

# RESOURCE CONSENT APPLICATION FOR:

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## ***Ontrack, Corner of Wyndham Street & Belvedere Road , Carterton District***

**8 Lot Subdivision  
Railway Designated Land  
Discretionary Activity**  
(Section 77C(1)(b) applies as no subdivision standards apply)



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

**Date:** 25 August 2008      **Ref:** 08/117  
**To:** Carterton District Council  
P O Box 9  
CARTERTON

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

Ontrack,  
Wyndham Street,  
Carterton

**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 railway lot into 7 urban residential lots & 1 road to vest.  
Location: Corner of Wyndham Street & Belvedere Road, Carterton.  
Current Zoning: Railway Designation  
Type of Activity: 

Controlled	<input type="checkbox"/>	Discretionary	<input checked="" type="checkbox"/>	Restricted Discretionary	<input type="checkbox"/>	Non-Complying	<input type="checkbox"/>
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Notification: 

Public Notification	<input type="checkbox"/>	Limited Notification	<input checked="" type="checkbox"/>	Non Notified	<input type="checkbox"/>
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Non-complying aspects: Discretionary under Section 77C(1)(b) of the Act as resource consent is required for subdivision but no standards or activity status set in operative or proposed plans.

## LEGAL

Title Reference:	WN34B/882	Legal Description:	Part Lot 2 Section 206 Taratahi District
Legal Roads:	Wyndham Street	Encumbrances:	Railway Designation & SOE 1986 Act.
Rights of Way:	None	Reserves:	None

## PLANNING

Existing Activities: 

Conventional Pastoral	<input type="checkbox"/>	Horticulture	<input type="checkbox"/>	Viticulture	<input type="checkbox"/>
Intensive Cropping	<input type="checkbox"/>	Cropping	<input type="checkbox"/>	Forestry	<input type="checkbox"/>
Existing Dwelling	<input type="checkbox"/>	Other Buildings/ Uses:	Bare land.		

  
Proposed Use: 

Urban Residential	Urban Residential/Lifestyle	Yes
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Number of Lots: 8    Sizes: 5 x 400m<sup>2</sup>, 410m<sup>2</sup>+ ROW, 460m<sup>2</sup> + ROW, 63m<sup>2</sup> (road to vest)  
Proposed building sites: 

Available	Yes	Specified	No	Earthworks	None
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Proposed: easements: Utilities and access to lots 4 & 5.  
rights of way: 

To lots 4 & 5.	reserves	None
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## DESIGNATIONS/ HAZARDS

Designations:	Railway Designation	Significant Trees:	None.
Drains/ Water Courses:	None	Rivers/ Lakes:	None
Physical Nature of land:	Flat land	Soil Type:	n/a
Hazards:	Ocean	River	No
		Earthquake fault	No

## PROPOSED ACCESS

From legal road	Wyndham Street.	Formed	Yes	Sealed	Sealed
From right of way	To lots 4 & 5.	Formed	Yes	Sealed	Sealed

## UTILITIES

Existing Services:	None.			
Proposed Services:	Water Supply	Urban Supply	Stormwater	Onsite soak pits.
	Sewage	Urban system	Electricity/ Telephone	Available at boundary.

## ASSESSMENT OF ENVIRONMENTAL EFFECTS

Attached to this application.
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## CONSULTATION

Greater Wellington Regional Council	No	Railways	Yes	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 Monday, 25 August 2008.

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

Address for service: -





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

## **1. INTRODUCTION**

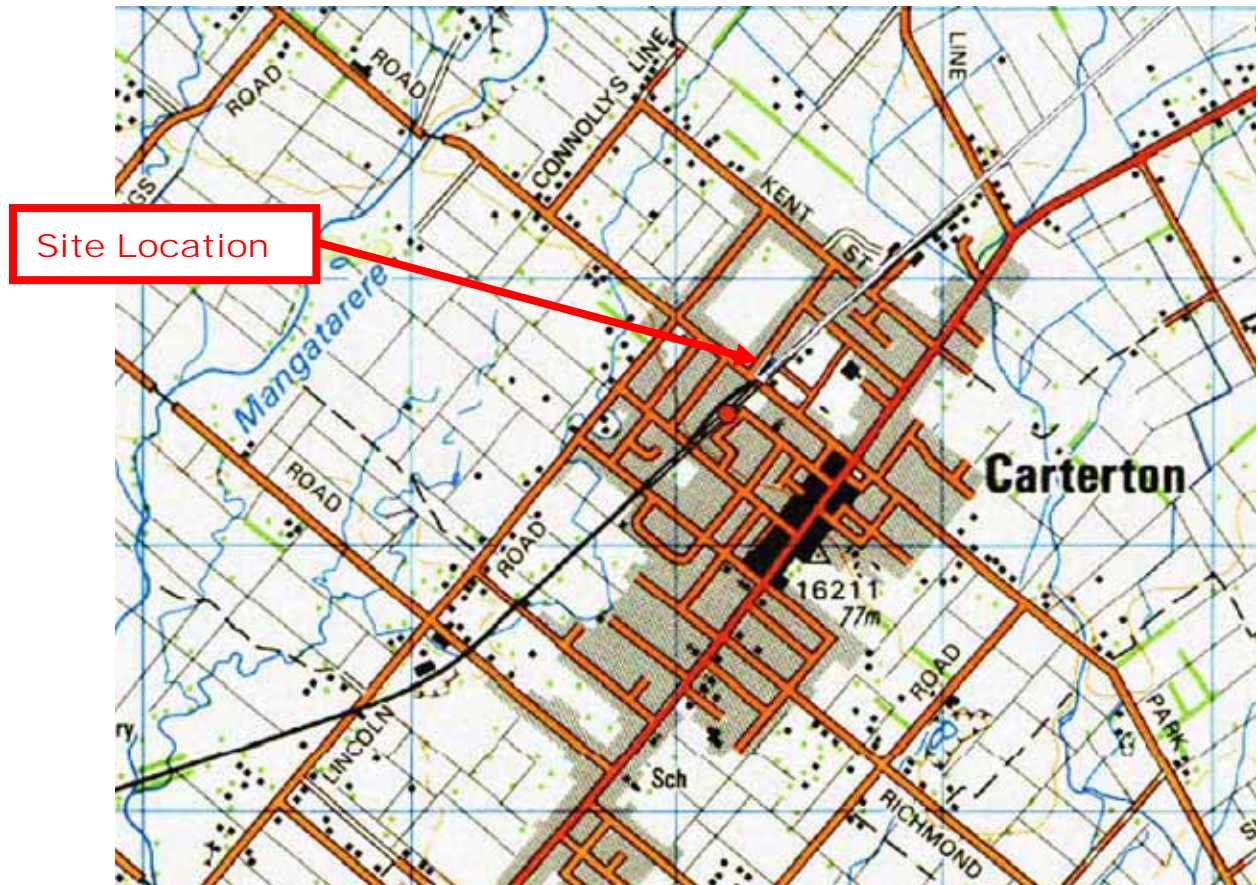
This report represents an Assessment of Effects on the Environment for an eight lot subdivision on railway land. The activity is Discretionary under the Carterton District and the Proposed Wairarapa Combined District Plan under Section 77C(1)(b) of the Act as subdivision consent is required but there are no standards for the proposed activity. 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 at the corner of Wyndham Street & Belvedere Road on railway designated land in the Carterton urban area. The land proposed to be subdivided is approximately 3058m<sup>2</sup> in size. The legal description of the site is Part Lot 2 Section 206 Taratahi District contained within the Certificate of Title WN34B/882.

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

The site is located on railway designated land in the Carterton urban area environment of the Carterton District.

The site is bare and planted in grass with a few trees.

Access to the site is by means of an access to Wyndham Street.

Services available to the site include urban water, urban sewerage, electricity and telecommunications available at the boundary with Wyndham Street. There are currently no connections to these services.

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



### **3. PROPOSAL**

#### **3.1 Proposal Description**

The proposal is to subdivide one lot held on one title into 8 lots. The sizes for the 8 proposed lots are:

<b>Lot</b>	<b>Size</b>
1	400m <sup>2</sup>
2	400m <sup>2</sup>
3	400m <sup>2</sup>
4	410m <sup>2</sup> +ROW
5	460m <sup>2</sup> +ROW
6	400m <sup>2</sup>
7	400m <sup>2</sup>
8	63m <sup>2</sup>

Lots 1-7 are to be developed into Urban Residential lots. Lot 8 is to be vested as road reserve to widen Belvedere Road.

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 Access**

Access to proposed lots 1-3 and Lots 6-7 will be through separate entrances from Wyndham Street. Lots 4 & 5 will shared an entrance as part of a right of way.

The design of the accessways will be formed and sealed according to NZS4404:2004 low usage access standard.

#### **3.3 Water supply**

Any future dwelling will source its water from the urban supply.

#### **3.4 Sewage Disposal**

Any future dwelling will source its water from the urban system.

#### **3.5 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.

#### **3.6 Electricity and Telecommunications**

The site has electricity and telephone connections available at the boundary.

#### **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 amenity 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**

Easements are proposed for access and utilities to Lots 4 & 5 and these are shown on the scheme plan.

Also, it is recommended that consent notices pursuant to Section 221 of the Resource Management Act 1991 should be put on Lots 1-5 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 1-5 at no cost to the Council:

1. This lot is adjoining a railway corridor. Any purchaser of this allotment should expect the noise, smell and activities associated with the operation of a railway. Buildings should also be located and built to mitigate the effect of noise and vibration of the neighbouring railway activities.
2. A 1.8 metre high close-boarded fence shall be constructed along the entire length of the boundary of the site with the railway corridor and maintained at the owner's cost.

### **3.11 Land Use**

The proposal is to permit building heights, height to boundary and setbacks for each proposed lot that are similar to that for an urban residential lot as specified in Section 5.5.2(a-c) of the Proposed Wairarapa Combined District Plan. More specifically the proposal will apply the following standards:

#### **5.5.1 Permitted Activities**

The following are Permitted Activities:

- (a) **Residential buildings and activities;**
- (b) **Homestays;**
- (c) **Papakāinga housing;**
- (d) **The following non-residential activities;**
  - (i) Residential business

- (ii) Reserves and recreational activities;
- (iii) Healthcare activities
- (iv) Community amenity facilities
- (v) Education and child care facilities
- (vi) Temporary activities that comply with the standards under District Wide Land Use Standards of the [Proposed] Wairarapa Combined District Plan.

### **5.5.2 Standards for Permitted Activities**

Permitted activities shall comply with all of the following standards for the Residential Zone:

#### **(a) Maximum Building Height**

- (i) 10 metres

#### **(b) Maximum Height to Boundary**

- (i) 3 metres height at the boundary with a 45-degree recession plane

#### **(c) Minimum Building Setback**

- (i) 5 metres from the front boundary
- (ii) 1.5 metres from all other boundaries, except that there shall be one setback of at least 3 metres from one side boundary
- (iii) 0 metres for common wall boundaries

Exceptions:

- (i) An accessory building may be located within any part of the above building setbacks for side and rear boundaries, provided:
  - (1) The building does not cover more than 25% of the total yard requirements along any one boundary; and
  - (2) The building is not located between an existing building and the front boundary; and
  - (3) The building does not encroach the minimum front yard setback.
- (ii) Part of a dwelling may be located within the required 3 metre setback from one side boundary, provided the total length of all parts of the building within the 3 metre setback is no longer than 9m in length, and that no part of the building encroaches the minimum front yard building setback of 5 metres.
- (iii) Eaves, porches, balconies and decks or other minor features may occupy any part of a required setback, other than the front yard setback, provided they do not encroach by more than 25% of the relevant setback distance and do not, except for eaves, exceed 2m in length.

It is requested that the above mentioned building standards be registered against the certificates of title for each of the applicable lots as a consent notice pursuant to Section 221 of the Resource Management Act 1991.

The proposed plan has been notified but is not operative. As the proposed plan does not include the subdivision site in the urban residential area, as an interim measure this application seeks to apply some of the standards of the proposed plan.



## 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 discretionary activity so it could be considered that the following parties are affected:

- Direct neighbours; 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.

### 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.*

This proposal will have no more than minor effects and request that this application be notified to the following people:

- Direct neighbours; and
- Greater Wellington Regional Council.

## 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).

Under Section 77C of the Resource Management Act 1991 it states:

***77C Certain activities to be treated as discretionary activities or prohibited activities***

- (1) An application for a resource consent for an activity must, with the necessary modifications, be treated as an application for a resource consent for a discretionary activity if—
  - (a) Part 3 requires a resource consent to be obtained for an activity and there is no plan or proposed plan, or no relevant rule in a plan or proposed plan; or
  - (b) a plan or proposed plan requires a resource consent to be obtained for an activity, but does not classify the activity as controlled, restricted discretionary, discretionary, or non-complying under section 77B;

The site is currently zoned as a railway designation in the operative and proposed district plans. While all subdivisions require resource consent under the proposed plan, there are no subdivision standards set for the activity in the operative and proposed plans. Section 77C(1)(b) therefore applies.

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.



## 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 -
    - Designation
- 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 urban residential lots within the urban 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 on surplus railway land 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 urban 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.”*

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 maximise where possible a visual separation with neighbouring houses.

The site will be modified from its current state, but in a fashion that is consistent with the area zoning and the intention of the relevant provisions of the district Plan. The proposal will also be in keeping with the residential land use patterns of the area.

It is suggested that Council condition the decision appropriately in order to ensure that the respective lots are developed in a fashion that is desired by Council.

#### 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. In the case of the site of this application, the land is currently designated for railway purposes and close in proximity to a railway station. The proposal is suitable for the site and should set a positive precedent for other development in the area.

### 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 emerging trend of Urban Residential lots has generated a mounting concern by full time farmers about urban values being implemented against the standard operating practises of their farms.

As the area is a Urban area where permitted activities are specified in the District Plan, any new settlement must conform to the Urban environment.

This point is important as an emerging issue in many Urban areas. It is coined the ‘reverse sensitivity’ issue. 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.”*

The concept of reverse sensitivity originates where amenity values of two neighbouring permitted activities conflict with each other. Examples could include a pig farm, 24 hour shipping container port, airport, sewage treatment or a quarry next to an urban residential area. These neighbouring uses are incompatible by a significant degree.

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.

The Ministry for the Environment released a report *Amenity Values: Managing Urban Amenity Conflicts* (February 2000, Ref. ME372) where a variety of conflicting uses were listed including:

1. Factory farming near intensifying subdivision;
2. Horticulture at odds with Urban Residential development;
3. Exotic forestry at odds with pastoral farming;
4. Lifestyle blocks set amongst vineyards;
5. Lifestyle blocks and their affect on infrastructure; and
6. Horticulture at odds with emerging organics.

It is evident that the conflicts in neighbouring uses need to be so significant that intervention is required. The existing use of the site in this application, being railway designated land, does have an incompatible use with the proposed use. Conflicts include:

- Train movements at night; and
- Level crossing bells ringing.

Increasing the intensity of the residential use by the potential addition of dwellings could, if improperly managed, generate further incompatibility with neighbouring uses.

Chapter Nine of the *Ministry Report* provides techniques for managing Urban amenity conflicts including:

- 9.1 Effects-based techniques such as zoning, environmental standards and guidelines;
- 9.2 Controls on activities such as site coverage, separation distances and nominated building platforms;
- 9.3 Controls on subdivision such as rates of development, allotment size and restrictions to minimise reverse sensitivity; and
- 9.4 Infrastructure controls, property ownership and compensation, easements and private agreements.

It is recommended that consent notices pursuant to Section 221 of the Resource Management Act 1991 should be put on Lots 1-5 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 1-5 at no cost to the Council:

1. This lot is adjoining a railway corridor. Any purchaser of this allotment should expect the noise, smell and activities associated with the operation of a railway. Buildings should also be located and built to mitigate the effect of noise and vibration of the neighbouring railway activities.
2. A 1.8 metre high close-boarded fence shall be constructed along the entire length of the boundary of the site with the railway corridor and maintained at the owner's cost.

The relevant planning statutory documents have a shared focus to provide for the continued operation of urban activities in the urban areas. Where urban residential activities are proposed neighbouring urban residential activities there would be no reverse sensitivity effects.

## 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 development should not have a significant impact on the existing values and it will not be out of the character of the urban area. Vegetation is desired and, in this case, an expected visual feature in the established urban area. This subdivision will visually not cause any adverse effects on the environment.

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, if used for residential purposes, will not effect groundwater.

### 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.*

There are no waterbodies on the site where an esplanade strip would be applicable.

## 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.*

Proposed lots can be supplied with a potable water source from the urban water supply, which is not expected to create any adverse effects.

### 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

Adverse effects resulting from this activity can be avoided by ensuring that effluent disposal for proposed lots are connected to the urban sewage system.

#### 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 lots 1-3 and Lots 6-7 will be through separate entrances from Wyndham Street. Lots 4 & 5 will shared an entrance as part of a right of way.

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

#### **7.3.4 Roothing**

Wyndham Street is legally formed and sealed. Wyndham Street 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.

It may be necessary to include a condition of consent restricting the construction of any entrances from Belvedere Road as this could conflict with the efficient operation of the road and rail intersections.

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

The proposed application does intensify the use of the lot the urban character of the surrounding area is maintained.

The existing issues created by the existing use of the land relate to the physical appearance in contrast to the surrounding area. Residential development is the predominant feature of the surrounding area and the size of the lots are consistent with the level of intensification of the surrounding environment.

### 7.4.2 Urban Design

The Ministry for the Environment in March 2005 published the New Zealand Urban Design Protocol (ME #579, ISBN: 0-478-18993-1). The New Zealand Urban Design Protocol prescribes the “Seven C’s” of urban planning. They are:

1. Context – the integration and relationship of buildings and spaces over a wider area;
2. Character – dynamic and evolving buildings and spaces appropriate to their location;
3. Choice – different building types, densities, transport options and activities;
4. Connections – social cohesion, variety of walking and cycling routes, transport and communication networks and connections with outdoor spaces and facilities;
5. Creativity – adding richness and diversity adds identity;
6. Custodianship – environmentally sustainable and responsive design solutions that create a sense of ownership and responsibility in all residents and visitors; and
7. Collaboration – coordination and integration between all stakeholders.

The Urban Land Institute and Smart Growth Network identify ten principles for smart growth on the suburban fringe<sup>1</sup>. They are:

1. Creating a common vision shared by landowners, developers, elected officials, environmental and citizen activist groups, and local business leaders;
2. Defusing antigrowth sentiment by identifying areas to be developed and those to be protected from development;
3. Determining the right locations to develop and the right places to conserve;
4. Protecting environmental systems and conserving resources;
5. Offering diverse housing types to meet the needs of changing demographics;

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<sup>1</sup> *Ten Principles for Smart Growth on the Suburban Fringe*, Michael Pawlukiewicz, Urban Land Institute, 2004 (ISBN:0-87420-943-9)

6. Building appealing, pedestrian-friendly, mixed-use projects that create destinations for employment, retail, public services, and community activities;
7. Reducing traffic by planning a network of connected roads to offer a variety of routes for cars, pedestrians, bicyclists, and emergency vehicles;
8. Creating a range of transportation options from the start;
9. Preserving the character of the community; and
10. Changing regulations and zoning to encourage better development.

This application, from the original concept through to the design, has encompassed all the principles of the Smart Growth and the Urban Design Protocol. In particular:

1. The site is vacant land within the urban serviced perimeter that is an appropriate place for 'infill';
2. Footpaths and shared rights of way provides improved pedestrian and efficient access;
3. The proximity of other public facilities provides a variety of community facilities;
4. The clustering of similarly sized lots creates a consistent amenity within the site;
5. The use of existing infrastructure is optimal;
6. The proximity to public transport is suitable for commuter accommodation;

Latest census figures show a consistent psycho-graphic trend for the Carterton area that includes:

1. An ageing population;
2. Young couples are deciding to have fewer children in their thirties rather than twenties;
3. More people are choosing to commute by train;
4. Average household size is shrinking;
5. The average number of bedrooms for housing building consents is just over three;
6. A larger proportion of income is invested in housing; and
7. More recreational time is spent on home improvement and less on gardening; and
8. Outdoor living areas tend to focus on paved areas rather than larger areas of lawn and plants.

The proposed development certainly caters for the demands for more manageable housing units that is consistent with the policies and objectives of the Proposed Wairarapa Combined District Plan.

It is suggested that Council condition the decision appropriately in order to ensure that the respective lots are developed in a fashion that is desired by Council.

### 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 for the Residential Serviced Zone.

### 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 boundaries between the 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 6 lots as part of this application will reduce the open space so a reserve contribution is applicable as well as a roading financial contribution.

As the future use of proposed lots is most likely to be for 7 additional dwellings, an infrastructural financial contribution is applicable per additional connection to urban water and sewer.

It should be recognised that the proposal includes a 3 metre strip to be vested as road reserve. This area could be deducted from the roading financial contribution.

### 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.*

The site is not part of an area subject to specified development.

## 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 not indicate any sign of a fault running through the proposed subdivision area.

### **7.6.3 Flooding**

The site is not recorded as showing a history of inundation during storm events.

### **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
- Other Matters -
  - Designation

### 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, is 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 available to the site.

## **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 site is zoned in the Railway Designation Zone. In the absence of any rules governing the proposed activity, the rules of the Urban Residential Area of the Carterton District Plan that adjoins the site will be applied.

If the site was within the Urban Residential Area, this proposal would be a Discretionary Activity as the proposed lots do comply with the minimum lot size of 400m<sup>2</sup> but not the average lot size of 500m<sup>2</sup> if the proposal is for three or more lots.

Within the Carterton District Council Plan the following objectives are incorporated for the Urban Residential Zone:

- 4.2.1 To enable a mix of residential development to establish;
- 4.2.2 To maintain and enhance residential amenity;
- 4.2.3 To ensure safe and efficient pedestrian and vehicle access in residential areas.

The resource consent application shall be assessed in accordance with these objectives and the associated policies and methods.

### **8.5.1 Subdivision Standards**

#### **8.5.1.1 Shape Factor**

All proposed lots are large enough to accommodate the necessary 12 x 15 rectangle.

#### **8.5.1.2 Boundary Lines**

The boundaries of the proposed subdivision have been designed to comply with the District Plan bulk, height and location requirements.

#### **8.5.1.3 Disposal of effluent**

Any future development will be connected to the Carterton District Council sewer system. This is permitted and desired under the District Plan (9.6.1.2)

#### **8.5.1.4 Access**

Lots 1-7 will gain access from Wyndham Street. All accesses will be meet the specifications outlined within NZS:4404:2004.

#### **8.5.1.5 Water Supply**

The existing dwelling is connected to the Carterton District Council urban system. Any future development on lots will be connected to the Carterton District Council water supply.

#### **8.5.1.6 Other Services**

All other services are available to the site and currently utilised by the existing dwelling.

#### **8.5.1.7 Drainage**

Disposal of stormwater from future dwellings on the proposed lots will be disposed of in the usual manner for lots in the Urban Residential areas of Carterton. Soakpits will provide a sufficient method of disposal from the proposed lots.

## 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.’

## 8.7 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).

The site is subject to a designation and is not included within a zone. The zone that is most appropriate to assess the proposed activity to is the Residential Serviced (Carterton and South Wairarapa Districts) Area.

### 8.7.1 District Wide Subdivision Rules and 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>Residential, Commercial and Industrial Zones</b>	
<b>(a)</b>	<b>Minimum Lot Area</b>	
	<i>Residential Serviced (Carterton and South Wairarapa Districts) Zone:</i>	
	<i>400m<sup>2</sup> and</i>	Complies.
	<i>500m<sup>2</sup> minimum average lot area</i>	Does not comply.
	<i>Note 1: The minimum lot area shall exclude any accessways or rights of-way, and the minimum lot size shall not apply to those areas where they are a separate access lot.</i>	
<b>(b)</b>	<b>Minimum Developable Area</b>	
<b>(i)</b>	<i>Each undeveloped lot must be able to contain a rectangle measuring 15 metres by 12 metres that is clear of any right-of way.</i>	Complies.
<b>(d)</b>	<b>Maximum Building Coverage</b>	
<b>(i)</b>	<i>In the Residential Zone, the maximum resulting building coverage of any lot containing an existing dwelling shall be no more than 30% of the lot area.</i>	Complies.
	<i>For the purpose of this rule, the minimum lot area excludes any accessways or rights-of-way, and the minimum lot area shall not apply to those areas where they are a separate lot.</i>	



## 8.7.2 Residential Zone – Rules & Standards

Under Rule 5.5. of the Proposed Wairarapa Combined District Plan it states:

Standard	Description	Assessment
<b>5.5.1</b>	<b>Permitted Activities</b>	
<b>5.5.2</b>	<b>Standards for Permitted Activities</b>	
<b>(a)</b>	<b>Maximum Building Height</b>	
(i)	10 metres.	
(ii)	7 metres for coastal settlements (Castlepoint, Riversdale, Lake Ferry, Whangaimoana, Whatarangi, Ngawi, Mangatoetoe).	
<b>(b)</b>	<b>Maximum Height to Boundary</b>	
(i)	3 metres height at the boundary with a 45- degree recession plane.	Any future development can comply with this standard.
<b>(c)</b>	<b>Minimum Building Setback</b>	
(i)	5 metres from the front boundary.	Any future development can comply with this standard.
(ii)	For front sites, 1.5 metres from all other boundaries, except that there shall be two setbacks of at least 3 metres from any side and/or rear boundary.	Any future development can comply with this standard.
(iii)	For rear sites, 1.5 metres from all other boundaries, except that there shall be two setbacks of at least 3 metres from any side and/or rear boundary.	Any future development can comply with this standard.
(iv)	0 metres for common wall boundaries.	

**Note:** For the purpose of the above rule –  
Front site: means a site with a legal road  
frontage of not less than 10 metres;  
Rear site: means a site with a legal road  
frontage less than 10 metres.

### Exception

- (i) An accessory building may be located within any part of the above building setbacks for side and rear boundaries, provided:
  - (1) The building does not cover more than 25% of the total yard requirements along any one boundary; and
  - (2) The building is not located between an existing building and the front boundary; and
  - (3) The building does not encroach the minimum front yard setback.
- (ii) 5 metres from any waterbody.
- (iii) In the South Wairarapa District, 20 metres from the banks of any river and stream whose bed has an average width of 3 metres or more. (Note: For the purpose of this rule, 'bed' is the definition applied in Section 2 of the

*Resource Management Act  
for a 'bed' in relation to any river for the  
purposes of esplanade  
reserves).*

- (iv) *Eaves, porches, balconies and decks or  
other minor features may occupy any part  
of a required setback, other than the front  
yard setback, provided they do not  
encroach by more than 25% of the  
relevant setback distance and do not,  
except for eaves, exceed 2m in length.*

**(e) Number of Dwellings**

- (i) *The total number of dwellings per site  
shall be limited to that which enables each  
dwelling to meet the minimum lot area  
subdivision requirements for that site  
(Rule 20.1.2).*

The lots can each contain only one dwelling.

**(h) Roads, Access, Parking and  
Loading Areas**

- (i) *Compliance with the standards in  
Appendix 5 Requirements for Roads,  
Access, Parking and Loading.*
- (ii) *One vehicle access point per frontage.*
- (iii) *No contiguous carparking area containing  
five or more parking spaces, including  
access and manoeuvring areas.*

Any future development can comply with this  
standard.

Complies

Complies.

### 8.7.3 Subdivision Standards – Discretionary Activities

Standard	Description	Assessment
<b>All Environmental Zones</b>		
(g)	<i>A subdivision that is not otherwise a controlled, restricted discretionary, or non-complying activity under Chapter 20.</i>	Under Section 77C(1)(b) the proposed activity is a discretionary activity.
(i)	<i>Any subdivision with proposed access to a State Highway, Limited Access Road Masterton Heavy Traffic Bypass or over or under the Wairarapa Railway, provided that the standards for Discretionary Activities are met;</i>	Access to the site is not across the Wairarapa Railway.

## 8.7.4 Objectives & Policies – Residential Zone

Description	Assessment
<b>5.3.1 Objective Res1 – Residential Amenity Values and Character</b> <i>To maintain and enhance the character and amenity values of Wairarapa’s residential areas, having due regard to the particular characteristics of each neighbourhood, and the need to provide for a diversity of residential lifestyles and non-residential services and activities.</i>	The proposal is consistent and not contrary to this relevant provision.
<b>5.3.2 Res1 Policies</b> <b>(a)</b> <i>Manage the Wairarapa’s residential area under a single overall framework to provide for a wide range of lifestyles in a manner that is consistent with maintaining and enhancing an acceptable level of residential character and amenity values.</i> <b>(b)</b> <i>To provide residents with an acceptable level of certainty through environmental controls imposed on development and land use in the Residential Zone.</i> <b>(c)</b> <i>Apply specific management requirements as necessary to maintain and enhance the special character and amenity values of those residential areas with differing characters.</i> <b>(d)</b> <i>Require comprehensive residential developments to be designed and developed to a high environmental standard through a specific management framework.</i> <b>(e)</b> <i>Promote variety and innovation in residential development to meet the diverse needs of current and future generations, including opportunities to use renewable energy in housing design and siting.</i> <b>(f)</b> <i>Enable a wide range of residential based business and activities in keeping with the relative amenity values and character of residential neighbourhoods.</i> <b>(i)</b> <i>Manage non-residential activities that are not generally accepted within a residential area to avoid, remedy or mitigate adverse effects on residential character and amenity values.</i>	The proposal is consistent and not contrary to this relevant provision.  The proposal is consistent and not contrary to this relevant provision.  The proposal is consistent and not contrary to this relevant provision.  The proposal is consistent and not contrary to this relevant provision.  The proximity of the site to the railway station makes the lots appropriate for development by commuters.  The proposal is consistent and not contrary to this relevant provision.  The proposal is consistent and not contrary to this relevant provision.
<b>5.4 Anticipated Environmental Outcomes</b> <b>(a)</b> <i>A diversity of residential environments, providing for the living needs of Wairarapa’s residents.</i> <b>(b)</b> <i>Residential neighbourhoods supported by a good range of services, facilities and amenities that enhance their character</i>	The proposal is consistent and not contrary to this relevant provision.  The proposal is consistent and not contrary to this relevant provision.

and environmental quality.

- |     |  |   |
|-----|--|---|
| (c) | <i>Residential environments where the scale, character and amenity of new development is appropriate for the particular neighbourhood.</i> | The proposal is consistent and not contrary to this relevant provision. |
| (d) | <i>Comprehensive residential developments that have a high standard of character and amenity values.</i>                                   | The proposal is consistent and not contrary to this relevant provision. |
| (e) | <i>Protection of residential amenity values from environmental pollutants such as excessive dust and noise.</i>                            | The proposal is consistent and not contrary to this relevant provision. |
| (f) | <i>Greater use of renewable energy sources, particularly through passive solar design.</i>   | The proposal is consistent and not contrary to this relevant provision. |

### 8.7.5 Objectives & Policies – Subdivision, Land Development & Urban Growth

	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>	
<b>18.3.2</b>	<b>SLD1 Policies</b>	
(a)	<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 proposal is consistent and not contrary to this relevant provision.
(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 proposal is consistent and not contrary to this relevant provision.
(d)	<i>Set minimum allotment sizes for the Residential and Urban 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 proposal is consistent and not contrary to this relevant provision.
(e)	<i>Provide for higher density subdivision and development in the Residential Zone around community focus points, such as the central business districts and main transport links, and to ensure the design and quality of proposed buildings and site development maintains or enhances neighbourhood character, residential amenity values and the efficient functioning of infrastructure and roads.</i>	The proposal is consistent and not contrary to this relevant provision.
(j)	<i>To provide for subdivision below the minimum standards if it results in the</i>	The proposal is consistent and not contrary to

*more effective management of network utilities or the protection of significant heritage assets and natural areas.*

this relevant provision as the site is located in close proximity to the railway station.

- (m) *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.*

The proposal is consistent and not contrary to this relevant provision.

#### **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.*

The proposal is consistent and not contrary to this relevant provision.

#### **18.3.5 SLD2 Policies**

- (a) *Ensure adequate infrastructure is provided by the subdivider/developer to allow new activities and development to connect to wastewater and water reticulation where adequate capacity exists to meet the needs of the development.*

The proposal is consistent and not contrary to this relevant provision.

- (b) *Ensure that urban areas have adequate capacity in wastewater disposal and water supply to service future urban development demands, particularly in the South Wairarapa where the spare capacity is only available to service land zoned residential, commercial and industrial and not land zoned rural.*

The proposal is consistent and not contrary to this relevant provision.

- (c) *Avoid, remedy or mitigate any adverse effects resulting from stormwater discharges.*

The proposal is consistent and not contrary to this relevant provision.

- (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).*

The proposal is consistent and not contrary to this relevant provision.

#### **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.*

The proposal is consistent and not contrary to this relevant provision.

#### **18.3.8 SLD3 Policies**

- (a) *Require an equitable contribution from developers where new connections to the*

The proposal is consistent and not contrary to this relevant provision.

*Councils' water supply or wastewater disposal services will contribute to a future need for upgrades or extensions to the services.*

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

The proposal is consistent and not contrary to this relevant provision.

### **18.3.10 Objective SLD4 – Managing Urban Growth**

*To provide for urban expansion adjoining existing urban areas where such growth does not adversely affect the safe and efficient use and development of land, roads and infrastructure.*

The proposal is consistent and not contrary to this relevant provision.

### **18.3.11 SLD4 Policies**

- (a) *Identify the urban environments of the Wairarapa within which further urban development is appropriate, including areas of potential growth.*

The proposal is consistent and not contrary to this relevant provision as the proposal is effectively brown field development in the centre of an established urban residential area.

- (b) *Manage subdivision and development within growth areas on a comprehensive basis to ensure a structured and integrated pattern of development, with the environmental qualities of the land fully identified and sustainably managed.*

The proposal is consistent and not contrary to this relevant provision as the site is located in close proximity to the railway station.

- (c) *Manage urban subdivision and land development to connect with the existing infrastructure and transportation network, according to the capacity limitations of that network and the potential requirements for upgrading its capacity.*

The proposal is consistent and not contrary to this relevant provision.

### **18.3.13 Objective SLD5 – Reserves and Open Space**

*To sustainably manage and develop the reserve and open space network to cater for current and future community needs and to protect and enhance significant environmental assets.*

The proposal is consistent and not contrary to this relevant provision.

### **18.3.14 SLD5 Policies**

- (a) *Require a reserve contribution from new residential and visitor accommodation development, including rural subdivision creating vacant lots that have the ability to be developed for residential purposes, that is proportionate to the demand for passive and active community recreational requirements arising from the development, including the need to protect the Wairarapa's key environmental assets such as its coastal margins and natural features.*

The proposal is consistent and not contrary to this relevant provision.



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| (c) | <i>Manage subdivision and development adjacent to or near reserves to ensure public access (or future public access) is provided at the time of subdivision and/or development.</i> | The proposal is consistent and not contrary to this relevant provision due to the proximity of the site to parks and reserves. |
|-----|---|--|

#### **18.4 Anticipated Environmental Outcomes**

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|-----|--|---|
| (a) | <i>Allotments of a size form and pattern to provide for land uses that are compatible with the values, character and qualities of the immediate environment.</i> | The proposal is consistent and not contrary to this relevant provision. |
| (b) | <i>The long-term protection of significant natural and historic values of subdivided land.</i>   | The proposal is consistent and not contrary to this relevant provision. |
| (c) | <i>Structured urban growth that is well connected and compatible with the existing urban and surrounding environment.</i>  | The proposal is consistent and not contrary to this relevant provision. |
| (d) | <i>Effective wastewater systems that protect the quality of ground and surface water resources.</i>  | The proposal is consistent and not contrary to this relevant provision. |

### **8.7.6 Objectives & Policies – Transport**

<b>Description</b>		<b>Assessment</b>
<b>17.3.4</b>	<b>Objective TT2 – Managing the Rail Corridor</b> <i>To ensure development and activities in and around the rail corridor, as well as the operation of the railway itself, are managed to be mutually compatible.</i>	The proposal is consistent and not contrary to this relevant provision.
<b>17.3.5</b>	<b>TT2 Policies</b>	
(a)	<i>Protect the existing rail corridor from the adverse effects created by adjoining land use activities, particularly the subdivision and development of land.</i>	The proposal is consistent and not contrary to this relevant provision.
(b)	<i>Manage the adverse effects of the use of the rail corridor on adjoining activities.</i>	The proposal is consistent and not contrary to this relevant provision.
(c)	<i>Provide for the development and continued operation of the rail network.</i>	The proposal is consistent and not contrary to this relevant provision.
(d)	<i>Establish controls and standards on land use and subdivision to avoid, remedy or mitigate any effects of the land use on the safe and efficient functioning and operation of the railway network.</i>	The proposal is consistent and not contrary to this relevant provision.

## **8.8 Other Matters – Designation**

The site is within an area designated by the operative and proposed district plans for the use as a railway. Ontrack are the requiring authority pursuant to Section 167 of the Act.

As provided in the appendices, Ontrack have provided permission for the land to be used for a non-designated purpose.

## 9. PERMITTED BASELINE

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 term “Permitted Baseline” is not a term expressly used in the Act and there are several assessment tools when applying Section 104(2) of the Act.

### 9.1 “As of right”

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.*

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 and proposed plans, the land can only be used for railway purpose due to the railway designation on the site.

### 9.2 Existing Environment

In *Wilson v Selwyn DC* (2005) 11 ELRNZ 79 on page 93 Bayley was clarified by stating:

*“or as it would exist if the land were used in a manner permitted as of right by the plan... on the environment as it exists.”*

While the District Plan states that the purpose of the Urban Area is to provide a Urban 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 Urban’ in nature, and in fact more in line with ‘Urban Residential’ lifestyle lots, then we submit that this application does not generate an adverse effect.

In *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 proposed activity is more in line with the activities of its surrounds incorporating Urban Residential activities.

If the site was within a residential zone, 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 Urban 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 there are more than three lots and the average lot size is less than 500m<sup>2</sup>. The site could include a 6 lot subdivision to achieve an average lot size of over 500m<sup>2</sup>.

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

- 6 dwellings with no site coverage restrictions (Rule 5.5.2(e));
- A building height of 10 metres (Rule 5.5.2(a)(i)); and
- Accessory buildings with no size limit.

Under the proposed plan for the Residential Serviced (Carterton and South Wairarapa Districts) Area no subdivision is a permitted activity. The proposed activity does not meet the criteria for a controlled activity under Rule 20.1.2(a) as the average lot size is less than 500m<sup>2</sup>. The site could include a 6 lot subdivision to achieve an average lot size of over 500m<sup>2</sup>.

### 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.

Although the site is not zoned as residential, the proposal could be amended to include 6 lots to achieve an average lot size of over 500m<sup>2</sup>.

### 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:

- The Residential Serviced (Carterton and South Wairarapa Districts) Area that borders the site on two boundaries;
- Numerous lots within the vicinity of the site ranging between 300m<sup>2</sup> (Lot 2 DP 375061) and 500m<sup>2</sup>; and
- The large number of buildings on neighbouring sites.

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, reverse sensitivity issues can be addressed through consent notices and building standards that may not necessarily be available if the site was developed using other methods.

The potential and actual effects of the proposal are therefore considered less than minor.

## **10. CONCLUSION**

Taking into account the assessment of environmental effects and the analysis of the relevant planning provisions:

- The effects of the proposal on the existing amenity will be less than minor;
- The effects of the proposal on the existing infrastructure will be minimal; and
- 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.

## APPENDIX 1: Certificate of Title



### COMPUTER FREEHOLD REGISTER UNDER LAND TRANSFER ACT 1952

Search Copy



R. W. Muir  
Registrar-General  
of Land

Identifier **WN34B/882**  
Land Registration District **Wellington**  
Date Issued 11 July 1989

#### Prior References

PROC 859

Estate	Fee Simple
Area	3058 square metres more or less
Legal Description	Part Lot 2 Section 206 Taratahi District
Purpose	Railways

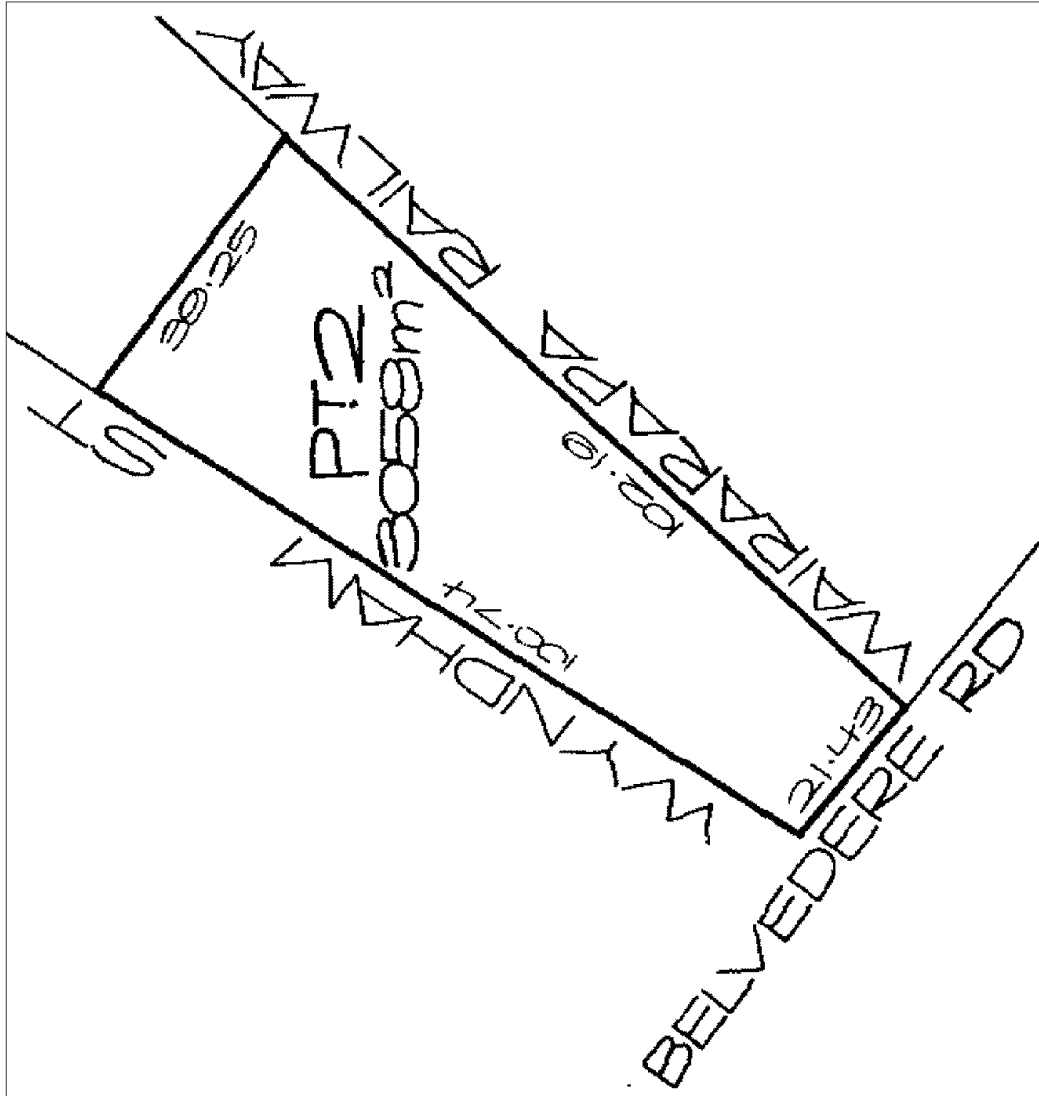
#### Proprietors

Her Majesty The Queen

#### Interests

Identifier

WN34B/882





## APPENDIX 2: Correspondence from Ontrack



District Planner  
Carterton District Council  
P.O. Box 9  
Carterton

Friday, 15 August 2008

RE: Railway Designated Land on the corner of  
Wyndham Street & Belvedere Road, Carterton

Dear Sir/Madam,

Ontrack is the requiring authority under Section 167 of the Resource Management Act 1991 designated on behalf of the Crown for the railway designated land on the corner of Wyndham Street and Belvedere Road in Carterton. In the Proposed Wairarapa Combined District Plan this land is Designated as Dc020 on Planning Map 54 which is rolled over from the operative Carterton District Plan.

Ontrack has instructed Tomlinson & Carruthers Surveyors Limited to seek subdivision consent for 7 residential lots ranging in area from 400m<sup>2</sup> and 460m<sup>2</sup> on the site on the corner of Wyndham Street and Belvedere Road in Carterton. Ontrack recognises that the proposal is for a non-designated purpose and, as the requiring authority for this designated land, Ontrack gives approval for the proposal.

If there is anything further you wish to discuss please do not hesitate to contact me.



Crystal Giles  
Central Property Administrator

Ph: 04 495 3000 ext 42205  
Fax: 04 498 3331  
Cell: 027 464 8750



