

MINUTES

TITLE: Environment and Planning Subcommittee
DATE: Friday, 27 May 2005
TIME: 9.30 am
VENUE: Council Chamber, 189 Queen Street, Richmond

PRESENT: Cr T B King (Chair), Crs M J Higgins and S G Bryant.

IN ATTENDANCE: Manager, Consents (J S Hodson), Landscape Architect (F Boffa), Senior Consent Planner, Subdivision (M D Morris), Administration Officer (B D Moore).

1. K and H FARNDALE, BRONTE ROAD EAST – APPLICATION RM041427

1.1 Proposal

The applicant sought consent to subdivide 2.11 hectares at Bronte Road East into three allotments. The application was amended at the hearing to provide for Lot 1 of 9,000 square metres, Lot 2 of 4,000 square metres, Lot 3 of 7,000 square metres from existing CT NL 9B/493. The site is zoned Rural Residential (Waimea Inlet) and all of Lot 1 and part of Lot 2 is within the Coastal Environment Area. Within that area any new building would require a resource consent as a controlled activity. An existing dwelling and sleep-out are located in proposed Lot 3 nearest Bronte Road East.

1.2 Presentation of Application

Mr F Bacon, resource management consultant, appeared for the applicants at the hearing and allowed submitter, Mr A Robinson, to speak to his submission prior to presentation of the applicant's evidence.

1.3 Presentation of Submission

A submitter, Mr A Robinson, said that he would prefer lots of an equal size and although the amended application helps, it is not enough. He claimed that the proposed application would encourage similar applications and that Bronte Road is not wide enough to cope with additional traffic generated by infilling. He sought the preservation of views of the estuary environment.

1.4 Presentation of Application (continued)

Mr Bacon then tabled and read a submission on behalf of the applicants and referred to the revised subdivision plan. He spoke to the concerns of submitters, which he stated as follows:

- a) lot size/number of lots;
- b) landscape effects and tree size;
- c) contravention of 100 metre setback from mean high water springs;
- d) access and traffic issues;
- e) existing dwelling and sleep-out on the site.

He explained that the amended application had been prepared with a view to meeting the concerns expressed. The lot boundaries had been altered to achieve as closely as possible the 100 metre setback from mean high water springs, which was required under Variation 32. A distance of 90-95 metres is now shown on the amended plan, between the edge of the building location area on Lot 1 and mean high water springs. The evidence referred to other subdivision approvals in the vicinity, including one next door where the minimum lot size was 7,200 square metres.

Mr Bacon requested a waiver of development levies and listed some proposed conditions of consent. These included volunteered conditions that the heights of buildings on Lot 1 shall not exceed 5.5 metres and Lot 2 shall not exceed 6 metres. The mature height of trees was volunteered to not exceed 6 metres. Mr Bacon volunteered to covenant against further resubdivision of proposed Lots 2 and 3 and no building located on Lot 1 will be closer than 100 metres from mean high water springs, if it is located outside the building site shown on the subdivision consent plan.

Mr Farndale spoke to his application and asked the hearing panel to consider the application in light of the requirements of people and communities. He explained that his disabled son uses the sleep-out and dines with Mr and Mrs Farndale within the house. The son grazes sheep on the property at present and the applicants wish to retire on this site. The applicants wish to create the further two lots, as the costs of roading and other charges would be offset in this way.

1.5 Presentation of Submissions

S Moriarty of 46 Bronte Road East said he approved of the proposed subdivision and his only concerns were for the application of height restrictions.

Landscape architect, Mr F Boffa, tabled and read a statement of evidence on behalf of the applicant and explained the photographs appended to that evidence. He explained that the overall landscape within this location is changing and encouraged the hearing panel to consider the question of the location of houses. He spoke of the need to encourage a sense of retaining openness and said that it was fair if all residents were to make a contribution to that openness.

A submission from J and C Newth expressed concern about the proposed lot sizes, building within 100 metres of mean high water springs and the potential for the cumulative effects of a grant of consent to this application.

A submission from R and L Lamb was read by R Carver, who expressed the submitter's concerns about the proposed size of the allotments, the building site partly within 100 metres of mean high water springs and the need to discourage skyline development.

Ms R Carver stated her opposition to the dwelling within 100 metres of mean high water springs and asked how Council can ensure measurement of that distance. She claimed that Council would be unable to maintain the proposed limitation to the heights of trees.

Mr P Jones opposed the amended plan presented at short notice and spoke of his concern about the proposed density of dwellings, the smallness of lot sizes and his concern that effluent disposal would be difficult in this environment near the Waimea Inlet. He expressed concerns about the width of Bronte Road East and the access to the subject site and the potential for an effect on traffic safety.

Mrs C Jones said that she lives in a house about 70-75 metres from mean high water springs and near a steep bank. She said that there is one dwelling on that site and a sleep-out which is subject to a covenant. She stated that the subject site should have only two lots of a similar size. She was concerned that the applicants had amended the route of the proposed accessway. Mrs Jones expressed her concern with the potential to change the feeling of the existing locality from lifestyle to residential.

Mr R Kitto expressed concern about the potential for trees to be too high on the ridge within the site. He said that 2 hectare sites would be too big for people to manage and said that a site area of 4000 square metres is better for management.

A submission from Nelson Branch, Royal Forest and Bird Protection Society of New Zealand Inc was spoken to by Ms H Campbell and the submission expressed concerns about the potential for fragmentation of rural-residential land; the increase in residential land; the increased intensification of land occupation that will increase the impacts on the adjacent estuary. Ms Campbell did not support an amended two lot site application and said she was concerned in particular with the intensification of use of the land resulting in more houses. She acknowledged the existence of the present esplanade reserve. The submitter was concerned with the potential effects on birdlife from cats and dogs. The submission claimed that the potential adverse effects of the subdivision have not been adequately avoided, mitigated or remedied.

1.6 Staff Reports

Senior Consent Planner, Subdivision, Mr M Morris, spoke to his report contained within the agenda and referred to the status of Variation 32 to the Proposed Tasman Resource Management Plan. He said that for subdivisions below 2 hectares, the design guide applies, as in Chapter 7 of the Plan. He said that this is the first subdivision since Variation 32 came into effect. Mr Morris suggested that clustering of dwellings is used to achieve a large balance area of open space. Mr Morris said that a 4,000 square metre site is a significant change and would make it difficult for Council to decline similar proposals. He said that lot size is the principal determination of character.

Mr Morris said that a surveyor would have to determine the location of mean high water springs and also said only reserves and levies are charged on this application. He spoke about the problem with sight distance at the proposed access point to the property and the need for the bank nearest the house to be cut back, which could encroach on the property and require the area to be vested as road. The report contained some proposed conditions of consent.

Landscape architect, Mr F Boffa, spoke to the application on behalf of the Council. He said that earthworks required to form the building sites and access will be relatively extensive and the physical effects will be quite substantial. He noted that there was an 8 metre drop across the proposed building site on Lot 1 and about 7 metres fall across the building site on Lot 2. He said that the rural characteristics need to be retained and the density of dwellings is the key issue. He favoured the creation of only one building site.

1.7 Right of Reply

Mr Bacon responded for the applicant, saying that the area of Lot 2 of 4,000 square metres was not hard and fast and that it could go up to 6,400 square metres approximately so that overall the sites would average about 7,000 square metres. He noted that the sleep-out is not self-contained, as it does not contain cooking facilities. He acknowledged that the applicants had advertised the use of basement of the existing house for rental but that did not include the adjacent sleep-out.

Mr Bacon reminded the hearing panel that it was not unusual for an applicant to present an amended plan at a hearing, in order to satisfy some concerns of submitters. He reminded the hearing panel that the applicants had done their best to locate the house on Lot 2, 100 metres back from mean high water springs. He said the applicant had asked for consent for a minor encroachment into that area. Mr Bacon said that access can be constructed so that vehicles exiting the site can do so without crossing the centreline. He said that an acceptable compromise solution had been forward, bearing in mind the quiet nature of the road.

Mr Bacon said that the applicants are being required to provide a certain element of open space with a rural nature where elsewhere this has not been maintained. He said that effluent disposal can be achieved satisfactorily from the proposed allotments. Mr Bacon said that the intention was that the applicant would recognise the Council's proposed guideline. He said that everything proposed within the subdivision is well clear of the estuary margin and the applicant acknowledged that no vegetation can be placed on the estuary margin. He reminded the hearing panel that the creation of two additional lots could be considered cumulative but is not totally unprecedented. He said that the discretionary provisions raise an expectation and this is sometimes justified and sometimes not.

He suggested that Council needs to be a little more prescriptive within the Plan. He recommended the discretionary provisions may need some boundaries around them. He reminded the hearing panel that the proposal is within the discretionary provisions that can be granted. He said the Coastal Policy Statement is not absolute about development. He said that the applicants acknowledged that a single lot could be an acceptable compromise but asked the hearing panel not to rule out the compromise situation however the applicant would definitely prefer a total of three lots. He repeated that the applicant can achieve three lots of more equal size but this would alter the west boundary somewhat.

The Subcommittee reserved its decision at 3.25 pm.

**Moved Crs Higgins / Bryant
EP05/05/16**

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

K and H Farndale

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 |
|------------------|--|--|
| K and H Farndale | Consideration of a planning application. | A right of appeal lies to the Environment Court against the final decision of Council. |

CARRIED

**Moved Crs King / Higgins
EP05/05/17**

THAT for the purposes of discussing the application of K and H Farndale as an "In Committee" item, the Manager Consents be authorised to be in attendance as advisor.

CARRIED

**Moved Crs Bryant / Higgins
EP05/05/18**

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. K and H FARNDALE, BRONTE ROAD EAST – APPLICATION RM041427

**Moved Crs King / Higgins
EP05/05/19**

DECISION - SUBDIVISION:

THAT pursuant to Section 104B, 220 and 221 of the Resource Management Act 1991, Council GRANTS consent to K A and H D Farndale to subdivide Lot 1 DP 14727 into two allotments being approximately of equal size.

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

CONDITIONS – SUBDIVISION:

Amended Plan

1. The Plan shall be amended to show only two lots of approximately equal size.

Lot 1 shall contain a proposed building site at least 100 metres from MHWS and located off the ridge (as was the case in the original application plan for the building site on Lot 2).

Lot 2 is the lot which contains the existing dwelling and other buildings.

A consent notice shall be created on Lot 1 such that no building may be erected within 100 metres of the MHWS.

Right-of-way B shall be deleted.

The right-of-way A entrance onto Bronte Road shall be moved 50 metres to the west so that it enters the road at right angles and eliminates the sharp angle bend half way down the right-of-way.

An accurate scaled plan showing the amended lot layout and access shall be prepared by the applicant and submitted to Council within 15 working days of this decision and prior to the submission of engineering plans.

Financial Contribution and Development Contribution

2. A financial contribution for Reserves and Community Services shall be paid and is calculated at 5.5% of the total market value of a notional 2500 m² building site contained within Proposed Lot 1.

ADVICE NOTE:

Council will not issue the Section 224(c) certificate in relation to this subdivision until all development contributions have been paid in accordance with Council's Development Contribution Policy under the Local Government Act 2002.

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 the amount to be paid and will be in accordance with the requirements that are current at the time the relevant development contribution is paid in full.

This consent will attract a development contribution on one allotments in respect of roading, wastewater and water.

Access and Right-of-Way

3. Right-of-way A shall be created with a legal width of 5 metres and a formation width of 3.5 metres. The formation shall be constructed in accordance with Tasman District Engineering Standards with watertables to deal with stormwater. The finish shall be an all weather compacted gravel surface or better. The maximum gradient of the right-of-way shall 1:6.

The right-of-way entrance onto Bronte Road shall be designed and constructed in accordance with Appendix B attached to this consent and as follows:

- a) The entrance shall be at least 50 metres from the existing north-eastern access point and crossing place shall be at right-angles to the road formation (i.e "T" junction).
- b) Be more or less level for the first 6 metres.
- c) The first 5 metres be sealed with a two coat bitumen chip seal.
- d) Provision made for the control and discharge of stormwater.
- e) The access crossing shall have sight distances in accordance with the requirements of rule 16.2.2(v) of the PTRMP (12 June 2004) (attached). It is likely that in order to achieve this, some of the existing road side banks will need to be cut back and some of the road side vegetation removed. The gradient of any batters shall be no more than 1 in 3. The batters shall be contained within the road reserve. Any batter areas outside the road reserve shall vest as road reserve.
- f) All cuts and batters shall be finished with topsoil and seeded with grass.
- g) The existing entrance at the north eastern end of the property shall be physically closed off replaced by a permanent fence.

Engineering Plans

4. Prior to the commencement of works, engineering plans shall be submitted for approval by the Councils Engineering Manager, detailing the access and right-of-way works, including the sight distances and the works required above.

Services

5. Underground power and telephone servicing are to be provided to the proposed building site on Lot 1 in accordance with TDC Engineering Standards.

Certification

6. Certification of the building site on Lot 1 by a Chartered Professional Engineer in accordance with TDC Engineering standards (Section 11 Appendix B) and certification that all engineering works have been completed in accordance with TDC Engineering Standards or to the satisfaction of the Council's Engineering Manager.

Building Site

7. The proposed building site on Lot 1 shall be shown as a rectangular building site of no more than 300 square metres, and shall be shown on the survey plan. It shall be at least 100 metres from MHWS and located off the ridge as shown in the landscape design report submitted with the application.

Consent Notices

8. Consent notices on the proposed Lot 1 including the following:
 - a) Restriction that no building shall be erected within 100 metres of the line of Mean High Water Springs.
 - b) Buildings on Lot 1 shall be restricted to the "building site" on the Title Plan.
 - c) Consent notice advising of the need for discharge consent for any on-site effluent disposal system for Lot 1 and also resource consent for any dwelling on Lot 1.
 - d) All buildings shall be limited to a height of 6 metres above natural ground level.
 - e) Any trees planted must not grow higher than 6 metres above natural ground level.

Consent notice for both Lot 1 and Lot 2:

- f) That no further subdivision of either Lot 1 or 2 shall be undertaken except as may be required for a minor boundary adjustment which does not create an additional allotment.

Easements

9. Easements are to be created over any services located outside the boundaries of the lots that they serve as easements-in-gross to the Tasman District Council for Council reticulated services (including future provision for water and wastewater reticulation) or appurtenant to the appropriate allotment.

Engineering Works and Plans

10. All works and engineering plan details are to be in accordance with Tasman District Engineering Standards or to the satisfaction of the Tasman District Engineering Manager.

DECISION – LAND USE:

THAT pursuant to Section 104 and 104B of the Resource Management Act 1991, Council DECLINES consent for K A and H D Farndale to construct a dwelling on Proposed Lot 1 within 100 metres of MHWS.

REASONS FOR THE DECISION - SUBDIVISION AND LAND USE:

1. The land is within the Waimea Inlet Rural Residential Zone under the Proposed Tasman Resource Management Plan. The minimum lot size for a controlled activity subdivision is 2 hectares according to Rule 16.3.10, thus the application is deemed to be a restricted discretionary activity, as it does not comply with this rule. The land also falls within the Services Contribution Area which was introduced as part of Variation 32. Submissions on these provisions have yet to be heard and decisions yet to be made. The provisions affect the quantum of Service Contribution payable at the time of subdivision and development.

It is noted that the application was modified at the hearing which proposed to increase the area of Lot 1 and Lot 2 and decrease the area of Lot 3 and also to move the building site for Proposed Lot 1 to approximately 90 metres from MHWS.

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 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 eleven submissions; ten in opposition and one conditionally in support.

The concerns raised were:

- Proposed dwelling should comply with 100 metre setback from MHWS
- Approval of small lots would create a “precedent” and thus open the door to others.
- Small lot not in keeping with character of surrounding area
- Traffic effects, dangerous access, poor visibility
- Should only be one dwelling per property
- Planting large trees on ridgeline, should have height restriction on trees
- Possible problems with wastewater disposal
- Possible effects on wetland area
- Only two lots should be approved
- Any subdivision below the 2 hectare size will alter the character of the area
- Development Impact Levies should be paid
- Fragmentation of rural land, loss of land for future generations

- Intensification of residential activity leading to more pets which threaten estuary birdlife
 - Application not in accordance with the Design Guide
 - Contrary to NZ National Coastal Policy Statement
 - Application does not meet the purpose and principles of the Resource Management Act 1991
5. The Committee carefully considered these concerns and also the landscape evidence provided by the applicant and the staff which was of assistance in terms of the assessment of the impact on the visual character and amenity. The Committee was also aware of the personal circumstances and the reasons given for making the application. However, the Committee were mindful that the task of decision making in terms of the Resource Management Act 1991 had to be done in a quasi-judicial manner that considered the “public good” as well as the benefits to individual families.
 6. The Committee considered that there were three key issues which had to be considered; rural character and amenity values, traffic effects, “precedent” and cumulative effects.
 7. In terms of the rural character and amenity values, the Committee considered that there were two issues. One was the size and therefore density of the proposed lots and subsequent dwellings and the other was the location of the lower building site in relation to the effects on estuary values and the amenity of other properties. The Committee was concerned about the proposal for this land to be divided into three lots. It was considered that the proposal was out of keeping with the surrounding area and development (both existing and approved but not built), but that because the land sat next to a property which had been already subdivided, it was possible to limit the effects of another dwelling as it could be seen as being within an existing group of dwellings. It was considered that two additional dwellings on this land would create visual effects in terms of the level of built development which would have adverse effects which could not be mitigated by the proposed landscaping and other suggested conditions contained within proposal.

The Committee noted that the application had been amended in several ways including moving the building site for Lot 1, 90 metres from MHWS. However, it was considered that if only two lots were permitted, there was no reason to encroach into the required 100 metre setback. The Committee considered that it was important that the 100 metre setback be maintained. The Committee considered that the two approved lots should be roughly equal in size although the exact sizes was not seen as critical, rather it was the location of the building site off the ridge and well away from the estuary which made the creation of one additional allotment acceptable. The Committee accepted the offers proposed by the applicant to limit the height of the dwelling to 6 metres and also to limit the height of trees to 6 metres. These matters will be included as a consent notice on Lot 1 to ensure on-going compliance with these controls.

8. The Committee noted the existing resource consent for the second “dwelling” associated with the garage. As this situation is existing and controlled by a resource consent with appropriate conditions, the Committee considered that it was not reasonable or appropriate to cause a review of that situation.

9. In terms of traffic effects, the limitations of the existing driveway was such that it was considered to be inappropriate to allow it to be used for access for the additional lot. It was considered that the entrance should be moved to achieve safe sight lines and safe entry and exiting. The Committee considered that the existing carriageway of Bronte Road East was adequate to cater for the increased traffic associated with one additional allotment.
10. In terms of the “precedent” and cumulative effects of granting the application, the Committee was clear that each application must be assessed on its merits, but that the decisions made by Council should be consistent, that is, like being treated as like. This process of consistent assessment is made in terms of the adjoining development and the effects on the character and values of the area. Approvals send a signal which lead to other applications and thus cumulative effects and this is a valid consideration. The Committee did not wish to send a signal that development of the intensity as was proposed is compatible with the outcome of the Waimea Inlet Rural Residential Zone ie that of a low intensity productive rural environment protecting the coastal values of the area. The Committee was confident that granting consent to one additional lot on this property would not send a signal that that lots less than 2 hectares would be acceptable throughout the zone.
11. The Committee noted that the Development Contributions are taken under the provisions of the Local Government Act 2004 rather than the Resource Management Act 1991 and therefore they are not a matter which is before the Committee at this point. However, it is noted that if the outcome of hearings relating to the Services Contribution Area provisions are changed, the amount charged will be reduced or refunded depending on the outcome.
12. The Committee was clear that consent for the dwelling on Lot 1 as sought in the original application (being less than 100 metres from MHWS) was the only “land use” application sought and therefore a consent would have to be sought in the future for a dwelling on Lot 1 because it will fall within the Coastal Environment Area. Therefore the effects of the proposed dwelling will be dealt with at that time. Also this will be the time to consider the effects in relation to on-site wastewater disposal.
13. In summary, the Committee considered that the effects from one additional lot would be acceptable provided the new dwelling complied with the setback requirement from MHWS and the size and location of the building site was controlled. It was considered that granting two additional lots would not maintain or enhance the amenities of the surrounding area. It was considered that granting consent for two lots would be consistent with the purposes and principles of the Resource Management Act 1991 and the relevant provisions of the Proposed Plan.

CARRIED

Confirmed:

Chair: