



STAFF REPORT

TO: Environment & Planning Committee
FROM: "Author"
REFERENCE: "File Reference"
SUBJECT: "REPORT TITLE" - REPORT REP..... - Report prepared for meeting of 2010

FROM: Mark Morris, Senior Consent Planner, Subdivision
REFERENCE: RM071219
SUBJECT: *J P BEST ESTATE- REPORT EP10/06/XX Report prepared for 23 June Hearing*

APPLICANTS

S & S Stephen.

PROPOSAL

Section 357 objection to Condition 2 of resource consent RM071219.

LOCATION

31 & 33 Iwa Street, Mapua.

LEGAL DESCRIPTION

Lots 1 & 2 DP 367812 (CTs 275494 & 275493).

1. INTRODUCTION AND BACKGROUND

The property in question contains two existing titles of 1002 m² (33 Iwa Street) and 820 m² (31 Iwa Street), each of which contains two dwellings.

The second dwelling at 33 Iwa Street was constructed in 2000 (BC 000186) and the second dwelling at 31 Iwa Street was also constructed in 2000 under BC 000185.

According to Council's records, no financial contributions were paid for either of the second dwellings, though it is likely, if they were, it would have been very small, because the value of each of the dwellings was just over \$50,000 and financial contributions under rule 16.5.4.3 are based on 0.5% of the value of the building work above \$50,000.

At the time (2000), second dwellings could be constructed in a residential zone as a permitted activity as long as they complied with the overall site coverage for the site of 33%.

Both dwellings were relatively small at approximately 59m² in area for each of the dwellings.

The applicant has applied for subdivision consent to create a separate certificate of title for each of the dwellings.

Consent was issued on 18 March 2008. (Attachment 1).

On 14 April 2008 a Section 357 objection was received by Council objecting to the imposition of Development Impact levies (5.5% of the value of two allotments for reserves & community services) under Condition 2. Because the applicant's were still working through issues with Mr Best's estate the applicant asked that the hearing be deferred and this was accepted.

In the mean time the property was sold to Shane and Sarah Stephen, who have taken over the subdivision consent and on 17 May 2010, their agent Tony Quickfall advised that they wished to proceed with the objection, which had been on hold since April 2008.

The Sec 357 objection originally had an objection to the right-of-way access, but the present owners only wish to pursue the objection relating to the reserve fund levy under condition 2.

2. SECTION 357 OBJECTION

2.1 Condition 2 (Financial Contributions)

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.

I have included a copy of the relevant sections of 16.5.1 as Attachment 2 to this report.

In 16.5.1.2 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.

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

- (a) The reserves levy is based on a percentage of land value of each allotment. The subdivision stage is the best stage to determine this as you have a very accurate defined area shown by survey, which would be less certain at building consent stage.
- (b) 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.

Subdivisions are generally associated with residential development, which do impose a demand on Council services. The issue here is: does it matter whether the residential development happens before or after the subdivision?

I accept that subdivision usually 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 last few years I have approved a number of subdivisions, 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 they could argue that the “effects already exist” as with this application.

It would be unfair on the community, 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 considered not a subdivision and because under Local Government Act, 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 16.5.2.3 (c) sets out the circumstances where Council may waive or reduce the levy.

Reason (ii) 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 2 remains unchanged.

M D Morris
Co-ordinator – Subdivision Consents

ATTACHMENT 1

RM071219

Writer's Direct Dial No. (03) 543 8420
Writer's E-mail: mark.morris@tdc.govt.nz

18 March 2008

J P Best Estate
C/O Cotton & Light Surveyors Ltd
195B Queen Street
RICHMOND 7020

Dear Sir/Madam

DECISION ON NON-NOTIFIED RESOURCE CONSENT APPLICATION NO. RM071219 – J P BEST ESTATE

Pursuant to Section 114 of the Resource Management Act 1991 ("the Act"), please find enclosed a copy of the Council's decision on your application for resource consent referred to above.

Section 357A of the Act provides you with the right to lodge an objection with the Council in respect of this decision and/or any associated conditions. Any such objection must be made in writing setting out the reasons for the objection and must be lodged with the Council, together with a fixed fee of \$125.00 (GST inclusive), within 15 working days of receiving this letter.

At this stage the Council has not calculated the final costs of processing your application. Should the final costs exceed the deposit already paid, then as previously advised, you will be invoiced separately for these costs. Should the final costs be less than the deposit already paid, then you will receive a refund. Where the costs are equal to the deposit already paid, no further action is required. You will receive a letter shortly regarding the final costs of processing your application.

Please note that under Section 125 of the Act, your consent will lapse in five years unless you have given effect to it before then. In the case of subdivisions, the consent is given effect to when you have submitted a survey plan 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.

Please feel free to contact me if you have any questions regarding any aspect of your consent or its conditions. My contact details are listed at the top of this letter.

Yours faithfully

Mark Morris
Co-ordinator Subdivision Consents

RESOURCE CONSENT DECISION

Resource consent number: RM071219

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

J P Best Estate

(hereinafter referred to as “the Consent Holder”)

Activity authorised by this consent: Subdivision consent to subdivide Lots 1 and 2 DP 367812 to create four allotments with net areas between 400 square metres and 525 square metres. Each of the allotments contains an existing dwelling.

Location details:

Address of property: 31-31A and 33-33A Iwa Street, Mapua
Legal description: Lots 1 and 2 DP 367812
Certificates of title: 275494 and 275493
Valuation number: 1938041300

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

CONDITIONS

General Accordance

- 1 That the proposal shall be in accordance with the Cotton & Light Surveyors Plan dated 18 March 2008 (shown as “Plan A” attached to this consent) as amended by the following conditions of consent.

Financial Contributions

- 2 Financial contributions are required on two allotments. The following shall apply:

Reserves and Community Services

Payment of a reserves and community services levy assessed at 5.5% of the value of each of the two allotments. The valuation will be undertaken by Council’s valuation provider within one calendar month of Council receiving a request for valuation from the Consent Holder. The request for valuation should be directed to the Consents Administration Officer at Council’s Richmond office. The cost of the valuation will be paid by Council.

If payment of the financial contribution is not made within two years of the date of this consent, a revised valuation will be required and the cost of the revised valuation shall be paid by the Consent Holder.

Easements

- 3 Easements are to be created over any services located outside the boundary of the allotment that they serve. Reference to easements is to be included in the Council resolution on the title plan and endorsed as a Memorandum of Easements.
- 4 Lot 1's right to the existing right of way EC 7280414.5 shall be extinguished.

Consent Notices

- 5 The following consent notice shall be registered on the titles of Lots 1-4:
 - (a) All vehicle access to Lot 1 shall be via the existing access crossing on to Iwa Street.
 - (b) No filling shall occur or buildings be erected in the existing stormwater drainage swale covered by easement EI 7280414.5, unless written consent is obtained from the Tasman District Council Engineering Manager.
 - (c) Stormwater servicing in the Iwa Street area is very limited. Any stormwater run-off from new building or extensions to existing buildings will be required to comply with the permitted activity discharge Rule 36.4.2 of the Proposed Tasman Resource Management Plan, unless authorised by a discharge consent.

The applicant's solicitor shall submit a copy of the consent notice for signing and approval by the Council's Co-ordinator Subdivision Consents.

ADVICE NOTES

Proposed Tasman Resource Management Plan

- 1 Any matters not referred to in this application for resource consent or are otherwise covered in the consent conditions must comply with the Tasman Resource Management Plan or subsequent planning document, or authorised by another resource consent.

Other Council Requirements

- 2 The Consent Holder shall meet the requirements of Council with regard to all Building and Health Bylaws, Regulations and Acts.

REASONS FOR THE DECISION

Background to Proposed Activity

The proposal is to subdivide two existing certificates of title (275494 and 275493) that are 820 square metres and 1,002 square metres in area. Each of the titles has two small existing dwellings on them that have previously been approved by Council. The subdivision will enable a separate certificate of title to be issued for each of the dwelling sites.

The allotments gain access via an existing right of way that was constructed under a previous subdivision consent (RM040352, Tasman District Council Engineering Plan 6044/2s1).

Proposed Tasman Resource Management Plan (“PTRMP”) Zoning, Area, and Rules Affected

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

Zoning: Residential
Area(s): Land Disturbance Area 1

No person may subdivide land within Tasman District as a permitted activity according to the PTRMP. The activity authorised by this resource consent is deemed to be a discretionary activity in accordance with Rule 16.3.4 of the PTRMP.

Principal Issues (Actual and Potential Effects on the Environment)

The principal issue(s) associated with the proposed activity involve the actual and potential effects on the environment. For this application these were:

- (a) servicing;
- (b) access;
- (c) allotment area.

The Council considers that the adverse effects of the activity on the environment will be no more than minor for the following reasons:

- (a) all the allotments are already fully serviced for water and sewer. The existing dwellings have existing stormwater servicing by way of soakage, which was installed as part of the approved building consents for the dwellings;
- (b) all allotments already have existing access created under the previous subdivision consent RM040352;
- (c) while the proposed allotments are smaller than what is required for a controlled activity subdivision in the PTRMP, they simply reflect the existing site area of each of the approved dwellings on site. Therefore, there should be little change in amenity effects resulting from the subdivision.

Relevant Statutory Provisions

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

- (a) the Tasman Regional Policy Statement (TRPS);
- (b) the Transitional District Plan;
- (c) the proposed Tasman Resource Management Plan (PTRMP).

Most of the objectives and policies contained within the TRPS are mirrored in the PTRMP. The activity is considered to be consistent with the relevant objectives and policies contained in Chapters 5 and 6 of the PTRMP in particular 6.1.1, which is to allow for infill development of existing allotments in existing serviced townships as a means of minimising encroachment on the most versatile land in the District.

Part II Matters

The Council has taken into account the relevant principles outlined in Sections 6, 7 and 8 of the Act and it is considered that granting this resource consent achieves the purpose of the Act as presented in Section 5.

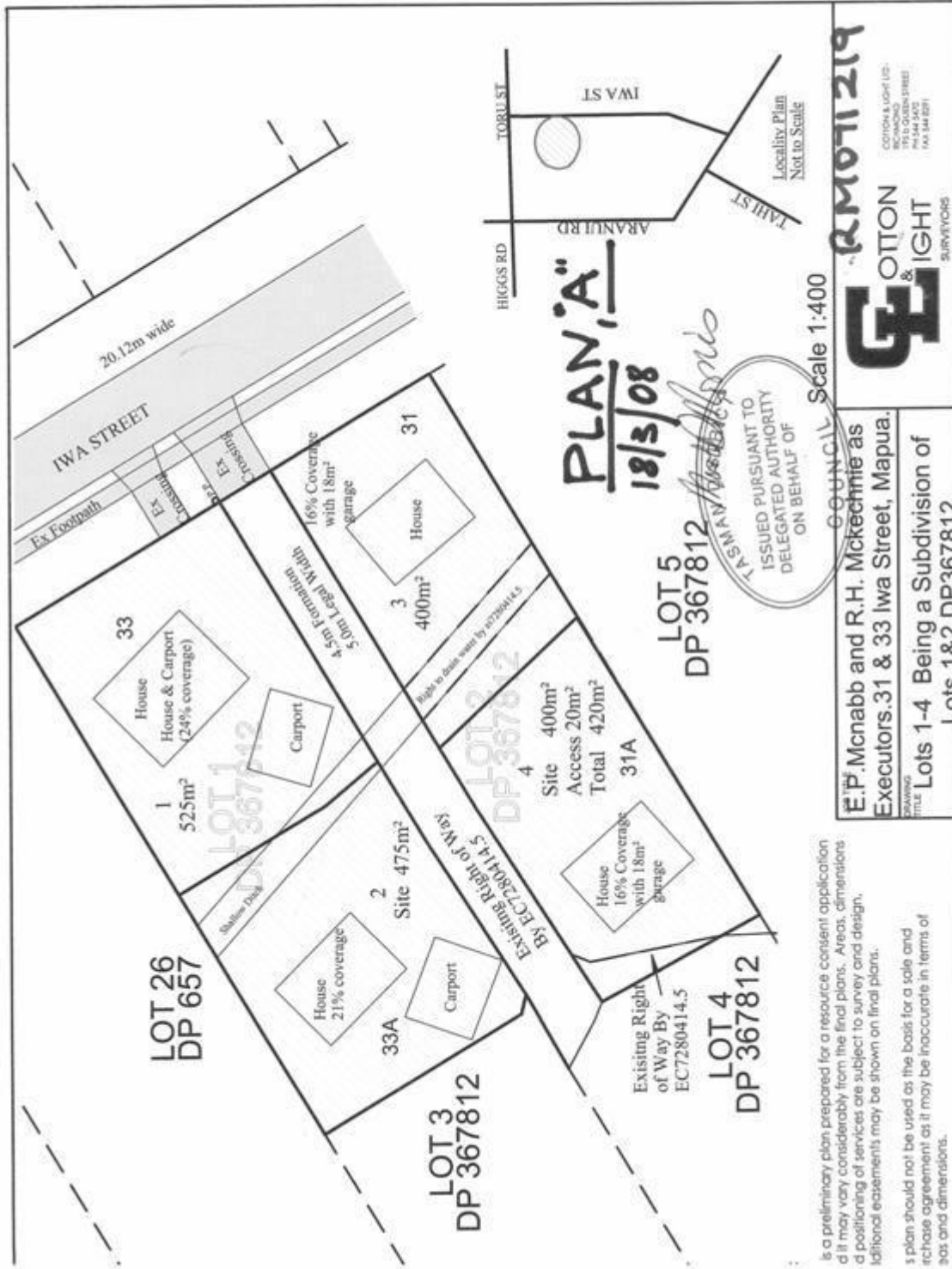
Notification and Affected Parties

The adverse environmental effects of the activity are considered to be no more than minor. In the context of what could be done in erecting a second dwelling as a controlled activity, no parties were deemed to be adversely affected by the proposal. The Council's Resource Consents Manager has, under the authority delegated to him, decided that the provisions of Section 94(2) of the Act have been met and therefore the application has been processed without notification.

This consent is granted on **18 March 2008** under delegated authority from the Tasman District Council by:

Mark Morris
Co-ordinator Subdivision Consents

Plan A
 18 March 2008
 RM071219, J P Best Estate



16.5 Financial Contributions

16.5.1 *Scope of Section*

This section establishes Council's ability to require payment of financial contributions as a condition of subdivision, building development, establishment of plantation forestry in a Groundwater Recharge Protection Area or a Surface Water Yield Protection Area, or resource consents for other purposes.

16.5.1.1 Financial Contributions

Financial contributions are contributions of land or money that Council may require to assist in managing adverse effects of activities. They can be obtained through conditions on permitted activities or on resource consents.

Financial contributions should be seen in perspective. They are a third level method for managing adverse effects of activities.

The first method is the obligation on an applicant for resource consent to adequately identify likely adverse effects of the proposed activity and to show how those effects will be managed. The second method is for Council, in considering the application, to identify any additional measures it can reasonably require the applicant or persons implementing the consent to carry out to manage effects, and to impose conditions to achieve that end. These may include requiring works and services to be carried out or provided.

Financial contributions are available to redress any residual effects management issues. Usually these will be matters that are more effectively or efficiently carried out by Council, than by individual developers or site users. Contributions would not normally be required for on-site work that a developer would be expected to carry out. They are more likely to be applied where a development creates or contributes to a need for the provision of, or improvements to, off-site facilities provided and operated by Council. These may include roading improvements; upgrades to reticulation or treatment facilities for water supply, or sewage or wastewater disposal; stormwater disposal; or development of reserves and other community facilities; where these cannot be achieved by the developer. They may also include water augmentation measures where adverse water yield effects of new plantation forest cannot be met through conditions on resource consents.

Financial contributions are one of the set of methods to manage effects in this Plan. They are not simply a tax on development. Financial contributions by themselves do not offset adverse effects: they allow some other measure to be purchased or implemented to manage effects. They should not be taken unless they can be applied to a measure to manage identified effects.

Financial contributions are a method applicable to implementing any policy, or achieving any objective, of this Plan.

16.5.1.2 Circumstances where Financial Contributions will be Imposed

From 1 July 2004 onwards Council's Development Contributions Policy in its Long Term Council Community Plan prepared under the Local Government Act 2002 requires development contributions to be paid on subdivision and building development to contribute to the long term costs of provision of new or expanded road network, wastewater, water supply or stormwater services. Where Council has required development contributions for the same activity and service, Council will not require payment of financial contributions for any of these infrastructure services as a condition of subdivision or building development under the provisions of this section. This statement qualifies the purpose of financial contributions given below to apply after 1 July 2004.

Financial contributions will be imposed when land is subdivided, and when buildings are constructed, to assist in managing effects anticipated to be generated by the subsequent use of those allotments and buildings. They may also be imposed on resource consents for activities that generate effects that cannot be managed by the consent-holder but which can be managed through some Council facility or operation.

Because of the special circumstances of the Rural 3 Zone, and the need for financial contributions to provide for the adequate servicing of the area within these zones and adjacent areas to accommodate new residential development, financial contributions for roading, water supply and wastewater are applied in this area as a standard for all subdivision consents, and for buildings. This also applies in the Mapua and Waimea Inlet Rural Residential Zones and Services Contribution Areas at Mapua and Tasman where improved servicing is needed to provide for existing and future development.

16.5.1.3 Purpose of Financial Contributions

Subject to the explanation above concerning the circumstances where financial contributions will be imposed, the primary purpose of financial contributions is to provide an additional step in implementing the principle that the instigators and beneficiaries of activities generating adverse effects should meet the costs of avoiding, remedying, mitigating or offsetting those effects. The complementary purpose is to minimise the extent to which the community at large would otherwise subsidise those activities by meeting the costs of managing any adverse effects they generate. These primary and complementary purposes include the following matters:

- (a) Infrastructure in Tasman District has generally been sufficient to cope with effects generated by the present community. There is a need to upgrade and extend existing services, and to provide new services, to ensure that effects of community growth and development are adequately managed. The cost of such services which is over and above that required by the existing community will be funded by the new subdivision and development that generate the demand.
- (b) The roading network serves the total community and must be maintained and upgraded on a District-wide basis, and will be funded in part by financial contributions. For that reason, a contribution to roading will be levied on all subdivision and development.
- (c) Wastewater reticulation, collection and disposal is designed to serve discrete urban areas. Properties that are unable to benefit from such services will not be required to contribute. They will, however, be required to make suitable provision for the disposal of wastewater independently, as required by any consent.

- (d) Water supply is also designed to serve identified urban areas. Properties that are unable to benefit from such systems will not be required to contribute.
- (e) No provision has been made for a general contribution for stormwater yet. When an assessment has been made of the effects of new growth and the need for stormwater management determined, provision for a contribution may be introduced through a plan change.
- (f) Reserves and community services are considered to be essential facilities for the wellbeing of the people of the District. New growth places a demand to upgrade existing services, to expand, and to develop new facilities. Reserves and community services throughout the District are available to the total community. The cost of enhancing such facilities will be funded in part by new subdivision and development.
- (g) Financial contributions are an appropriate means of addressing effects of activities that warrant measures such as:
 - (i) natural hazard mitigation;
 - (ii) maintenance, enhancement, protection, preservation or restoration of:
 - landscape and natural values;
 - amenity values;
 - habitats and ecosystems;
 - heritage values;
 - water, soil and air quality.

Financial contributions for these purposes may be applied on-site or off-site. Positive effects such as environmental compensation will be taken into account.

16.5.1.4 How Financial Contributions have been Set

The determination of the financial contribution for each component is derived from the cost of Council’s ten-year strategy for infrastructure works, reserves and community services, and the estimated demand for new allotments and development. The amount of funding required is a direct relationship between the strategy and the demand. The amount to be covered as a financial contribution is set for approximately three years. A review through the annual Plan process will be undertaken every three years and, if required, the amount of the contribution required will be altered by a Plan Change.

For land subdivision, the financial contribution will be in two parts. The first will be a dollar value applied to providing, upgrading and extending infrastructure, including the roading network, wastewater and water reticulation, and the control and disposal of stormwater. The second will be a percentage of the land value of new allotments, applied to acquisition and development of land for reserves, and to the development and upgrading of community services.

For building development, the financial contribution will be a percentage of the value of the building work. It will be divided equally between infrastructural needs and those for reserves and community services.

In the Rural 3 Zone, Mapua and Waimea Inlet Rural Residential zones and in the Services Contribution Area at Mapua and Tasman shown on the planning maps, detailed analysis has been undertaken in relation to servicing costs to accommodate growth in accordance with the Plan provisions for the area. These are “end state” calculations based on the

expected number of dwellings and a full services development programme, and will provide for roading upgrades and extensions, and provision of water supply and wastewater services over time to the Council's standards. Because of this provision, financial contributions can be determined throughout the area with certainty, and applied as a standard to all controlled and discretionary subdivision in the Zones and Area. Where subdivision consents have already been granted, but building has not yet taken place, these will be required to make a contribution at a reduced rate, as they will also benefit from the Council-provided services in the longer term. In this area, financial contributions for roading, wastewater and water supply will be applied within the area and there will be no requirement for applicants to contribute to such services outside the area. However, the reserves and community services financial contribution applied elsewhere within the District will apply to this area.

16.5.2.3 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:

- (a) 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.
- (b) 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.
- (c) 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;
 - (ii) 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;
 - (iii) where work is or has been undertaken or land set aside that will result in substantial environmental compensation.
 - (iv) 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.
- (d) 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.

16.5.2.4 Reserves and Community Services Component of Financial Contribution on Subdivision

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

- (a) 5.5 percent 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 16.5.2.1 from this calculation.
- (b) 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.
- (c) 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.
- (d) 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.