

# RESOURCE CONSENT APPLICATION FOR:



***Lance Brett McGhie &  
Barbara Lois McGhie,  
44 Norfolk Road,  
Carterton District***

**2 Lot Subdivision  
Rural (Special) Zone  
Non-Complying Activity  
(lot size,, Flood Hazard Zone)**



**TOMLINSON &  
CARRUTHERS  
SURVEYORS LTD**

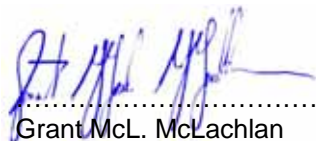
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# APPLICATION FOR RESOURCE CONSENT UNDER SEC 88 OF THE RESOURCE MANAGEMENT ACT 1991

**Date:** 26 May 2008  
**To:** Carterton District Council  
P O Box 9  
CARTERTON

**Ref:** 08/026

We, **TOMLINSON & CARRUTHERS**, Surveyors, apply for SUBDIVISION consent on behalf of: -

Lance Brett McGhie & Barbara Lois McGhie,  
44 Norfolk Road,  
Carterton District

**The names and addresses of the owner/s and occupier/s (other than the applicant) of any land to which this application relates:** None

Proposal Description:	Subdivide 1 rural lot into 2 rural lots.				
Location:	44 Norfolk Road, Carterton.				
Current Zoning:	Operative Plan: Rural Zone		Proposed Plan: Rural (Special) Zone		
Type of Activity:	<i>Controlled</i>	<input type="checkbox"/>	<i>Discretionary</i>	<input type="checkbox"/>	<i>Restricted Discretionary</i>
Notification:	<i>Public Notification</i>	<input checked="" type="checkbox"/>	<i>Limited Notification</i>	<input type="checkbox"/>	<i>Non-Complying</i>
Non-complying aspects	Discretionary under Carterton District Plan as 1 lot is under 3 hectares. Is Non-Complying under the Proposed Wairarapa Combined District Plan and is within a Flood Hazard Zone.				

## LEGAL

Title Reference:	WN35D/192	Legal Description:	Lot 2 Deposited Plan 67648	
Legal Roads:	Norfolk Road	Encumbrances:	None.	
Rights of Way:	None	Reserves:	None	

## PLANNING

Existing Activities:	<i>Conventional Pastoral</i>	<input checked="" type="checkbox"/>	<i>Horticulture</i>	<input type="checkbox"/>	<i>Viticulture</i>	<input type="checkbox"/>
	<i>Intensive Cropping</i>	<input type="checkbox"/>	<i>Cropping</i>	<input type="checkbox"/>	<i>Forestry</i>	<input type="checkbox"/>
	<i>Existing Dwelling</i>	<input checked="" type="checkbox"/>	<i>Other Buildings/ Uses:</i>	Garage and several sheds		
Proposed:	Rural Residential		Rural Residential/Lifestyle		<b>Yes</b>	
Number of Lots	2	Sizes	1.25 ha, 8.7 ha			
Proposed building sites:	<i>Available</i>	<input checked="" type="checkbox"/>	<i>Specified</i>	<input type="checkbox"/>	<i>Earthworks</i>	<input type="checkbox"/>
Proposed: <i>rights of way</i>	Bo both lots					
<i>easements</i>	For access and services.		<i>reserves</i>	None		

## DESIGNATIONS/ HAZARDS

Historic Classification:	None		Significant Trees:	None.	
Drains/ Water Courses:	Water race across site.		Rivers/ Lakes:	Waingawa River	
Physical Nature of land:	River Terraces	Soil Type:	VIs4, IIIs2	Slope Stability:	Minimal movement.
Hazards:	<i>Ocean</i>	<input type="checkbox"/>	<i>River</i>	<input type="checkbox"/>	<i>Earthquake fault</i>
	No		Lower terrace		No

## PROPOSED ACCESS

From legal road	Norfolk Road.	Formed	Yes	Sealed	Yes
From right of way	None	Formed	Yes	Sealed	No

## UTILITIES

Existing Services:	Telephone, electricity.			
Proposed Services:	<i>Water Supply</i>	<i>Rainwater.</i>	<i>Stormwater</i>	<i>Onsite soak pits.</i>
	<i>Sewage</i>	Site specific septic systems	<i>Electricity/ Telephone</i>	Available at boundary.

## ASSESSMENT OF ENVIRONMENTAL EFFECTS

Attached to this application.

## CONSULTATION

Greater Wellington Regional Council	No	Railways	No	Iwi	No
Department of Conservation	No	Telecom	No	Neighbours	No
Transit New Zealand	No	PowerCo	No	Land Registrar	No
Other organisations consulted	None				
Other Consents applied for:	None				

**SIGNED** .....  
Dated at **MASTERTON** on 26 May 2008.

To the best of my knowledge the information given in this report is accurate and correct.

Address for service: -





Memorandum of Easements			
Purpose	Shown	Servient Tenement	Dominant Tenement
Right of Way, Electricity, Telecommunications, Water.	A	Lot 1	Lots 2

**Note:** Areas and distances are subject to the final survey.

Prepared for:	McGhie
Drawn Date:	3 June 2008
Territorial Authority:	Carterton District Council
Scale:	1:3000 @A4
Reference #:	08-026 Rev.B



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**Lots 1-2 being a proposed subdivision of  
Lot 2 Deposited Plan 67648  
contained in certificate of title WN35D/192**

**Scheme Plan**



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# **Subdivision Consent Application & Assessment of Environmental Effects**

## **1. INTRODUCTION**

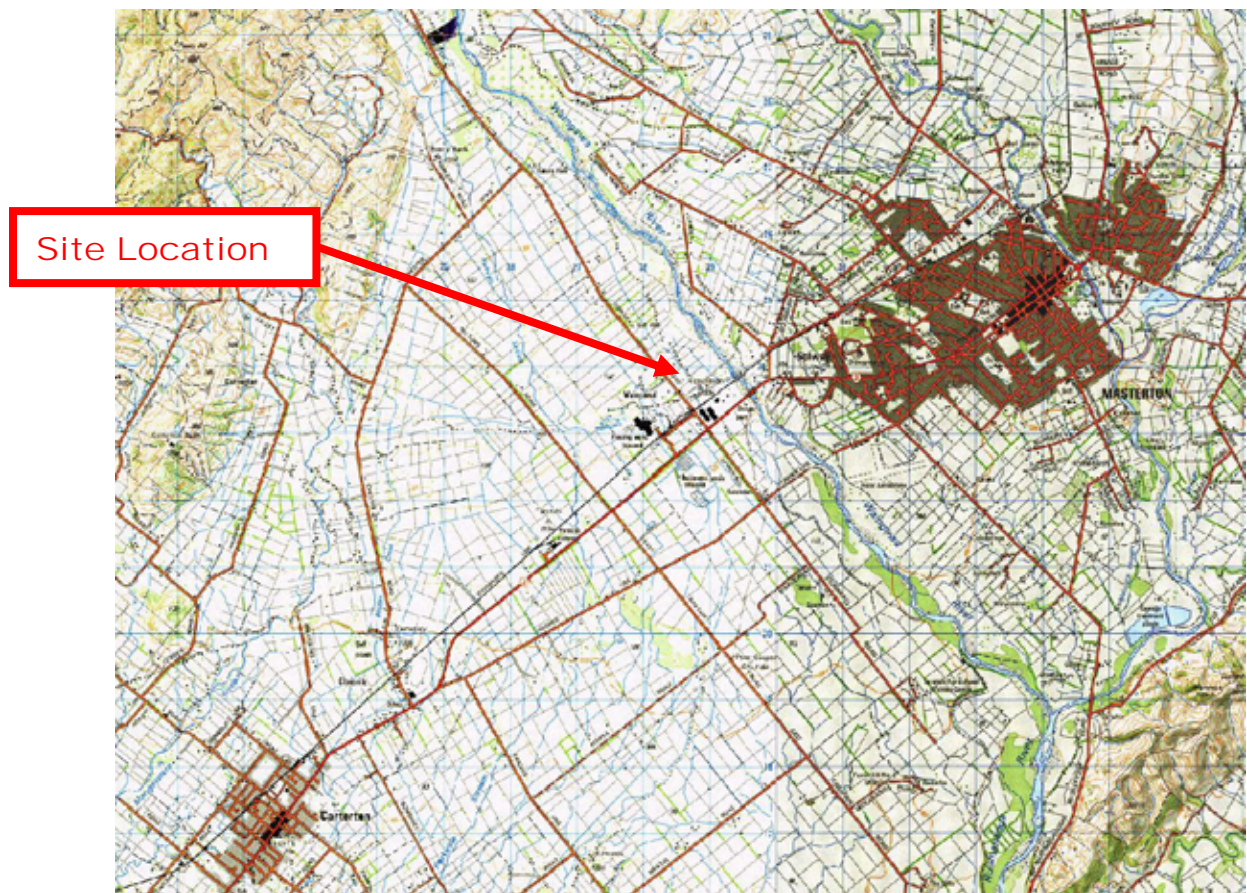
This report represents an Assessment of Effects on the Environment for a two lot subdivision in the Rural Area. The activity is Discretionary under the Carterton District Plan as one of the proposed lots is less than the minimum lot size. Under the Proposed Wairarapa Combined District Plan this application is a Non-Complying activity in the Rural (Special) Area and the application site is identified as a Flood Hazard Area. This assessment has been prepared in accordance with Section 88 and the Fourth Schedule of Resource Management Act 1991.

## **2. GENERAL INFORMATION**

### **2.1 Site Location**

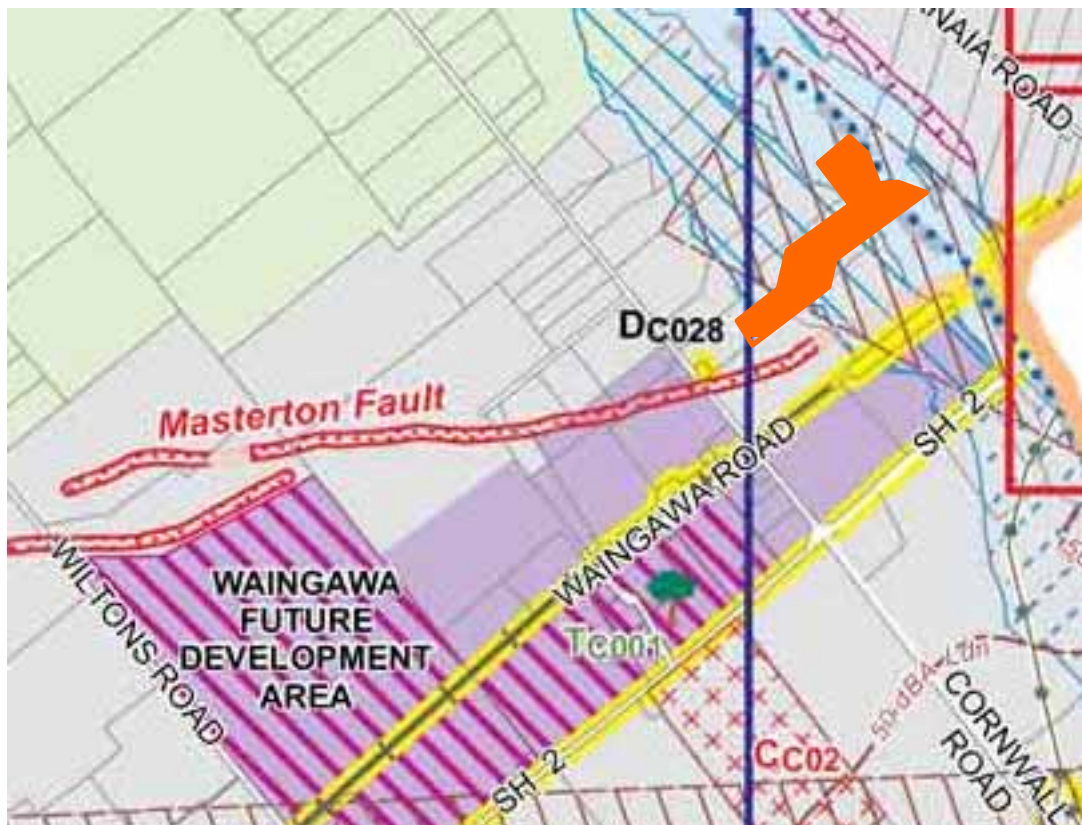
The proposed subdivision is located on farmland on Norfolk Road 8 kilometres by road east of the Carterton urban area. The land proposed to be subdivided is approximately 10 hectares in size. The legal description of the site is Lot 2 Deposited Plan 67648 contained within the Certificate of Title WN35D/192.

For more information, please refer to Figure 2.1 below and the certificates of title at the rear of the application.



**Figure 2.1** Proposed subdivision site

## 2.2 Site Description



**Figure 2.2** Proposed Wairarapa Combined District Plan Map 14 showing the site highlighted in orange.

The site is located in the Rural environment of the Carterton District. The majority of the land is flat pasture used for a farming operation.

The site is proposed to be zoned as Rural (Special) Zone under the proposed combined district plan. Part of the site is within a Flood Hazard Zone, the Hood Aerodrome Obstacle Limitation Surfaces Area and the site is adjacent to an existing rural industrial zone.

There are several buildings on the site. The main dwelling is to the south west of the site surrounded by a cluster of sheds.

The majority of the land is used for grazing.

A water race flows through the site.

For more details, please refer to the aerial photograph shown on the scheme.



## 2.3 Soil Structure

Reference to the Land Use Capability Maps show two distinct soil types on the property.

On the lower terrace to the west of the site is Class IIIs2 and can be described as:

*'Flat terraces with light textured soils over gravels. The soils are free draining and seasonally moisture deficient. With appropriate soil conservation measures, erosion limitations can be minimised.'*

On the upper terrace to the east of the site is Class IIIs2 and can be described as:

*'Flat, stony terraces and fans, with very shallow, stony, low fertility soils.'*

### 3. PROPOSAL

#### 3.1 Proposal Description

The proposal is to subdivide one lot held on one title into two lots. The sizes for the two proposed lots are:

<b>Lot</b>	<b>Size</b>
1	1.25 ha
2	8.7 ha

All lots are to be developed into rural residential lifestyle blocks.

Please refer to the scheme plan in this application for further details. Please note the areas are approximate and subject to final survey.

#### 3.2 Water supply

Any future dwelling will source its water from rainwater.

#### 3.3 Drainage

Drainage from all proposed lots will be by means of onsite soak pits and the natural drainage of the land for other water not captured by buildings.

#### 3.4 Sewage Disposal

All proposed lots are capable of disposing of wastewater by means of onsite septic disposal systems fully contained within the boundaries of proposed lots.

#### 3.5 Electricity and Telecommunications

The site has electricity and telephone connections available onsite and these easements are attached to the title.

#### 3.6 Access

Access to proposed lots will be through a shared existing entrance from Norfolk Road.

The design of the new accessway to Lot 2 will be formed according to NZS4404:2004 low usage access standard.

It is accepted that the proposed plan requires that the proposed right of way to Lots 1 and 2 be sealed to the body of Lot 2. Taking into account that the existing house and nearest neighbouring dwellings are more than 40 metres from the right of way and that there is screening between the right of way and existing dwellings, effects from dust and noise are less than minor. It is requested that a waiver be granted allowing the right of way to be metalled rather than sealed.

#### 3.7 Landscaping & Earthworks

No landscaping or earthworks are proposed or required.

#### 3.8 Alternative Sites

The Fourth Schedule of the Resource Management Act 1991 states that the following matter is included in an assessment of effects on the environment:

*b) Where it is likely that an activity will result in any significant adverse effects on the environment, a description of any possible alternative locations or methods for undertaking that activity*

Due to the site specific nature of the proposed activity, it is not appropriate to provide a description of alternative sites. Furthermore, it is considered that the proposed subdivision will not be a contributor to any significant adverse effects on the environment.

### 3.9 Mitigation Measures

The effects of the proposal on the existing infrastructure will be minimal. The effects on the productivity of the area will not alter.

It is considered that the proposed subdivision will not contribute to any significant adverse effects on the environment but if there are any effects in this proposed subdivision that require mitigation these could be dealt with in conditions issued by the Carterton District Council.

### 3.10 Easements and Covenants

No easements are proposed or required.

Consent notices pursuant to Section 221 of the Resource Management Act 1991 should be put on Lot 2 stating the following:

That pursuant to Section 221 of the Resource Management Act 1991, the following condition shall be registered as a Consent Notice on the Titles of Lots 2 at no cost to the Council:

1. This lot is located within a Rural Area. Any purchaser of this allotment should expect the noise, smell and activities associated with a **working** rural environment.
2. This lot is located adjacent to an Industrial Area. Any purchaser of this allotment should expect the noise, smell and activities associated from a **complying** industrial environment.
3. This lot is located within the approach/takeoff path of the Hood Aerodrome. Any purchaser of this allotment should expect the noise and activities associated from aviation. The purchaser should also not undertake any activities that might interfere or obstruct with aviation safety.
4. Part of this lot is located within a Flood Hazard Zone. The purchaser should not erect a building within any area prone to inundation without the approval from the district council.

Consent notices pursuant to Section 221 of the Resource Management Act 1991 should be put on Lot 1 stating the following:

That pursuant to Section 221 of the Resource Management Act 1991, the following condition shall be registered as a Consent Notice on the Titles of Lots 1 at no cost to the Council:

1. This lot is located within a Rural Area. Any purchaser of this allotment should expect the noise, smell and activities associated with a **working** rural environment.
2. This lot is located adjacent to an Industrial Area. Any purchaser of this allotment should expect the noise, smell and activities associated from a **complying** industrial environment.



## 4. CONSULTATION

### 4.1 Affected Parties

Section 94B of the Resource Management Act 1991 states:

***94B Forming opinion as to who may be adversely affected***

- (1) Subsections (2) to (4) apply when a consent authority is forming an opinion, for the purpose of section 94(1), as to who may be adversely affected by the activity.*
- (2) The consent authority must have regard to every relevant statutory acknowledgement, within the meaning of an Act specified in Schedule 11, made in accordance with the provisions of that Act.*
- (3) A person—*
  - (a) may be treated as not being adversely affected if, in relation to the adverse effects of the activity on the person, the plan permits an activity with that effect; or*
  - (b) in relation to a controlled or restricted discretionary activity, must not be treated as being adversely affected if the adverse effects of the activity on the environment do not relate to a matter specified in the plan or proposed plan as a matter for which—*
    - (i) control is reserved for the activity; or*
    - (ii) discretion is restricted for the activity; or*
  - (c) must not be treated as being adversely affected if it is unreasonable in the circumstances to seek the written approval of that person.*

In the circumstances of the proposal, the activity is for a non-complying activity so it could be considered there are people that might be adversely affected due to the non-compliance of the proposal.

In the circumstances of the proposal, the following parties are affected:

- Direct neighbours;
- Masterton District Council (administrators of the Hood Aerodrome); and
- Greater Wellington Regional Council.

### 4.2 Written Approvals

Under Section 104 (3) it states:

- (3) A consent authority must not—*
  - (b) when considering an application, have regard to any effect on a person who has given written approval to the application*

No written consents have been obtained due to the application being publicly notified.

### 4.3 Notification

Section 93 of the Resource Management Act 1991 allows for non-notification of applications in certain circumstances:

***93. When public notification of consent applications is required—***

- (1) A consent authority must notify an application for a resource consent unless—*
  - (a) the application is for a controlled activity; or*
  - (b) the consent authority is satisfied that the adverse effects of the activity on the environment will be minor.*

However if the above applies Section 94 of the Resource Management Act 1991 prescribes that notice must be served on all those deemed to be affected unless all written approvals have been received from the affected persons:

***94. When public notification of consent applications is not required—***

- (1) If notification is not required under section 93(1), the consent authority must serve notice of the application on all persons who, in the opinion of the consent authority, may be adversely affected by the activity, even if some of those persons have given their written approval to the activity.*
- (2) However, a consent authority is not required to serve notice of the application under subsection (1) if all persons who, in the opinion of the consent authority, may be adversely affected by the activity have given their written approval to the activity.*

Due to the proposal being a non-complying activity as a result of a proposed plan we request that this application be publicly notified.

## 5. STATUTORY REQUIREMENTS

### 5.1 Activity Status

Under Section 88A of the Resource Management Act 1991 it states:

**88A Description of type of activity to remain the same**

- (1) Subsection (1A) applies if—
- (a) an application for a resource consent has been made under section 88; and
  - (b) the type of activity (being controlled, restricted, discretionary, or non-complying) for which the application was made under section 88, or for which the activity is treated under section 77C, is altered after the application was first lodged as a result of—
    - (i) a proposed plan being notified; or
    - (ii) a decision being made under clause 10(3) of the First Schedule; or
    - (iii) otherwise.
- (1A) The application continues to be processed, considered, and decided as an application for the type of activity that it was for, or was treated as being for, at the time the application was first lodged.
- (2) Notwithstanding subsection (1), any plan or proposed plan which exists when the application is considered must be had regard to in accordance with section 104(1)(b).

The proposed activity is a discretionary activity under the operative Carterton District Plan.

The proposed activity is a non-complying activity under the Proposed Wairarapa Combined District Plan.

Pursuant to Section 88A, the activity status of the proposal is for a non-complying activity.

Under Section 104B it states:

**104B Determination of applications for discretionary or non-complying activities**

*After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—*

- (a) may grant or refuse the application; and
- (b) if it grants the application, may impose conditions under section 108.

Under Section 104D it states:

**104D Particular restrictions for non-complying activities**

- (1) *Despite any decision made for the purpose of section 93 in relation to minor effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—*
- (a) *the adverse effects of the activity on the environment (other than any effect to which section 104(3)(b) applies) will be minor; or*
  - (b) *the application is for an activity that will not be contrary to the objectives and policies of—*
    - (i) *the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
    - (ii) *the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
    - (iii) *both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*



## 5.2 Section 104 – Consideration of Applications

Under Section 104, in assessing the merits of this application, the consent authority is required to consider the following:

- (1) *When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to–*
  - (a) *any actual and potential effects on the environment of allowing the activity; and*
  - (b) *any relevant provisions of–*
    - (i) *a national policy statement*
    - (ii) *a New Zealand coastal policy statement*
    - (iii) *a regional policy statement or proposed regional policy statement*
    - (iv) *a plan or proposed plan; and*
  - (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*
- (2) *When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect.*

This application will address the provisions of Section 104 in the following order:

- Part II Matters – Purpose and principles of the Resource Management Act
- Actual and Potential Effects – Assessment of Environment Effects
- Relevant Provisions of -
  - Regional Policy Statement
  - Regional Soil Plan
  - Regional Discharge to Land Plan
  - District Plan
    - Operative Plan
    - Proposed Plan
  - Other Matters
- Permitted Baseline

## 6. PART II MATTERS

### 6.1 Section 5 - Purpose

Section 5(1) specifies that the purpose of the Act is to “promote the sustainable management of natural and physical resources”.

Sustainable management is defined within Section 5(2) as:

*“sustainable management” means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while-*

- (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) *Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.”*

The subdivision seeks to create rural residential lots within the rural area.

The proposal has provided mitigation measures with regards to the disposal of sewage, the supply of a potable water supply and practical access.

Overall, the proposed development aims to sustainably manage the natural and physical resources of the site.

### 6.2 Section 6 - Matters of national importance

Under Section 6 of the Resource Management Act 1991 it states:

*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 recognise and provide for the following matters of national importance:*

- (a) *The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
- (b) *The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*
- (c) *The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- (d) *The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
- (e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*
- [f] *the protection of historic heritage from inappropriate subdivision, use, and development.]*
- [g] *the protection of recognised customary activities.]*

The site of this application is located in the Rural (Special) Area but this is not identified in the District Plan as an outstanding natural feature or landscape.

### 6.3 Section 7 – Other Matters

Under Section 7 of the Resource Management Act 1991 it states:

*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 have particular regard to—*

- (a) Kaitiakitanga:*
- (aa) The ethic of stewardship:]*
- (b) The efficient use and development of natural and physical resources:*
- [(ba) the efficiency of the end use of energy:]*
- (c) The maintenance and enhancement of amenity values:*
- (d) Intrinsic values of ecosystems:*
- (e) Repealed.*
- (f) Maintenance and enhancement of the quality of the environment:*
- (g) Any finite characteristics of natural and physical resources:*
- (h) The protection of the habitat of trout and salmon:*
- [(i) the effects of climate change:]*
- [(j) the benefits to be derived from the use and development of renewable energy.]*

Under section 7 it relates to ‘other matters’ that shall be given regard to when assessing development of an area. The proposal seeks to be consistent with these other matters, in particular the maintenance and enhancement of amenity values, and the maintenance and quality of the environment.

It is considered that in the context of Sections 6 and 7 the subdivision of the site predominantly for rural and residential use is not inappropriate.



## 7. ACTUAL AND POTENTIAL EFFECTS

This assessment combines the assessment criteria of both the operative Carterton District Plan and the assessment criteria for subdivisions described in Rule 22.1.1 (a) of Proposed Wairarapa Combined District Plan as required by section 104 of the Resource Management Act 1991.

### 7.1 Amenity Values

#### 7.1.1 Amenity

In Rule 22.1.1 (a) of Proposed Wairarapa Combined District Plan states:

- (i) *The extent to which the area's amenity values and character are protected and/or enhanced.*

The Resource Management Act 1991 defines amenity values as;

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

Rural character changes from place to place, and differs markedly from urban character. The proposed development site is on Norfolk Road which is between rural residential lots and pastoral farming and adjacent to industrial development. Some of the characteristics that contribute to the Norfolk Road properties’ rural character are as follows:

- Low density residential development
- Few structures
- Rural animals
- Expansive landscape and open space values

Rural character reflects the predominance of natural elements, but is also modified by the predominance of cultural (human induced) patterns and processes. The process of subdivision and associated rural residential development has the potential to affect this rural character by increasing the intensity of development. In the case of this subdivision, the result will be more intensive land uses that will produce different environmental effects.

There is potential to reduce the purely rural-pastoral character of the area and enhance the rural-residential nature to the environment. The potential addition of houses and the associated structures (garages, etc.) may clutter the environment and reduce open space values. Taking into account the existing vegetation in the surrounding area, however, the applicants’ proposed development of all lots will maintain a visual separation with neighbouring houses.

#### 7.1.2 Precedent & Cumulative Effects

In *Blyth v Tasman DC* EnvC C175/05 it stated that the test for an adverse precedent effect is whether the case can be readily distinguished from others that might arise in the area.

The site is proposed to be zoned Rural (Special) for the following reasons:

1. the site containing an area prone to inundation;
2. the site containing an area including the Aerodrome Obstacle Limitation Surfaces of the Hood Aerodrome; and
3. the site’s proximity to an existing industrial area.

The proposal includes an additional lot that is designed to mitigate any perceived adverse effect from these three areas. The existing dwelling is the closest to the existing industrial area as compared to the potential building area on the additional lot. The lot containing the existing dwelling is less than the complying 4 hectares in order to provide a building platform for the additional lot outside the Flood Hazard Zone and Aerodrome Obstacle Limitation Surfaces of the Hood Aerodrome. The additional lot to be developed is considerably more than 4 hectares. The overall average lot size is considerably more than 4 hectares so the level of density the council desires is maintained.

Due to the proposal's design and location a precedent and cumulative effect will be avoided, remedied and mitigated. Successive applications for other sites will need to be assessed on a case by case basis.

### 7.1.3 "Reverse Sensitivity"

In Rule 22.1.1 (a) of Proposed Wairarapa Combined District Plan states:

- (ii) *The provision to mitigate reverse sensitivity effects where specific site characteristics and the nature of adjoining land uses are likely to generate the potential for complaints about adjoining land based primary production activities.*

The issue of reverse sensitivity has been raised by the consultant planner in the case of the following existing activities:

1. Proximity to the Hood Aerodrome; and
2. Proximity of the Waingawa Industrial Area.

In *Auckland Regional Council v Auckland City Council* (A10/97) the concept of reverse sensitivity means (with important terms underlined):

*"the effects of the existence of sensitive activities on other activities in their vicinity, particularly by leading to restraints in carrying out those activities."*

In *Winstone Aggregates v Matamata-Piako DC* EnvC W055/2004, noted [2004] BRM Gazette 98 the Court cautioned against a view that "reverse sensitivity" consequences should be avoided by constraint on sensitive new activities. The first principle should be that the activity causing the adverse effects should internalise them. Where long-established activities could not internalise the adverse effects, and the continued presence of the activity in the area was nationally, regionally or locally important, this could result in constraints on the neighbouring land uses.

In *Winstone and Auckland Regional Council v Auckland City Council* (1997) NZRMA 205 the court established the principle that a council could include within a plan provisions that provide for reverse sensitivity to protect a polluter both within a zone and between zones so long as all reasonable measures have first been implemented by the polluter to avoid, remedy or mitigate adverse effects.

### **Hood Aerodrome**

Under Section 2.7.4 of the operative plan is states:

*The Airport Protection Area comprises land in the shape of a fan, located at the ends of the landing/takeoff strips and vertically below the takeoff/approach slopes of the strip. The protection area extends from the end of the strips for a horizontal distance of 2250 metres.*

***2.7.4.1 No building, other structure, mast or tree shall be erected or located in the Airport Protection Area so as to penetrate the 1:50 approach slopes, the transitional slopes or the horizontal surface.***

*Explanation: Specific provisions have been included for a small area of land in which the effects of activities on the airport needs to be avoided. In addition, the impact of the airport on other activities need to be avoided.*

The site does not fall within the Airport Protection Area under the operative plan. Furthermore, the purpose of the rule is to avoid structures from interfering in the flightpath of aircraft.

Under Rule 21.1.24 of the proposed plan is states:

**(a) Aerodrome Obstacle Limitation Surfaces**

- (ii) No building, other structure, mast or tree shall be located in the Airport Obstacle Limitation Surfaces so as to penetrate the 1:50 approach slopes, the transitional slopes or the horizontal surface.

The Obstacle Limitation Surfaces are shown on the Planning Maps and defined in Appendix 11. They comprise land in the shape of a fan, located at the ends of the landing/takeoff strips and vertically below the takeoff/approach slopes of the strips.

The site does fall within the Aerodrome Obstacle Limitation Surfaces Area under the operative plan as shown on the planning maps. The site is 2600m metres from the Hood Aerodrome runway. Under the proposed rule, no structure on the site may be more than 52 metres tall. The site does and can comply with this proposed rule.

The inclusion of proposed Rule 21.1.24 (b) specifies an “Air Noise Boundary” around the Hood Aerodrome. The boundaries are very specific and the result of significant research. It states that any habitable room of an existing noise sensitive activity must be designed and constructed to a certain specification for each noise contour. It is therefore irrelevant to consider any noise effects as a reverse sensitivity issue within the Aerodrome Obstacle Limitation Surfaces that is not within the Outer Air Noise Boundary. There is no rule specifying noise levels or mitigation measures within the Aerodrome Obstacle Limitation Surfaces.

In *Baker Boys Ltd* the Court held that an applicant for a resource consent must satisfy the Court that the single purpose of the Act (s5) is met by granting rather than refusing consent. Under the existing environment, a consent authority cannot mitigate reverse sensitivity from purchases of existing properties because purchasing a property is

permitted. A consent authority can, however, mitigate a reverse sensitivity as part of a resource consent condition.

***Waingawa Industrial Area***

The Waingawa Industrial Area is adjacent Norfolk Road. The existing dwelling on the site is on the front lot and there are established shelterbelts along the length of the road frontage and along the side boundaries. To the south east of the site between JNL and the site is a railway and a Rural (Special) zoned property with the Masterton Fault through the centre of it.

The additional lot is further from the Waingawa Industrial Area than the existing dwelling. The closest that a dwelling can be located on Lot 2 is more than 200 metres from the Norfolk Road road corridor and 425 metres from JNL.

Although the proximity of the lots to the Waingawa industrial activities should not generate an adverse that is more than minor, as part of this application it is submitted that a reverse sensitivity consent notice be attached to both new titles.

## 7.2 Natural Resources

### 7.2.1 Landscapes

In Rule 22.1.1 (a) of Proposed Wairarapa Combined District Plan states:

- (iii) *The extent to which existing landforms, significant tree, indigenous vegetation and habitats and waterbodies are protected and/or enhanced.*

The visual effects associated with the proposed subdivision essentially relate to the future development of proposed lots. Such visual effects will be both permanent and temporary in nature. Permanent effects will be largely associated with the construction of houses, sheds, fences, driveways, gardens, and planted trees etc. It is likely that these permanent effects will be reduced in time as each site becomes more established. Temporary visual effects relate mainly to earthworks associated with constructing of dwellings.

The visual impact of the proposed subdivision will have no more than a minor effect on the existing open landscape. The Norfolk Road area is an area of a medium level of residential activity.

Overall, the proposed development of the proposed subdivision will have no more than minor visual impact on neighbouring properties, but over time the structures will blend in to the landscape through landscaping. Taking into account that there is significant visual separation between the site and neighbouring properties due to the presence of established shelter belts the potential effects is minimised considerably.

The reserved control of the proposed plan provides adequate remedies should the council be of a mind to implement additional conditions to mitigate the potential risk to visual impact.

### 7.2.2 Groundwater

In Rule 22.1.1 (a) of Proposed Wairarapa Combined District Plan states:

- (iv) *Whether the subdivision would create adverse effects on groundwater quality in areas where groundwater quality.*

The proposed development of the lots is located near the former Waingawa Freezing works which is an area known for issues relating to high groundwater, nitrate pollution in groundwater and soil issues where development could affect groundwater quality. The site, however, is elevated and on the opposite side of the Masterton Fault. Unless the council has information stating otherwise, the site should not have any issues where mitigation is necessary.

The proposal states that water collection is through rainwater systems and wastewater disposal is through site specific septic disposal. So long as both these methods comply with applicable standards no adverse effects are expected.

### 7.2.3 Water Environment

In Rule 22.1.1 (a) of Proposed Wairarapa Combined District Plan states:

- (v) *The provision for esplanade reserves and/or strips.*



The Waingawa River abuts the site. As part of the proposal the river boundary will be adjusted according to the erosion of the river boundary. An esplanade strip is also proposed.

## 7.3 Physical Resources

In Rule 22.1.1 (a) of Proposed Wairarapa Combined District Plan states:

- (vi) *Whether the subdivision is inconsistent with the requirements of New Zealand Standard 4404:2004 Land Development and Subdivision Engineering and other related standards.*
- (ix) *The cumulative impacts on infrastructure and its efficient use and development, including the capacity, safety and efficiency of the roading and rail network, and the ability of the area's utility services to function efficiently.*

I will assess the potential impact of the development on these services separately.

### 7.3.1 Water supply

In Rule 22.1.1 (a) of Proposed Wairarapa Combined District Plan states:

- (vii) *The provision of a potable water supply.*

Water supply to all proposed lots will be by way of rainwater tank collection. Rainwater collection is not expected to create any significant adverse effects on the environment so long as there is sufficient storage and water quality is maintained.

### 7.3.2 Sewage & Stormwater

In Rule 22.1.1 (a) of Proposed Wairarapa Combined District Plan states:

- (viii) *The adequate and effective disposal of sewage and stormwater, or the ability of every lot to dispose of sewage and stormwater effectively without risk to public health and the environment.*

#### 7.3.2.1 Sewage

Any new dwellings on proposed lots will have to have septic tanks installed to dispose of effluent. Proposed lots are of a sufficient size and shape to provide adequate area for any wastewater disposal to comply with Rules 6 & 7 of the Wellington Regional Council Discharge to Land Plan. A compliant system will not generate any adverse effects on the environment.

#### 7.3.2.2 Stormwater

The creation of any additional soakpits for the disposal of stormwater is not expected to cause any significant adverse effects on the environment.

### 7.3.3 Access

In Rule 22.1.1 (a) of Proposed Wairarapa Combined District Plan states:

- (x) *The adequate provision of access within every lot to meet modern vehicular standards.*

Access to proposed lot 2 will be through an upgraded existing entrance that accesses Norfolk Road. Access to Lot 1 will be achieved through an existing entrance on Norfolk Road.

The design of the new entrances will be formed and sealed according to NZS4404:2004 low usage access standard. So long as both accesses comply with these standards it is not anticipated that any adverse will be generated.

### **7.3.4 Roothing**

Norfolk Road is legally formed and sealed. Norfolk Road could provide access to additional lots without any significant adverse strain on the infrastructure or the environment.

The access to the proposed lots will be formed and has good sight distances and capable of complying with District Plan Standards.

### **7.3.5 Electricity/Telecommunications**

These services for additional lots can be accessed from the existing connections on the site. Due to their close proximity to the proposed lots, no problems are foreseen in supplying these services and that there will be no significant adverse effects on the environment.

### **7.3.6 Energy Efficiency**

In Rule 22.1.1 (a) of Proposed Wairarapa Combined District Plan states:

- (xi) *The provision of renewable energy and energy efficiency in the design and construction methods of the subdivision, and the consequential land use development.*

There are no perceived issues of energy efficiency in relation to the proposed development.

## **7.4 Development & Land Use**

### **7.4.1 Subdivision Design**

In Rule 22.1.1 (a) of Proposed Wairarapa Combined District Plan states:

- (xii) *Whether the design and layout of the subdivision avoids, remedies or mitigates any adverse effects on the surrounding environment.*

The proposed application does intensify the use of the site. The type of development is, however, consistent with other development in the area. While the proposed lot sizes do not comply, the design of the subdivision is to avoid and mitigate the reasons for the proposed zoning. The density of the proposal is consistent with the level that the proposed plan aims to achieve.

Overall, it is expected that the proposed use through the design will avoid where possible any adverse effects on neighbouring uses. The application does not create any lots with an urban character. The rural character of the surrounding is maintained.

### **7.4.2 Intensification**

In Rule 22.1.1 (a) of Proposed Wairarapa Combined District Plan states:

- (xiii) *Whether the proposed subdivision will create an additional lot for building/development or will change the use of the affected land.*

There are no existing issues created by the existing use of the land. Rural residential development is the predominant feature of the surrounding area and additional lots (being lot 2) that comply with the proposed minimum lot size are consistent with the desired intensification for the surrounding area.

### **7.4.3 Building Standards**

In Rule 22.1.1 (a) of Proposed Wairarapa Combined District Plan states:

- (xiv) *The ability of any existing or likely proposed building to comply with all standards in this Plan.*

The lots are designed so that future buildings on the site can comply with all standards of the proposed and operative plan.

### **7.4.4 Setback & Bulk Standards**

In Rule 22.1.1 (a) of Proposed Wairarapa Combined District Plan states:

- (xv) *The ability of every allotment of land to accommodate a conforming dwellinghouse or a principal building and to be utilised in a manner that can comply with the Plan provisions.*

The new boundary between the two proposed lots comply with the district wide setback distances and other applicable standards. Any new dwellings can comply with the setback requirements avoiding the need for a land use consent at building consent stage.

#### 7.4.5 Financial contributions

In Rule 22.1.1 (a) of Proposed Wairarapa Combined District Plan states:

- (xvi) *The potential for financial contributions to avoid, remedy or mitigate any adverse effects on the environment.*

The addition of **one** lot as part of this application will reduce the open space so a reserve contribution is applicable. As **one** additional lot will be accessing a rural road a roading financial contribution is also applicable. No other financial contributions are necessary as all effects are internalised within the site.

#### 7.4.6 Reserves

In Rule 22.1.1 (a) of Proposed Wairarapa Combined District Plan states:

- (xvii) *Whether additional reserve land is necessary, including connections to existing and future reserves, to provide for the increased demand on the reserve network as a result of the subdivision.*

No reserves are necessary as part of this application.

#### 7.4.7 Development

In Rule 22.1.1 (a) of Proposed Wairarapa Combined District Plan states:

- (xviii) *The effects on the safe and efficient operation of Hood Aerodrome.*  
(xix) *The extent to which the subdivision is consistent with the Development/Management/Structure Plan for the area.*

Part of the site contains the Hood Aerodrome Obstacle Limitation Surfaces Area. The design of the subdivision provides a large enough area for a dwelling to be located outside this area. Any development within the Hood Aerodrome Obstacle Limitation Surfaces Area can comply with the proposed rules for this area.



## 7.5 Heritage

In Rule 22.1.1 (a) of Proposed Wairarapa Combined District Plan it states that in assessing applications it must take into account the following general assessment criteria:

- (xx) *The effects on any historic or archaeological site and the surroundings associated with any historic or archaeological site.*
- (xxi) *The effect of the subdivision on the values of any waahi tapu site and any resources of significance to Tangata Whenua.*

There are no heritage sites located on the proposed subdivision site. If any archaeological deposits are identified during any development of the land, the owner/contractor will act in good faith and contact the Historic Places Trust and the relevant Iwi's. It is acknowledged that under Section 99 of the Historic Places Trust Act 1991 it is an offence to destroy, damage or modify an Archaeological site without Authority from the Trust.

## 7.6 Hazards

In Rule 22.1.1 (a) of Proposed Wairarapa Combined District Plan states:

- (xvii) The risk where land is subject to flooding or inundation, erosion, landslip or subsidence, or is within an identified natural hazard high-risk area.*
- (xviii) The risk of fire, and whether mitigation measures will effectively mitigate this risk.*

### 7.6.1 Stability

The land to be developed on each lot is not within an area identified or known for soil instability and does not show any sign of a potential threat of instability.

### 7.6.2 Earthquake Fault

Geological maps do indicate the presence of the Masterton Fault on a neighbouring site but at no stage is this fault located within the site.

### 7.6.3 Flooding

The lower terrace of the site is prone to inundation from the Waingawa River. Development in this area is avoided by the design of the subdivision offering many elevated areas where buildings can be located.

### 7.6.4 Earthworks

In Rule 22.1.1 (a) of Proposed Wairarapa Combined District Plan states:

- (xxiii) The extent to which earthworks are required and the effects of earthworks on the site and surrounding environment.*

No earthworks are proposed as part of this application.

## 8. RELEVANT PLANS AND POLICIES

Relevant Plans and Policies include:

- Regional Plans and Statements –
  - Regional Policy Statement
  - Regional Soil Plan
  - Regional Discharge to Land Plan
- District Plans -
  - Operative Plan
  - Proposed Plan

### 8.1 ‘Relevance’

Where a relevant operative plan is devoid of policy framework, or where a proposed plan introduces a new measure which introduces a more coherent pattern of objectives and policies in a plan, then there is the ability to give more weight to a proposed plan if it is appropriate in the circumstances to do so. Each application should be a case specific consideration.

In *Russell v Dunedin CC* EnvC C92/2003 it states in paragraph 17 and 18:

*“Although the application is contrary to the Proposed District Plan, it cannot be said that the weight to be given to that Proposed Plan under section 104 should be significant having regard to the state of the Proposed Plan.”*

*“In terms of the Act however, we can further conclude that where the state of the plan is still uncertain (as it is here), then the Act intends the more conservative approach to be taken of layering both the Transitional and the Proposed Plan over the application.”*

In the following sections the provisions of plans will be assessed for relevance and whether the proposal complies, if consistent with or is contrary to those relevant provisions.

### 8.2 Regional Policy Statement

The Wellington Regional Policy Statement outlines the resource management issues for the region. Objectives and policies for the various resources in the region are outlined, and methods are described for achieving these.

Land subdivision and the issues of subdivision upon the resources of the Region are identified within the document.

Policies associated with subdivision within the Regional Policy Statement are outlined within various sections of the document, and are identified within the ‘User Guide’.

The proposal aims to be consistent with the policies of the Regional Policy Statement. In particular the proposal will have a neutral or minor effect upon:

- Water quality
- Soil erosion
- Landscape character of the area

### 8.3 Regional Soil Plan

The Regional Soil Plan covers activities associated with soil disturbance, tracking, and vegetation disturbance.

These rules cover activities associated with these land disturbances, excluding any activities associated with a subdivision consent.

Activities involving land disturbance associated with the proposed subdivision consent would be permitted under the Regional Soil Plan.

As the proposal involves land disturbance involved with subdivision consent it is, however, considered that the proposal is consistent with the rules of the Regional Soil Plan.

## **8.4 Regional Discharges to Land Plan**

### **8.4.1 Policy**

*Section 4.2.17-*

*To promote the following provisions for sewage treatment and disposal in relation to new developments:*

- (1) reticulated sewerage systems should be used, where available and practicable;*
- (2) on-site sewage treatment and disposal systems should be designed and located in a manner which reflects the characteristics of the site (including lot size), in order to avoid, remedy or mitigate adverse effects on water quality and human health.*

### **8.4.2 Rules**

New septic systems are required to comply with Rules 6 and 7 of the Regional Discharges to Land Plan.

### **8.4.3 Assessment**

A reticulated sewage system is not available to the site. Any proposed septic systems can comply with Rule 7 of the Regional Discharge to Land Plan.

## 8.5 Operative Carterton District Plan

In assessing the merits of this application, the Carterton District Council is required to have regard to matters set out in Sec 104 of the Resource Management Act 1991. The current operative district plan for the Carterton District is the Carterton District Plan.

### 8.5.1 Rules

This application is a Discretionary Activity under Rule 2.7.10(a) as one or more proposed lots are under the 3 hectare minimum size required. The proposal will be assessed in accordance with the criteria set out in Rule 2.7.10 and Chapter 9 of the District Provisions.

### 8.5.2 Controlled Activities – Reserved Controls

Standard	Description	Assessment
2.7.7.1	<i>The minimum lot size is 3 hectares.</i>	The proposal does not comply with this standard.
2.7.7.1(a)	<i>Whether each lot can be serviced from a supply demonstrated as being adequate and potable to the lots being created</i>	A potable water supply is able to be obtained from all proposed lots.
2.7.7.1(b)	<i>Whether each lot can be serviced by a system that is evidenced to be fully contained for on-site treatment and disposal.</i>	Any new disposal systems must comply with the requirements of the Building Act 1991, and Rules 6 and 7 of the 'Regional Discharge to Land Plan'.
2.7.7.1(c)	<i>Whether the lot can provide a site suitable for building development.</i>	All lots provide many suitable building sites.
2.7.7.1(d)	<i>Every lot must have suitable access to a formed legal road.</i>	Access is available from Norfolk Road.
2.7.7.1(e)	<i>Whether the right of way is adequate to serve the number of proposed lots.</i>	The proposed access is adequate in accordance to relevant standards.
2.7.7.1(f)	<i>Whether esplanade land is required to be set aside.</i>	The proposal does include an esplanade strip that complies with applicable standards.

### 8.5.3 Discretionary Activities - Matters over which Council retains control

Standard	Description	Assessment
2.7.11.1(a)	<i>Whether the scale of the development is generally in keeping with the character and amenity of the rural area;</i>	Due to the design of the proposal and character of the site and the surrounding areas the proposal does provide a character and maintain an amenity consistent with the surrounding area.
2.7.11.1(b)	<i>the nature and scale of the effects created by the activity for example, on noise, glare, dust, and smoke and the methods proposed to avoid, remedy or mitigate the effects;</i>	The design of the proposal provided a building area further away from areas where a reverse sensitivity effect could be generated.
2.7.11.1(c)	<i>any effects on the operation of the road, access provision, provision for vehicle parking, loading and manoeuvring. Access to the State Highway will be</i>	The design of the proposal avoids and mitigates any perceived actual and potential effects.



- carefully assessed;
- 2.7.11.1(e) *the effects on the visual amenity of the rural environment and the proposed mitigation measures in terms of screening and landscape;* The design of the proposal avoids and mitigates any perceived actual and potential effects.
- 2.7.11.1(f) *consideration will be given to the likely cumulative effects where activities are being concentrated in one locality including effects on the rural character and amenity;* The design of the proposal avoids and mitigates any perceived actual and potential effects.
- 2.7.11.1(g) *the proposed means of waste disposal and other required servicing including water supply. A solid waste management plan may be required.* Any new disposal systems can comply with the requirements of the Building Act 1991, and Rules 6 and 7 of the 'Regional Discharge to Land Plan'.

## 8.6 Section 104D ‘Contrary to’ test

Section 104D(b) states:

**104D Particular restrictions for non-complying activities**

- (1) *Despite any decision made for the purpose of section 93 in relation to minor effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—*
- (b) *the application is for an activity that will not be contrary to the objectives and policies of—*
- (i) *the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
  - (ii) *the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
  - (iii) *both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*

Cooper J said in *Rodney DC v Gould and Gillian* 11/10/04 HC Auckland CIV2003-485-2182 paragraph 76:

*“Put simply, the scheme of the Act for non-complying activities does not work if rules are included among the matters to be considered under [s104D(1)(b)].”* (statute was renumbered in RMAmA03)

In order to assess the proposal against Section 104D (1)(b) of the Act, the term ‘contrary’ needs to be defined. The consultant planner states in paragraph 8.1:

*That is, that the proposal is not “opposed to in nature, different, or opposite to” the objectives and policies.”*

This test is taken from *New Zealand Rail Ltd v Marlborough District Council* (1993) 2NZRMA 449. It should be noted that the term ‘not contrary’ is used rather than ‘consistent’ or ‘compliant’ suggesting there is higher threshold of incompatibility than mere complying with a rule.

In the appeal Greig J considered this by stating (*New Zealand Rail Ltd v Marlborough District Council* [1993] NZRMA 70):

*“...The essential question was whether the consent to the proposed use and development was “contrary” or not to the relevant objectives and policies. The Tribunal correctly I think, with respect, accepted that that should not be restrictively defined and that it contemplated being opposed in nature, different to or opposite. The Oxford English Dictionary in its definition of “contrary” refers also to repugnant and antagonistic. The consideration of this question starts from the point that the proposal is already a non-complying activity but cannot, for that reason alone, be said to be contrary. “Contrary” therefore means something more than just non-complying.”*

Greig J states that the “opposed to in nature, different, or opposite to” test sets a lower threshold than a standard of “antagonism” or “repugnance.” He is concerned that there needs to be a clearer differentiation between non-compliance with a rule and being contrary to a policy and an objective. “Antagonism” or “repugnance” presents the proposition that a proposal would need to be flagrantly and deliberately against the policies in order to meet the threshold of being ‘contrary.’

### 8.6.1 Objectives & Policies - Rural Environment

Objectives outlined within the District Plan for the Rural Environment are:

Objective	Description	Assessment
2.3.1	<i>Maintain and enhance the character and amenity of the rural area.</i>	The proposal contains measures that maintain the character of the rural area and is therefore consistent and not contrary to this relevant provision.
2.3.2	<i>Protect significant natural features and areas from adverse effects of development.</i>	The proposal is not near any area of significant natural features and is therefore consistent and not contrary to this relevant provision.
2.3.3	<i>Ensure that development does not contribute to the susceptibility of land to erosion.</i>	The proposal is not near an area prone to erosion and is therefore consistent and not contrary to this relevant provision.
2.3.4	<i>Ensure that development does not adversely impact upon susceptibility to flooding or the availability of water.</i>	The proposed areas of future development avoids areas prone to flooding or groundwater issues and is therefore is consistent and not contrary to this relevant provision.
<b>Policy</b>		
2.4.1	<i>Manage the density of development to deal with adverse effects on the open rural amenity.</i>	Due to the design of the proposal and character of the site and the surrounding areas the proposal is consistent and not contrary to this relevant provision.
2.4.2	<i>Manage the adverse effects of activities to limit their impact on the quality of the rural environment.</i>	Due to the design of the proposal and character of the site and the surrounding areas the proposal is consistent and not contrary to this relevant provision.
2.4.3	<i>Any activity utilising the land resource should be managed in a sustainable manner so as to avoid soil loss.</i>	The proposal is consistent and not contrary to this relevant provision.

### 8.6.2 Objectives & Policies - Natural Hazards

Objective	Description	Assessment
10.2.1	<i>Avoid or mitigate the adverse effects of natural hazards on the environment within the District.</i>	The proposed areas of future development avoids areas prone to flooding or groundwater issues and is therefore is consistent and not contrary to this relevant provision.
<b>Policy</b>		
10.3.1	<i>Avoid or mitigate the adverse effects of natural hazards on the environment within the District.</i>	The proposed areas of future development avoids areas prone to flooding or groundwater issues and is therefore is consistent and not contrary to this relevant provision.
10.3.2	<i>To recognise the risk of natural hazard events to existing activities.</i>	The proposed areas of future development avoids areas prone to flooding or groundwater issues and is therefore is consistent and not contrary to this relevant provision.
10.3.3	<i>To encourage people to be prepared for the occurrence of natural hazard events through the provision of information and advice.</i>	A consent notice informing owners of the risks is consistent and not contrary to this relevant provision.

## 8.7 Proposed Wairarapa Combined District Plan

In assessing the merits of this application, the Carterton District Council is required to have regard to matters set out in Sec 104 of the Resource Management Act 1991, including a proposed plan.

Under the Plan, Resource Consent is required prior to any subdivision of land (Rule 20).

This application meets the criteria as a Non-Complying Activity in the Rural (Special) Area under proposed Rule 20.1.7.(b).

Part of the application site is, however, identified as part of a Flood Hazard Area that is also a Discretionary Activity under Rule 20.1.5(h)(ii).

### 8.7.1 Subdivision Standards – Controlled Activities

Under Rule 20.1.2 (f) (3) of the Proposed Wairarapa Combined District Plan it states:

Standard	Description	Assessment
<b>20.1.2</b>	<b>Rural (Special) Zone</b>	
	<b>(f) Minimum Lot Standards</b>	
	<b>(i)</b> <i>Any subdivision within the Rural (Special) Zone shall comply with the following:</i>	
(1)	<i>Minimum lot area of 4 hectares.</i>	The additional Lot 2 does comply but not Lot 1 containing the existing dwelling. The average lot size is 5 hectares, however.
(2)	<i>Each front lot shall have a minimum frontage of 100m; and</i>	Does comply. The site has a frontage of 100 metres.
(3)	<i>If there are two or more rear lots they shall share a single vehicle access, and shall be designed in accordance with the requirements for accessways under this Plan; and</i>	Does comply. The entrance is shared for both lots.
(4)	<i>Each lot must contain a building area outside a buffer distance of 25m from all existing boundaries of the parent property, except the buffer distance shall be 10m from the road front boundary of sealed roads.</i> <u><i>“Building Area”</i></u> <i>For the purpose of this rule, building area shall be defined as that area (or areas) shown within each lot on a proposed subdivision plan that:</i>	Does comply. There is an existing system for Lot 1 and Lot 2 is large enough to contain areas to dispose of effluent.
	- <i>Contains any dwelling house to be located on the lot, and which is able to meet the minimum development standards for dwellings in the Rural (Primary Production) Zone; and</i>	Complies.
	- <i>Has minimum dimensions of 15m by 12m; and</i>	Complies.
	- <i>Shall be able to satisfactorily dispose of effluent on-site;</i>	Complies.

While there are similar policies and objectives for the Rural (Special) and Rural( Primary Production) Zones that influence the rules and standards for these zones, I provide the following rules and standards for the Rural (Primary Production) Zone as a comparison.

## 20.1.2 Rural (Primary Production) Zone

### (e) Minimum Lot Standards

- (i) *Any subdivision within the Rural (Primary Production) Zone shall comply with any one of the following:*

#### Existing Dwelling Lot Option

- |  |           |
|--|-----------|
| (2) <i>One lot of less than 4 hectares if that lot contains an existing dwelling, provided that:</i>   | Complies. |
| (a) <i>The dwelling complies with the permitted activity setback standards in relation to the new lot boundaries; and</i>  | Complies. |
| (b) <i>All effluent disposal systems can be contained within the lot; and</i>  | Complies. |
| (c) <i>The balance lot must have a minimum area of 4 hectares; and</i>   | Complies. |
| (d) <i>The Certificate of Title for the site was issued before 26 August 2006, or resource consent to subdivide was granted for the site before 26 August 2006; or</i> | Complies. |

This application meets the criteria as a Controlled Activity in the Rural (Primary Production) Area under proposed Rule 20.1.2.(f)(i)(2). The application site is, however, identified as a Flood Hazard Area so is a Discretionary Activity under Rule 20.1.5(a)(v).

## 8.7.2 Subdivision Standards – Discretionary Activities

Standard	Description	Assessment
<b>All Environmental Zones</b>		
(h)	<i>Any subdivision that creates a new allotment in which one or more of the following circumstances apply:</i>	
	(iii) <i>The allotment is within a Flood Hazard Area or Erosion Hazard Area;</i>	Part of the site is within a Flood Hazard Zone.



### 8.7.3 Objectives & Policies – Rural Zone

	Description	Assessment
<b>4.3.1</b>	<b>Objective Rur1 – Protection of Rural Character &amp; Amenity</b>	
	<i>To maintain and enhance the amenity values of the Rural Zone, including natural character, as appropriate to the predominant land use and consequential environmental quality of different rural character areas within the Wairarapa.</i>	The proposal subdivides a 10 hectare block into 2 blocks. The design of the proposal, in its attempt to avoid, remedy and mitigate any potential and actual effects on the rural environment, is consistent and not contrary to this relevant provision.
<b>4.3.2</b>	<b>Rur1 Policies</b>	
(a)	<i>Identify areas within the Rural Zone where the predominant land use is primary production, which needs to operate and develop effectively – Rural (Primary Production) Zone.</i>	The proposal is consistent and not contrary to this relevant provision.
(c)	<i>Identify areas within the Rural Zone in which there are particular land use issues that require specific management approaches, including urban growth, flood hazards, and the operational requirements of key infrastructural facilities and intensive primary production activities – Rural (Special) Zone.</i>	The design of the proposal is consistent and not contrary to this relevant provision.
(d)	<i>Maintain and enhance the amenity values, including natural character, of the differing Rural character areas through appropriate controls over subdivision and the bulk, location and nature of activities and buildings, to ensure activities and buildings are consistent with the rural character, including an appropriate scale, density and level of environmental effects.</i>	The design of the proposal is consistent and not contrary to this relevant provision.
<b>4.3.4</b>	<b>Objective Rur2 – Provision for Primary Production and Other Activities</b>	
	<i>To enable primary production and other land uses to function efficiently and effectively in the Rural Zone, while the adverse effects are avoided, remedied, or mitigated.</i>	The design of the proposal is consistent and not contrary to this relevant provision.
<b>4.3.5</b>	<b>Policies Rur2</b>	
(a)	<i>Provide for primary production activities as permitted activities in the Rural (Primary Production) Zone and Rural (Special) Zone, subject to such environmental standards as necessary to</i>	The design of the proposal is consistent and not contrary to this relevant provision.

	<i>avoid, remedy or mitigate any adverse effects of primary production activities without unreasonably affecting landowners' ability to use their land productively.</i>	
(b)	<i>Provide for other land uses as permitted activities in the Rural (Primary Production) Zone and Rural (Special) Zone, subject to such environmental standards as necessary to avoid, remedy or mitigate any adverse effects.</i>	The design of the proposal is consistent and not contrary to this relevant provision.
(c)	<i>Ensure activities that are potentially sensitive to the adverse external effects of primary production and other activities, particularly those activities with significant external effects, are either appropriately sited, managed or restricted to avoid or mitigate these effects.</i>	The design of the proposal is consistent and not contrary to this relevant provision.
(d)	<i>Ensure that new primary production and other activities that may have significant external adverse effects are appropriately sited from sensitive land uses or are otherwise controlled to avoid or mitigate such effects.</i>	The design of the proposal is consistent and not contrary to this relevant provision.
(e)	<i>Provide interface controls on primary production and other activities that may have adverse effects on adjoining activities.</i>	The design of the proposal is consistent and not contrary to this relevant provision.
<b>4.3.7</b>	<b>Objective Rur3 – Interzone Management</b> <i>To ensure the amenity values of adjoining zones are reasonably protected from the adverse effects of activities within the Rural Zone.</i>	The design of the proposal is consistent and not contrary to this relevant provision.
<b>4.3.8</b>	<b>Rur3 Policy</b>	
(a)	<i>Manage the effects of Rural Zone activities to ensure that the environmental qualities and characteristics in the adjoining zones are not unreasonably degraded, bearing in mind their location adjacent to a functioning primary production environment.</i>	The design of the proposal is consistent and not contrary to this relevant provision.

## 8.7.4 Objectives & Policies – Subdivision, Land Development

	Description	Assessment
<b>18.3.1</b>	<b>Objective SLD1 – Effects of Subdivision &amp; Land Development</b> <i>To ensure subdivision and land development maintains and enhances the character, amenity, natural and visual qualities of the Wairarapa, and protects the efficient and effective operation of land uses and physical resources.</i>	The design of the proposal is consistent and not contrary to this relevant provision.
<b>18.3.2</b>	<b>SLD1 Policies</b>	
<b>(a)</b>	<i>Manage subdivision and land development in a manner that is appropriate for the character and qualities of the environmental zone in which it is located, while recognising that such change may alter the character and qualities.</i>	The design of the proposal is consistent and not contrary to this relevant provision.
<b>(b)</b>	<i>Provide subdivision where it is compatible with the physical characteristics of the site, provided any adverse environmental effects are avoided, remedied or mitigated.</i>	The design of the proposal provides suitable building platforms that is consistent and not contrary to this relevant provision.
<b>(d)</b>	<i>Set minimum allotment sizes for the Residential and Rural Zones that provide a baseline for maintaining the character, scale and intensity of development of their Zones, including their servicing capacity, while recognising the differing constraints, qualities and characteristics within each zone.</i>	The design of the proposal is consistent and not contrary to this relevant provision. The proposal provides an average lot size higher than the minimum lot size. The proposal is also consistent with the permitted baseline for the area.
<b>(f)</b>	<i>Limit the intensity of subdivision and land development in those rural parts of the Wairarapa in which significant intensification may have adverse effects on the risks from natural hazards, the operational requirements of key infrastructural and land use assets, water supply catchments, and the growth of urban areas.</i>	The design of the proposal avoids risk areas and is therefore consistent and not contrary to this relevant provision.
<b>(g)</b>	<i>To provide for the subdivision of rural land for rural-residential purposes through minimum standards that seek to:</i>	
i.	<i>Avoid or mitigate any significant potential adverse effects on the viability and operational requirements of any productive use of any adjacent rural or industrial land;</i>	The design of the proposal is consistent and not contrary to this relevant provision.
ii.	<i>Ensure allotment sizes and the pattern of subdivision maintains the open rural character, particularly from public roads;</i>	The design of the shared entrance is consistent and not contrary to this relevant provision.
iii.	<i>Ensure allotments are able to</i>	The design of the proposal allows compliance

	<i>accommodate the likely use in accordance with the other requirements of the Plan;</i>	with all other relevant rules and is therefore consistent and not contrary to this relevant provision.
iv.	<i>Avoid adverse effects on the safe and efficient use of roads, and pedestrian and cycling networks;</i>	The design of the shared entrance is consistent and not contrary to this relevant provision.
v.	<i>Satisfactorily avoid or mitigate the potential reverse sensitivity effects in relation to either nearby industrial and rural productive activities, activities allowed by the zoning, or anticipated urban growth;</i>	The design of the proposal avoids reverse sensitivity issues and is therefore consistent and not contrary to this relevant provision.
vi.	<i>Ensure the actual and potential effects on rural character, amenity and natural values will not be compromised by intensive and ad hoc urban development and/or through the cumulative effects of rural-residential development;</i>	The design of the proposal provides building areas away from where an adverse effect may be created and is therefore consistent and not contrary to this relevant provision.
vii.	<i>Ensure the sewage effluent from all lots can be effectively disposed without any potential adverse effects on the environment.</i>	The design of the proposal is consistent and not contrary to this relevant provision.
viii.	<i>Ensure a potable water supply is available on each allotment.</i>	The design of the proposal is consistent and not contrary to this relevant provision.
(h)	<i>Allotments below the minimum standards in the Rural Zone will not be allowed unless there are exceptional or unique circumstances, particularly if one or more of the following matters applies:</i>	Section 104D of the Resource Management Act 1991 states clearly that the second ‘gateway test’ is that ‘the application is for an activity that will not be <u>contrary to</u> the objectives and policies of <u>both</u> the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity’. A provision of a proposed plan stating that subdivision will not be allowed unless there are ‘exceptional or unique circumstances’ is beyond the powers conferred by the Act to the territorial authority.
i.	<i>The proposed subdivision is likely to have a significant adverse effect on the viability and operational requirements of any productive use of adjacent rural or industrial land, including activities allowed by the zoning, or anticipated urban growth;</i>	It should be noted that the provisions of i-ix are similar to those in (g) and have previously been addressed. Due to (h) being <i>ultra vires</i> , assessment under this provision should not be given any weight.
ii.	<i>The allotment sizes and/or pattern of the subdivision would not maintain the open rural character, particularly from public roads and vantage points;</i>	
iii.	<i>Allotments are unable to accommodate the likely use in accordance with the other requirements of the Plan;</i>	
iv.	<i>The subdivision would require an extension or upgrading of any service or road that is not in the economic interest of the District;</i>	
v.	<i>The subdivision would compromise the safe and efficient use of the road network;</i>	

vi.	<i>Any exacerbation of risks from flooding or other natural hazards that is likely to occur through intensified landholdings, occupation or where capital and infrastructural investment is more than minor;</i>	
vii.	<i>The proposal is unlikely to be able to satisfactorily and reliably dispose of effluent;</i>	
viii.	<i>The proposal is likely to lead to ad hoc urban development and/or adverse effects on rural character, amenity, and natural values through the cumulative effects of rural residential development in the vicinity;</i>	
ix.	<i>The proposal is unable to provide a potable supply of water.</i>	
(j)	<i>To provide for subdivision below the minimum standards if it results in the more effective management of network utilities or the protection of significant heritage assets and natural areas.</i>	
(k)	<i>Ensure that subdivision and land development adjoining State Highways other arterial roads and the Wairarapa railway, avoid, remedy or mitigate any adverse effects on the safe and efficient operation of the roading and networks.</i>	
(l)	<i>Manage the intensity of development along strategic arterial roads to reduce the cumulative adverse effects on the safe and efficient functioning of such links.</i>	
(m)	<i>To support the use of integrated and innovative subdivision design and best practice to maintain and enhance the character and qualities of the environmental zone in which it is located.</i>	

#### **18.3.4 Objective SLD2 – Effects of Servicing Requirements**

*To ensure that subdivision and land development is appropriately serviced to provide for the likely or anticipated use of the land.*

Each lot is able to be serviced on-site.

#### **18.3.5 SLD2 Policies**

(c)	<i>Avoid, remedy or mitigate any adverse effects resulting from stormwater discharges.</i>	Stormwater discharges is not an issue for the site.
(d)	<i>Ensure that owners of unserviced lots</i>	Each lot is able to be serviced on-site.

*are responsible for providing a potable water supply and for the disposal of sewage and stormwater in a manner that avoids, remedies or mitigates any adverse effects.*

- (e) *Promote infrastructure and servicing design solutions for development that avoids, remedies or mitigates significant adverse environmental effects on natural and physical resources, ecosystems, and amenity values (for example water bodies).*

Each lot is able to be serviced on-site.

### 18.3.7 **Objective SLD3 – Sustainable Infrastructure Development**

*To maintain sustainable and efficient public infrastructure that meets the additional demand generated by development and subdivision, while avoiding, remedying or mitigating adverse effects on the environment.*

Financial contributions for roading and reserve are applicable to the proposal.

### 18.3.8 **SLD3 Policies**

- (a) *Require an equitable contribution from developers where new connections to the Councils' water supply or wastewater disposal services will contribute to a future need for upgrades or extensions to the services.*

Financial contributions for roading and reserve are applicable to the proposal.

- (b) *Require a contribution where an activity necessitates road upgrading to avoid, remedy, or mitigate adverse effects on the road or the wider environment.*

Financial contributions for roading and reserve are applicable to the proposal.

## 9. PERMITTED BASELINE

Under Section 5 of the Resource Management Act 1991 it states:

- (2) *In this Act, “sustainable management” means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—*
- (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

While the District Plan states that the purpose of the Rural Area is to provide a rural character, in assessing this application it must assess the environmental effects this application has on those affected by the proposed subdivision. If the properties affected are not ‘purely rural’ in nature, and in fact more in line with ‘rural residential’ lifestyle lots, then we submit that this application does not generate an adverse effect.

### 9.1 “As of right”

The term ‘permitted baseline’ is described in the case *Smith Chilcott Ltd v Auckland CC* [2001] 3 NZLR 473 where it is stated that when considering permitted baseline the consent authority can take into consideration a fully complying development.

Under the operative plan the following activities are permitted for the site:

- 1 dwelling (Rule 2.7.2.2 (a));
- As well as a dwelling, 1 accessory flat being a self contained dwelling with an area of less than 75m<sup>2</sup> (Rule 2.7.2.2 (b));
- Dwellings to be at least 8 metres from front and rear boundaries, 5 metres from side boundaries (Rule 2.7.2.1);
- Other buildings to be at least 16 metres from front boundaries, 12 metres from side and rear boundaries (Rule 2.7.2.1);
- A dwelling of building height of no more than 10 metres (Rule 2.7.2.1);
- Other buildings of building height of no more than 10 metres (Rule 2.7.2.1);

Under the operative plan for the Rural Area only boundary adjustments that will not create additional buildings lots and subdivision involving different parts of a building are a permitted activities. The proposed activity does not meet the criteria for a controlled activity as the proposed lots are less than 3 hectares. The proposed activity is therefore a discretionary activity. The site could include a 3 lot subdivision of lots over 3 hectares as a controlled activity.

Under the proposed plan the following activities are permitted for the site:

- 1 dwellings with no site coverage restrictions (Rule 4.5.2(e)(ii));
- Dwellings to be at least 25 metres from all boundaries (Rule 4.5.2(b));
- Other buildings to be 10 metres from all boundaries (Rule 4.5.2(c));
- A building height of 15 metres (Rule 4.5.2(a)(i)); and
- Accessory buildings with no size limit.

Under the proposed plan for the Rural (Special) Area no subdivision is a permitted activity. The proposed activity does not meet the criteria for a controlled activity under Rule 20.1.2(f).

In *Bayley v Manukau CC* [1999] 1 NZLR 568 the following test is applied when assessing effects:

*“The appropriate comparison of the activity for which the consent is sought... is with what either is being lawfully done on the land or could be done there as of right.”*

In *Baker Boys Ltd v Christchurch CC* (1998) 4 ELRNZ 297 the Court held that an applicant for a resource consent must satisfy the Court that the single purpose of the Act (s5) is met by granting rather than refusing consent. The operative and proposed plan provides the tools to the consent authority in the form of reserved control for the purpose of maintaining the amenity the district plans aim to achieve. In the case of the site as present, there is visual separation between the existing developed part of the site with neighboring lots. The eventual development of Lot 2 will blend the developed areas into the landscape therefore mitigating any perceived intensification.

## 9.2 Existing Environment

In more recent case law (*Paremata Residents Assn Inc v Porirua CC* EnvC W41/2003) the Environment Court held that the comparison of the proposed use and the existing uses should extend to the difference in the character and nature of the activities. The amended proposed activity is more in line with the activities of its surrounds incorporating rural residential activities with purely rural activities.

In *Stalker v Queenstown Lakes DC* (EnvC) C40/2004 the Court also took into account, as part of the existing environment, the existing activities on the site pursuant to existing use rights, when determining whether consent should be granted for an extension of those activities.

## 9.3 Controlled Activities

*Glenfield Ratepayers & Residents Association Assn (Inc) v North Shore CC* Env A138/02 applied the permitted baseline approach of *Arrigato* in respect of activities “as of right”, “permitted” or “permitted by the plan” was interpreted as not referring exclusively to “permitted activities” as defined in the Act. The Court held that it could extend in appropriate circumstances to controlled activities where it was reasonably clear that consent would be granted because the discretion over which a council had reserved control would not apply.

Alternatively, as a controlled activity, the proposal could be amended to include 2 lots of at least 4 hectares in area.



## 9.4 Conclusions

Under Section 104(2) of the Resource Management Act 1991 which states:

*When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect.*

The permitted baseline therefore not only includes an activity permitted under a plan, but also the activities allowed under a resource consent as well as existing uses protected under Section 10 of the Act.

The environment that this application should be assessed against include the following:

- Numerous lots within the vicinity of the site ranging between 7070m<sup>2</sup> (Lot 2 DP 346317) and 1.3 hectares (Lot 1 DP 323267);
- The large number of buildings on Lot 4 DP 5347; and
- Lot 3 DP 5347 containing a large number of large buildings.

Taking these factors into account, along with the average lot size for the proposal being higher than the operative and proposed lot sizes, the potential and actual effects of the proposal are therefore considered less than minor.

## APPENDIX 1: Certificate of Title



### COMPUTER FREEHOLD REGISTER UNDER LAND TRANSFER ACT 1952

Search Copy



R. W. Muir  
Registrar-General  
of Land

**Identifier** WN35D/192  
**Land Registration District** Wellington  
**Date Issued** 01 December 1989

**Prior References**  
WN9B/1015

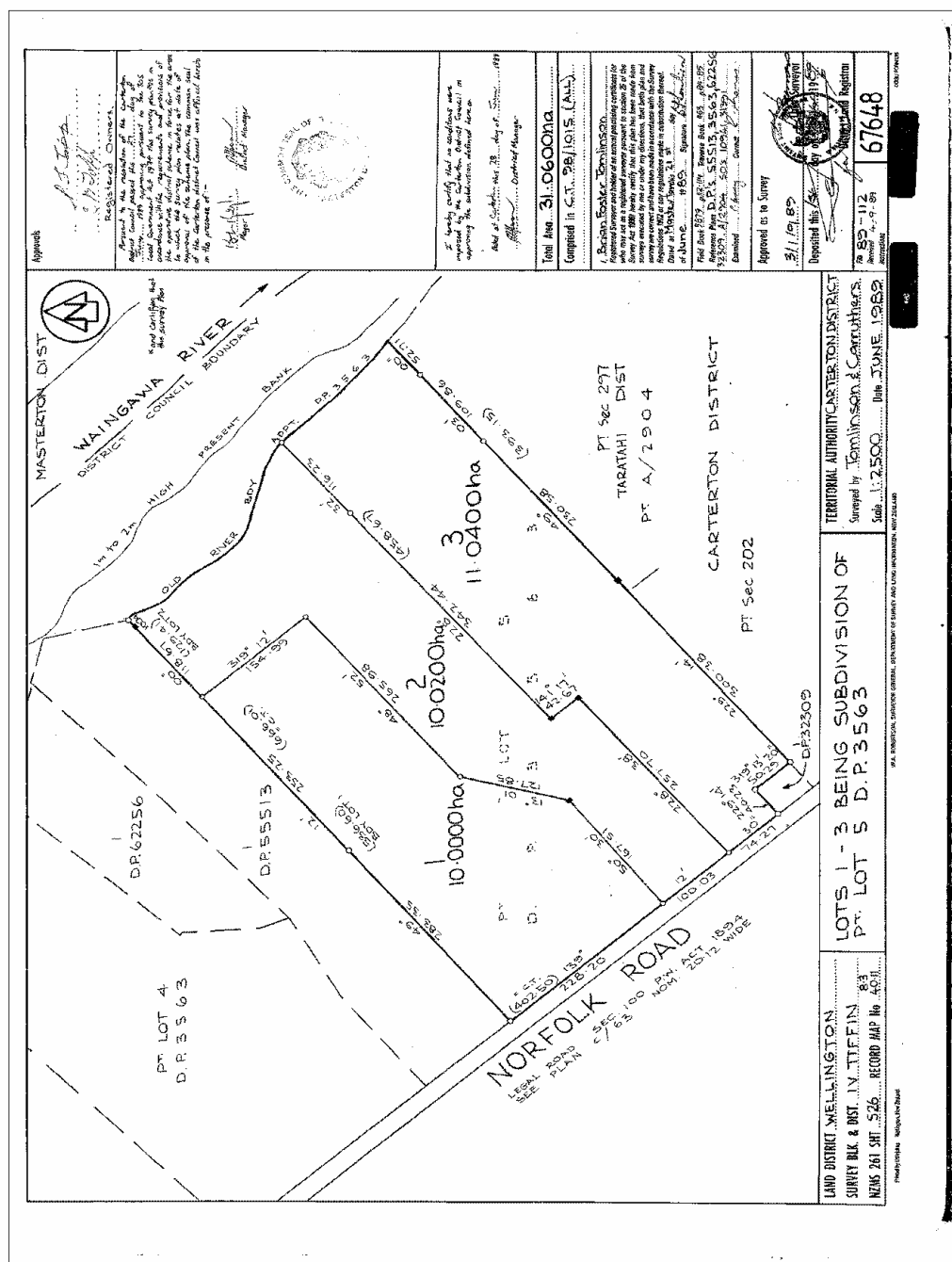
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<b>Estate</b>	Fee Simple
<b>Area</b>	10.0200 hectares more or less
<b>Legal Description</b>	Lot 2 Deposited Plan 67648

**Proprietors**  
Lance Brett McGhie and Barbara Lois McGhie

---

**Interests**  
B451225.3 Mortgage to ANZ Banking Group (New Zealand) Limited - 22.8.1995 at 11.57 am

**WN35D/192**





Memorandum of Easements			
Purpose	Shown	Servient Tenement	Dominant Tenement
Right of Way, Electricity, Telecommunications, Water.	A	Lot 1	Lots 2

**Note:** Areas and distances are subject to the final survey.

Prepared for:	McGhie
Drawn Date:	3 June 2008
Territorial Authority:	Carterton District Council
Scale:	1:3000 @A4
Reference #:	08-026 Rev.B



**TOMLINSON & CARRUTHERS**  
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**Lots 1-2 being a proposed subdivision of  
Lot 2 Deposited Plan 67648  
contained in certificate of title WN35D/192**

**Scheme Plan**