

MINUTES

TITLE: Environment and Planning Subcommittee
DATE: Friday, 15 April 2005
TIME: 9.30 am
VENUE: Council Chamber, 78 Commercial Street, Takaka

PRESENT: Cr R G Kempthorne (Chair), Crs S J Borlase and T E Norriss.

IN ATTENDANCE: Manager, Consents (J S Hodson), Resource Scientist, Rivers and Coast (E L Verstappen), Consent Planners, Subdivision (M D Morris and P J Gibson), Administration Officer (B D Moore).

1. D LUND and A BALCK, NYHANE DRIVE, LIGAR BAY, GOLDEN BAY – APPLICATION RM041260

1.1 Proposal

The applicant sought consent to subdivide Lot 8 DP 36070 of 3,704 square metres into two allotments, with a balance area being Lot 7 DP 316070 of 2,376 square metres. Proposed Lot 1 will be 2,150 square metres and Lot 2 will be 1,554 square metres. A land use consent is also sought to erect dwellings on each new lot 1 within the Coastal Environment Area. The site is on a relatively steep block that overlooks Ligar Bay on two physically separated blocks held together in CT NL 62901.

1.2 Presentation of Application

Mr N McFadden, solicitor, read a statement of evidence and said that on 7 October 2003 the Tasman District Council granted consent cancelling the amalgamation condition and enabling (once conditions were satisfied) the issue of a separate title for each of Lots 7 and 8. If actioned, that consent will enable an allotment of 2,367 square metres (Lot 7) and an allotment of 3,704 square metres (Lot 8). A copy of that consent was provided, annexed to this evidence. The evidence addressed the matters contained with the Consent Planner's report and discounted the potential for the proposed subdivision to have precedent and cumulative effects. The evidence concluded that the proposed subdivision will have only a minor effect on the amenity of this locality.

Mr McFadden described a number of distinguishing elements in relation to the application, such as the land being sandwiched between the Residential Zone and the Rural Residential Zone. The characteristics and attributes of the proposed lots are similar to those properties adjoining and reticulated services and roading are constructed to the boundary. The lot is of an odd shape and in separated parts and it is in an area where Council has approved residential sites, within the Rural Residential Zone directly adjoining. Mr McFadden said that in response to a submission from iwi, a condition will be volunteered for an archaeological assessment to be undertaken within three months of the establishment of any consent and creating a protocol in the event of finds.

Planning evidence for the applicant was read by resource management consultant, Ms L Gibellini. She advised that the applicant's current consent for the subject site had been put on hold pending the outcome of the current consent application. She said that a geotechnical report identifying suitable building sites for both allotments had been provided to Council and that this essentially removes the significance of slope instability. The evidence addressed submissions to the application and provided an assessment of effects on the environment. The evidence disagreed with the Consent Planner's report statements that the area of the subdivision has a high degree of natural and rural amenity, with a relatively low level of built development and that lot size is a key determinant of character and amenity. A plan was displayed to show the number of sites with smaller lot areas than the proposed subject sites.

The applicant volunteered to provide an archaeological assessment within three months of the issue of any consent and prior to undertaking any works on site. Ms Gibellini said that the applicant had volunteered a condition in favour of neighbouring property owners (Hirst) and that this had been submitted with the application and should be on Council's file.

1.3 Presentation of Submissions

Mrs P Tregoning opposed the application because of concern that the proposal will cause a visual impact and take time to be mitigated by plantings. She was concerned about the threat of further subdivision and the potential traffic safety effect from further traffic entering the locality.

A statement on behalf of Manawhenua Ki Mohua was read by Ms J Hodson. The statement said that a kumara pit is in the vicinity of this subdivision and that archaeological and cultural values must be acknowledged and the submitter sought that a consent notice be registered on the title requiring that permission be obtained from New Zealand Historic Places Trust and that this organisation be contacted prior to any excavation work being carried out.

The Chairman acknowledged the late submission of P Speirs. Mr McFadden said that on behalf of the applicant that the late submission should not be accepted.

**Moved Crs Norriss/Borlase
EP05/04/13**

**THAT the late submission from P Speirs be accepted.
CARRIED**

1.4 Staff Report

Mr M Morris spoke to his report contained within the agenda and advised that the site had been checked by Council staff member, Mr C Michie, that earthworks had been carried out that complied with the permitted activity status and that the gum trees had been removed as they were considered to be a threat and danger to the road.

Mr Morris said that the consent granted in 1996 concerning this site was at a time when the submission process to the Tasman Resource Management Plan was still underway. He said that the subject site is zoned Rural Residential and it is distinguished from the Residential Zone by the lot size as a key determinant. He said that lots below 2000 square metres have an urban residential character.

Mr Morris said that the Rural Residential Zone acts as a buffer between the Rural 2 zoned land, as a transition area. Mr Morris claimed that to allow this subdivision would undermine the integrity of the zone. He said that he believed that this could be followed by similar applications and that he did not believe there are unique characteristics with this application. He said he believed it was best that Lot 8 remains in its present form and that adjacent existing services would encourage further subdivision.

1.5 Right of Reply

Mr McFadden said that the deposited plan displayed at this hearing sums up what has happened in this zone. He said that Lot 8 is adjoined by smaller sized allotments. He noted that Lots 9 and 10 did not comply with the zone rules but were granted consent. He said that the subject proposal fits that pattern. He noted that the Consent Planner did not mention Lots 9 and 10 in his report, as the processing officer for that previously approved application.

Mr McFadden questioned why these proposed larger allotments could not be consented to. Mr McFadden said that in the Rural Residential Zone the principal activity is residential. He said that there are existing houses nearby and that these properties should be considered by the Committee to see if they are residential and what other urban services are required. Mr McFadden said that the transition area or buffer is not affected by this application.

Mr McFadden reminded the hearing panel that this is a discretionary activity that Council must consider and asked the panel to look at the distinguishing factors and the generality of activity in this zone. He asked the Subcommittee to list the reasons and characteristics and factors in its decision based on the facts. He said the unique factors are to be considered in the discretionary activity in terms of the facts presented.

The Subcommittee reserved its decision at 11.40 am.

**Moved Crs Norriss / Borlase
EP05/04/14**

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

D Lund and A Balck

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
D Lund and A Balck	Consideration of a planning application.	A right of appeal lies to the Environment Court against the final decision of Council.

CARRIED

**Moved Crs Norriss / Borlase
EP05/04/15**

THAT for the purposes of discussing the application of D Lund and A Balck as an "In Committee" item, the Manager Consents be authorised to be in attendance as advisor.

CARRIED

**Moved Crs Norriss / Borlase
EP05/04/16**

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

CARRIED

2. D LUND and A BALCK, NYHANE DRIVE, LIGAR BAY, GOLDEN BAY – APPLICATION RM041260

**Moved Crs Kempthorne / Borlase
EP05/04/17**

THAT pursuant to Sections 104, 104A and 104B of the Resource Management Act 1991, Council declines consent for D Lund and A Balck to subdivide Lot 8 DP 316070 into two allotments.

The associated applications to erect dwellings, carry out earthworks are also declined.

The reasons are stated below.

REASONS FOR THE DECISION - SUBDIVISION:

1. The land is zoned Rural Residential (Serviced) (Ligar Bay) under the Proposed Tasman Resource Management Plan. The subdivision is a discretionary activity under rule 16.3.11 of the Proposed Tasman Resource Management Plan in that the proposed lots are less than the 2500 square metres required under rule 16.3.10 for a controlled activity subdivision. Schedule 16.3A of the Proposed Plan sets out the matters the Council will have regard to in assessing the application for the subdivision. In addition, the proposal is within the Slope Instability Risk Area and the Land Disturbance Area 2 and therefore the earthworks require a consent as does the construction of dwellings as the land is also within the Coastal Environment Area.
2. The Committee understands that there are no reference pertaining to the subdivision or land use rules and policies and objectives relating to this application and therefore the provisions of the Transitional Plan are not considered to be relevant and all the weight will be placed on the Proposed Plan.

3. The application has been considered subject to Part 2 of the Act i.e. the purpose and principles of sustainable management of natural and physical resources, and Section 104 which requires the Committee to have regard to:
 - a) any actual and potential effects on the environment of allowing the activity
 - b) the relevant provisions of:
 - Regional Policy Statement
 - Plan or Proposed Plan
 - Any other matter considered relevant and reasonably necessary to determine the application.
4. The Committee noted that the application had received nine submissions in opposition to the application.

The concerns raised were:

- Loss of amenity associated with rural and rural residential area caused by allowing lots below permitted size of 2500 m².
 - Precedent would be created if application allowed, possibly leading to further loss of amenity in the area as a result of increased density of development.
 - Adverse environmental effect caused by tree and vegetation removal
 - Adverse traffic effects
 - Adverse visual effects and loss of privacy associated with additional dwelling
 - Land stability issues
 - Archaeological and cultural values need to be assessed and provided for.
5. The Committee considered the evidence provided at the hearing by the applicant stating that the proposal was consistent with the size of lots surrounding the subject land. However, the Committee did not accept that view and instead considered that the site was only suitable for one dwelling as permitted. It was considered that the bluff was a distinct landscape feature compared with the area of land which had been subdivided as per the residential zoning.

The Committee was satisfied that the consent for Lots 9 and 10 to the east of the land was given in the context of the residential zoning process which applied at the time. The Committee considered that the subject land has natural character associated with its topography, land cover and lot size. These values would be adversely affected by the subdivision and the construction of an additional dwelling. The Committee acknowledge the geotechnical report which indicated that the site was capable of receiving a building on proposed Lots 1 and 2.

6. The Committee noted the debate about what were the key factors to consider in terms of amenity values and character associated with the land and that of rural residential land in general. It was noted that the concept of rural residential involved a fairly wide range of lot sizes (from 4 hectares to 2000 square metres) and this factor of lot size and thus density of dwellings was clearly a feature which had an effect on the character of an area. Again the Committee favoured the evidence of the Council Officer in relation to the issue of rural residential character of the land in question which would be adversely affected by the proposed two lot subdivision.
7. The Committee carefully considered the list of factors that was given by the applicant which they considered marked this application as distinct or different from others in the Rural Residential zone. These factors are examined in turn below:
 - The Committee acknowledges that the land is adjacent to land zoned Residential but it is considered that the land is quite distinct in terms of its topography, character and appearance. Proximity to another zone is not an unusual factor and certainly not one which should necessarily enhance subdivision opportunities.
 - The Committee disagrees that the land is similar in character to the adjoining residentially zoned land.
 - While it is correct that services are available, this does not make the land suitable for subdivision and is not a factor which is very distinctive.
 - The irregular shape is considered by the Committee to be appropriate for a rural residential land use associated with one dwelling.
 - While the land may be separated from developed rural residential lots higher up the right of way, this was not considered to be a factor which carried any significance and the Committee did not agree that the land is physically separated from land to the west.
 - While the size of the lot is larger than the minimum lot size for a controlled activity (by 1204 m²) the proposed Lot 1 would be 946 m² less than the minimum size. A mixture of lot sizes is usual in a subdivision as the lots take account of physical constraints. The Committee considered that maintaining the character of the zone as influenced by the minimum lot size of 2500 m² was appropriate. The Committee also considered that the matter of consistent plan administration was an important consideration.
 - The approval of Lots 9 and 10 as part of the earlier subdivision has already been discussed and is not considered to be a reason to approve this application.
 - The recreation reserve only separates the land from other rural residential land in Nyhane Drive, but only the road separates it from the residential lots in Nyhane Drive. The Committee does not consider that this issue is a matter of any significance.
 - Complaints about the logging of trees may well be an expression of concern over loss of local natural values associated with the land, rather than as an indication that that land use in itself is inappropriate. The Committee has no information before it on the meaning of the complaints.

8. The Committee agree that the consideration of the permitted baseline in this case has little relevance as neither subdivisions nor dwellings are permitted activities in this location.
9. The Committee noted the wide spread concerns of submitters regarding the adverse effects on rural residential amenity which the proposal would create. The Committee did not determine that there were any significant distinguishing or mitigating factors associated with the land that would justify the smaller lot sizes. The steepness of the land and its prominent visual location meant that it was only suitable for one dwelling.
10. In summary, the Committee considered that the application was inconsistent with the purpose and principles of Part 2 of the Resource Management Act and the granting of the consent would not result in sustainable management of the land. In addition, the granting of the consent would be inconsistent with the policies and objectives of the Proposed Plan and allowing the application would have adverse effects on the rural residential character, amenity and open space values of this part of Ligar Bay which are considered to be unacceptable.

CARRIED

Confirmed:

Chair: