

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

OF

A submission to Proposed Plan Change 6 to the Selwyn District

Plan by Mr Greg Horgan

EVIDENCE OF GREGORY JOHN DEWE July 2009



# 1.0 INTRODUCTION

- 1.1 My name is Gregory John Dewe and I am a Resource Management Planner and Principal with the firm Aurecon. My qualifications and experience are set out at **Annexure A**.
- 1.2 I am familiar with the Code of Conduct for Expert Witnesses contained in the Environment Court Consolidated Practice Note 2006. Whilst the Practice Note applies to Environment Court fixtures the same conduct it requires is equally applicable to Council hearings and I have complied with it in preparing this statement. This evidence is within my area of expertise, except where I state that I am relying on what I have been told by another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
- 1.3 I have been asked to present planning evidence in respect of Proposed Plan Change 6 to the Selwyn District Plan by Mr Greg Horgan. In particular I will address the proposed 'grandfather clause' and earthwork provisions.
- By way of background Mr Horgan is in the process of completing a subdivision within the area proposed to rezoned from Inner Plains to Port Hills and is very concerned that he is able to complete the same. The approved subdivision (a copy of the consent is attached as **Annexure B**) is for the creation of seven allotments at least 4ha in area each. Of these one has a dwelling on it and at the time the subdivision consent was granted dwellings were a permitted activity on the vacant lots, this being the purpose for which the subdivision was undertaken. In short Mr Horgan simply wants to retain the ability to complete what he originally gained consent for, that being to create six new allotments that can have dwellings erected on them. I note that while there will be six additional dwellings there will only be five additional sites as there are two underlying titles affected by the subdivision.

# 2.0 SUMMARY

2.1 Having considering the proposed Plan Change as notified, the submission made by Selwyn District Council and the Officer Report (prepared by Ms Rykers) it is clear that the matter of the 'grandfather clause' has been the subject of some consideration. I note that the Regional Council have also submitted on the clause. As it stands it is my opinion that the



recommendation made by MS Rykers in respect of the final wording for the 'grandfather clause' is too restrictive in that it is limited to the 60m contour rather than the upper limit of the Inner Plains Zone boundary.

2.2 In terms of the controls on earthworks it is my opinion that a preferable approach to this issue would be to have the ECAN and SDC controls for the same issue aligned. As presently proposed these controls re not aligned.

# 3.0 SUBMISSION AND RELIEF SOUGHT

In simple terms the submission by Mr Horgan is opposed to the whole of Plan Change 6 as it casts aside the agreement reached, over a very lengthy period of time, between landowners and Council which resulted in the Inner Plains boundary along the Port Hills being located as confirmed in the District Plan. Plan Change 6, which was notified within 6 months of the District Plan becoming partially operative, demonstrates to all those landowners involved in the Port Hills Focus Group initiated by SDC, that worked with Council staff and Councillors on the appropriate level of control over the Port Hills, that the time and effort put into that process was not valued by the Council.

# **Grandfather Clause**

- 3.2 Putting aside for the meantime the fact that the quick change of direction by Council has angered many affected landowners and sees them again having to argue the same issues on which they had previously reached an agreement with Council (or so they thought), many like Mr Horgan wish to at least retain the ability to complete exercises they have already started.
- 3.3 To cater for the above Mr Horgan wishes to see the proposed grandfather clause promoted by Council expanded so that is consistent with other similar clauses in the District Plan (Rule 3.10.2.2 page C3-012 Rural Volume) which provides for a dwelling to be erected on a site inter alia to be created by an approved subdivision consent which has not yet lapsed.
- In Plan Change 6 and the Officer's Report alike there are references to the area between the 20m and 60m contours being affected by the Plan Change, however, this is not strictly



correct. The area affected by the Plan Change is that area that was zoned Inner Plains before PC6 which is now proposed to be rezoned Lower Port Hills. This area does not in all locations follow the 60m contour and that may also be the case in terms of the 20m contour. Whilst the 60m contour is referred to in PC6 and the Officer's Report as being the upper limit of the Inner Plains Zone this contour is not identified on the planning maps, or described in this way within the District Plan as far as I can tell.

- 3.5 Attached as **Annexure C** is a copy of a plan that was included with PC6 which identifies the 60m contour (among other things) and a copy of Planning Map 9 from the District Plan. On both I have indicated the location of the location of Mr Horgan's land and as can be seen by comparing these two plans there is an area which is above the 60m contour which is zoned Inner Plains. Recognition of this area is critical in the formulation of the grandfather clause.
- 3.6 The Regional Council has sought that the 'grandfather clause' be limited to an area between the 20m and 60m contours on the basis that this is the area being rezoned through Plan Change 6. As I have identified above this is incorrect as there is land above the 60m contour which is zoned Inner Plains under the District Plan. An example of this occurring is on Mr Horgan's site.
- 3.7 At paragraph 66 of the Officer's Report Ms Rykers identifies that the SDC included a 'grandfather clause' in PC 6 to ensure consented subdivision and dwellings approvals were not lost through PC6. Ms Rykers goes on to note that there were some difficulties with the provision as notified and to that end SDC lodged a submission to correct the same. At paragraph 72 Ms Rykers invites submitters to consider the amended 'grandfather clause' now being recommend to ascertain whether it addresses the concerns being raised and goes on to note that "The intent of the provision is to clearly state that the Controlled Activity status applies to consented subdivision, which may not yet have title." In addition it is noted that the latest provision has been drafted to address issues raised by the Regional Council.
- 3.8 I have reviewed the recommended version of the proposed rules (3.2.2 and 3.10.2.2) and are comfortably with the same apart from the clauses which refer to the 60m contour. The inclusion of reference to this contour means that not all of the former Inner Plains Area that



is to be rezoned is covered by the 'grandfather clause' which is not what I understand to be the intention of the provisions.

- 3.9 The inclusion of a 'grandfather clause' in District Plans is a common technique to protect certain limited existing use rights/approvals where changes to District Plans would otherwise remove development rights. The District Council has seen the need to do so in this instance, which I agree must happen given the history of the subject matter, and to this end the 'grandfather clause' in my opinion must extend to protect the whole of the Inner Plains Area that is proposed to be rezoned. This can be achieved by identifying the area proposed to be rezoned as a 'sub area' on the planning maps and then refer to this area in the relevant provisions. I believe this is probably the tidiest way of ensuring that the 'grandfather clause' captures the whole of the affected area and at the same time does not provide development opportunities above the Inner Plains Area which the Regional Council is eager to avoid.
- 3.10 Given the above it is my suggestion that proposed Clause 3.2.2.2 be reworded along the following lines and supported by an addition to the relevant planning maps (Maps 9 and 14) which simply identifies the area to be rezoned through PC6 as 'Sub-Area A':
  - 3.2.2.2 The building site is located wholly within 'Sub-Area A' as identified on Planning Maps 9 and 14.
- 3.11 Similarly proposed Clause 3.10.2.2 would need to be reworded along the following lines:

3.10.2.2

- (a) ....
- (b) The dwelling site is located wholly within 'Sub-Area A' as identified on Planning Maps 9 and 14; and
- (c) ....
- 3.12 The above should also be supported through an explanation under the relevant "Reasons for Rules" section of the District Plan. In addition the addition recommended to Policy B4.1.5 by Ms Rykers (see page 23 of the Officer's Report) also needs to be amended to reflect the change that I believe should take place to the 'grandfather clause'.



- 3.13 It is my opinion that the changes I have recommended above are completely consistent with the reasons Ms Rykers has given in support of her recommendation in respect of the 'grandfather clause' as set out at paragraph 82 of her report, i.e.:
  - "It is necessary that the DP is clear and can be administered clearly and consistently;
  - It is fair, reasonable and appropriate that the Grandfather clause applies to subdivisions which are consented (but not necessarily given effect to);
  - That the exemption provided by the Grandfather Clause is applied to those who are losing development future opportunity i.e. land previously zoned Rural Plains (Inner) and is not applied more widely to all land in the Lower port Hills;"
- 3.14 If the changes I have outlined are not made to the 'grandfather clause" the second and third reasons promoted by Ms Rykers above for having the clause in the first place will in fact not be achieved. This is because the current wording would exclude some land previously zoned Inner Plains over which there is a subdivision and land use consents which are yet to be given effect to.

## **Earthworks**

In terms of the earthworks control I note that a change has been recommended to the permitted quantities bit with a maximum cut depth of 1m added. Mr Horgan sought that the provision be aligned with ECAN's Land and Vegetation Management Regional Plan, Part II, Earthworks and Vegetation Clearance, Port Hills, so as to read:

"any other earthworks not exceeding 100m3 in any one hectare in any ten year period"

3.16 The basis for the above request was to achieve some consistency between SDC and ECAN on earthwork controls over the Port Hills which to my mind would be a sensible outcome and help achieve the integrated management of effects. Whilst the level of earthworks would be increased from a limit per site to a limit per hectare the period within which they could occur would be doubled from five years to ten. For the sake of



consistency I believe that the wording promoted by Mr Horgan should adopted over that recommended in the Officer's Report.

## 4.0 CONCLUSION

- 4.1 It is my opinion that the 'grandfather clause' as presently drafted will not deliver the outcome which it is intended to as described by Ms Rykers. To correct this situation it must, in my view, be amended along the lines I have promoted above to ensure that it relates to the whole of the area that is proposed to be rezoned through PC6.
- 4.2 I believe that there would be significant benefits arising to landowners and consent processing staff alike if SDC aligned the earthworks controls over the Port Hills with those administered for the same area by ECAN. I see no good reason to have two different controls to address the exact same subject matter.

G. J. Dewe BA, MRRP, MNZPI



# Annexure A

# Qualifications and Experience of Gregory John Dewe

I hold the qualifications of Bachelor of Arts in Geography and Master of Regional and Resource Planning (with Distinction) from the University of Otago. I have some fourteen years experience in the field of resource management and am a Member of the New Zealand Planning Institute.

The majority of my experience has been in the field of urban development and has included the preparation of District Plan Changes and Variations for local authorities and private clients rezoning land for urban purposes, the formulation of subdivision and residential development controls for Local Authorities in District Plan Reviews, as well as the preparation of large scale subdivision applications.

The abovementioned experience includes:

- Rolleston New Town Plan Change Private plan change affecting some 540ha of land to cater for some 10,000 people, new schools, commercial facilities, and open space. I provided all the planning inputs for the project.
- Hobsonville Airbase Redevelopment Completion of the Comprehensive Development
  Plan application for 1200 residential units, two school sites, retail areas, open space and
  community facilities. I provided all the planning inputs for the project.
- Banks Peninsula and Selwyn District Council District Plan Reviews. I assisted with development control provisions in the District Plans for both local authorities.
- Selwyn District Council Izone Southern Business Hub at Rolleston. I provided all planning
  inputs to a Plan Variation rezoning some 72ha of rural zoned land for industrial purposes
  and assisted with a recent plan change to rezone a further 56ha so as to expand the
  Business Hub.
- Selwyn District Urban Growth provisions. I presented evidence at the Environment Court
  on the appropriateness of the urban growth provisions in the Proposed Selwyn District Plan.
- Various residential subdivision applications ranging in size from 100 to 300 lots.
- Various private plan changes rezoning rural land for urban purposes.

Through the above and other matters I am regularly called upon to present evidence at both Council hearings and the Environment Court.



Annexure B
Existing Consent



23704

HIGH STREET, LEESTON PRIVATE BAG 1, LEESTON PH: (03) 324-8080 FAX: (03) 324-3531

28 January 2005

Connell Wagner PO Box 1061 CHRISTCHURCH

Attention: Sarah Ancell

DATE
3 1 JAN 2005 FILE
23724

PROJ. DIR. ACTIONED DATE

SA 2-2

NARRATION & COUNTY

Dear Madam

RE: RESOURCE CONSENT APPLICATION - R307216 & R307217

APPLICANT:

**GF & JM HORGAN** 

LOCATION:

Ahuriri Road, Tai Tapu

LEGAL DESCRIPTION:

Lots 3 and 4 DP72357

ZONING:

Proposed District Plan -Inner Plains

Paparua County section of the Transitional Plan-Rural

1 and 2

PROPOSAL:

To subdivide a 31.1975ha block of land held in two certificates of title into seven allotments ranging in area from 4ha to 6.2ha, erect a dwelling each on Lots 2-7 and retain an existing dwelling on Lot 1.

TYPE OF APPLICATION:

Subdivision

Proposed District Plan - Controlled Activity

Paparua County section of the Transitional Plan -Non-

complying Activity

Landuse

Proposed District Plan - Permitted Activity

Paparua County section of the Transitional Plan -

**Controlled Activity** 

## **COUNCIL DECISION**

This application was lodged and formally received with the Selwyn District Council on 23<sup>rd</sup> December 2004.

Assessment and approval took place on 28<sup>th</sup> December 2005 under a delegation given by the Council.

The full text of the decision is as follows:

#### R307216

That pursuant to Sections 104, 108, 220, 405 and 407 of the Resource Management Act 1991, the Selwyn District Council grants Resource Consent Application R307216 to subdivide a block of land held in two certificates of title into seven allotments ranging in area from 4ha to 6.2ha.

The following conditions are imposed on this consent:

- 1. That the application proceed in general accordance with the attached approved site plan and details submitted with the application.
- 2. That the subdivider shall provide evidence from the relevant service provider that electricity and telecommunication connections are available to service Lot 1.
- 3. That Council shall require as a subdivision contribution a street light at the intersection of a public road and a right of way in the rural area where there are 5 or more lots being accessed by a right of way. The Council will maintain these streetlights.
- 4. That prior to the issue of a completion certificate for the subdivision, any required new vehicle entranceway shall be formed and sealed in accordance with the attached diagram C1.
- 5. That prior to the issue of a completion certificate for the subdivision, the access entrance for the right-of-way shall be formed and sealed in accordance with the attached diagram D, Table 1 Appendix 11.
- That a financial contribution of \$44,710 plus GST shall be paid to the Council for the purpose of upgrading Ahuriri Road from the edge of the seal at the State Highway 75 intersection for a distance of 1170m for seal extension.
- 7. That a financial contribution shall be paid for the installation of a flag light at the intersection of State Highway 75 and Ahuriri Road. Flag lighting is to be in accordance with the AS-NZS1158.

#### R307217

That pursuant to Sections 104 and 108 of the Resource Management Act 1991, the Selwyn District Council grants Resource Consent Application R307201 to erect a dwelling on Lot 1 and retain an existing dwelling on Lot 2 created by subdivision consent R307200.

The following conditions are imposed on this consent:

That the application proceed in general accordance with the attached approved site plan and details submitted with the application.

## Note to the Consent Holder.

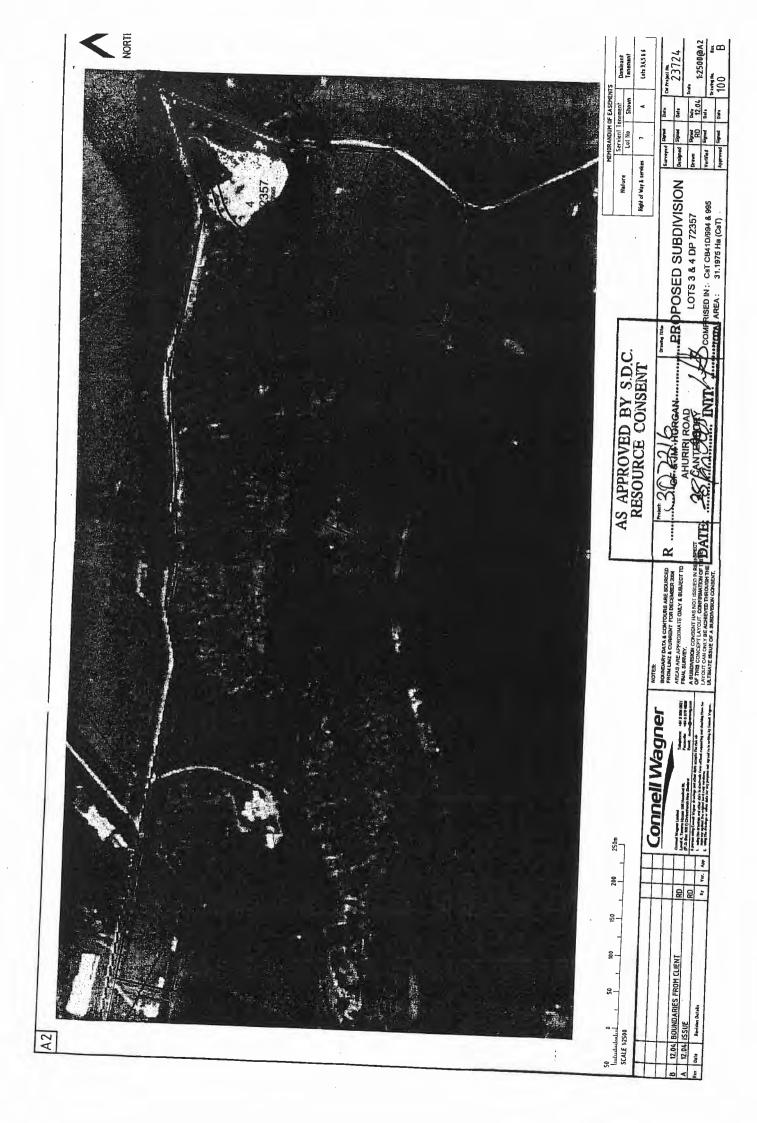
- a) Pursuant to section 125 of the Resource Management Act 1991, if not given effect to, this resource consent shall lapse five years after the date of this decision unless a longer period is specified by the Council upon application under Section 125 of the Act.
- b) In accordance with section 36 of the Resource Management Act 1991, the Council's standard monitoring fee has been charged.

- c) This consent is not an authority to build and a Building Consent is also required before the commencement of construction.
- d) A resource consent may be required should a new dwelling erected not comply with the setback requirements of the relevant plan(s).
- e) A cash bond may be entered into with regard to subdivision Condition 4.

Yours faithfully

Gillian Brockie

**RESOURCE MANAGEMENT PLANNER** 





HIGH STREET, LEESTON PRIVATE BAG 1, LEESTON PH: (03) 324-8080 FAX: (03) 324-3531

DECISION INFORMATION

# SELWYN DISTRICT COUNCIL

# RESOURCE CONSENT DECISION INFORMATION

# LAPSING OF CONSENT

- 1. A resource consent lapses on the date specified in the consent or, if no date is specified, 5 years after the date of the decision (or if any appeal results, from the date of any decision of the Environment Court) unless, before the consent lapses,—
  - (a) the consent is given effect to; or
  - (b) an application is made to the consent authority to extend the period after which the consent lapses, and the consent authority decides to grant an extension after taking into account
    - (i) whether substantial progress or effort has been, and continues to be, made towards giving effect to the consent; and
    - (ii) whether the applicant has obtained approval from persons who may be adversely affected by the granting of an extension; and
    - (iii) the effect of the extension on the policies and objectives of any plan or proposed plan.
- 2. If you or any future purchaser of your property wish to change or cancel any conditions of this resource consent, an application for a variation of consent must be made to the Council on Form 10. An application for a variation will be processed pursuant to Section 127 of the Resource Management Act 1991, and may or may not be granted by Council.

# THIS IS A RESOURCE CONSENT ONLY

1. This consent is a resource consent in terms of the Resource Management Act 1991. It is **not** a consent under any other Act, Regulation or Bylaw. Separate applications will need to be made for any other approval, such as a building consent.

# RIGHTS OF APPEAL

- 1. This notice of resource consent is distributed in accordance with the terms of Section 114 of the Resource Management Act 1991.
- 2. Your attention is drawn to the provisions of Sections 120, 121 and 357 of the Resource Management Act 1991 which allows for objections to, and appeals against, decisions made by consent authorities.
- 3. Any party to this application may, within 15 working days of the receipt of this decision, appeal to the Environment Court pursuant to Section 120 of the Resource Management Act 1991. The Christchurch address of the Environment Court is:

83 Armagh Street (corner Durham Street) Christchurch.
The postal address is PO Box 2069 Christchurch.
The telephone number is (03) 962 4170 and the fax number is (03) 962 4171.

- 4. The procedure for lodging an appeal is set out in Section 121 of the Resource Management Act 1991. The appeal should be made on Form 16. Clauses 16 to 27 of the Resource Management Act Regulations 2003 also set out important information.
- 5. Section 121 of the Resource Management Act 1991 sets out the persons upon whom the appeal must be served and the time when service must take place. It is essential that these provisions be adhered to. Failure to do so may result in the appeal being struck out.
- 6. Copies of the Resource Management Act 1991 are available for inspection at the Leeston Service Centre and the Christchurch Central Public Library.
- 7. If you are in any doubt as to the procedure to be followed, it is strongly recommended that you seek planning and/or legal advice.

#### MONITORING FEE CONDITIONS

1. Monitoring of this resource consent is carried out by the Council's Resource Monitoring Officers. This is separate from any monitoring or inspections related to a building consent. Pursuant to Section 36 of the Resource Management Act 1991, the fees relating to monitoring conditions are as follows:

# a. Basic Monitoring

Included in the fees payable for the processing of this application, for which an account will be rendered, the applicant shall pay to the Council a monitoring fee of \$30.00. This fee will cover monitoring of Council records to ensure compliance with the conditions imposed where no site visit is required.

# b. Standard Monitoring

Included in the fees payable for the processing of this application, for which an account will be rendered, the applicant shall pay to the Council a monitoring fee of \$75.00. This fee will cover the cost of setting up a monitoring programme and the carrying out of one site inspection to ensure compliance with the conditions imposed.

# c. Specialised Monitoring

Included in the fees payable for the processing of this application, for which an account will be rendered, the applicant shall pay to the Council a monitoring fee of \$125.00. This fee will cover the cost of setting up a monitoring programme and the carrying out of two or more site inspections to ensure compliance with the conditions imposed. In cases where further site inspections are required, due to non-compliance with any of the conditions or for the reasons specified by the consent, the Council may render an account to the consent holder for the additional monitoring fees at the rate of \$50.00 per hour for time spent and 40 cents/kilometre travelled. Non-payment of any fees associated with this consent shall be in breach of this condition.

#### R307216

That pursuant to Sections 104, 108, 220, 405 and 407 of the Resource Management Act 1991, the Selwyn District Council grants Resource Consent Application R307216 to subdivide a block of land held in two certificates of title into seven allotments ranging in area from 4ha to 6.2ha

The following conditions are imposed on this consent:

- 1. That the application proceed in general accordance with the attached approved site plan and details submitted with the application.
- 2. That the subdivider shall provide evidence from the relevant service provider that electricity and telecommunication connections are available to service Lot 1.
- 3. That Council shall require as a subdivision contribution a street light at the intersection of a public road and a right of way in the rural area where there are 5 or more lots being accessed by a right of way. The Council will maintain the streetlight.
- 4. That prior to the issue of a completion certificate for the subdivision, any required new vehicle entranceway shall be formed and sealed in accordance with the attached diagram C1.
- 5. That prior to the issue of a completion certificate for the subdivision, the access entrance for the right-of-way shall be formed and sealed in accordance with the attached diagram D, Table 1 Appendix 11.
- 6. That a financial contribution of \$44,710 plus GST shall be paid to the Council for the purpose of upgrading Ahuriri Road from the edge of the seal at the State Highway 75 intersection for a distance of 1170m for seal extension.
- 7. That a financial contribution shall be paid for the installation of a flag light at the intersection of State Highway 75 and Ahuriri Road. Flag lighting is to be in accordance with the AS-NZS1158.

#### R307217

That pursuant to Sections 104 and 108 of the Resource Management Act 1991, the Selwyn District Council grants Resource Consent Application R307217 to erect a dwelling on Lots 2-7 and retain an existing dwelling on Lot 1 created by subdivision consent R307216.

The following conditions are imposed on this consent:

That the application proceed in general accordance with the attached approved site plan and details submitted with the application.

## Note to the Consent Holder.

- a) Pursuant to section 125 of the Resource Management Act 1991, if not given effect to, this resource consent shall lapse five years after the date of this decision unless a longer period is specified by the Council upon application under Section 125 of the Act.
- b) In accordance with section 36 of the Resource Management Act 1991, the Council's standard monitoring fee has been charged.

- c) This consent is not an authority to build and a Building Consent is also required before the commencement of construction.
- d) A resource consent may be required should a new dwelling erected not comply with the setback requirements of the relevant plan(s).
- e) A cash bond may be entered into with regard to subdivision Condition 4.

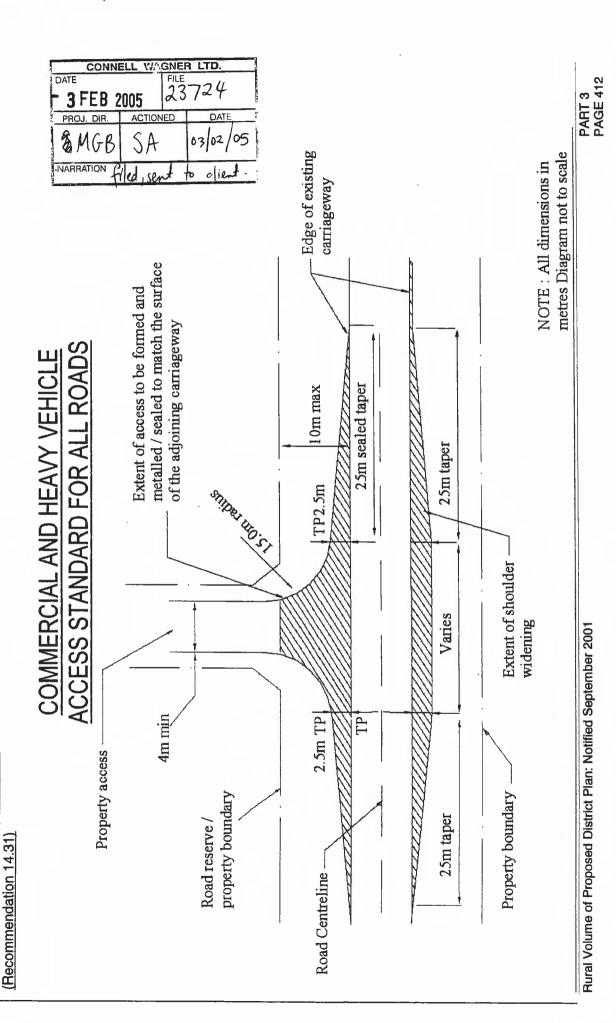
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Yours faithfully

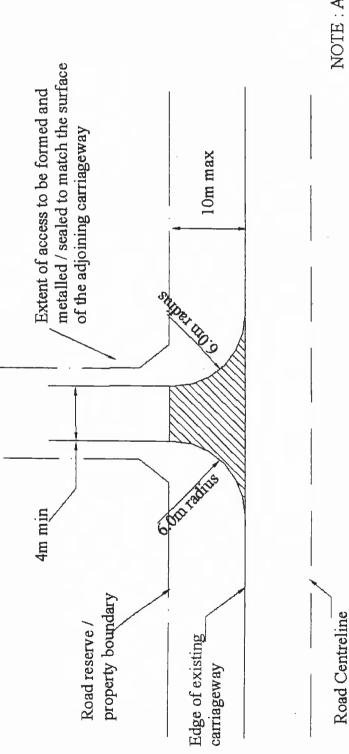
Gillian Brøckie

RESOURCE MANAGEMENT PLANNER

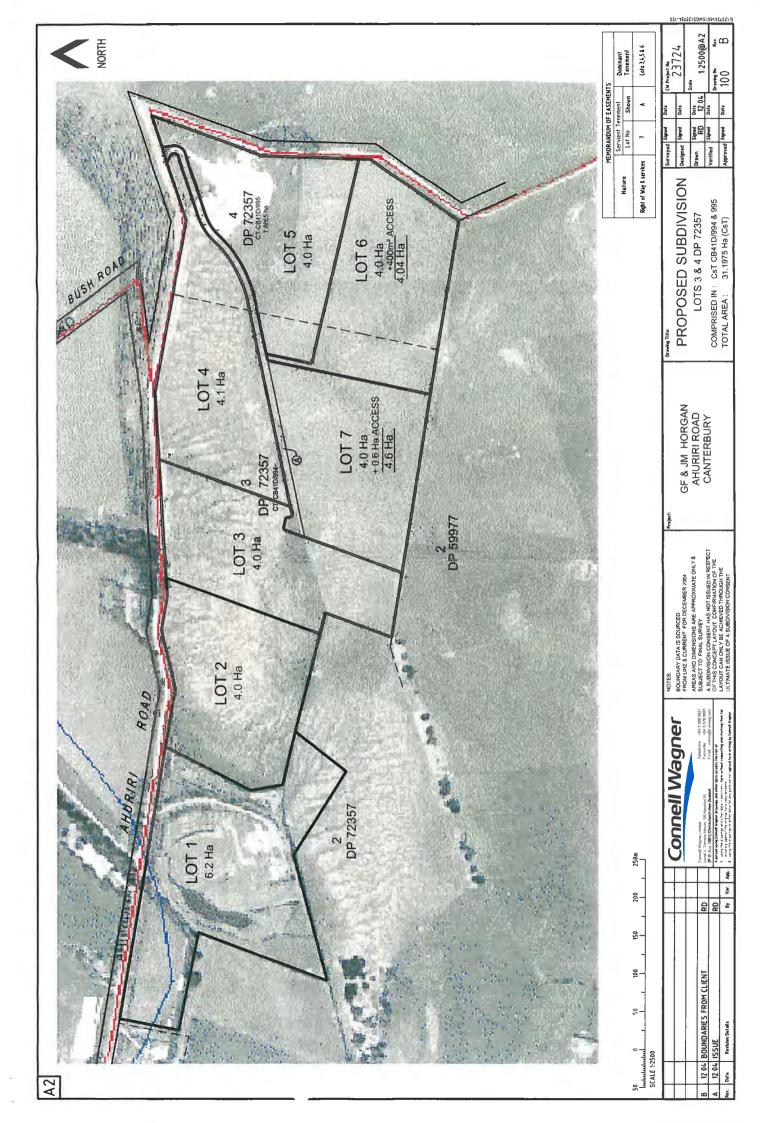
DIAGRAM D - VEHICLE CROSSING



# RESIDENTIAL ACCESS STANDARD FOR LOCAL ROADS



NOTE : All dimensions in metres Diagram not to scale





# Annexure C

# Planning Map and Extract from PC6

