

BEFORE THE TASMAN DISTRICT COUNCIL

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of Plan Change 79 to the Tasman Resource
Management Plan

MEMORANDUM OF COUNSEL FOR APPLEBY 88 LIMITED

27 June 2025

Counsel:

Sally Gepp KC / Shoshona Galbreath

3 Brookside

Nelson 7010

sally@sallygepp.co.nz | 021 558 241

shoshona@sallygepp.co.nz | 021 905 314



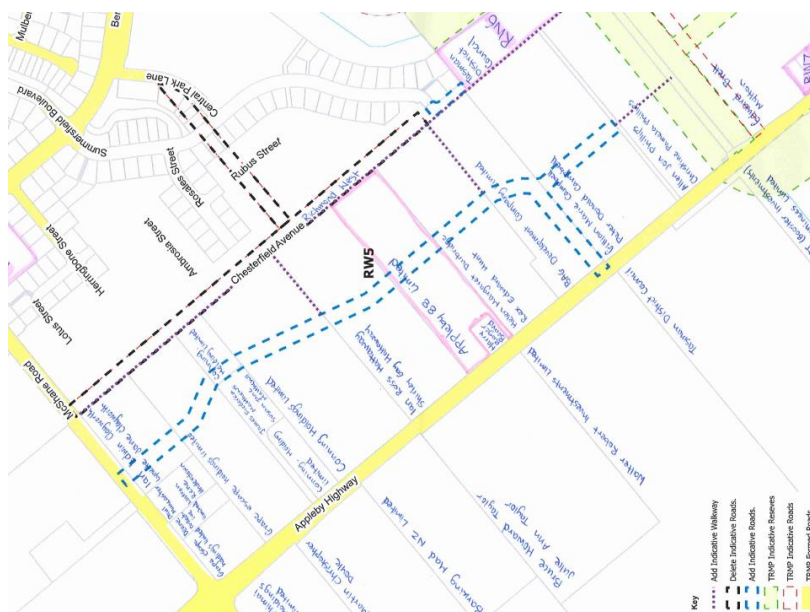
SALLY GEPP KC
BARRISTER

Introduction

1. This Memorandum is filed on behalf of Appleby 88 Ltd and responds to Council's circulation during the hearing of an email from the New Zealand Transport Agency which Council relies on in recommending that relief sought by Appleby 88 not be accepted.

Context

2. The indicative road for deferred site RW5 was previously located at the intersection of Chesterfield Ave and Rubus St to connect with SH60 via Appleby 88's boundary.¹ The image below shows the number of landholdings crossed by the new location of the RW5 indicative road. These sites are in either mixed business or rural productive use. Sites used for productive purposes are unlikely to be developed in a manner that engages a requirement for roading to vest in the near to medium term, and there is likely to be some resistance from established mixed business sites to an indicative road layout that intersects and compromises established land uses. As a result, it may be some time before access can be achieved in reliance on the indicative road.



3. In light of this change in location for the RW5 indicative road, Appleby 88's submission on PC79 sought to provide sufficient flexibility in the TRMP transport infrastructure requirements to enable it to develop 88 Appleby Highway in advance of the indicative road being provided. Its reasoning is that if some sites within RW5 can provide a NZTA-approved access directly onto SH6 for the time being, and are otherwise adequately serviced, then provided their on-site development does not preclude future provision of the

¹ Appleby 88 is disadvantaged by the relocation of the RW5 indicative road, not least because it had planned development around the previously indicated location. It would prefer that the location were reinstated to the boundary.

indicative road in the layout shown above, there is no reason why those sites should not be able to progress with development anticipated by their end use zoning.

4. Appleby 88's submission sought amendments to:

a. Policy 6.3.3.4D:²

Amend Policy 6.3.3.4D as follows:

6.3.3.4D *The urban development anticipated by a deferred zoning is avoided unless:*

- a) *any necessary intersections, connections and upgrades of roads (as identified in Schedule 17.14A) to an appropriate standard have been delivered, or the site otherwise has road access approved by NZTA / Waka Kotahi; and*
- b) *~~the necessary~~ servicing infrastructure (including wastewater, water supply and stormwater) to an appropriate standard has been delivered; and*
- c) *where relevant, development is sequenced with Council strategic planning, infrastructure delivery and land release programmes.*

b. Column D of Schedule 17.14A:³

Transportation:

Provision for either:

- a) a single mid-block intersection with SH60 to be approved by NZTA as part of the central access roadway through mixed business area as per indicative road layout on planning maps. To be provided by developer, plus some Council funding available. See AMP ID 46094 in LTP 2024. or
- b) individual sites have:
 - i. designs that anticipate the indicative road layout on the planning maps; and
 - ii. NZTA-approved accessways to Appleby Highway (SH6), to be rescinded upon the mid-block intersection and relevant parts of the indicative road in (a) being delivered.

5. The s 42A report did not address those submission points.

6. In a separate part of the s42A report addressing Appleby 88's request to live zone the site to mixed business zone, Council said that the existing accesses at 88 Appleby Highway are "for limited rural uses", making them unsuitable to serve a wider mixed business zone on the site.⁴ During the hearing, Council

² Submission point 4227.3

³ Submission point 4227.10

⁴ Section 42A report, p 73.

indicated that it relied on the same reasoning in not recommending adoption of the changes sought by Appleby 88 to Policy 6.3.3.4D and Schedule 17.14A, and provided a copy of an email from NZTA purporting to support its position.

The NZTA email

7. The email from NZTA confirms that the existing accesses were provided as part of a 2018 subdivision and were approved based on the vehicle movement estimates given during that consent process.
8. The relief Appleby 88 seeks on Policy 6.3.3.4D and Schedule 17.14A does not rely on those existing approved accesses. It seeks the ability to develop the site if approved accesses off SH6 are provided. This would be assessed as part of its application for resource consents to develop the site.
9. The effect of Council's position is that development must be "avoided" (per Policy 6.3.3.4D and the link to the infrastructure requirements of Schedule 17.14A) unless the indicative road is provided. The NZTA email does not indicate opposition in principle to development of 88 Appleby Highway in reliance on access off SH6. It does not support Council's position with respect to the relief Appleby 88 seeks on Policy 6.3.3.4D and Schedule 17.14A.
10. Council has given no other reason for recommending against the relief sought. Appleby 88 respectfully submits that its position and reasoning should be preferred.



Sally Gepp KC / Shoshona Galbreath
Counsel for Appleby 88 Ltd