

MINUTES

TITLE: Environment and Planning Subcommittee
DATE: Monday, 2 May 2005
TIME: 9.30 am
VENUE: Motueka Service Centre, 7 Hickmott Place, Motueka

PRESENT: Crs T B King (Chair), S G Bryant and P K O'Shea

IN ATTENDANCE: Consent Manager (J Hodson), Consent Planner (M Bishop),
Administration Officer (B D Moore)

1. D HAYWOOD, TORLESSE DRIVE, KAITERITERI - APPLICATION RM040905

1.1 Proposal

The applicant sought consent to use the lower floor of an existing dwelling at Torlesse Drive, Kaiteriteri as a separate self-contained apartment to rent to tourists. The lower floor is presently fitted out with two bedrooms, lounge, full kitchen and bathroom/toilet. An internal stairway leads to the upper storey.

1.2 Presentation of Application

The applicant, Ms D Haywood, attended the hearing and planning evidence was tabled and read by Planning Consultant, Mr R W Batty. The evidence said that the height, size and location of the exterior appearance of the applicant's building are not to be altered by this proposal. The consented plans for the ground floor area, indicated a separate bathroom and toilet together with a bar area and sink unit adjoining the games room. The applicant was subsequently recommended by her architect, to build this bar area in the form of a kitchen.

Mr Batty said that the applicant accepted that because the kitchen was included, then relevant provisions of the Tasman Resource Management Plan classify the ground floor as a separate dwelling unit and resource consent is now required for that, as a discretionary activity. Mr Batty referred to the home occupation rules which allow up to four visitors to be accommodated on site at any one time, where the owner is in occupation. The evidence said that the proposal is to be assessed as a discretionary activity and that the integrity of the plan is therefore not compromised as this activity is potentially envisaged in the zone.

Mr Batty referred to the Planning Officer's proposed condition to which purports to prevent the existing dwellings, occupants, guests or visitors from parking on this right of way. He suggested that this condition should only be related to the letting of the ground floor unit as visitor accommodation. He said that proposed condition 6 concerning the review provisions should be restricted to a period of two years.

Mr Batty said that there are five spaces on this site where vehicles can be accommodated clear of the right of way. Two are in the garage, two in front of the garage and one on the hard standing area at the opposite end of the building. He noted that the Planning Officer maintained that the two spaces in front of the garage cannot be considered as parking spaces within the definition of the plan. Mr Batty suggested that proposed conditions one and two be deleted and substituted with the following wording:

Parking

That the applicant shall ensure as a condition of letting the lower ground floor on this property, that no more than three visitor vehicles of any type related to that letting shall be parked within the property, and that no such vehicles shall be parked on the adjoining right of way. Mr Batty said that the proposed review condition will allow Council to reconsider the parking issue.

1.3 Submissions

Ms H Denize was the only submitter present at the hearing. Ms Denize is the owner of Lot 10 DP 19385, a vacant lot, on the upper side at the end of the right of way, shared with the applicant. She read a report prepared by Mr I Dalton, a Senior Resource Management Planner for Davis Ogilvie and Partners of Canterbury. This report considered the issues of two dwellings and site density, the size of the site and the parking requirements. Further comment was made regarding renting part of the building as part a commercial activity and the lack of enforcement by Council. This evidence said that the environmental outcomes in terms of density, access and parking, for this proposal, are worse than those from a permitted activity.

The evidence suggested that similar conditions could be applied to similar applications on other sites in the locality. This evidence concluded that the density of the development is too great and that parking and access are inadequate. Ms Denize said that she was concerned that the application would be a prelude to cross-leasing and unit titles.

1.4 Staff Report

Consent Planner, Ms M Bishop, spoke to her staff report of 14 April 2005 contained within the agenda which recommended that the application be granted, subject to the listed conditions. The staff report sought that a minimum of two onsite car parks per self-contained unit be provided at all times. Ms Bishop said that the proposal was based on an existing resource but that the applicant may not always be in residence. She said that the review condition should remain as part of the consent. Ms Bishop said that the second dwelling status is based on cooking facilities and how the dwelling is used. She commented that the rental of dwellings in Kaiteriteri is common.

1.5 Right of Reply

Mr Batty responded for the applicant and advised that the vacant section owned by Ms Denize has been subdivided and that this doubles the use of the right of way and also parking requirements. He advised that the property owned by N M Allen and A J Allen-Jones at Rolling Road, Kaiteriteri has a garage that is in use as a games room and that site has been subdivided.

Mr Batty said that some vehicles and boats are being parked on other vacant sections. He said that some evidence presented by Ms Denize, prepared by I Dalton cannot be questioned as Mr Dalton did not attend this hearing.

He noted that Mr Dalton had not mentioned the permitted baseline, which is a discretionary consideration. He said that the assessment made by Mr Dalton is a hypothetical assessment made without visiting the site. He said there was no mention of the home occupation rules and section 42A report. Mr Batty said the proposed condition for requiring certification under the Building Act was unusual in a Resource Consent situation.

Councillor King asked that the Committee be permitted to enter the applicant's dwelling on a site visit and also stand on the land owned by Ms Denize. Both the applicant Ms Haywood and submitter Ms Denize agreed to the Chairman's request.

The Committee reserved its decision at 11.30 am.

Moved Crs King / Bryant EP05/05/01

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

D Haywood

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 Haywood	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
EP05/05/02**

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

CARRIED

**Moved Crs Bryant / O'Shea
EP05/05/03**

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 HAYWOOD, TORLESSE DRIVE, KAITERITERI - APPLICATION RM040905

**Moved Crs Bryant / King
EP05/05/04**

THAT pursuant to Section 104B of the Resource Management Act 1991, the Council GRANTS consent to D Haywood to use the lower floor of an existing dwelling as a separate self-contained apartment to rent to tourists.

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

CONDITIONS:

1. Number of Guests/Tenants

The number of guests and/or tenants allowed to occupy the ground floor apartment shall be no more than five.

2. Parking

A minimum of three on-site car parks be provided at all times.

The single carpark to the left of the building shall be for the use of the occupants of the lower floor apartment but they may also use the two spaces in front of the garage or the parks inside the garage by agreement of the consent holder.

3. Right-of-Way

The consent holder shall advise the tenants and guests using the property of the rights and obligations relating to the right-of-way serving the property.

4. Landscaping

The vegetation on-site shall be maintained in general accordance with the landscaping plan attached to this consent drawn by Chand Design dated 8/8/02.

5. Completion of Required Works

The renting of the lower level apartment shall not commence until a Code Compliance Certificate pursuant to the Building Act 2004 has been obtained.

6. Monitoring

The resource consent holder shall, in order to allow for the monitoring of consent conditions, provide a minimum of three working days written notice to Council's Manager, Environmental Information or his agent before the commencement of renting the lower level apartment.

7. Review

The Council may, at six monthly intervals from the date of this consent is issued, review any or all of the conditions of the consent pursuant to Section 128 of the Resource Management Act 1991. The purpose of such a review would be to deal with any adverse effect on the environment which may arise from the exercise of the consent that was not accurately foreseen at the time of granting of the consent, and which is therefore more appropriate to deal with at a later stage; and/or to require the consent holder to adopt the best practicable option to remove or reduce any adverse effects on the environment resulting from noise, parking, loss of privacy, loss of amenity and the number of people renting the lower level apartment.

NOTATIONS

1. 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 monitoring costs exceed this initial fee, Council will recover this additional amount from the resource consent holder. Costs are able to be minimised by consistently complying with conditions and thereby reducing the frequency of Council visits.
2. This consent is issued pursuant to the Resource Management Act 1991, the Transitional District Plan (Waimea Section) and the Proposed Tasman Resource Management Plan. It does not constitute building consent and the conversion works should obtain the necessary approvals pursuant to the Building Act 1991.
3. Any matters not referred to in this application for resource consent or are otherwise covered in the consent conditions must comply with the Proposed Tasman Resource Management Plan (PTRMP) or the Resource Management Act 1991.
4. Council will require payment of a development contribution in accordance with Council's Development Contributions Policy under the Local Government Act 2002 for the development subject of this resource consent.

The Development Contributions Policy is found in the Long Term Council Community Plan (LTCCP) and the amount to be paid will be in accordance with the requirements which are current at the time the relevant development contribution is paid in full. A 5% discount is available if the payment is made prior to the uplifting of the building consent (see attached brochure).

REASONS FOR THE DECISION:

1. The land is zoned Residential under the Proposed Tasman Resource Management Plan (TRMP). The application is a discretionary activity under the Tasman Resource Management Plan.
2. It is understood that there are no relevant references to the Residential zone 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 six submissions had been received, three in support and three in opposition. In summary the following issues were raised:
 - Fencing and landscaping for protection of privacy of adjoining property,
 - Consent should be personal to the applicant,
 - Adverse traffic effects on right of way use associated with additional traffic generated by proposal,
 - Insufficient on-site parking for cars and boats,
 - Granting consent will set a precedent,
 - Loss of character and amenity value of area,
 - Guests may not be responsible and may cause excessive noise,
 - Impact on motels from competition.
4. The Committee carefully considered the concerns of the submitter regarding the potential impact of the tourist apartment on the character and amenity of the neighbourhood. They considered that the area was being fairly intensively developed with both retirement, permanent and holiday homes many of which may be rented out from time to time. Therefore the concept of a tourist apartment is not out of character with the existing and foreseeable character of the area.
5. The Committee noted the existing right of way which served these properties and considered that it was able to cope with the additional traffic which would be generated by the proposal.
6. The Committee considered that the shortfall in the 450 m² of nett site area per dwelling unit was a minor issue which did not create any significant adverse effects on the density or character of the area given that the apartment is wholly contained within the ground floor of the existing dwelling and the site coverage requirement is met.
7. The Committee considered the concerns regarding the shortfall of on-site carparking. They noted the discussion regarding the definition of "parking space" but considered that even though the two parks located in front of the garage did not meet the definition in the Tasman Resource Management Plan, these spaces were available albeit with the co-operation of other occupants (as in the normal residential situation) for example if a vehicle in the garage is needed and another vehicle is parked behind it.

Therefore the Committee considered that the five total parks available would be sufficient for the use of the occupants of the upper floor and the lower floor apartment and therefore the spirit of the requirement is met albeit not in the way required by the definition. However, it was also recognised that the matter of the provision of parking could be reviewed if the present requirement proves to be insufficient. The Committee noted that the right of way serving the property will have various rights and obligations attached to it and that these should be brought to the attention of any guests staying in the apartment.

8. The Committee were satisfied that the review condition as recommended was reasonable. Limiting the length of time within which a review could take place could lead to a problem if unexpected effects arose after that time.
9. In terms of the permitted baseline, the Committee considered that the provision of a home occupation for up to four visitors as a permitted activity was a relevant consideration. The Committee noted the offer by the applicant at the hearing to limit the number of guests to five which would usually be a family. This limitation is endorsed by the Committee. The Committee also notes that there is no limitation on the number of occupants in one dwelling or indeed the number of families who occupy it as a permitted activity.
10. The Committee did not consider that it was reasonable to limit the consent by making it personal to the applicant. There were no special factors that would point to the need for this.
11. In terms of "precedent" as raised by a submitter, the Committee is clear that the granting of a consent does not create a 'precedent' in the legal sense of the word but relates more to the concept of "like being treated with like" and fair and consistent administration of the Plan. However the Committee notes the factors associated with this proposal such as the apartment being within the existing ground floor of the dwelling, services being available and the character of the area as a holiday destination. On balance, it is considered that granting the consent would not create a "precedent" given that each application must be considered on its merits nor will approving the consent undermine the integrity of the District Plan or represent inconsistent administration.
12. The provisions of the Resource Management Act 1991 limit the Committee's ability to consider the issue of trade competition.
13. In summary, the Committee considered that the proposal was consistent with the objectives and policies of the Proposed Tasman Resource Management Plan and the Resource Management Act 1991 and subject to the conditions imposed, the effects on the environment will be no more than minor.

CARRIED

Confirmed:

Chair: