

STAFF REPORT

TO: Environment & Planning Subcommittee

FROM: Pauline Webby, Consent Planner - Subdivision

REFERENCE: RM100668 - Subdivision

SUBJECT: **CRESSWELL FARMS LTD - REPORT REP11-04-01** - Report prepared for meeting of 13 April 2011

1. SUMMARY OF PROPOSAL

The subdivision application RM100668 proposes creating a 5600 square metre allotment (Lot 1) containing an existing 80 year old (approximately) dwelling on its residential curtilage area leaving a balance area of 12.811 hectares (Lots 2 and 3) of Rural 1 land containing an existing 30 year old (approximately) dwelling and farm accessory buildings. Both dwellings have existing access points from Central Road.

Lot 4 would vest with Crown as river bed; this water course is known locally as "*Blue Creek*".

The proposed scheme plan is appended to this report as Plan A.

1.1 Legal Description

The application site is legally described as Lot 1 Deposited Plan 19654, comprised in CT NL 13A/666.

2. STATUS OF APPLICATION

Zoning: Rural 1
Areas: Land Disturbance 1

The proposed activity is assessed as a Discretionary Activity under Rule 16.3.5.2 as Lot 1 of the subdivision application RM100668 has an area of 5600 square metres which is less than the minimum area of 12 hectares specified in the controlled activity rule 16.3.5.1.

3. NOTIFICATION AND SUBMISSIONS

3.1 Written Approvals

Prior to notification written approvals were received from:

- E S Inwood
- B J Page
- B P Wratten Family Trust
- J and T J Greenhough and K L Bisley

Pursuant to Section 104(3)(a)(ii) of the Act the decision-making panel must not have any regard to any effect on these parties.

The location of properties with written approvals provided is shown on the map in Appendix 2.

3.2 Notification

The application was fully notified and submissions closed on Friday, 11 February 2011.

3.3 Submissions

Submissions in support

Submitter	Reasons	Heard?
Nelson/Tasman Forest & Bird protection Society	Provided no precedent effect is created for subdivision of Rural 1 land the protection of the vegetation in the proposed covenant area and the vesting of river bed will provide benefits for wildlife habitat.	No

Neutral submissions

Submitter	Reasons	Heard?
NZ Fire Service Commission	Required water supply for firefighting purposes to be installed in accordance with SNZ PAS 4509:2008 for the dwellings on both allotments.	Have withdrawn their requirement to be heard

3.4 Comments on Submissions

The NZ Fire Service has withdrawn their right to be heard.

The Nelson/Tasman Forest & Bird Protection Society has provided a submission in support of the biodiversity values that would be improved with the proposed QEII protection.

4. STATUTORY CONSIDERATIONS

Section 104

A decision on this application must be made under Section 104 of the Act. The matters for the Council to address are:

- Part 2 (Sections 5, 6, 7 and 8)

- Effects on the environment (positive and negative)
- Objectives and Policies of the TRMP
- Other matters

Section 106

There are no relevant matters for this proposal.

5. SECTIONS 6, 7 AND 8

The following matters are relevant to this application:

Matters of National Importance

- S.6(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
- S.6(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers.

Other Matters

- S.7(d) intrinsic values of ecosystems.
- S.7(f) maintenance and enhancement of the quality of the environment.

Treaty of Waitangi

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

6. KEY ISSUES

The key issues are:

- Rural productive land
- Rural amenity
- Servicing
- Protection of natural values
- Reverse sensitivity
- Precedent

6.1 Rural Land Productive Values

Objectives and Policies relating to Rural Land Productive Values

(The underlined terms are defined below).

Objective 7.1.2 *"Avoid the loss of potential for all land of existing and potential productive value to meet the needs of future generations, particularly land of high productive value."*

“High Productive Value” is defined in Chapter 2 of the Tasman Resource Management Plan (TRMP) as:

“in relation to land, means land which has the following features:

- (a) flat to gently rolling topography;*
- (b) free-draining, moderately deep to deep soils;*
- (c) moderate to good inherent soil fertility and structure;*
- (d) a climate with sufficient ground temperature, sunshine, available moisture, and calmness to make the land favourable for producing a wide range of types of plants.”*

7.1.3.1 *”To avoid, remedy or mitigate the adverse effects of subdivision of rural land, particularly land of high productive value.”*

Subdivision Schedule matter 16.3A (1) *The productive value of the land in Rural 1, 2 and 3 zones and the extent to which the proposed subdivision will adversely affect it and its potential availability.*

6.1.1 Rural Land Productive Values Assessment

Lot 2 will have an area of 12.811 hectares which remains consistent with the anticipated minimum 12 hectare area prescribed within the TRMP for a Rural 1 controlled activity subdivision. Lot 4 with an area of 4100m² will contain river bed to vest and Lot 3 will contain 4500m² of Kanuka which will be protected by way of QEII covenant. Lot 3 and 4 are not currently available for productive purposes as they form part of a watercourse and encompass a stand of Kanuka so will not constitute any further loss of land from productive use.

This application would see Lot 1 (5600m²) fragmented from the larger property. A portion of this area is already lost from productive uses as it is utilised by the residential dwelling and curtilage area.

In this case the subdivision of the second dwelling on a small area of land from the main property is a fragmentation of productive rural land (Productive soil Class B in the Council’s Land Classification) that is not contemplated by the TRMP.

6.2 Rural Character, and Amenity Values

Objectives and Policies - Rural Character and Amenity Values

Objective 5.1.2 *“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 5.1.3.1. *“To ensure that any adverse effects of subdivision and development on site amenity, natural and built heritage and landscape values, and contamination and natural hazard risks are avoided, remedied, or mitigated.”*

Objective 5.2.2 *“Maintenance and enhancement of the amenity values on site and within communities throughout the District.”*

Policy 5.2.3.1 *“To maintain privacy in residential properties, and for rural dwelling sites.”*

Policy 5.2.3.6 *“To maintain and enhance natural and heritage features on individual sites.”*

Objective 7.4.2 *“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 7.4.3.4 *“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.”*

Subdivision Schedule matter 16.3A (2) *“The potential effects of the subdivision on the amenity values and natural and physical character of the area.”*

“Rural character” is defined in the TRMP (Chapter 2) as:

“the character of the land as shown by the predominance of rural productive activities and includes:

- (a) a high ratio of open space to built features;*
- (b) large areas of pasture, crops, forestry, and land used for productive end;*
- (c) built features associated with productive rural land uses;*
- (d) low population density;*
- (e) predominant form of residential activity directly associated with a productive land use;*
- (f) social and economic activity associated with productive land use;*
- (g) cultural values associated with farming and living on the land.”*

“Amenity values”, as defined in Section 2 of the Resource Management Act 1991, is set out below:

“Amenity values means those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.”

6.2.1 Assessment of the Proposed Amenity and Rural Character

The current landscape of the immediate area around the application site comprises these aspects of “rural character” defined above. The subdivision of this 12.811 hectare property creating a 5600m² curtilage around the existing 80 year old (approximately) dwelling will not change the existing and established rural character and amenity of this Central Road locality.

The main rural allotment (Lot 2) will retain the second dwelling, meets the minimum area of 12 hectares specified for a Rural 1 controlled subdivision and will also see the protection of natural values contained within Lots 3 and 4. The maintenance of these natural values also enhances rural character and amenity values and could be seen as a positive aspect of this subdivision.

The proposed density of Lot 2 is consistent with the definition of “*rural character*” as defined by the Plan and set out above; but a 5600m² allotment (Lot 1) is not consistent with the Rural 1 zone’s anticipated rural character and amenity as it is significantly smaller than the minimum area prescribed within the TRMP for a controlled Rural 1 subdivision.

Those adjoining properties owners who have provided their written approval have not been considered further in terms of any effects of privacy and amenity values. No submission was received from the property at 326 Central Road.

The buildings on this property have been in existence in this location for 30 and 80 plus years respectively and form part of the local character; the change that occurs as a result of this subdivision will be not be obvious to those unaware of the subdivision process that is being undertaken.

It is considered that any adverse effect arising from this proposal on rural amenity and character is limited.

6.3 Servicing Matters

Objectives and Policies relating to servicing

Objective 7.4.2 *“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 7.4.3.9 *“To avoid, remedy or mitigate servicing effects of rural subdivision and development, including road access, water availability and wastewater disposal*

Subdivision Schedule matters 16.3A relating to servicing.

8A) *“For water supply, the extent of compliance with the “Drinking Water Standards for New Zealand 1995” or any subsequent replacement of this standard.”*

(10) *“Where wastewater disposal will occur within the net area of the allotment, the extent to which the site and soil assessment, design and construction of the system complies with the AS/NZS 1547; 2000, taking into account the requirements of rules in Chapter 36 regulating the discharge of wastewater.”*

(11) *“The adequate provision of potable water and water for fire fighting.”*

6.3.1 Assessment of servicing

Both existing dwellings for Lots 1 and 2 have existing water supplies (wells), stormwater and wastewater services encompassed within their allotment boundaries.

Separate telephone and power reticulation exist for both dwellings.

Both dwellings have existing accesses from their Central Road frontage with complying sight distances in both directions. The access surface for Lot 1 would require upgrading to meet Council TRMP vehicle access standards.

No new services are required.

6.3.2 Water supply / firefighting

NZ Fire Service has made a submission requesting compliance for firefighting water supply for each dwelling to the standards specified in SNZ PAS 4509:2008 and has since withdrawn their requirement to be heard.

6.4 Protection of Biodiversity

Objectives and Policies - Significant Natural Values

Objective 7.2.2 *“Provision of opportunities to use rural land for activities other than soil-based production, including papakainga, tourist services, rural residential and rural industrial activities in restricted locations, while avoiding the loss of land of high productive value”*

Policy 7.2.3.4 *“To enable the subdivision of land or amalgamation of land parcels for the preservation of:*

(a) significant natural values, including natural character, features, landscape, habitats and ecosystems;”

Objective 10.1.2 *“Protection and enhancement of indigenous biological diversity and integrity of terrestrial, freshwater and coastal ecosystems, communities and species.”*

Policy 10.1.3.1 *“To recognise and protect indigenous vegetation and habitats and individual trees which are of significant scientific, wildlife and botanical value assessed according to criteria in Schedules 10B and 10C.”*

Part II of the RMA lists the following as matters of national importance and these are considered pertinent to this application.

- S.6(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

And other matters listed below:

- S.7(d) intrinsic values of ecosystems.
- S.7(f) maintenance and enhancement of the quality of the environment.

6.4.1 Assessment of biodiversity

The QEII National Trust has provided a letter of support indicating that the biodiversity values in this *“tall kanuka forest”* as represented in Lots 3 and 4 warrants long term protection as less than 1% of the District’s lowland riparian/alluvial forest remains.

Enhancement and or maintenance of natural values such as volunteered by this application can add value to the rural amenity values in a locality, improve water quality and provide habitat for wild life species. Nelson/Tasman Forest & Bird Protection Society have indicated their support in a positive submission on this basis.

The letter states: *“The Native Habitats Tasman Survey by Michael North rates this area MO16c as significant”*.

The protection of these natural values encompassed within Lots 3 and 4 may not have been triggered without a desire by the applicants to achieve this subdivision. While protection of natural values is not the main aim of this proposal it is a positive outcome that is a direct consequence of the subdivision proposal.

Any weighting given to this positive outcome of the subdivision is important given the very small areas of this type of indigenous lowland forest remaining in the district.

6.5 Reverse Sensitivity Effects

Subdivision Schedule matter 16.3A (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.”*

6.5.1 Reverse Sensitivity Assessment

The creation of an additional small rural lifestyle allotment in a productive rural environment has the potential to create cross-boundary effects and limit future rural productive land uses.

For those adjoining property owners who have provided their written approvals no further consideration has been given to potential reverse sensitivity effects on them. The nearby rural lifestyle property at 326 Central Road is well separated from the small allotment (Lot 1) being created by this application and reverse sensitivity is less likely to be an issue with the separation provided by both Central Road and distance.

The applicants have volunteered a rural emanations easement over Lot 1 in favour of the larger Lot 2. The productive areas of Lot 2 have some separation from the Lot 1 residential area by a lower terrain and the swampy area running along the eastern boundary of Lot 1.

It is considered that the Lot 1 landform, the road location and the volunteered rural emanations easement will reduce the potential for reverse sensitivity effects and ensure that the ability to utilise Lot 2 productively in the future will not be limited by the presence of this smaller allotment and residential dwelling.

6.6 Precedent

Case law has established that the granting of consent for one application (like for like) may well have an influence on how another application should be dealt with. The pressure for subdivision of a second dwelling onto a small allotment separate from the main property and dwelling is ongoing. As a consequence care must be taken to ensure that a consistent approach in assessing subdivisions is taken to ensure a precedent effect is not created. This effect could increase the fragmentation of the district's most productive Rural 1 land.

It is considered that the creation of one additional allotment of 5600m² leaving a balance area of 12.811 hectares could generate a precedent effect especially if the second dwelling was a reason for allowing the subdivision.

This subdivision proposal is inconsistent with the TRMP's Rural 1 policies and objectives and if granted would need to be distinguished from other Rural 1 subdivisions by positive factor/s other than small size, small differences in terrain and topography and the presence of a second dwelling.

7. SUMMARY OF KEY ISSUES

The key point of this assessment; is that the presence of the second dwelling on this property and it being not needed by the applicants' should not be a reason for supporting the subdivision.

The property is zoned Rural 1 under the Tasman Resource Management Plan and this development is not considered to be consistent with the policies and objectives of the Plan that seek to limit fragmentation of productive land and minimise the conflict that can arise with the proximity of productive use with small lifestyle allotments.

The longstanding history of the two dwellings established on this property does mean that they do form part of the existing rural "*built*" environment in this locality and any adverse environmental impacts from the separation of each building onto its own area in terms of rural character and amenity are considered to be limited.

The protection of the biodiversity and natural values within both Lots 3 and 4 (vesting of river bed with Crown and the QEII protection) is a positive benefit for a district where less than one percent of its lowland indigenous vegetation remains.

It is my assessment that this protection and therefore future enhancement and maintenance of the significant natural values within Lots 3 and 4 would be unlikely to occur independently of the subdivision.

8. SECTION 5 AND RECOMMENDATION

No recommendation

As a planner weighing up all of the relevant considerations in terms of Section 5 of the Act, I consider that the considerations are finely balanced and I do not wish make a recommendation in this case.

If the Committee decide to grant the subdivision the following conditions should be imposed:

9. CONDITIONS, ADVICE NOTES, PLANS

General

1. The subdivision shall be undertaken in accordance with the information submitted with the application and in particular with the plan prepared by Planscapes (NZ) Ltd titled, "*Lots 1 to 4 being proposed subdivision of lot 1 DP19654*", Job no 0318 dated June 2010 and attached to this consent as Plan A. If there is conflict between the information submitted with the consent application and any conditions of this consent, then the conditions of this consent shall prevail.

Vesting of Lot 4 as River Bed (Volunteered)

2. The survey plan which is submitted for the purposes of Section 223 of the Act shall show as vesting in the Crown that part of the allotment that forms the bed and inner banks of the watercourse referred to as Blue Creek and shown in the scheme plan as Lot 4.

Easements

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

Rural Emanations Easement

4. A rural emanations easement in favour of Lot 2 DP XXX shall be registered on the title of proposed Lot 1 DP XXX and the memorandum granting the easement is to be generally in the form attached as Appendix A.

Financial Contributions

5. The Consent Holder shall pay a financial contribution for reserves and community services in accordance with following:
 - (a) the amount of the contribution shall be 5.62 per cent of the total market value of 2,500 square metres (rural)(at the time subdivision consent is granted) of Lot 1;
 - (b) the Consent Holder shall request in writing to the Council's Consent Administration Officer (Subdivision) that the valuation be undertaken. Upon receipt of the written request the valuation shall be undertaken by the Council's valuation provider at the Council's cost;
 - (c) if payment of the financial contribution is not made within two years of the granting of the resource consent, a new valuation shall be obtained in accordance with (b) above, with the exception that the cost of the new valuation shall be paid by the Consent Holder, and the 5.62 per cent contribution shall be recalculated on the current market valuation. Payment shall be made within two years of any new valuation.

Advice Note:

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

Advice Note:

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

Protection of Lot 3 via a QEII covenant (Volunteered)

6. The survey plan which is submitted for the purposes of Section 223 of the Act shall show Lot 3 as the QEII covenant Area.
7. Written confirmation and copy of the QEII covenant agreement shall be provided to Council prior to Section 224 approval.

Amalgamation

8. That Lots 2 and 3 hereon be held together in the same computer freehold register.
Land Information New Zealand reference; to be advised.

Vehicle crossing to Lot 1

9. The existing vehicle crossing to the dwelling on Lot 1 shall be upgraded to meet the following standards:
 - (a) is between 5.5 metres and 8.0 metres in width at the property boundary;
 - (b) the surface of the vehicle crossing and access shall be sealed from the Central Road carriageway edge to the existing metal cattle stop.

GENERAL ADVICE NOTES

Council Regulations

1. This is not a building consent and the Consent Holder shall meet the requirements of Council with regard to all Building and Health Bylaws, Regulations and Acts.

Other Tasman Resource Management Plan Provisions

2. This resource consent only authorises the activity described above. Any matters or activities not referred to in this consent or covered by the conditions must either: 1) comply with all the criteria of a relevant permitted activity rule in the Tasman Resource Management Plan (TRMP); 2) be allowed by the Resource Management Act; or 3) be authorised by a separate resource consent.

Consent Holder

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

Development Contributions

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

This consent will attract a development contribution on one allotment in respect of roading.



Pauline Webby
Consent Planner - Subdivision

Right to Emit Noise from Hail Cannons and Other Farming Activities/Equipment, Odour from Farming Activities, and Drift from Agricultural and Horticultural Sprays

1. Definition

In this easement the term “authorised farming activities” means all rural activities, including farming and horticultural crop production (and in particular, odour and noise from farming activities, the spraying for weeds and horticultural pests and diseases and the use of hail cannons to protect against hail damage to fruit crops) together with any other activity permitted under the relevant District Resource Management Plan for the time being in force and any existing uses and any activity permitted by any resource consent(s). The term “authorised farming activities” shall also include any other activity ancillary to the activities already defined or necessary therefore.

2. Rights and Powers

The owners or occupiers from time to time of the Dominant Tenement shall have the full, free, uninterrupted and unrestricted right, liberty and privilege for themselves and their respective servants, tenants, agents, licensees and grantees from time to time to emit noise from hail cannons and other farming practices and equipment, odour from farming activities, and drift from agricultural and horticultural sprays and to allow such emanations to escape, pass over or settle on the Servient Tenement in the course of the use of the Dominant Tenement for rural purposes with the intent that such aforementioned rights shall run with the Servient Tenement and be forever appurtenant to the Dominant Tenement.

3. Terms, Conditions, Covenants, or Restrictions in Respect of the Above Easement

- (a) The owners or occupiers from time to time of the Servient Tenement shall allow authorised farming activities to be carried out on the Dominant Tenement without interference or restraint.
- (b) All noise emitted from hail cannons, and farming practices and equipment shall not exceed the maximum level permitted in any relevant District Resource Management Planning document.

The owners or occupiers from time to time of the Servient Tenement shall not:

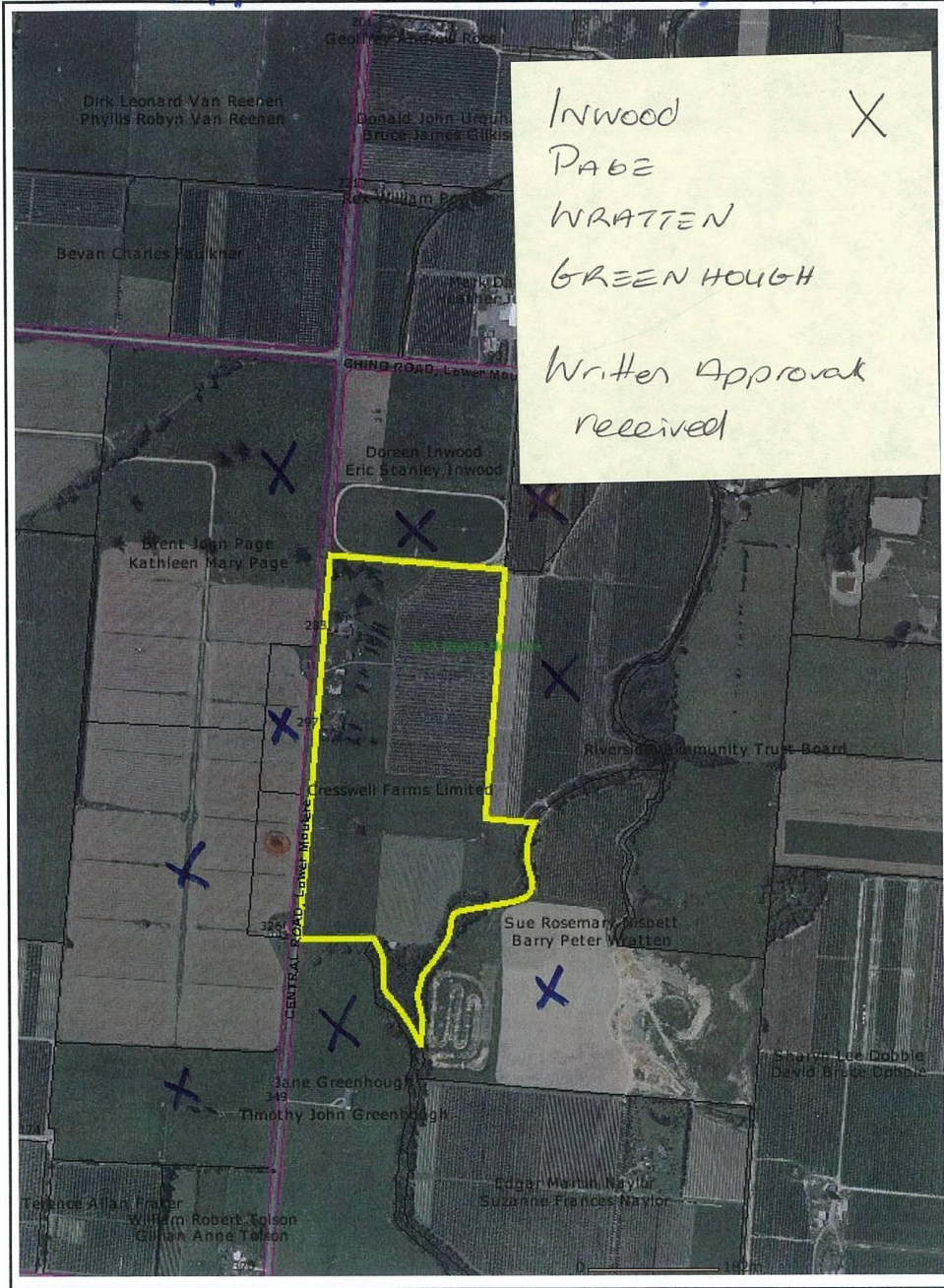
- (i) make or lodge; nor
- (ii) be party to; nor
- (iii) finance nor contribute to the cost of;

any submission, application, proceeding or appeal (either pursuant to the Resource Management Act 1991 or otherwise) designed or intended to limit, prohibit or restrict the continuation or recommencement of the authorised farming activities by the owners or occupiers from time to time of the Dominant Tenement.

- (c) The owners or occupiers from time to time of the Dominant Tenement shall at all times use sprays in accordance with usual agricultural and horticultural practices in the District.

Appendix B - Written approvals

Map Output *These would be considered affected by lifestyle allotment potentially* Page 1 of 2
Written Approvals received from: X



ExploreTasmanMap

13/1/2011 **DISCLAIMER:**

This map is derived from ExploreTasman and has generally been compiled from data generated by and supplied to the Tasman DC. It has no legal status and is known to be incomplete. To ascertain the exact location of any item, Tasman DC advises that the customer arrange onsite verification. Tasman DC will not be liable for any damages or loss whatsoever suffered from the use of this information. Cadastre sourced from Land Information New Zealand (LINZ) data. Crown Copyright reserved.

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