

# BEFORE THE WAIKATO DISTRICT COUNCIL HEARINGS COMMITTEE

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Under

The Resource Management Act 1991 ('the Act')

In the  
matter of

District Plan Review

Hearing 7

Industrial Zone

Between

**McCracken Surveys Limited for Tasman Lands Limited**

Submitter

And

**Waikato District Council**

Consent Authority

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**Statement of Evidence of Philip Barrett**

21 January 2020

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## **INTRODUCTION**

1. My name is Philip James Barrett, I am a planning consultant engaged by the submitter Tasman Lands Limited.
2. I am a Senior Planner employed by Cheal Consultants Ltd. I have worked as a planner for 25 years. I have held roles both within and external of Councils in addition to a Government Department. I have held the positions Manager of Resource Consent Monitoring and Compliance at Papakura District Council; Team Leader Policy and Heritage Christchurch City Council; Senior Management Planner for the Department of Conservation and otherwise I have worked in consultancy. I am a full member of the New Zealand Planning Institute. I have a Bachelor of Arts (Hons) and Resource and Environmental Planning Master's Degree.
3. I prepared Tasman Land Limited submission being Council submission number 943.
4. I have read Council's s42 A report.
5. I confirm I have read and agree to comply with the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014. I confirm this evidence is within my area of expertise except where I state that I am relying on facts or information provided 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.
6. Unless otherwise specified, all statements in this evidence are my own opinion.
7. I have prepared this statement based on my knowledge of the Resource Management Act 1991, the Waikato District Council District Plan and my knowledge of the locality, past history and numerous site visits over the past 5 years.

## **SCOPE OF EVIDENCE**

8. My evidence addresses s42 A report item 34 Specific Area 20.5 Nau Mai Business Park and addresses the following matters:
  - (a) Potential Consolidation of Nau Mai Business Park (NMBP) within the Industrial Zone.
  - (b) Various amendments to acknowledged and protect the local industrial environment from degradation.

## **KEY ISSUES**

9. Tasman Lands Limited (TLL) in submission 943 requested Nau Mai Business Park (NMBP) to be subsumed within the Industrial Zone. This is proposed on the basis that industrial activities (as defined) in the Industrial Zone can and should be permitted activities subject to compliance with the relevant performance standards.
10. However, there is no objection to the retention of the current specific NMBP section recognising there are specific rules associated with NMBP and where additional provisions are sought.

11. One significant change should apply. That being that any light industrial activity in the NMAP can and should be permitted activities subject to compliance with the relevant performance standards of the NMBP.
12. It follows that the table contained in the PDP section 20.5.2 Permitted Activities can be replaced with PDP rule 20.1.11 Permitted Activities table with minor changes (a mix of notified PDP tables 20.1.11 and 20.5.2 – see Table 1 below). The default activity status remains discretionary. The permitted activity status defaults to discretionary on that basis the proposed industrial zone rule 20.5.3 D1 is retained and amended as follows: *Any permitted activity that does not comply with an activity specific condition in Rule 20.5.1. This rule change is consistent with the general Industrial zone layout and application of the district plan. Rule 20.5.1 are the rules (performance standards) that will be applied.*
13. This change should require the deletion of P1 - P13 contained in rule 20.5.1 (b) (Attachment 1) since these activities can be deleted as a consequence of the submitted change sought in paragraph 1 above.

#### Proposed Changes

14. Table 20.5.2 is to be amended to the following:

Table 1

Activities		Activity specific conditions
P1	Industrial Activity	Nil
P2	Trade and industry training activity	Nil
P3	Truck stop for refuelling	Nil
P4	Office ancillary to an industrial activity	(a) Less than 100m <sup>2</sup> gfa; or (b) Does not exceed 30% of all building on the site.
P5	Food outlet	(a) less than 200m <sup>2</sup> gfa
P6	Ancillary retail	Does not exceed 10% of all buildings on the site
P7	One dwelling per lot for a caretaker	a) gross floor area of 70m <sup>2</sup> (excluding a garage, carport or decking)

15. The table above includes similar or same activities found in both the Operative District Plan (ODP) and the Proposed District Plan (PDP) industrial tables (Attachment 2) for which there is no obvious reason not to include the same for NMBA. These include as above in Table : P2, which is similar to the current education facility; P4 ancillary office; P5 food outlet; P6 ancillary retail and P7 one dwelling for caretaker. There is no obvious reason to deny NMBP the same opportunity as the general industrial zone in terms of P3. Activity P7 is also not uncommon in industrial zones (storage facilities).
16. The above table provides for industrial activities as permitted activities; the table accepts there are other activities that are appropriate in the industrial zone (P2 - P7) above and deletes (ODP) activities that are not likely to pass muster as industrial activities or requires further understanding and deliberation to ascertain if it 'fits' the industrial activity definition; for example, timber and hardware merchant; farming supplies merchant; plant nursery and landscape supplies.



17. The deletion of non-industrial activities from the PDP permitted standards is consistent with the argument to allow industrial activities to be permitted subject to compliance with related NMBP standards that otherwise defaults to discretionary activity status.
18. **The current ODP still represents a relic interpretation that NMBP somehow remains and should remain associated with its land use origins. It should not.**
19. It should not because the site is approximately 90% developed, currently supporting about twenty activities, all but one is not an industrial activity, a coffee cart outlet, established under the LUC0071/10 (OPD rule 24F10(k) food outlet less than 200m<sup>2</sup> gfa). The bulk of activities on site are light industrial activities as might be expected.

Operative District Plan Rule

20. Another reason for the proposed change is that the current district plan activity status section 24F.10.1 causes confusion. A lay person unfamiliar with planning terminology, have consistently interpreted this section as any activity not listed in 24F10.1 not to be a permitted activity after reading 24F.10.2.
21. This very issue was taken up with Council staff in August 2016 at which time I spoke with a Council planning team leader seeking a Council planner interpretation concerning the perceived default activity interpretation of now OPD rule 24F.10.2. I was told this is a "*wider district plan issue to be sorted one hopes during the plan review*". I was also told that "*Council Planners take practical steps and focus on the failed performance standard default status and any specific restricted discretionary criteria are considered*". This suggests that district planners had not a firm interpretation of the default rule and wished it to be submitted upon via the district plan review.
22. Industrial activity *Means the production, processing, bulk moving or storage in bulk of any materials, goods or products:*  
Production includes:  
(a) *manufacturing; and*  
(b) *assembly from components.*  
Processing includes:  
(a) *repair;*  
(b) *servicing;*  
(c) *maintenance; and*  
(d) *assembly of materials, goods or product.*  
Bulk storage includes:  
(a) *warehousing.*
23. ODP rule 24F.10 is clear; "*Any activity listed below is a permitted activity if it complies with the relevant performance standards of this Schedule and the performance standards of the Industrial Zone*". This rule fails any bonified industrial activities (see definition above) as permitted. This is in stark contrast to the PDP Industrial Zone rule 20.1.1 that clearly states that an industrial activity is a permitted activity subject to activity specific conditions.
24. Rule 24F.10.2 is not easily interpreted by lay persons seeking to establish an industrial activity at NMBP.
25. Rule 24F.10.2 is as follows:



*Any activity that is not listed in 24F.10.1 or does not comply with a condition for a permitted activity is a discretionary activity.*

26. The likely intended interpretation of 24F.10.2 is that *any activity not listed in 24F.10.1 is discretionary* (requiring resource consent) and *any listed activity that fails a permitted condition falls to discretionary* (requiring resource consent). The intention is that any industrial activity, if interpreted against the industrial activity definition to be an industrial activity, cannot operate in the industrial zone as a permitted activity. This is a very odd planning outcome, industrial activities in the industrial zone require resource consent even if they were to fully meet permitted performance standards.
27. The reason for this interpretation in my opinion is that Council maintains the inaccurate interpretation that NMBP is not an industrial zone (see S42A report page 141). This assumption is incorrect because the original land use consent specifically provided for industrial activities as well as listed non - industrial activities (attachment 3).
28. A lay person reads rule 24F.10.2 with the starting point that an industrial activity should be permitted in an industrial zone and is astonished when told it does not.
29. Confusion can be avoided, and common sense can apply by undertaking the proposed changes that will allow the NMBP to continue to operate as a [light] industrial zone.

#### Miscellaneous Proposed Changes

30. Rule 20.5.7 Sign General P2(a)(iv). The submission simply suggested that the reference to Lot 1 DP 454300 no longer exists. The plan review offers the opportunity to acknowledge this and delete the sub-rule. The submission provides the new record of title reference. The Title Plan and easement schedule (attachment 4) confirms existing easement BB (p2 of easement) and the right to erect and maintain a sign (EI 9125031.9).
31. The submission sought a prohibit rule to prevent storage of fireworks and incineration due to the extent and ongoing protection of vegetation and, at times, the lack of onsite water. Plantings were established and maintained as mitigation for the original land use (LUC0071/10 - PC5). The planning decision emphasized the importance of planting among a suite of conditions that reduced the adverse effects on the environment to less than minor allowing approval of the applications. Notwithstanding the consented need for a fire fighting water supply system water levels fluctuate resulting in low water levels during dry periods. The prohibition would support the established local industrial character and amenity.
32. Rule 20.5.12 Gross Floor Area. The submission sought the inclusion of an additional restricted discretionary criteria (ii) The Reduction of Fire Risk. The origin of the GFA 800m<sup>2</sup> was to create a fire cell maximum in order to minimise fire and the spread of fire. The PDC Fire Design Report 11 June 2009 that supported the land use resource consent that established activities on site utilised the largest fire cell (building) at <800m<sup>2</sup>. The area is important because it related to the "Method of determining required water supply classification" and therefore the required water storage and number of hydrants. It is appropriate that Council have the ability to specifically enquire about fire protection where the gfa exceeds 800m<sup>2</sup>.

33. The submission suggested that the PDP planning map indicating the Effective Building Area is attachment. Currently the map could be misconstrued/ misunderstood. Hatching would provide instant clarity.
34. Ancillary to the above and paragraph 30, there is also a need to specifically protect all the existing landscape and battered areas within NMBP. The landscape planting, batters and effective platform areas together support the achieved local environment envisaged by the suite of original land use conditions of LUC007/10. Not to do so allows for slow and incremental degradation of these areas. PDP landscape rule 20.5.5 relates only to land adjacent a road. Presumably a road means a legal road only. The rule does not account for extensive landscape planting not adjacent a road. Landscape areas and batters result from the construction of effective areas as well as giving effective to the overall industrial environment achieved on site. The reduction of visual mitigation to parking areas and storage areas adjacent a road is inconsistent and waters down the original intent of the original land use conditions.



**PHILIP BARRETT**  
**CHEAL CONSULTANTS LIMITED**  
**SENIOR PLANNER**  
**21 January 2020**

## 20.5.1 Application of rules

- (a) The activity rules in 20.1.1 (Permitted Activities), 20.1.2 (Discretionary Activities) and 20.1.3 (Non-complying Activities) do not apply within the Nau Mai Business Park Specific Area and Rules 20.5.2, 20.5.3 and 20.5.4 apply instead.
- (b) The rules that apply to a permitted activity in Rule 20.5.2 PI-P13 within the Nau Mai Business Park Specific Area as identified on the planning maps are as follows:
  - (i) Rule 20.2 (Land Use – Effects), except:
    - A. Rule 20.2.2 (Landscape Planting) does not apply and Rule 20.5.5 applies instead;
    - B. Rule 20.2.3.1 (Noise – General) does not apply and Rule 20.5.6 applies instead;
    - C. Rule 20.2.7.1 (Signs – General) does not apply and Rule 20.5.7 applies instead;
    - D. Rule 20.2.8 (Outdoor storage of goods and material) does not apply and Rule 20.5.8 applies instead.
  - (ii) Rule 20.3 (Land Use – Building), except:
    - A. Rule 20.3.1 (Building Height) does not apply and Rule 20.5.9 applies instead.
  - (iii) Rule 20.5.10 (Construction Materials);
  - (iv) Rule 20.5.11 (Building Coverage); and
  - (v) Rule 20.5.12 (Gross Floor Area);
  - (vi) Rule 20.5.13 (Building Location and Setbacks); and
  - (vii) Rule 20.5.14 (Acoustic Insulation for Dwelling)
- (c) Rule 20.4 (Subdivision) applies for subdivision within the Nau Mai Business Park Specific Area.



## 20.5.2 Permitted Activities

(a) The following activities are permitted activities if they meet all the:

- (i) Activity-specific conditions in Rule 20.5.2; and
- (ii) Rules 20.5.5 to 20.5.14 (inclusive).

Activities		Activity-specific conditions
P1	Timber and hardware merchant	Nil
P2	Farming supplies merchant	Nil
P3	Plant nursery	Nil
P4	Landscape supplies	Nil
P5	A retail activity that is ancillary to any permitted activity.	(a) does not exceed 20% of the gross floor area of the industrial building; (b) involves the sale of goods manufactured and stored within the site, except for the activities listed P1-P4 above.
P6	One dwelling per lot for a caretaker or security personnel	(a) gross floor area of 70m <sup>2</sup> (excluding a garage, carport or decking)
P7	Veterinary practice	Nil
P8	Boarding, breeding or animal training establishment contained in a building or outdoor enclosure	Nil
P9	Research and technology	Nil
P10	An education facility	for no more than 10 students
P11	A food outlet	less than 200m <sup>2</sup> gross floor area
P12	An office that is ancillary to any permitted activity	Nil
P13	Plant and equipment hire	Nil

Other Activities  
Editorial Note:

For rules for Telecommunication Facilities on Road Reserves see the National Environmental Standards in Appendix Od.

For rules for Electricity Transmission Activities see the National Environmental Standards in Appendix Oe.

For rules for the following activities which are proposed to occur on land where an activity or industry listed in the Ministry for the Environment's Hazardous Activities and Industries List (HAIL) is being or has been undertaken, or where it is more likely than not a HAIL activity is being or has been undertaken, see the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 in Appendic Of:

- Removing or replacing a fuel storage system;
- Sampling soil;
- Disturbing soil;
- Subdividing land; or
- Changing the use of land.

24F.10 - Type of activity

ITEM	PERMITTED	RESOURCE CONSENT
24F.10 Type of activity	<p>24F.10.1</p> <p>Any activity listed below is a permitted activity if it complies with the relevant performance standards of this Schedule and the performance standards of the Industrial Zone:</p> <ul style="list-style-type: none"> <li>(a) Timber and hardware merchant;</li> <li>(b) Farming supplies merchant;</li> <li>(c) Plant nurseries permanently contained in buildings or outdoor enclosures;</li> <li>(d) Landscape supplies;</li> <li>(e) Retail activities that are ancillary to any permitted activity. Retail activities shall not exceed 20% of the floor area of the associated industrial building and the goods sold must be manufactured and stored within the site/lot excluding those activities (a), (b), (c) and (d)</li> </ul>	<p>24F.10.2</p> <p>Any activity that is not listed in 24F.10.1 or does not comply with a condition for a permitted activity is a discretionary activity.</p>

	<p>listed in this rule that have higher inherent retail component.</p> <p>(f) Dwelling for caretaker or security personnel (one dwelling per lot with a maximum 70m<sup>2</sup> habitable floor area);</p> <p>(g) Veterinary practice;</p> <p>(h) Boarding kennels or catteries permanently contained in buildings or outdoor enclosures;</p> <p>(i) Research and technology activities involved in the research, development, manufacture and commercial application of advanced technology including but not limited to: agritechnology, energy technology, transportation technology, manufacture technology, soils/water/air resources;</p> <p>(j) An educational institution involving no more than 10 students;</p> <p>(k) Food outlet less than 200m<sup>2</sup> GFA;</p> <p>(l) Office that is ancillary to any permitted activity;</p> <p>(m) Plant and equipment hire.</p>	
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24F.17 - Landscaping

ITEM	PERMITTED	RESOURCE CONSENT
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# SCHEDULE A

## CONDITIONS OF CONSENT

### LAND USE CONSENT LUC 0071/10

#### PLANNING CONDITIONS

- PC1 The development shall be undertaken in accordance with the application received 28 September 2009 titled *Proposed Nau Mai Business Park and Lifestyle Subdivision* prepared by McCracken Surveys Ltd, and subsequent further information received 15 December 2009, 18 December 2009, 28 January 2010, 12 February 2010, 8 March 2010, 10 May 2010, 1 June 2010, 17 June 2010 and 29 June 2010, except as otherwise altered by the following conditions of consent.
- PC2A All activities, including construction, operation and maintenance, on Precincts 12, 14, 15, and 16 and Lots 18 and 19, as already existing or created by subdivision consent SUB0048/10, shall be undertaken in accordance with the Performance Standards attached as Appendix I. Any industrial development shall only occur within the 'effective areas' within each precinct, as shown on the plans prepared by McCracken Surveys Ltd reference 08157.
- PC2B All activities, including construction, operation and maintenance, on Lots 3, 4 5, 6, 7, 8, 9, 11 and 17, as already existing or created by subdivision consent SUB0048/10, shall be undertaken in accordance with the Performance Standards attached as Appendix II.
- PC3 There shall be no future expansion of the Nau Mai Business Park to Lot 10 beyond the approved boundary of Precinct 14, to ensure the remainder of Lot 10 is retained in rural land use.
- PC4 All buildings within Precinct 15 shall be shielded from adjacent locations on State Highway 23. As a minimum, a two-metre high earth bund shall be constructed on the State Highway 23 boundary of the precinct and planted with a mixture of species from the proposed plant schedule, both to occur within the first construction season following the commencement of this consent, and prior to any other construction or building taking place within any precinct, to the satisfaction of the Chief Executive of the Waikato District Council, or delegate (hereafter referred to as "the Chief Executive"). The grade and species of plants used on the bund shall be selected to ensure growth to a height of not less than 2m in 2 years. The bunding and planting shall be in general accordance with Detail I, Appendix

## APPENDIX I

### PROPOSED LAND USES AND PERFORMANCE STANDARDS - LIGHT INDUSTRIAL PRECINCTS

The following land uses and performance standards are to be applied over the Nau Mai Business/Industrial Precincts 12, 14, 15 and 16 (and any subsequent subdivision of these precincts) as shown on McCracken Surveys Plan Numbered 08157 Sheets 1 – 12. Industrial development shall only occur within the 'effective areas' within each precinct.

Meaning of Words: Unless otherwise stated, the meaning of words in the following sections labelled 'A', 'B' and 'C' shall be the same as those in the *Proposed Waikato District Plan (Appeals Version)*. Reference to the "District Plan" shall mean the *Proposed Waikato District Plan (Appeals Version)*.

#### A. Land Uses Permitted

Provided the performance standards in 'C' below are met the following land uses/activities will be permitted activities within Precincts 12, 14, 15 and 16 (and any subsequent subdivision of these precincts) of the Nau Mai Business and Industrial Park. Light industries/businesses involving the processing, manufacturing, fabricating, packing or storage of goods and servicing and repair activities including:

1. Depots for rural, roading, building contractors and building sub-contractors;
2. Light engineering, manufacturing, and sheet metal fabrication;
3. Woodworking, including but not limited to; kitchen manufacturing, pre-nailing of timber trusses and frames, and furniture making including upholstery;
4. Panel beating and auto trimming;
5. Spray painting;
6. Vehicle disassembly (only within a building);
7. Transport depot – as defined in Appendix P District Plan;
8. Research and technology activities involved in the research, development, manufacture and commercial application of advanced technology including, but not limited to: agritechnology, energy technology, transportation technology, manufacturing technology, soils/water/air resources;
9. Dwelling for caretaker or security personnel (one dwelling per precinct – 70m<sup>2</sup> habitable floor area);
10. An educational institution involving no more than 10 students;
11. Office that is ancillary to any permitted industrial uses listed herein;
12. Retail activities that are ancillary to any permitted industrial uses (retail activities shall not exceed 20% of floor area of the associated industrial building and the goods sold must be manufactured or stored within the site/lot/precinct or associated industrial building) not including specific uses listed here that have a higher inherent retail component e.g. 15, 20, 21;
13. Food outlet less than 200m<sup>2</sup> gfa (one for all four precincts);

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14. Intensive farming activity but limited to plant nurseries permanently contained in buildings or outdoor enclosures, boarding kennels or catteries;
  15. Veterinary facilities;
  16. Vehicle and machinery hire;
  17. Plant and equipment hire;
  18. Self storage facilities;
  19. Vehicle and engine repair activities including but not limited to maintenance, testing and certification;
  20. Timber and hardware merchant;
  21. Farming supplies merchant;
  22. Boat repair, building, servicing, storage and chandlery, including bait, ice, and tackle;
  23. Refuelling depot (Diesel) – contractors only (not general public);
  24. Produce storage;
  25. Fertiliser storage;
  26. Landscaping supplies;
  27. Clothing manufacture;
  28. Pump shed;
  29. Part Precinct 14 – Uses authorised by Waikato District Council Consent LUC0177/07 – Mini-Mix Plant;
  30. Salvaged vehicle compound (provided salvaged vehicles are not visible from SH23);
  31. Manufacturing of concrete and clay products, surf boards and sails;
  32. Pastoral farming and/or cropping on unused parts of precincts; and
  33. Any combination of the above listed uses.

**B. Land Uses Not Permitted**

Despite meeting the performance standards in C. below the following land uses/activities will not be permitted within Precincts 12, 14, 15 and 16 (and any subsequent subdivision of these precincts) of the Nau Mai Business and Industrial Park.

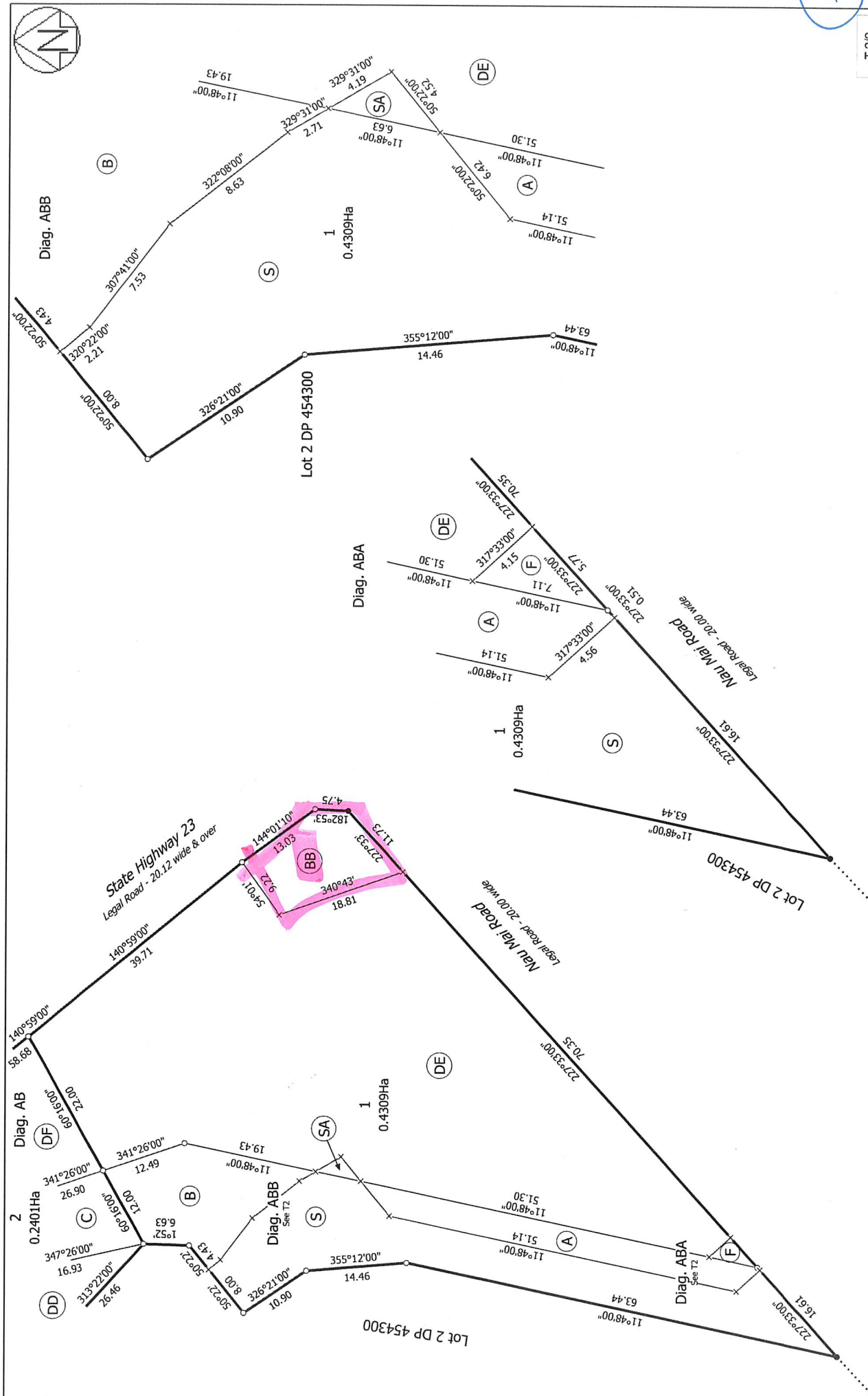
1. Residential activities of any type as defined in Appendix P of the District Plan except for caretaker or security personnel (one dwelling per precinct - max. habitable floor area = 70m<sup>2</sup>) and the acoustic design criteria specified in C. below;
2. Sale of liquor;
3. Retail activities (except as provided for in A. above);
4. Abattoir;
5. Dairy Factory;
6. Asphalt manufacturing;
7. Oil refining; and
8. Pulp and paper manufacturing.

**C. Performance Standards**

1. Where required, land uses and buildings within each precinct (or subdivision thereof) are to be connected to stormwater and on-site wastewater disposal in a way that complies with Appendix B (Engineering Standards) of the District Plan, and



4



T 2/2

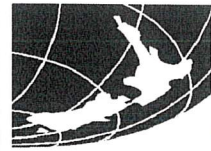
<p>Land District: South Auckland</p> <p><b>Digitally Generated Plan</b></p> <p>Generated on: 19/01/2018 10:09am Page 5 of 5</p>	<p><b>Lots 1 to 5 being a Subdivision of Lot 1 DP 454300</b></p>	<p>Surveyor: John Philip Marsden Firm: McCracken Surveys Ltd</p>	<p><b>Title Plan</b> <b>DP 517948</b></p> <p>Deposited on: 11/01/2018</p>
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# View Instrument Details

Instrument No. 9125031.9  
Status Registered  
Date & Time Lodged 12 Aug 2013 13:29  
Lodged By Rejthar, Christopher Roman  
Instrument Type Easement Instrument

Toitu te  
**Land whenua**  
**Information**  
New Zealand



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Affected Computer Registers	Land District
583048	South Auckland
583049	South Auckland
583050	South Auckland
587086	South Auckland
587087	South Auckland
587088	South Auckland
587089	South Auckland

**Annexure Schedule:** Contains 5 Pages.

## Grantor Certifications

I certify that I have the authority to act for the Grantor and that the party has the legal capacity to authorise me to lodge this instrument ☒

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument ☒

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply ☒

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period ☒

I certify that the Mortgagee under Mortgage 8822041.2 has consented to this transaction and I hold that consent ☒

## Signature

Signed by Christopher Roman Rejthar as Grantor Representative on 08/08/2013 08:21 AM

## Grantee Certifications

I certify that I have the authority to act for the Grantee and that the party has the legal capacity to authorise me to lodge this instrument ☒

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument ☒

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply ☒

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period ☒

## Signature

Signed by Christopher Roman Rejthar as Grantee Representative on 08/08/2013 08:21 AM

\*\*\* End of Report \*\*\*

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## Form B

**Easement instrument to grant easement or *profit à prendre*, or create land covenant**

(Sections 90A and 90F Land Transfer Act 1952)

**Grantor**

Tasman Lands Limited

**Grantee**

Tasman Lands Limited and Bay-Rise Trustee Limited

**Grant of Easement or *Profit à prendre* or Creation of Covenant**

**The Grantor** being the registered proprietor of the servient tenement(s) set out in Schedule A **grants to the Grantee** (and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A, **or creates** the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

**Schedule A***Continue in additional Annexure Schedule, if required*

Purpose (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference) DP454300	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Right of Way, Right to Convey Water, Electricity, Telecommunications & Computer Media, Right to Drain Water & Sewage	H & AF	Lot 102 – 587089	Lot 43 – 587088
	J, AD & I	Lot 40 – 587087	Lot 43 – 587088
	K	Lot 40 – 587087	Lot 1 – 583048 Lot 2 – 583049 Lot 3 – 583050 Lot 4 – 587086 Lots 5, 6, 11 & 42 – 587087 Lot 17 – 583050, 587086 & 587087 Lot 43 – 587088 Lot 102 – 587089
	AD, J, G, AK, AI & AV	Lot 40 – 587087	Lot 3 – 583050 Lot 4 – 587086 Lots 5, 6, 11 & 42 – 587087 Lot 17 – 583050, 587086 & 587087 Lot 102 – 587089
	L	Lot 17 – 583050, 587086 & 587087	Lot 3 – 583050 Lot 4 – 587086 Lots 5, 6, 11 & 42 – 587087



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## Schedule A continued.

Purpose (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference) DP454300	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Right to Take and Convey, Water for fire fighting purposes	S	Lot 1 – 583048	Lot 2 – 583049 Lot 40 – 587087 Lot 102 – 587089
	W	Lot 2 – 583049	Lot 1 – 583048 Lot 40 – 587087 Lot 102 – 587089
	G, J, AD, AK & AI	Lot 40 – 587087	Lot 1 – 583048 Lot 2 – 583049
	R, U & AJ	Lot 102 – 587089	Lot 1 – 583048 Lot 2 – 583049 Lot 40 – 587087
Right to Erect and Maintain Sign	BB	Lot 1 – 583048	Lot 2 – 583049 Lot 40 – 587087 Lot 102 – 587089

A

Form B - continued

**Easements or profits à prendre rights and powers (including terms, covenants and conditions)***Delete phrases in [ ] and insert memorandum number as required; continue in additional Annexure Schedule, if required*

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or Schedule Five of the Property Law Act 2007

The implied rights and powers are hereby **varied** by the provisions set out in Annexure Schedule

**Covenant provisions***Delete phrases in [ ] and insert Memorandum number as require; continue in additional Annexure Schedule, if required*

The provisions applying to the specified covenants are those set out in:

[Memorandum number N.A. , registered under section 155A of the Land Transfer Act 1952]

[Annexure Schedule ]

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Form L

Annexure Schedule

Page 4 of 5 Pages

*Insert instrument type*

Easement Instrument

**RIGHT TO CONVEY WATER**

The same rights and powers as set out in paragraph 3 of the Fourth Schedule to the Land Transfer Regulations 2002

**RIGHT OF WAY**

The same rights and powers as set out in paragraph 6 of the Fourth Schedule to the Land Transfer Regulations 2002 and Fifth Schedule to the Property Law Act 2007 and the grantor or grantee must not allow stock to graze on the easement areas.

**RIGHT TO DRAIN WATER**

The same rights and powers as set out in paragraph 4 of the Fourth Schedule to the Land Transfer Regulations 2002

**RIGHT TO CONVEY ELECTRICITY**

The same rights and powers as set out in paragraph 7 of the Fourth Schedule to the Land Transfer Regulations 2002

**RIGHT TO CONVEY TELECOMMUNICATIONS AND COMPUTER MEDIA**

The same rights and powers as set out in paragraph 8 of the Fourth Schedule to the Land Transfer Regulations 2002

**RIGHT TO TAKE AND CONVEY WATER FOR FIRE FIGHTING PURPOSES**

1. The full, free, uninterrupted and unrestricted right, liberty and privilege for the Grantee in common with the Grantor to a) store the minimum quantity of water required by the Waikato DC Land Use Consent LUC0071/10 (Clause FF1) for Fire Fighting Supplies in the Water Tank erected by the Grantor on marked area R and the Stormwater Detention Pond located on marked area W and b) to take and convey water for fire fighting purposes through the easement facility and over all the marked areas on the servient land to the dominant land.
2. The right to take and convey water is limited to the extent required by any period of necessary cleansing, renewal, modification, or repair of the easement facility however both the Grantor and Grantee shall ensure that either the supply from the Water Tank or the Stormwater Detention Pond is available at all times.
3. The easement facility is to be laid along the stipulated course or stipulated area. The Grantor must not do and must not allow to be done anything on the servient land that may cause the flow of water in the water supply system to be diminished or impeded.
4. Repair & maintenance costs of the easement facility shall be shared by the Grantor and Grantee (in conjunction with the owner of Lot 16 DP450114) as follows:

Area W (including Stormwater Detention Pond )

- Lot 1 – 24.5%
- Lot 2 – 9.5%

Areas AD, AI, AJ, AK, G, J, R, S & U (including Water Tank)

- Lot 1 – 15%
- Lot 2 – 6%
- Lot 102 – 15%
- Lot 40 – 24%



## Form L

## Annexure Schedule

Page 5 of 5 Pages

*Insert instrument type***Easement Instrument***Continue in additional Annexure Schedule, if required*

The easement facility shall be maintained and kept in good operational order and condition at all times to the specifications of the New Zealand Fire Service (together with any statutory successor or successors).

5. The Grantor covenants with the Grantee that:

a) Any Easement Facility erected on the marked areas shall be in accordance with the New Zealand Fire Service Code of Practice for Fire Fighting Supplies and the reasonable requirements and specifications of the New Zealand Fire Service and capable of being readily coupled to and of delivering water to Fire Service appliance pumps from the Water Tank and Stormwater Detention Pond through the Easement Facility

b) The Grantor will develop the easement areas and access to and from the public road to provide a surface with all-weather capability for fire fighting purposes.

c) The Grantee is granted unlimited access to the marked areas for the following purposes:

- Inspecting and testing the easement facility and the coupling to ensure that the operational efficiency of the same continues to meet the requirements and specifications of the New Zealand Fire Service
- Carrying out fire fighting drills using easement facility and/or coupling.
- Fighting Fire on the servient and dominant tenements.

d) The Grantor will ensure that the Water Tank on the marked area R contains not less than the minimum requirement at all times, except during the occurrence of any event(s). The Grantor will as soon as practicable after any event(s) replace the water in the water storage facility to the minimum requirement.

**RIGHT TO ERECT AND MAINTAIN SIGN**

The full, free, uninterrupted and unrestricted right, liberty and privilege for the Grantee in common with the Grantor for the purposes of erecting a sign on, through and under the servient land over which the easement is granted and the necessary rights or support of the said sign which the Grantee may desire. From time to time and at all times as required to enter the servient tenement for the purpose of inspecting, altering, repairing, renewing and cleaning such sign:

**TOGETHER WITH, IN RESPECT OF ALL OF THE SAID EASEMENTS**, the rights and powers as set out in paragraphs 1, 10, 11, 12, 13 and 14 of the Fourth Schedule to the Land Transfer Regulations 2002  
SAVE THAT:

- (a) In respect of the right of way where there is a conflict between the provisions of the Fourth Schedule to the Land Transfer Regulations 2002 and the Fifth Schedule to the Property Law Act 2007, the provisions of the Fifth Schedule must prevail.
- (b) Where there is a conflict between the provisions of the Fourth Schedule and/or the Fifth Schedule and the modifications in this Easement Instrument, the modifications must prevail.

Memorandum of Easements			
Purpose	Shown	Servient Tenement	Dominant Tenement
Right of Way & Right to convey water Electricity, Telecommunications & Computer Media & Right to Drain Water and Sewage.	A, B, S	Lot 1 hereon	Lots 2, 3, 4, and 5 hereon
	C	Lot 2 hereon	Lots 3, 4, and 5 hereon
	D	Lot 3 hereon	Lots 2, 4, and 5 hereon
	E	Lot 4 hereon	Lots 2, 3, and 5 hereon

Memorandum of Easements in Gross			
Purpose	Shown	Servient Tenement	Grantee
Right to Drain Water	A, F, S	Lot 1 hereon	Waikato District Council
Right to convey Electricity, Telecommunications and Computer Media.	A, B, F, S	Lot 1 hereon	WEL Networks Ltd.
	C	Lot 2 hereon	
	D	Lot 3 hereon	
	E	Lots 4 hereon	

Schedule of Existing Easements			
Purpose	Shown	Servient Tenement	Created By
Right to take and convey Water for Fire Fighting Purposes	S, SA	Lot 1 hereon	EI 8975109.3 EI 9125031.9
Right to Erect and Maintain Sign	BB	Lot 1 hereon	EI 9125031.9

Schedule of Existing Easements in Gross			
Purpose	Shown	Servient Tenement	Created By
Right to Drain Water	TA	Lot 3 hereon	EI 8975109.5
	TB	Lot 4 hereon	
	TC	Lot 5 hereon	

Note: Areas A, B, BB, C, D, DA, DB, DC, DD, DE, DF, DG, DH, E, F, S & SA are subject to existing Land Covenants, created by E.I. 9027093.2



DP 517948

