1)(a) and 128(1)(c) of the RMA.
- A spray belt shall be planted along the boundary of Lot 1 and Lot 3 in accordance with Rules 17.4.5(d)(ii) and 17.4.8(c) and (g).

### **ADVISORY NOTES:**

#### 1. Tasman Resource Management Plan

Any matters not referred to in this application for resource consent or not otherwise covered in the consent conditions must comply with the Tasman Resource Management Plan or the Resource Management Act 1991. In particular, the effluent disposal facilities for dwellings on Lots 1 and 2 shall be required to meet the requirements of Rule 36.1.4.

#### 2. Other Council Requirements

The consent holder shall meet the requirements of Council with regard to all Building and Health Bylaws, Regulations and Acts.

#### 3. Archaeological

Council draws your attention to the provisions of the Historic Places Act 1993. In the event of discovering an archaeological find during the earthworks (e.g. shell, midden, hangi or ovens, garden soils, pit depressions, occupation evidence, burials, taonga, etc.) you are required under the Historic Places Act, 1993 to cease the works immediately until, or unless, authority is obtained from the New Zealand Historic Places Trust under Section 14 of the Historic Places Act 1993.

Gary Rae  
**Consultant Planner**

## Appendix 1 Planning Map