

# MINUTES

**TITLE:** Environment & Planning Subcommittee  
**DATE:** Monday, 5 December 2005  
**TIME:** 9.30 am  
**VENUE:** Takaka Service Centre, 78 Commercial Street, Takaka

**PRESENT:** Crs E M O'Regan (Chair), S J Borlase and N Riley

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

## 1. M R and R M BENGE, McCALLUM ROAD, KOTINGA – APPLICATION RM040559

### 1.1 Presentation of Application

The application was made by Mr and Mrs Matthew Benge for resource consent to subdivide their 35.5 hectare allotment (CT NL193319) into six allotments, ranging in size from 2 hectare to 19 hectare.

The property is situated at McCallum Road, Kotinga and is directly across the road from the Golden Bay Salmon Fishery and the Bencarri Farm Park Café Restaurant, both of which are well known tourist attractions in Golden Bay.

The applicant, Mr M R Benge, appeared at the hearing together with his Counsel, Mr N McFadden. Mr McFadden read an introductory submission and said that the land is zoned Rural 2 and as the subdivision will yield allotments of less than 50 hectare, the application falls for consideration as a discretionary activity.

Mr McFadden referred to a letter received from J and G Dissel of Anatoki Salmon, withdrawing their submission. He also referred to letters from QEII National Trust advising that even with the subdivision in place, the Trust is prepared to accept the QEII covenant on the total property for the purpose of encouraging the regenerative native bush.

Mr McFadden referred to the Council Officer's report provided by Mr Morris which argued that the plan adopts a wholly zoning approach in relation to rural residential development and said that this was rejected by the Environment Court in the case Waring v TDC. He said that the proposed subdivision will occur on land of low productivity and each allotment will be contained within its own natural catchment between ridges and each will have a building site limited to 25 metre radius. The QEII covenant will help protect, maintain and enhance the natural vegetation and the habitat it creates.

Mr McFadden said that the Court of Appeal in the Dye case had indicated that a cumulative effect is something that will happen, not something that may happen. He said he did not agree with Mr Morris' report which indicated that a grant of consent can lead to a cumulative effect.

Mr S J Parker, Surveyor of Jones and Associates, spoke about the unusual nature of the Benge property which has five small catchments and one large catchment and each is distinct and self-contained. Each catchment has its own gully, spring, stand of regenerating native bush and microclimate. Building sites will be tucked below the ridges in locations which do not appear above the ridgeline or skyline.

Mr Parker explained how the individual allotments will be accessed by right of way. He referred to a report annexed to his evidence, from Mr K Thoma which referred to the productivity of the subject land. This report concluded that the subject land could be used for erosion control forestry but not pastoral activity. Water supplies to all new lots will be spring fed from within the catchment on each allotment and appended to Mr Parker's report was a report from Mr A Hewitt of EnviroLink and that report concluded that inadequate water supply was available.

Mr Parker then addressed the potential effects by reference to Schedule 16.3A of the PTRMP. Mr Parker explained how the proposed subdivision will fit the individual natural catchments and disagreed with Mr Morris' suggestion that there be a lesser number of lots, saying that an artificial grid-like subdivision will not respect contour or catchment areas.

A letter from the submitter J and G Dissel was tabled and also a letter from C Sedgwick advising that no concerns existed about archaeological sites.

Ms Hodson read a list of the names of neighbours who had given their consent to the proposed subdivision.

Mr McFadden referred to correspondence dated 27 September 2004 and October 2004 from QEII National Trust giving its approval to the proposed subdivision and QEII covenant.

Mr R M Langbridge, Landscape Architect, read a statement of evidence and used a series of photographs to illustrate the low level visual effect of the proposed subdivision. He said that with the proposed controls on height and the use of recessive colours, he did not believe any of the houses on the designated sites would appear visually prominent.

Mr Langbridge said that the area to be covenanted contained vegetation that is unusual due to its specific combination of species for this location. Mr Langbridge recommended a number of architectural controls which he believed would assist with the integration of the proposed subdivision into the landscape. Mr Langbridge did not support a proposal to reduce the number of allotments and supported the protection of this locally unique area of indigenous vegetation by QEII Trust covenant.

## **1.2 Staff Report**

Mr Morris spoke to his report which said that the integrity of the Rural Zone Rules, in achieving low density productive rural environment, will be undermined by the approval of this application. The report acknowledged the conclusions of the soils productivity report provided by K Thoma, in that the effects of the proposed subdivision on productive values will be no more than minor.

Mr Morris concluded that the property is in an area of pastoral farming and regenerating bush and scrub. He said it is in an area that has a high degree of natural amenity, with very little built development particularly in the hillside areas. The report said that to approve this subdivision, in its present form, would adversely affect this rural amenity, in a way that is not envisaged by the Rural 2 Zone Rules and the related policies and objectives under the proposed Plan. The report acknowledged that the soil productivity on the subject site is extremely low, with very little productive potential, except for forestry, which is likely to be uneconomic in Golden Bay.

Mr Morris said in his report that he considered that the proposal, in its present form, is contrary to the policies and objectives of both the proposed plan and the regional policy statement and the effects on the environment are more than minor. He recommended that the subdivision consent be amended to three titles of 7.5 hectare, 8.8 hectare and 19 hectares. The report recommended some conditions of consent for those proposed three allotments.

### **1.3 Right of Reply**

Mr McFadden responded for the applicant and reminded the Hearing Panel that underground electric power cables are proposed from the existing poles to all lots. He said that one more power pole may be necessary. He said that the proposed QEII covenant would restrict the landowner's use of the subject sites.

Mr McFadden said that a resource consent has to come first to avoid future conflict with the proposed covenants. He reminded the Hearing Panel that the Environment Court has not accepted that the zoning of a property will dictate its ability to be subdivided. He said that the neighbouring Rings subdivision had no special conditions and was dealt with in accordance with the PTRMP. He wondered at the need for a special fire fighting pond and said that if this was required the applicant would need clarity on proposed dimensions. Mr McFadden said that in regard to potential cumulative effects of subdivision, although the Rural 1 and 2 policies are similar, the thrusts are different. He said there are many permitted activities in the Rural 2 Zone. He reminded the Hearing Panel that the QEII Trust sees value in the regenerating bush on the subject site. He questioned if the affects of the dwelling site can be seen as adverse.

Mr McFadden said that the PTRMP focuses on effects and subdivision below 50 hectare minimum in the Rural 2 Zone is discretionary and that this has survived the submission process and Council scrutiny. He said the criteria for subdivision and the plan objectives are to be considered. Mr McFadden asked the Hearing Panel to consider that the present application fits the policy of sustainable development. He said that a Section 221 Consent Notice can be used to secure the proposed conditions by Mr Langbridge. He provided copies of titles for the subject land as requested by the Hearing Panel and information on the rights of way both existing and proposed.

The Committee reserved its decision at 1.50 pm.

**Moved Crs O'Regan / Riley  
EP05/12/05**

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

M R and R M Benge

**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:**

<b>Subject</b>	<b>Reasons</b>	<b>Grounds</b>
M R and R M Benge	Consideration of a planning application.	A right of appeal lies to the Environment Court against the final decision of Council.

**CARRIED**

**Moved Crs Riley / Borlase  
EP05/12/06**

**THAT for the purposes of discussing the application of M R and R M Benge as an "In Committee" item, the Manager Consents be authorised to be in attendance as advisor.**

**CARRIED**

**Moved Crs  
EP05/12/07**

**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. M R and R M BENGE, McCALLUM ROAD, KOTINGA – APPLICATION RM040559**

**Moved Crs O'Regan / Borlase  
EP05/12/08**

**THAT pursuant to Sections 104 and 104B of the Resource Management Act 1991, Council GRANTS consent to subdivide Lot 1 DP 347033 into six allotments subject to the following conditions.**

The reasons are stated below.

## **CONDITIONS:**

### **Right-of-Way**

1. The right-of-way serving the lots shall be formed and with a minimum legal width of 6.5 metres and a formation width of 4.5 metres (plus 2 x 500 mm wide metalled shoulders). The legal width is to include all cuts and batters. The formation shall be a metalled all-weather surface (except for the first 10 metres which shall be sealed) with watertables and culverts to deal with stormwater. The maximum gradient of the right-of-way shall 1:6.

The right-of-way entrance on to McCallum Road shall include the following:

- i) The access shall be formed and sealed in accordance with the attached entrance design (Attachment 1)
- ii) The first six metres of the access in from the road formation shall be level with the road formation.
- iii) The sight distances for the right-of-way access shall comply with the standards set out Attachment 2, in either direction. The final sight distances required shall be finalised at the engineering plan stage, prior to the commencement of works. It is likely that road side vegetation will have be cut back to achieve an adequate sight distance.
- iv) The existing sealed formation of McCallum Road shall be extended to at least 6 metres past the right-of-way entrance. This shall be constructed in accordance with Tasman District Engineering Standards 2004.

### **Access to Lot 6**

2. The vehicle entrance to Lot 6 shall be formed in accordance with the Engineering Standards.

### **Engineering Plans**

3. 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 in condition 1 and 2.

### **Power and Telephone**

4. Live telephone and electric power connections shall be provided to the building site of each allotment and all wiring and connections shall be located underground and be to the standard required by the supply authority. Confirmation that these requirements have been met shall be provided by way of a statement from the supply authority and a copy of the supplier's certificate of compliance shall be provided to the Council prior to a completion certificate being issued pursuant to Section 224(c) of the Resource Management Act 1991.

One additional pole may be erected if necessary.

## **Building Site Certification**

5. Certification of each building site shall be provided 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 Sites to be Shown on Survey Plan**

6. The proposed building site as shown on all lots shall be shown on the survey plan.

## **Consent Notices**

7. Consent notices on all proposed lots shall include the following:
  - a) All buildings on Lots 1-6 shall be restricted to the Building site areas marked on the Title Plan.
  - b) All buildings shall be restricted to 6 metres in height and shall be single storey.
  - c) All roofs shall be either hipped or of a low mono-pitch slope and shall be finished in a recessive colour which is darker than the walls of the building.
  - d) The exterior of all buildings shall be finished in colours which are recessive and have a low reflective value and which blend in with the environment.
  - e) Treatment of domestic wastewater on all lots shall be by way of a treatment system that incorporates disinfection, with the wastewater being treated to a tertiary standard prior to being discharged to land. Tertiary treatment is defined as meeting the following standards:
    - 5-day biochemical oxygen demand (BOD<sub>5</sub>) shall be less than 20 milligrams per litre;
    - Total suspended solids shall be less than 30 milligrams per litre; and
    - Total faecal coliforms shall be less than 100 colony forming units (cfu) per 100 millilitres.

The treated wastewater shall be discharged to land by way of pressure compensating drippers to a specifically designed and constructed disposal area.

- f) Rainwater from the roofs of buildings shall be collected and stored in an on-site water storage tank that has a capacity of not less than 35,000 litres. This tank shall be fitted with an accessible 50 millimetre diameter "Camlock" coupling to enable connection with fire fighting equipment.

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.

## **Easements**

8. Easements shall be provided for all services located outside the allotments that they serve.

## **Engineering Works and Revegetation of Cuts and Batters**

9. All works and engineering plan details are to be in accordance with Tasman District Engineering Standards 2004 or to the satisfaction of the Tasman District Engineering Manager.
- 9A. The earthworks required for the formation of the accesses and right of way may not include the method of soil disposal known as "side casting". Existing areas of side casting and all other cuts and batter areas shall be stabilised by revegetation. All faces and batters steeper than 1 V : 1.25 H shall be hydro-seeded or treated with a similar revegetation process. Other cuts and batters shall be revegetated by the use of manuka slash where ever possible.

## **Conservation Covenant(s)**

10. The applicant's solicitor shall provide a written undertaking that the QEII covenant will be registered on the new titles.

## **Financial Contribution**

11. The consent holder shall pay a financial contribution (for reserves and community services) to the Council. The amount of the financial contribution payable shall be 5.5% of the total market value (at the time the subdivision is granted) of a notional building site of a 2,500 square metres on each of five allotments. The consent holder shall engage the services of a registered valuer to undertake this assessment and a copy of the valuations shall be forwarded to the Council for calculation of the financial contribution. If the financial contribution payment is not made within two years of the date of granting of this consent, the consent holder shall prepare a revised valuation and the financial contribution shall be recalculated.

## **General**

12. The subdivision is approved in accordance with Appendix 3.

### **ADVICE NOTE:**

The consent holder is advised that the Council will require the payment of a development contribution prior to the issue of a completion certificate, issued pursuant to Section 224(c) of the Resource Management Act 1991. The development contribution that is payable is as is set out in the Development Contributions Policy, prepared pursuant to the Local Government Act 2002. The Development Contributions Policy is found in the Long Term Council Community Plan (LTCCP). The consent holder is advised that 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 in respect of roading only and will be based on the creation of five additional allotments.

## **REASONS FOR THE DECISION - SUBDIVISION:**

The land is zoned Rural 2 under the Proposed Tasman Resource Management Plan. The subdivision is a discretionary activity under rule 16.3.9 of the Proposed Tasman Resource Management Plan in that the proposed lots are less than the 50 hectares required under rule 16.3.8(b) for a controlled activity subdivision in the Rural 2 zone. Schedule 16.3A of the Proposed Plan sets out the matters the Council will have regard to in assessing the application.

The Committee is aware that there is one reference pertaining to the subdivision rules and policies and objectives particularly relating to the Rural 1 zone. It is not considered that this reference could have the effect of altering the relevant rule or zoning of this land and therefore the provisions of the Transitional Plan are not considered to be relevant and all the weight will be placed on the policies and objectives of the Proposed Plan.

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.

The applicant explained that the land had very low productive value and that it was his wish to see the native bush regenerate on the land and have it protected under the Queen Elizabeth II Trust. He considered that this process would be best achieved by having the land subdivided so that weed management and other work needed during the regeneration period could be undertaken by a greater number of land owners.

The proposed subdivision is in an area of mixed land uses including grazing, forestry, some tourist/rural activities (salmon farm and Bencarri Farm Park) and is near to the boundary of the Kahurangi National Park. There has been a recent subdivision of some adjacent land into lots of similar areas to that proposed by this subdivision.

The Committee noted that two submissions were received. One was generally in support and the other one was in opposition, but this submission was withdrawn shortly before the hearing.

The Committee acknowledges and commends the applicant for the efforts being made to protect the remnant and regenerating bush area on the land. It is noted that the documentation to create the conservation covenants over the entire property (except designated building sites and accesses) has been prepared.



Generally speaking, the Committee is concerned about the subdivision of rural land. The Plan policies seek to avoid the effects of fragmentation on all productive land which includes Rural 2 land. In this case the Committee was provided with expert evidence which stated that the land had very low, if any productive value and should be left to allow the bush to regenerate.

The Committee noted that the land was defined by relatively self contained catchments which were used by the applicant to define the proposed lots. This enabled building sites to be located discreetly below any ridgelines, tucked into the landscape and provide appropriate levels of separation and amenity between the sites. The Committee received expert evidence pertaining to the effects on rural character and amenity values and it was accepted that provided the dwellings were finished in recessive colours and limited in their height and location, the resulting development will not have a significant visual effect on the rural character and amenity.

The access arrangements proposed by the applicant were acceptable provided the engineering conditions ensured that the stability of the land was protected. The Committee considered that in view of the heavy rainfalls experienced in the area and the size of the cuts and batters, that prompt and effective revegetation was vital.

The Committee was satisfied that in this application there was an unusual set of circumstances which separated it from the generality of Rural 2 land and therefore that granting consent would not send a signal to the public that the subdivision of rural land for non-rural related activities was acceptable. The effects of the subdivision were considered to be relatively minor and there was a positive effect in terms of the long term protection of the regenerating native bush which would enhance the rural character of the area.

The Committee was satisfied that issues such as domestic wastewater disposal and other servicing issues could be adequately dealt with through the imposition of conditions.

**CARRIED**

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**Date Confirmed:**

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**Chair:**