

MINUTES

TITLE: Environment & Planning Sub-Committee
DATE: Tuesday 1 February 2005
TIME: 9.30 am
VENUE: Council Chambers, 189 Queen Street, Richmond

PRESENT: Crs E M O'Regan (Chair), T B King, P K O'Shea

IN ATTENDANCE: Manager Consents (J Hodson), Subdivisions Officer (R Shirley),
Corporate / Engineering Administrator (V Gribble)

1. JAKTRANS LTD, WAIROA GORGE ROAD, BRIGHTWATER, APPLICATION RM040936

1.1 Presentation of Application

Mr D R Smythe and J Kuipers (Principal Director, Jaktrans Ltd) were in attendance to present the application.

The proposal is to subdivide the land to create Lot 1 of 10.5 hectares and Lot 2 of 1.36 hectares, and to construct a dwelling on proposed Lot 2.

Mr Smythe read the evidence on behalf of the applicant.

Cr King questioned the perceived affect on the Pestell-Thompson property. He asked for comment on whether a single-storey only building was necessary and also asked whether the building platform could be more defined.

Mr Smythe said the height of 5.5 metres would allow for a 1.5 storey house. Looking at the shape of land it rises into the hill at the back and a house would be back off the road frontage and utilise the back of the property. The house site is barely visible from the Pestell-Thompson house.

Cr O'Shea suggested landuse condition 2 about design and finish of the building needed to be slightly more defined having regard to amenity and natural character of the locality.

Mr Smythe said those sorts of controls don't appear in discretionary matters in respect of RARA business, its all dealing with effects on quarry. He said it could be argued that it is not a reasonable condition, but Mr Shirley recommended it and the applicant accepted it.

Cr O'Regan questioned the necessity for consent notices in relation to matters that are taken into consideration at building consent stage. In relation to disposal of wastewater, would it not be fair to impose a consent notice to the portion of land to prevent building on it, as a consent notice is an ongoing requirement no matter who owns it.

Mr Smythe said the area is large enough and there are a range of options, effluent could be pumped and irrigated behind the house, or further to the south. The bund area could be used for effluent disposal. He said if a section existed it is a permitted activity to put a house on it.

Cr O'Regan asked if it is physically possible to encompass all cuts and batters that may be of future interest in relation to road maintenance with a 15 metres legal width. Mr Smythe said the plan has been drawn with that in mind.

Cr King asked if there has been any estimate undertaken of cost and any feedback from any Council department about whether they are interested in access up and down the river bank on that side.

Mr Smythe said no assessments made on costs. It has not been discussed with Community Services, although people have been out and looked at it. He agreed with Mr Shirley's assessment and use of section 405A.

Mr Smythe said it is not just a matter of putting a reserve along the bank of the river, it is also getting to and fro it. The top end an esplanade reserve may well sever the property in two because of the narrowness of the land. What is left to the north might be a totally unsuitable unusable portion of land.

2. PRESENTATION OF SUBMISSIONS

2.1 Ms N Thompson

Ms Thompson was in attendance to speak to her submission, which opposed the subdivision.

Ms Thompson said they have double access, from Haycock Road and Lee Valley. Haycocks Road has become very subdivided and she doesn't want to see that happen in Lee Valley and Wairoa Gorge. She sees this subdivision as the start of a snowballing effect.

Ms Thomspson said they can't see the Kuiper house from their property, but can see directly across to the dwelling proposed when in their paddock. From their residential house they can see the rock face and if a two-storey house was built they would be able to see the roof. She asked that a single storey house only be allowed.

Ms Thompson said she was happy for the committee to visit their property.

Cr O'Regan noted that in relation to the particular piece of land, it is clearly distinguished from other applications in that the Council has to clear up the matter of legal road, either under the Resource Management Act process or road legalisation process.

Ms Thompson said that is a valid point, but she still thinks it is going to create a snow ball effect.

2.2 Forest and Bird

Ms H Campbell was in attendance and spoke to a tabled submission on behalf of Forest and Bird, which neither supported nor opposed the application by Jaktrans.

Ms Campbell said the esplanade reserve is surveyed and becomes responsibility of Tasman District Council and ownership is taken over by Council. It becomes a reserve under the Reserves Act. An esplanade strip is not surveyed, and moves with the edge of the river. It remains on the title and is actually still on the title of the owner of the land, who in most instances continues to manage it. An esplanade strip can be closed for specific purposes, such as lambing and can be a variable width. If a strip was intended just for a walkway, then 3 metres is adequate. If conservation it would seem that it should be wider, up to 20 metres.

Cr King asked what benefit conservation-wise is there of taking a strip where effectively it will still remain as pasture, or reverts to gorse.

Ms Campbell said it has functions as a filter to land use adjacent. She would like to see the situation where Council recognises esplanade strips do have conservation values. It could be an opportunity for Council to provide vegetation planting. She would see the esplanade strip fulfilling a role in making the land owner aware that he is privileged to own the area adjacent to the river and would hope management of land would improve values.

Ms Campbell said from an environmentalist point of view they are hoping to protect habitats and creation of corridors along rivers, whatever they'll be. She said there will always be a certain amount of conflict and tension.

Cr O'Regan asked if Forest and Bird have any pressure from its members or the public to gain access to that particular area.

Ms Campbell said there has been no demand from local members to say there should be increased access to the Wairoa River at this particular point. There is a high demand for kayaking and fishing on the Wairoa, but not at this particular point.

3. OFFICER'S REPORTS

Mr Shirley spoke to his report that had been circulated.

Mr Shirley said the subdivision is discretionary and the body making decisions must consider effects and potential effects. A dwelling is proposed for proposed Lot 2. If the subdivision only is approved, housing can be built as of right. If we issue land use consent without a condition relating to water supply for a dwelling it can be legally constructed without water supply provision. He said it is important for land use conditions to be imposed on the subdivision consent. He had done a walkover with Reserves Manager and Walkways Co-ordinator and it had been discussed with The Community Services Manager.

The Reserves Manager said they concur totally with comments in the recommendation in the report. River Terrace Road is a collector road and is required to be 18 – 20 metres wide. To approve something less now, would need to get approval from the Transportation Manager. He said there is no problem with the applicant fencing within the legal road reserve. The purpose of 18 – 20 metre reserve will provide future opportunity to widen the road if and when appropriate.

The bund wall is not to protect the privacy of the applicant, but to protect environmental benefit of neighbouring properties and also traffic heading south on River Terrace Road. Landscaping is to try and mitigate the effect a dwelling will have on traffic.

It is important to remember access for hydrology is intermittent. They are particularly important areas for monitoring water levels. He recommended that Council should accept the applicant's offer to enter into agreement whereby access for Council staff for purposes of either access to equipment or other hydrology purposes is entered into. He said it is not necessary to create an easement, which would be expensive and involve a survey. The Council solicitor could be asked to draft up an agreement.

Cr O'Shea asked if there had been any challenges from the Minister with the way Council had handled esplanade matters in the past.

Mr Shirley said Council was challenged for not involving the Minister on subdivisions less than 4 hectare, but never for allotments over 4 hectares.

Cr O'Shea asked if there was anywhere within Council where responsibility lies to look at conservation values.

Mr Shirley said he had to assess the effects but to be fair, it can only be done where it is appropriate.

Mr Shirley said there would need to be a condition along the lines that road stopping and issue of title be completed prior to issue of S223 of survey plan of subdivision.

Cr King noted the difference in interpretation of the applicant's reason for a bund is to protect the house from noise, but your reasoning is the travelling public and neighbouring houses. There is no mention of screening or planting in the condition.

Mr Shirley said condition 6c) is that the dwelling should be designed, finished and landscaped having regard to the amenity and natural character of the locality. The way the application was structured gives opportunity to put a dwelling within the designated area. He said if the area was further defined, the bund wall could be further defined. He suggested a height range of 1 metres to 2 metres.

4. APPLICANT'S RIGHT OF REPLY

Mr Smythe stated he agreed with Mr Shirley's view regarding the provisions for esplanade reserves. He stated that the height of the bund wall would be irrelevant in terms of screening the proposed dwelling from the Pestell/Thompson property, and indicated that the condition should state the requirement for the height of the bund to be not less than 1.5 metres and limited to the extent described in the evidence. He considered the height restriction of 5.5 metres for the dwelling to be too restrictive. He considered a condition relating to stability should be included. He considered no precedent would be created due to the highly unusual circumstances of the case. He considered that the use of consent notices was not necessary and that the rules in the Tasman Resource Management Plan could be relied upon.

**Moved Crs O'Shea / King
EP05/02/01**

THAT the public be excluded from the following part of the proceedings of this meeting namely:

Jaktrans Ltd

The general subject of the matter to be considered while the public is excluded, the reason for passing this resolution in relation to the matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

Subject	Reasons	Grounds
Jaktrans Ltd	Consideration of a planning application.	A right of appeal lies to the Environment Court against the final decision of Council.

CARRIED

**Moved Crs O'Shea / King
EP05/02/02**

THAT for the purposes of discussing the application of Jaktrans Ltd as an "In Committee" item, the Manager Consents be authorised to be in attendance as advisor.

CARRIED

**Moved Crs O'Shea / O'Regan
EP05/02/03**

THAT the public meeting be resumed and that the business transacted during the time the public was excluded adopted and that the following resolutions be confirmed in open meeting.

CARRIED

**5. JAKTRANS LTD, WAIROA GORGE ROAD, BRIGHTWATER, APPLICATION
RM040936**

**Moved Crs King / O'Shea
EP05/02/04**

DECISION - SUBDIVISION:

THAT pursuant to Section 104B, 220 and 221 of the Resource Management Act 1991, Council grants consent to Jaktrans Ltd to subdivide Part Section 1, Blk 1, Waimea South District and Part Section 1, Waimea South District (CT 3A/1265), into two allotments of 10.5 hectares and 1.36 hectares.

The consent is subject to the following conditions and granted for the following reasons.

CONDITIONS – SUBDIVISION:

1. Road to vest

That the survey plan show road to vest a minimum of 18 metres wide for the purpose of legalising River Terrace Road.

Note:

River Terrace Road is designated a collector road under Council's roading hierarchy and as such requires a minimum road reserve 18-20 metres wide. The road to vest to include all the formation, water tables, maintenance of same and any provision for road widening.

2. Road Stopping

The road stopping procedure shall be completed prior to the approval of the Section 223 Certificate.

3. Vehicle crossing

That a vehicle crossing be designed and constructed to comply with the conditions for a permitted activity under chapter 16.2.2 noting in particular:

- a) Be more or less level for the first 6 metres.
- b) The first 5 metres be sealed with a two coat bitumen chip seal.
- c) Intersect River Terrace Road at right angles.
- d) Provision for the control and discharge of stormwater.
- e) Be located to maximise the sight distance between the crossing and traffic on River Terrace Road.

4. Power and telephone

Provision of power and telephone connections to Lot 2 to the satisfaction of the relevant authorities.

5. Bund wall and Screen Planting

That a bund wall a minimum of 1.5 metres high be constructed along the roadside frontage of the designated building area of Lot 2. The bund wall shall extend from 8 metres south of the access to Lot 2 for a distance of 100 metres and shall be shaped to blend into the hillside at the southern end. The southern end of the bund wall shall be planted with appropriate screening vegetation.

Note:

The purpose of the bund wall is to screen the proposed dwelling from other properties and road users. It is important that the bund wall does not adversely impact on traffic safety or the roading resource.

6. Development Impact Levies

The following Development Impact Levy (DIL) is required for the new allotment:

Roading	\$1,165
Reserves and Communi Services	Calculated in accordance with Rules 16.5.2 and 16.5.5 of the Proposed Plan.

Note:

The application was lodged with Council prior to 30 August 2004 and is therefore subject to financial contributions under the TRMP rather than development contributions under the LTCCP.

7. Consent notice – Lot 2

- a) Location – that the dwelling be located within the identified building area shown on the resource application plan and otherwise to comply with the setback rules for the zone.

Note:

For the avoidance of doubt the building restriction line identified in the geotechnical report should be reproduced on the LT plan.

- b) Foundations and surrounding hill stability– that the foundations of the dwelling and its location be subject to investigation, design and certification by a chartered professional engineer having regard to the report by Dr M R Johnston dated 27 October 2003.
- c) Height – that the maximum height of all buildings shall be 5.5 metres.
- d) Building finishes– that the cladding and roof of the dwelling and any other buildings, be finished in recessive colours and non-reflective materials which are consistent with the surrounding natural environment.

- e) Water supply – that the dwelling be connected to a reticulated water supply or be supplied by a rainwater supply or a surface or ground water source that is both reliable and potable. The dwelling should also be provided with onsite water storage of not less than 23,000 litres fitted with an accessible 50 mm camlock coupling to enable connection with fire fighting equipment.
- f) Discharge of stormwater – that the discharge or diversion of stormwater be appropriately designed, installed and managed to ensure compliance with conditions for a permitted activity under rule 36.4.2 TRMP.
- g) Discharge of domestic wastewater – that the system for the onsite disposal of domestic wastewater be appropriately designed, installed and managed having regard to the report from Lets Go Environmental Limited dated 5 May 2004 and otherwise to ensure compliance with the conditions for permitted activity under Rule 36.1.5 of the PTRMP.

The above conditions are to be complied with on a continuing basis and are therefore to be subject of consent notices issued under Section 221 of Act, such notices to be prepared by the applicant and forwarded to Council for approval.

7. Works and services

All works undertaken and services provided to be in accordance with Council's engineering standards.

NOTATIONS:

1. This consent does not constitute building consent and if the project involves any form of building, consent should be sought pursuant to the Building Act 1991.
2. Monitoring of the consent is required under Section 35 of the Resource Management Act 1991 and a deposit fee is payable at this time. Should the monitoring costs exceed the initial fee, Council will recover this additional amount from the resource consent holder. Costs can be minimised by consistently complying with conditions and thereby reducing the frequency of Council visits.
3. If any artefact or koiwi is encountered during earthworks then work shall cease immediately. The site shall be assessed by a suitably qualified person acceptable to the New Zealand Historic Places Trust and in consultation with local Tangata Whenua. The results of the survey shall be forwarded to the Environment and Planning Manager, Tasman District Council. Work shall not commence until approval has been granted by the Environment and Planning Manager, Tasman District Council to do so.

DECISION – LAND USE:

THAT pursuant to Section 104A of the Resource Management Act 1991, Council grants consent to Jacktrans Ltd to construct a dwelling on proposed Lot 2.

The consent is subject to the following conditions and granted for the following reasons.

CONDITIONS:

1. The commencement date of this land use consent will be the date of the Section 224(c) approved for the subdivision consent under RM040936.
2. In addition to the requirements specified in the Consent Notice on the title of Lot 2, all buildings shall comply with the standards for the Rural 2 zone.

NOTATIONS:

1. This consent does not constitute building consent and if the project involves any form of building, consent should be sought pursuant to the Building Act 1991.
2. Monitoring of the consent is required under Section 35 of the Resource Management Act 1991 and a deposit fee is payable at this time. Should the monitoring costs exceed the initial fee, Council will recover this additional amount from the resource consent holder. Costs can be minimised by consistently complying with conditions and thereby reducing the frequency of Council visits.
3. If any artefact or koiwi is encountered during earthworks then work shall cease immediately. The site shall be assessed by a suitably qualified person acceptable to the New Zealand Historic Places Trust and in consultation with local Tangata Whenua. The results of the survey shall be forwarded to the Environment and Planning Manager, Tasman District Council. Work shall not commence until approval has been granted by the Environment and Planning Manager, Tasman District Council to do so.

REASONS FOR THE DECISION (BOTH SUBDIVISION AND LANDUSE):

1. The land is zoned Rural 2 under the Proposed Tasman Resource Management Plan. The minimum lot size for a controlled activity subdivision is 50 hectares according to Rule 16.3.8(b), thus the application would be deemed to be a discretionary activity, as it does not comply with this rule. The land adjoins the Wairoa River and therefore falls to be considered as a discretionary activity. The land is also within the Residential Activity Restriction Area and thus the construction of a dwelling is a restricted discretionary activity.

The application has been considered pursuant to Part 2 and Section 104B of the Resource Management Act 1991.

2. It is understood that there are no references to either the zoning of the land or the relevant subdivision objectives, policies and rules of the Proposed Tasman Resource Management Plan and therefore in accordance with Section 19 of the Amendment Act, no weight is given to the Transitional Plan.
3. The Committee noted that the application had received five submissions; two in support, two in opposition and one conditional.

The concerns raised were:

- Small lot size of proposed Lot 2, adverse effects on the environment, granting a consent would create a precedent which would lead to other applications and thus a loss of rural character and amenity in the area. Visual effects of the proposed new dwelling particularly if it was large and two storey.

- Need for an esplanade reserve to protect conservation values along the length of the boundary of Lot 1 adjoining the River.
4. The Committee carefully considered these concerns. It was considered that the facts of this case were highly unusual in relation to the existing location of the formed road which bisects the land. The land which is intended to become Lot 2 is a relatively small piece which does not have any productive value and is separated from the balance of the land by the road. If it were not for this circumstance, the Committee considered that the application would have little merit, but as things stand, the granting of the consent, with appropriate conditions to mitigate potential visual and other effects, was not considered as creating a precedent for other subdivision.
 5. It was clear that the construction of a dwelling is the activity which will create effects, and this is an outcome of the subdivision itself. In terms of the potential effects of the proposal on the rural character of the area, the Committee considered that it was appropriate to impose restrictions on the construction of buildings on new Lot 2 as this was an effect of the subdivision. The conditions should be adhered to on an on-going basis and therefore should rightly be the subject of consent notices as there is a risk that if the conditions are only attached to the land use consent, this may lapse and then the specific conditions would be lost.

The Committee considered that the height of buildings on Lot 2 should be restricted, the colour and materials carefully controlled, a bund wall and screen planting created and the wastewater disposal managed in an appropriate manner as described in the application. It was considered that these measures would adequately mitigate the potential visual and environmental effects associated with the future dwelling. It was also considered appropriate to require further engineering investigation into the location of the future dwelling in relation to the stability of the hillside and the foundations of the dwelling.

6. In terms of the issue of the esplanade reserve, the Committee noted that the issue had been considered and evaluated by staff. The matter was further considered by the Committee in terms of the requirements of the Resource Management Act 1991. The Committee agreed that there were important conservation and natural values associated with the Wairoa River adjacent to proposed Lot 1. However, they did not consider that it was appropriate to impose a condition requiring the creation of an esplanade reserve or esplanade strip. They noted that this requirement is discretionary and dependant upon an assessment of the individual situation and the purpose of esplanade reserves and strips. It was clear that the application did not create any intensification of land use which would impact on the River. There did not appear to be any existing land use which was having an adverse effect on conservation values which could be managed better through the creation of a reserve or strip. If the land use on Lot 1 changes through the resource consent process in the future, the matter of the appropriateness of a reserve or strip can be reviewed.
7. The Committee considered the matter of the Residential Activity Restriction Area, but it was not considered that the creation of one additional dwelling in this location would compromise the possibility of a new quarry in the area.
8. The Committee was satisfied that the road legalisation process should be completed prior to the Section 223 certificate being approved.

9. In summary, the Committee was clear that the existing road formation caused a situation of existing fragmentation which the subdivision was formalising. This was a very important matter in terms of the Council consideration of this subdivision. Clearly if it was not for this distinguishing factor, the application may not have received the approval. In this circumstance, the granting of this consent would be consistent with the purposes and principles of the Resource Management Act 1991.

CARRIED

Confirmed:

Chair: