



## STAFF REPORT

**TO:** Environment & Planning Subcommittee

**FROM:** Mark Morris, Consent Co-ordinator - Subdivisions

**REFERENCE:** RM060688

**SUBJECT:** **NELSON DIOCESAN TRUST - REPORT EP07/11/01** - Report prepared for 5 November Hearing

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**APPLICANTS:** Nelson Diocesan Trust

**PROPOSAL:** Section 357 objection to Condition 3 of resource consent RM060688

**LEGAL DESCRIPTION:** Lot 1 DP 20491 (CT 13C/734)

### 1. INTRODUCTION AND BACKGROUND

The property in question is 1350 square metres and is situated at 9 Selwyn Street Motueka.

In 2005 the applicants gained consent (RM040293) for a Comprehensive Residential Development involving the construction of five dwellings on the one title. According to the application the dwellings were constructed between July and November 2005.

Although the resource consent for dwellings was issued in 2005, there had been building consents lodged for the dwellings in April 2004. Because of this, the dwellings were classified as pre LTCCP and they were charged the lower financial contribution payable for multiple dwellings under the TRMP at the time.

The Code Compliance Certificates were issued for all five dwellings in 2005.

In August 2006 the applicant applied for subdivision consent to create a separate certificate of title for each of the completed dwellings. The application was discretionary in that each of the lots were well below the minimum lot size of 500 m<sup>2</sup> for infill residential subdivision. However the effects of the subdivision were considered to be no more than minor as each of the proposed allotments already had an existing dwelling and there would be very little change that would result from the proposed subdivision.

Consent was issued on 31 August 2006. (Attachment 1).

On 6 September 2006 a Section 357 objection was received by Council objecting to the imposition of Development Impact levies (5.5% of the value of four allotments for Reserves & Community Services) under Condition 3.

The applicant also objected to the imposition of Development Contributions under the LTCCP. However, these are not imposed as condition of consent. They are simply pointed out as an advice note on the consent. The Development Contributions are imposed under the Local Government Act, not the Resource Management Act and an advice note advises the levies will need to be paid prior to the Section 224 certificate approval. If the advice note was removed, the Development Contributions would still apply.

Since the receipt of the Section 357 objection, the objection to the Development Contributions has been handled by Council's Environment & Planning Manager, Mr Dennis Bush-King in an attempt to resolve the matter under delegated authority. Part of the reason for delay in resolving the matter was waiting on the outcome of High Court Decision on development contributions which was Neil Housing v North Shore CC which was a Judicial Review on the imposition of Development Contributions for infrastructure on a housing development on the North shore.

Justice Potter found that the Council had erred in law in failing to ensure that its development contributions policy complied with the statutory requirement that there be a "development" under the s 199 of the Act (LGA) and had also failed to require a direct causal nexus between that "development" and the demand for infrastructure it, either alone or jointly with another development, generates.

In the light of the North Shore decision, Mr Bush-King concluded that in this case, because there was no "development" resulting from the activity i.e. the subdivision, and the demand on Council's infrastructural services, that the development contributions for the roading, water, stormwater and sewage should be waived.

It should be noted that this development has been "caught" in between the previous financial contribution policy and the new Development Contributions Policy under the Local Government Act, in that dwellings were built under the old policy and the subdivision Development Contributions were assessed under the new policy. If the same development was being done today, the full development contributions would be imposed at the dwelling consent stage.

The North Shore decision had found the reserves contribution (which for North Shore CC is 7.5%) was not unreasonable and that the same "direct causal" link between the "development" and the contribution was not necessarily required. In light of this Mr Bush-King offered on a "without prejudice" basis that the reserves contribution be reduced from 5.5% to 3.25 % plus the offer to waive the development contribution on the four additional allotments.

The offer has been refused by the applicants, which has resulted in the matter being taken to a hearing.

The Section 357 objection can only be in relation to a condition of consent, which in this case can only be the Development Impact Levy for Reserves & Community Services under Condition 3.

Therefore this report will cover the objection to condition 3.

## 2. SECTION 357 OBJECTION

### 2.1 Condition 1 (Development Impact Levies)

Financial contributions are imposed on subdivision and development under Section 16.5 of the Proposed Plan. Since August 2003 this part of the Plan has been operative so the Transitional provisions under DP1 and DP2 no longer apply.

In 16.5.1 it sets out the "Circumstances where Financial Contributions will be imposed."

In paragraph 2 it states:

*" Financial Contributions will be imposed when land is subdivided, and when buildings are constructed, to assist in managing the effects anticipated to be generated by the subsequent use of those allotments and buildings."*

Council has chosen the subdivision stage to impose the Reserves & Community Services levy which is used to fund reserves and community development in the district and is an important part of Council's ability to provide infrastructural services to manage growth in the District. There is a smaller levy that is imposed on additional dwellings under the Financial Contributions Policy which in this case came to \$1,450. This is credited against the reserves levy payable at the subdivision stage, so that overall amount is the same no matter which comes first, the subdivision or the dwelling.

Council has deliberately chosen the subdivision stage to impose the levy rather than the building consent stage for the following reasons:

1. The reserves levy is based on a percentage of land value of each allotment. The subdivision stage is the best stage to determine this, where you have a very accurate defined area shown by survey, which would be less certain at building stage.
2. Because the levy is based on land value, the subdivision is the best stage to take this, because the developer is able to recoup that value more easily through the selling of the subsequent allotments.

It could be argued that subdivisions by themselves do not actually have any effects at all, the only effect being a few pegs in the ground and lines on a plan. It has also been argued that it is the development that is associated with those titles i.e. residential development that creates the effects.

The issue here is, does it matter whether the residential development happens before or after the subdivision?

I accept that generally subdivision happens before residential development and so the wording of 16.5 is generally couched in those terms. However we are talking about exactly the same development and associated effects. It just happens that in this case subdivision happens after the building was erected.

In the last few years it has become increasingly common for developers and landowners to build two dwellings on a property and then subdivide later. There are advantages to this in that the dwellings can be built before the access and right-of-way are put in which can lessen the damage to the right-of-way.

I don't have any problem with this, and in Salisbury Road in Richmond alone, I have approved four subdivisions in the last few years, all based on dwellings that were already on the proposed allotments.

In all cases the Reserves Levy was imposed (and paid) on the additional allotments, even though the dwellings already existed.

It would be unfair to other developers, if land owners were able to build multiple dwellings and not have to pay reserves levies simply because at the subdivision stage the dwellings are already established.

It would be like the Cross-lease loophole which used to exist prior to 1991, whereby a 999 year lease was not considered a subdivision under Local Government Act, and Reserve Fund could only be imposed on subdivision.

The fact is there is a clear causal link between subdivisions/residential development and demand on Council services. It should not matter whether the subdivision comes before or after the building development.

It should not matter either, whether the dwelling was built 14 weeks before the subdivision or 14 years.

Section 16.5.3 (e) sets out the circumstances where Council may waive or reduce the levy.

The relevant section is (iii) which states:

“where an activity is to be established which will have no adverse impact on the environment, particularly the infrastructure, reserves or community services of the District”

With subdivisions, this clause applies to particular subdivisions that are related to an activity that has no impact on Council infrastructure, such as a public utility lot. This subdivision, like many others, is associated with residential development that has an impact on Council services.

This clause is not a loophole that will allow people to build second dwellings first and apply for subdivision later in order to escape the reserves contribution.

There would be serious negative financial consequences if Council were to uphold this objection and allow a waiver, in that it would essentially allow landowners to erect additional dwellings and subdivide without the impact on Council Services being able to be mitigated.

If this objection was upheld, the integrity of the Financial Contributions system to manage development in relation to Reserves and Community services would be severely undermined.

Therefore I recommend that the Section 357 objection be declined.

### **3. RECOMMENDATION**

That Condition 3 remain unchanged.

M D Morris  
**Consents Co-ordinator, Subdivision**

## RESOURCE CONSENT DECISION

**Resource Consent Number:** RM060688

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

**Nelson Diocesan Trust**  
(hereafter referred to as “the Consent Holder”)

**Activity Authorised by this Resource Consent:** To subdivide Lot 1 DP 20491 (CT NL 13C/734 ) into five allotments as shown on the resource consent application plan RM060688 dated April 2006 and referred to as Plan “A” attached to this consent.

### Location Details:

Address of property: 9 Selwyn Street, Motueka  
Legal description: Lot 1 DP 20491  
Certificate of title: NL 13C/734  
Valuation number: 1955011600

This consent is issued subject to the following conditions:

### Conditions

#### General Accordance

1. That the proposal shall be in general accordance with the Jones & Associates Plan No 2377 dated April 2006 submitted to Council as part of the application.

### Easements

2. Easements are to be created over any services located outside the boundaries of the allotments that they serve.

Reference to easements is to be included in the Council resolution on the title plan.

### Financial Contribution

3. Financial contributions are required on one allotment. The following shall apply:

#### Reserves and Community Services

Payment of a reserves and community services levy assessed at 5.5% of four allotments (land value only). Valuation shall be by way of a special valuation undertaken by a registered valuer at the Consent Holder’s request and cost.

The reserves levy that was paid as part of the land use and building consents for the dwellings (\$1,450 in total) will credit against the reserves levy payable for the subdivision.

## **Advice Note – Development Contributions**

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 Contributions Policy under the Local Government Act 2002. The power to withhold a Section 224(c) certificate is provided under Section 208 of 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 which are current at the time the relevant development contribution is paid in full.

This consent will attract a development contribution on four allotments in respect of:

- Roding
- Stormwater
- Water
- Sewage

The following levies that were paid as part of the building consents for the dwellings will credit against the amounts payable as development contributions.

- Roding \$698
- Water \$307
- Sewage \$335

## **REASONS FOR THE DECISION**

### **Activity Status**

1. The property is in a Residential Zone and the subdivision proposal is a discretionary activity under the Proposed Tasman Resource Management Plan (PTRMP). The proposal is a discretionary activity as it does not meet the relevant standards as a controlled activity under Rule 16.3.3.

### **Non-Notification**

2. The adverse effects on the environment and on neighbouring properties are no more than minor. The subdivision is simply to provide separate titles for a five dwelling comprehensive development previously approved under RM040293. Therefore, it was considered appropriate to process the application on a non-notified basis under delegated authority.

### **Part II of the RMA**

3. It is considered that the proposed subdivision is not contrary to Part II of the Resource Management Act 1991 in that the proposal will allow for efficient use and sustainable management of the urban land resource in allowing for in-fill development instead of taking up productive land through urban expansion.

## **Objectives and Policies**

4. The proposal was assessed against the objectives and policies in Chapters 5 and 6 of the PTRMP, which seek to provide a reasonable level of amenity in urban residential environments. It is considered that this subdivision is in accordance with these objectives and policies.

## **Environmental Effects**

5. The nature of the activity is such that subject to the consent conditions, any actual and potential adverse effects of the proposal will be no more than minor.

## **Residential Amenity**

6. Even though the allotments are small in area, in light of the specific purpose of the comprehensive residential development, it is considered that each allotment has an adequate amount of open space.

## **Servicing Matters**

7. Each of the proposed allotments will be individually serviced for water, stormwater and sewage.

## **Reserve Contribution**

8. A reserve contribution is required for all subdivisions that result in the creation of additional allotments.

## **Engineering Requirements**

9. Each of the allotments is already fully serviced, so no additional servicing conditions are required.

## **Conclusion**

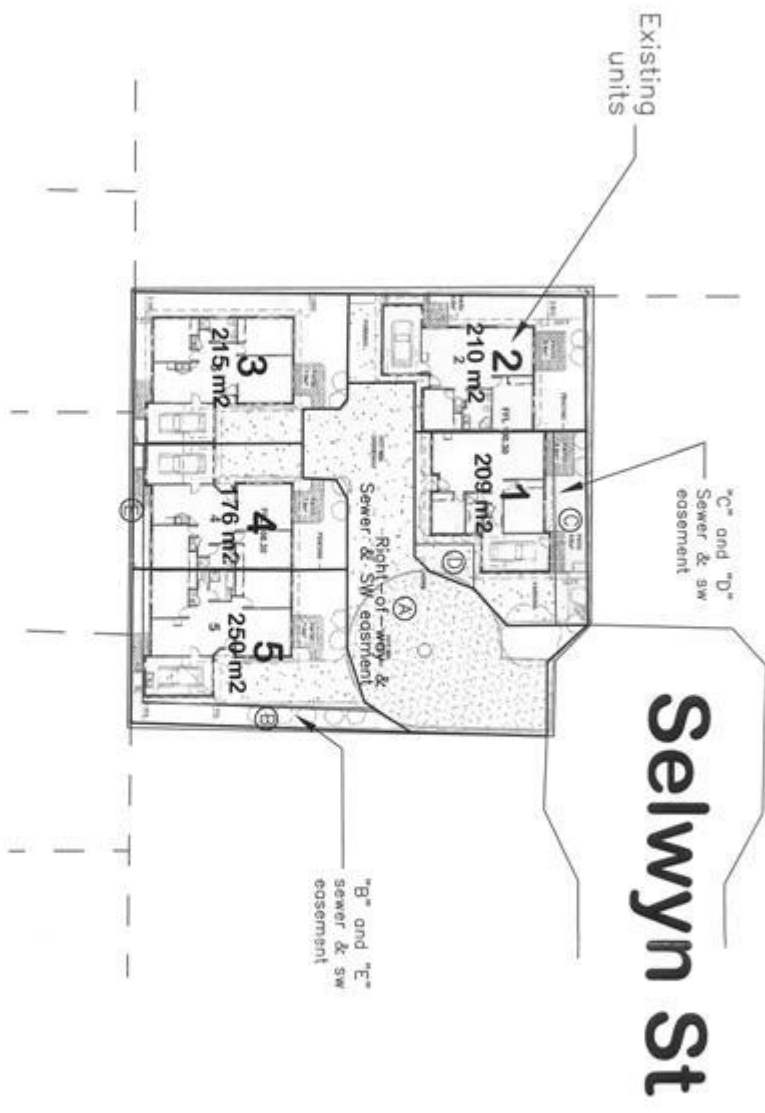
10. The proposal is not contrary to the purpose and principles of the Resource Management Act 1991 or the provisions of the Proposed Tasman Resource Management Plan. The adverse environmental effects generated by the proposal are considered to be no more than minor.

This consent is granted on **31 August 2006** under delegated authority from the Tasman District Council by:

M D Morris  
**Senior Consent Planner, Subdivision**



PLAN "A"



**JONES & ASSOCIATES LTD**  
 Registered Surveyors & Planners  
 104 Collingwood Street  
 PO Box 862  
 NELSON  
 Ph (03) 548-2833  
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Name:

**Proposed freehold titles for existing units**  
**No.9 Selwyn Street - Lot 1 DP 20491**  
 Drawing name: CIVILCAD FILES\3000\4377 - Selwyn St - Five units into freehold

Job No:  
**2377**

R1060688

Apr 06, 2006 - 3:34pm  
 0 5 10 20 40 60

## FINANCIAL CONTRIBUTIONS ON SUBDIVISION

### 16.5.3 Reductions, Waivers and Offsets of Financial Contribution on Subdivision (Except for Rural 3 Zone, including Rural 3 Closed Zone, Mapua and Waimea Inlet Rural Residential Zones, and the Services Contribution Area)

Subject to subsection 16.5.1:

- (d) The financial contribution will be reduced by the amount of the wastewater reticulation and urban water supply contributions where the proposed allotments cannot benefit from a Council wastewater reticulation system or a Council urban water supply system.
- (da) The financial contribution will be reduced by the amount of the Reserves and Community Services component where the proposed allotment is for a network utility function, provided that that facility will not result in any demand on reserves or community services.
- (e) The financial contribution may be waived or reduced where, upon request, the Council considers it fair and reasonable having regard to the particular circumstances. Circumstances which may warrant a reduction or waiver include:
  - (i) where work is or has been undertaken or services provided, by agreement between the Council and the subdivider, that are greater than those necessary to manage adverse effects arising from the subdivision;
  - (iii) where an activity is to be established which will have no adverse impact on the environment, particularly the infrastructure, reserves or community services of the District;
  - (iv) where work is or has been undertaken or land set aside that will result in substantial environmental compensation.
  - (v) where the applicant has previously carried out work or provided services or land, with the agreement of Council, that exceeded the requirements that applied to an earlier subdivision, and the applicant has not been compensated by any other means.
- (f) The cash component of the financial contribution will be offset where, by agreement, work is or has been undertaken or services provided that would have been the responsibility of the Council, and the Council agrees that the value of the work or services is fair and reasonable.

### 16.5.5 Reserves and Community Services Component of Financial Contribution on Subdivision

The financial contribution for reserves and community services under Figure 16.5A and Figure 16.5AA is assessed as follows:

- (a) 5.5% of the total market value (at the time subdivision consent is granted) of all new allotments created by the subdivision, other than allotments exempted by Rule 16.5.2 from this calculation.

- (c) In assessing the value of any allotment, the valuation shall be based on the area of the allotment or a notional building site on each allotment of 2500 square metres whichever is the lesser.
- (d) If payment is not made within two years of granting of the resource consent, and unless the resource consent specifies otherwise, a revised valuation must be made and the contribution recalculated. The cost of any valuation shall be paid by the subdivider unless the resource consent specifies otherwise.
- (e) The financial contribution shall be adjusted to take account of any land set aside and vested for reserve purposes at the request of Council. The market value (at the time subdivision consent is granted) of any such land shall be deducted from the Reserves and Community Services component calculated from conditions (a) and (c) for the remaining allotments. Where the value of the land being set aside exceeds the amount calculated under conditions (a) and (c) for the remaining allotments, the difference shall be credited or paid to the subdivider. Except that the foregoing provisions of this rule shall not apply in cases where any legislation enables land to be set aside compulsorily and without compensation.