

MINUTES

TITLE: Environment and Planning Subcommittee
DATE: Monday, 31 October 2005
TIME: 9.30 am
VENUE: Council Chambers, 189 Queen Street, Richmond

PRESENT: Crs E M O'Regan (Chair), S J Bryant and P K O'Shea

IN ATTENDANCE: Consents Manager (J Hodson), Senior Consent Planner, Subdivision (M D Morris), Development Engineer (D Ley) and Administration Officer (B D Moore).

1. V L and K V THOMAS, BEST ROAD, UPPER MOUTERE – APPLICATION RM050394

1.1 Proposal

The applicant sought consent to subdivide Part Section 161 Moutere District (CT NL9C/1017) as a boundary relocation with the resulting allotments being Lot 1 of 3.2 hectare and Lot 2 of 35.4 hectare being amalgamated with Part Section 106 Moutere District (CT NL5A/667).

1.2 Presentation of Application

Mr K V Thomas spoke on behalf of the applicant and said that he farms the family property at Gardiners Valley in partnership with his parents. The farm is currently used to run breeding cows and rear calves as well as producing some lambs. There is a small area planted in vineyard for the supply of grape juice to local wineries. Mr Kevin Thomas said that his father, Mr V Thomas, has had to go into residential care off the farm and this has placed a considerable financial burden on the family and capital needs to be raised from a sale of part of the farm to support Mr V Thomas. The family can make a living from the farm and wishes to keep it in production.

A small area of 3.2 hectare is proposed to be sold off leaving the bulk of the farm intact. The applicant did not wish to cut off 12 hectares to comply with minimum planning requirements as this would have meant losing too much productive land from the farm. The proposed subdivision will have the least impact on the viability of the farm and ongoing farming activities.

Licensed Land Surveyor Mr S Light read a submission on behalf of the applicant acknowledging acceptance of the Council Officer's proposed conditions of consent except for the road fence relocation. The applicant questioned the requirement to shift the road fence back 6.5 metres to the road boundary across the whole frontage of Lot 1. This will create an area of 1000 m² of verge to be maintained by the Council, whereas at present this land is grazed by stock. He said that setting the fence back at the access point would be sufficient.

Mr Light then addressed the concerns of submitters. He disputed the claim by the Daubney submission that the subdivision of 3.2 hectare will materially affect the economics of the whole farm. He said the proposed building site would be about 200 metres from the Daubney house and screened by new and existing trees. The proposed building site is the most ideal situation for a dwelling in that a dwelling could be constructed as of right on that location as a controlled activity.

V McLachlan opposed the proposed access point alongside the McLachlan access but the Council's engineer has endorsed the proposed positioning of this access point. The concerns of the Reid submission could be overcome by a rural emanation easement. Mr Light said that the proposed boundary readjustment has the benefits of allowing the owners to raise the capital they need and at the same time preserving the bulk of their farming unit.

1.3 Submissions

Mrs J Daubney opposed the application saying that it cuts off a small uneconomic block and she was worried about the potential use of this land and that a future dwelling will be very visible from the Daubney house. She said that the proposed subdivision could not be justified by the applicant's financial needs and also expressed concern about the road safety aspects of the proposed access to the subject site.

Mr A J Reid said that he grows apples and boysenberries on an adjacent site and that berries are harvested during the night when the fruit is cold. He sought the application of a rural emanations easement to avoid complaint from the occupants of the applicant's subject property. He was concerned that the new owner of the proposed new allotment could seek to dictate farming practices on the adjoining Reid property.

1.4 Staff Reports

Consent Planner M D Morris explained how the policies and objectives of the TRMP provide for the proposed boundary relocation subdivision as a discretionary activity. He said that a rural emanations easement could be a means of advising future landowners that legitimate farming operations may be carried out uninhibited on adjacent property. He noted that the applicant can potentially subdivide the subject total property into three lots with three dwellings, as a controlled activity.

Subdivisions Engineer Mr D Ley supplied the hearing panel with copies of an aerial photograph endorsed with the proposed access point and house site. He spoke of the potential nuisance with vegetation located close to the formed carriageway and said that the farm fence needed to be moved back to the road reserve boundary on the proposed new Lot 1. Mr Ley said that the proposed access point would provide adequate site distance in both directions on Best Road. Mr Ley agreed that a combined entranceway was desirable with the adjacent McLachlan property. With the fence set back from the existing carriageway on Best Road, this would provide a safe turning area.

1.5 Right of Reply

Mr S Light responded for the applicant saying that the applicant volunteered a condition of consent that no further subdivision would occur for a period of 10 years. He noted that the applicant already had the opportunity to apply for a subdivision to create three allotments and that the balance lot could also be further subdivided after consent to this application is granted. He questioned the need for a rural emanations easement with the adjoining property owners getting the benefit. Mr Light said that however the applicant would not have a problem with the provision of a rural emanations easement.

Mr Light acknowledged the need for the removal of some trees near the proposed entranceway and that combined entrance driveways could be provided with no requirements for reciprocal easements. Mr Light said that the proposed subdivision would be a good outcome for both the Tasman Resource Management Plan and the applicant owners.

The Committee reserved its decision at 11.05 am.

**Moved Crs O'Shea / Bryan
EP05/10/27**

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

V L and K V Thomas

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
V L and K V Thomas	Consideration of a planning application.	A right of appeal lies to the Environment Court against the final decision of Council.

CARRIED

**Moved Crs O'Regan / O'Shea
EP05/10/28**

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

CARRIED

**Moved Crs O'Regan / Bryant
EP05/10/29**

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. V L and K V THOMAS, BEST ROAD, UPPER MOUTERE – APPLICATION
RM050394**

**Moved Crs O'Regan / Bryant
EP05/10/30**

THAT pursuant to Sections 104, 104B, 220 and 221 of the Resource Management Act 1991, the Council GRANTS consent to subdivide Pt Sec 161 Moutere District (CT NL 9C/1017) to create two allotments.

The consent is subject to the following conditions:

CONDITIONS – SUBDIVISION:

1. Amalgamation

That Lot 2 heron be amalgamated with Pt Section 160 Moutere District (CT NL 5A/667) and one certificate of title issue.

DLR reference: 462196.

2. Consent Notices

Consent notices shall include the following:

- a) The dwelling on Lot 1 shall be restricted to the “building site” on the Title Plan.
- b) The dwelling on Lot 1 shall be single storied with a height of no more than 5 metres above natural ground level.
- c) No further subdivision of Lot 1 or 2 will be permitted for a period of ten years, unless such subdivision constitutes a boundary adjustment where it does not result in the creation of additional lots (for a dwelling) or is for the provision of a utility site.

Advice Note:

The above condition was volunteered by the consent holder.

Council will issue a consent notice pursuant to Section 221 of the Resource Management Act 1991 recording the requirement of this condition on the certificates of title. All associated costs will be paid by the consent holder.

3. Building site to be shown on Survey Plan

The proposed building site on Lot 1 shall be shown as a rectangular building site of no more than 300 square metres in accordance with Plan A attached to this consent and shall be shown on the survey plan.

4. Access

- i) A sealed access crossing shall be provided in the north-western corner of Lot 1 in accordance with Schedule 16.2C of the Proposed Tasman Resource Management Plan.
- ii) The access shall have a sight distance of at least 90 metres in both directions in accordance with rule 16.2.2(v) of the Proposed Tasman Resource Management Plan.
- iii) The access sealing shall extend 5 metres inside the property.
- iv) Culverts for stormwater drainage shall be installed, if required.
- v) The fence along the road reserve boundary of Lot 1 shall be relocated back to the actual boundary line and any road reserve vegetation removed.
- vi) The shoulder of Bests Road fronting Lot 1 shall be constructed at least 0.5 metres in width and a swale water table shall be constructed. All work to leave the remaining road reserve generally level and capable of being mown.
- vii) All work shall be constructed in accordance with Tasman District Engineering Standards 2004, or to the satisfaction of the Council's Engineering Manager.

Advice Note:

The consent holder is encouraged to form the access adjacent to the access to the Lot 1 DP 15243 so that a wide sealed area is created.

5. Rural Emanations Easement

That an easement for the benefit of Lot 2 and Pt Sec 162 Moutere District (Reid Property) be registered on the title of the proposed Lot 1. The memorandum granting the easement is to be generally in the form of Attachment 1.

The consent holder shall supply Council with a copy of a letter to the owners of Lot 1 DP 15469 (currently J and M Daubney) offering a similar easement to be registered in favour of that property, and a copy of any reply to the letter. (If no reply is received within one month of the date of the letter, this part of the condition will be satisfied.) If the owner of that property agrees to the easement, it shall be granted generally in the form attached as Attachment 1.

All costs associated with registration of the easement shall be paid by the consent holder.

6. Easements

All services located outside the boundaries of the lots that they serve to be protected by an appropriate easement referenced in Council's Section 223 Recital.

7. Servicing

The proposed Lot 1 shall be serviced for power and telephone to the boundary in accordance with Tasman District Engineering Standards 2004. Written confirmation of connection shall be provided from the relevant utility provider.

DECISION – LANDUSE:

THAT pursuant to Sections 104 and 104B of the Resource Management Act 1991, the Council, GRANTS consent to construct a dwelling on Lot 1. The consent is granted subject to the following conditions.

CONDITIONS – LANDUSE:

1. Location of Dwelling

The dwelling on Lot 1 shall be located in accordance with the site plan attached as Plan A.

2. Commencement of Consent

The commencement date shall be the date of the signing of the title for the respective allotment.

3. Dwelling requirements

That the materials, landscaping and colour of the dwelling built on Lot 1 shall be designed and constructed having regard to the amenity and natural character of the locality. The building consent for the dwelling shall be accompanied by a report from a suitably qualified person certifying that the above matters have been incorporated into the design of the dwelling.

The dwelling shall be single storied with a height of no more than 5 metres above natural ground level.

The total site coverage of the proposed dwelling and associated garaging shall be no more than 300 square metres.

A minimum of 23,000 litres of potable water storage shall be provided in association with the dwelling with an approved 50mm camlock firefighting connection.

NOTATIONS:

1. The dwelling must be connected to an effluent disposal system designed, constructed, maintained and operated in accordance with the standards in 36.1.4 of the Proposed Tasman Resource Management Plan.

2. The dwelling must comply with all bulk and location rules for a Rural 1 dwelling under rule 17.4.4 of the proposed Tasman Resource Management Plan unless otherwise limited by this consent.
3. This resource 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.
4. 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.
5. A Development Contribution will be charged at the time of granting the building consent for the dwelling. The Development Contributions Policy is found in the Long Term Council Community Plan (LTCCP). 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.

This consent will attract a development contribution on roading.

REASONS FOR THE DECISION - SUBDIVISION AND LANDUSE:

1. The land is zoned Rural B under the Waimea Section of the Transitional District Plan under which the activity is deemed to be a non-complying activity. Under the Proposed Tasman Resource Management Plan the land is zoned Rural 1 and the minimum lot size for a controlled activity is 12 hectares thus the application would be deemed to be a discretionary activity as it does not comply with this rule.
2. The Committee notes that there are no outstanding references regarding the zoning of the land. The Committee is aware of an unresolved reference seeking further investigation of the extent of Class A soils and associated non-complying status of subdivision thereof; or, alternatively makes subdivision of both Rural 1 and Rural 2 land containing Class A soils non-complying activities (Klaus Thoma v Tasman District Council - dated 24 December 1998 - RMA 001/99). The application has therefore been considered as non-complying in relation to the subdivision and discretionary in relation to dwelling construction. However, greater weight has been accorded to the policies and objectives of the Proposed Plan than the Transitional Plan as it has progressed a significant way through the public process under the Resource Management Act 1991.
3. The application has been considered subject to Part 2 of the Act i.e. the purpose of the Act and the principles of sustainable management of natural and physical resources, and Section 104D which states that the Committee may only grant the application if one of the two gateways of Section 104 D are met i.e:
 - If the adverse effects on the environment will be minor, or
 - If the activity will not be contrary to the objectives and policies of the relevant plan (including the proposed plan if one exists).

In addition Section 104 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 three submissions in opposition.

The concerns raised were:

- The subdivision establishes small blocks in Rural 1 land
- The subdivision will create an adverse environmental impact on neighbours and would devalue the neighbouring properties.
- The proposed dwelling will be very visible from the Daubney house.
- There is an unsafe entry/access to the proposed subdivision.
- The application is against the Council's land management plan for Rural 1 land by allowing small blocks to be cut from larger economic units of farm land.
- The proposed dwelling would be close to the McLachlan boundary. It should be at least 150 metres.
- The access will be alongside of the McLachlan access, which is on the crest of a ridge on a school bus route.
- The owner of the small allotment could attempt to dictate farming practices on adjoining properties. A statement on the proposed title providing information about the possible effects of adjoining rural land uses would be useful.

5. In terms of the issue of land fragmentation and the Council's policy on protecting land of productive value, there is no doubt that this is land that should be protected. However in this situation, there are already two titles and the end result is also two titles. The applicant has offered to have a consent notice imposed on the new titles which states that no subdivision (except for boundary adjustments) will be sought for a period of 10 years. This was accepted by the Committee as an indication of the intention of the applicant which will then be available for others by searching the titles. Clearly if the land was not already in two titles the outcome of an application to subdivide creating a rural residential sized allotment in the Rural 1 zone may have been quite different. The Committee agreed with the staff reasoning, that on balance, the "trade off" of allowing a small lot was worthwhile in terms of the creation of a larger title which can continue to be used for productive purposes.

6. The Committee was concerned that the new access to the proposed lot should be made as safe as possible and if it were combined with the adjacent access at the brow of the hill this would create adequate sight distances and also a possible safe pull off area for school buses.
7. The Committee considered that the fence along the frontage of Lot 1 should be moved back to the legal boundary. It was noted on the site visit that the foundation of the existing fence along the frontage of Lot 1 is unsatisfactory and that the road has no shoulder along this frontage. The Committee considered that this work should be completed by the consent holder in the interest of public safety.
8. The Committee agreed with the assessment and evidence of the Planner that the effects of the proposed subdivision and the construction of a new dwelling in the location proposed would have no more than a minor effect. The Committee was aware that the location chosen for the dwelling on Lot 1 complied with the setback rules for Rural 1 and would mitigate potential visual effects on the adjacent property as it would be located further away from the boundary than otherwise would be permitted. Limiting the height of the future dwelling was also seen as mitigation of potential visual effects.
9. The Committee was aware of the potential for cross boundary effects and reverse sensitivity arising and therefore considered that it was appropriate to have a "rural emanations" easement registered on the title of Lot 1 in favour of Lot 2 and the Reid property, and also Daubney property if that was agreed to. This ensures that the future purchaser of Lot 1 is made aware that rural activities in the area can have some impacts on nearby land uses at times.
10. In summary the Committee considered that the proposal was generally consistent with some of the objectives and policies of the Proposed Tasman Resource Management Plan, the Regional Policy Statement and the Resource Management Act 1991 and that the adverse effects would be no more than minor provided the recommended conditions were fulfilled.

CARRIED

Confirmed:

Chair: