

MINUTES

TITLE: Environment & Planning Subcommittee
Commissioner Hearing

DATE: Monday, 1 May 2006

TIME: 10.00 am

VENUE: Collingwood Fire Station, Elizabeth Street, Collingwood

PRESENT: Commissioner B Dwyer

IN ATTENDANCE: Senior Consent Planner Subdivisions (M D Morris), Resource Scientist Rivers and Coast (E Verstappen), Consent Planner Community Services (R Squire), Administration Officer (B D Moore)

1. C AND G PETRY ENTERPRISES LIMITED, COLLINGWOOD-PUPONGA ROAD, GOLDEN BAY- APPLICATION RM040782, RM060092

Counsel for the applicant Ms C M Owen tabled and described the following amended scheme plan which the applicant now proposed. She described the following residential lots that had been decreased to five: Lot 1 of 3620 m², Lot 2 of 1130 m², Lot 3 of 1190 m², Lot 4 of 1350 m², Lot 5 of 1740 m² and Lot 6 of 1510 m². These lots would be interconnected with a right-of-way to provide only one access to the main road. Proposed Lot 10 of 1500 m² is seabed which adjoins a 20 metre wide esplanade reserve of 3550 m². Proposed Lot 11 of 1640 m² is road to vest in Council.

Ms Owen described how the road to vest has been altered to encompass a 10 metre wide strip measured from the centreline of the existing Pakawau-Collingwood Road. She described the location of the proposed building sites which comply with the setback requirements and that each lot contained a 400 m² effluent disposal field. The scheme plan of subdivision was shown as an overlay over the aerial photograph of the subject site. Ms Owen said the subject site is located towards the northern end of the Pakawau Spit and the applicants proposed to subdivide this 1.76 hectare property into lots of similar shapes and sizes to those in the near vicinity. The application was described as a discretionary activity in the Rural 2 Zone.

Ms Owen tabled and read a written submission on behalf of the applicants and described the relevant statutory considerations to this application. Ms Owen acknowledged that the landscape in the vicinity of the subject site has some visual amenity and that the subdivision has been designed to fit within the natural landscape. It was noted that the proposed subdivision would provide a joining of the esplanade reserve in front of the properties to the south of the applicants' site with the Department of Conservation reserve to the north. This would improve the public access along the seaward side of the Pakawau Spit. The applicants agreed to the provision of a 20 metre wide reserve.

The submission referred to the relevance of the NZ Coastal Policy Statement and Tasman Regional Policy Statement and proposed TRMP to the subject application. The applicants had changed the scheme plan of subdivision to meet the requirements of Council traffic engineers. The applicants had provided sufficient reassurance that onsite wastewater disposal can be achieved in this special domestic wastewater disposal area. The applicants had already arranged for an archaeological assessment to be conducted and an addition volunteered that a standard archaeological condition be applied to the subdivision consent. The present state of the rock revetment on the shoreline adjacent to the subdivision is satisfactory. The submission addressed the remainder of the concerns raised by submitters.

Mr T F Carter, a landscape architect of Tasman Carter Limited, read a statement of evidence and spoke to landscape plans and a series of photographs. The evidence included a visibility analysis to describe where new dwellings should be located. The evidence described the proposed mitigation methods and provided a general landscape plan to show the types and location of proposed plantings. Mr Carter clarified that a more detailed landscape plan would be needed to be provided by each landowner at the building consent stage or alternatively the landscaping could be done as a package being commenced at the early stage of development. He described the process of development of the subdivision including planting of species and that the subdivision section 224 certificate could be signed off after the first planting. There would be an ongoing maintenance obligation for three years including replanting of dead plants. It was noted that a bond could be used for enforcement purposes and a covenant or consent notice put on the certificate of title.

Resource Management Consultant, Mr H Briggs, read a statement of evidence and used a series of photographs to describe the subject site and locality. He addressed the concerns of submitters and described the mitigation measures proposed and offered suggested conditions of consent for consideration by the Commissioner. The evidence provided an assessment of the criteria for the subject discretionary activity in the rural zone and addressed the matters of concern outlined in the Council officers' reports. Mr Briggs concluded that the subject application is not contrary to the principles and objectives of the PTRMP and other statutory documents against which it has to be assessed. He said that with the scheme plan redesigned to incorporate more planting and a more integrated form of development, it can readily be accommodated within this locality without detriment to the existing landscape or natural character.

To conclude the applicants' evidence, Ms Owen referred to the controls applied through the Historic Places Trust, the access way standards in Section 16.2A of the PTRMP and that irrigation was not needed for the proposed new planting.

1.1 Submissions

Mr A Vaughan tabled and read a submission in opposition to the application for subdivision. He said that only 10 metres of the required setback of 100 metres from the coastal environment is proposed by the applicants. Mr Vaughan said that the archaeological assessment carried out in one day was insufficient. He favoured the use of a 20 metre esplanade reserve and said that this coastal boundary is subject to erosion. Mr Vaughan said that migratory birds are affected by people and development. He criticised the application as being a speculative development and just infill and that urban development should be avoided.

Mr Vaughan said that people should not be allowed to keep cats in this area because of the potential effect on birdlife. He said that the approval of the Shaw subdivision in 1976 was no reason to approve this application and he also referred to the recommendations of the Boffa Miskell landscape report. He said it would be hard to implement the applicants' landscape proposals and that its success is almost completely reliant on goodwill.

Mr Vaughan questioned if the writer of the applicants' report on effluent disposal had visited the subject site. The submitter suggested that proposed Lot 1 could provide a buffer and have a covenant on it to prevent future subdivision.

Ms J Vaughan submitted in opposition and tabled a photograph of the high tide lapping the top of the rock revetment. She displayed a map to show the Pakawau River outlet into the sea and the Pakawau Inlet which she described as both having important bird feeding grounds. She described how this is important to rare and endangered species such as the banded rail. The submitter described how the Boffa Miskell Landscape Report said that further subdivision development should be discouraged in this vicinity. She said that the Golden Bay landscape has a national importance and this is described in the PTRMP in Section 21.1.0. She said that whilst she agreed with the applicants' presentation on landscaping that the subject site has potential for growing agricultural crops such as potatoes.

Ms N Basham sought that the application be declined and tabled a series of nine photographs to illustrate that the proposed buildings and landscaping will obscure the views and have significant natural effects. She said that the Rural 2 Zone objectives and policies should be maintained and that there is presently an excess of sections for sale in Golden Bay. She suggested that the subject land can be used for food production and said that the introduction of household pets will have an adverse effect on migratory birds. Ms Basham criticised the landscaping plans which she said seemed to be to shelter the houses from the roadway. She explained that there had been much erosion on this coast since 1980 and this site could be threatened. She expressed concern that the effluent disposal system has not been assessed and that the Pakawau Estuary is an important shellfish gathering area. Ms Basham said that the proposed esplanade reserve was seen as necessary.

Ms F Wilson opposed the application and said that more houses are not a benefit to the community. She saw no reason to fill this area with housing although the subject site has natural boundaries. She noted that the land in the vicinity is becoming eroded. Ms Wilson said that screening of the houses by landscaping has occurred nearby but the landscaping takes six or seven years to have any effect. She described the Pakawau Inlet as almost pristine and populated by a large variety of birds, and that the same situation applies on the beach side of the subject site. Ms Wilson said that five new houses would have a bad effect on the area. She explained that the current rock revetment wall has been breached at high tides and that the rocks are eroded away and fall down.

1.2 Staff Reports

Resource Scientist, Mr E Verstappen, spoke to the potential for foreshore erosion, seawater inundation and the potential effects of climate change. He said that a certain modest amount of land disturbance and infilling is allowed in the coastal area. He said that part of the southern area of the subject site is likely to comply with minimum land levels but that it is desirable to raise the area where it is very low lying. He said at least there needs to be a minimum floor level set for dwellings.

Mr Verstappen said that the wall in front of the Petry property has to be maintained and this will require some more maintenance. He said it was likely that a higher easterly weather pattern may coincide with spring tides and could result in more erosion.

Consent Planner, Ms R Squire, spoke to her memorandum contained within the agenda about the proposed esplanade reserve and acknowledged that the current PTRMP provisions are under appeal and the general presumption in the plan is that a 20 metre wide reserve will be required. She said that as most people walk along the beach, an esplanade reserve would have limited public use. She said that the proposed landscaping and planting plan should have the approval of the Council Reserves Manager and that the reserve needs to be clearly defined so that the public may be confident in accessing it. She said that Council reserve staff would rather see esplanade reserves along the Golden Bay coastline protected and managed using soft engineering approaches, such as those implemented by the Coast Care programme.

A supplementary report from Consent Planner, Mr J Butler, was tabled. This included a condition that related to wastewater treatment and discharge on the proposed lots and that consent notices should be applied on the proposed certificates of title.

Consent Planner, Mr M Morris, spoke to his report contained within the agenda and acknowledged that the Boffa Miskell Limited landscaping report is not an officially accepted report. Mr Morris spoke to the portion of his report regarding relevant plans and policy statements applicable to the subject subdivision and resulting in land use activity. He referred to PTRMP Chapter 6, 6.3 concerning avoidance of inappropriate subdivision in the coastal environment. Mr Morris asked the Commissioner to note Policy 6.3.2 which is to provide for future growth of key coastal settlements landward rather than along the coast. He referred to Objective 8.2.0 concerning maintenance and enhancement of the natural character of the coast.

Mr Morris questioned if the subdivision is really appropriate in terms of Policy 8.2.7, which seeks to preserve natural character of the coastal environment by avoiding sprawling or sporadic subdivision, use or development. Mr Morris listed the number of small residential areas within Golden Bay where the Council has zoned land for residential use. He said he was concerned with cumulative effect and precedent that this subdivision would lead to. Mr Morris said that the existing rural character of the Rural 2 Zone must be protected and that this application goes against the rural amenity goals.

1.3 Commissioner's Directions and Requirements

Commissioner, Mr Dwyer, instructed that the roading proposal for this subdivision be referred to Council's Development Engineer, Mr D Ley, and that a copy of Mr Ley's response be referred to Commissioner Dwyer and Counsel Ms Owen by Wednesday 3 May 2006.

Ms Owen advised that the applicant was perfectly happy with that and for Lot 6 to be provided with a separate access. Commissioner Dwyer directed that the applicants' landscaping condition be redrafted and provided to him.

1.4 Closing Submissions

Commissioner Dwyer sought that the applicants provide closing submissions in writing. Ms Owen responded that she would be happy with a written closure and would need until 12 May 2006 to provide this. Mr Dwyer accepted the date of 12 May for the provision of closing submissions and said that a draft landscape condition must be provided to Mr Morris before that date.

Ms Owen said that the landscaping condition would be provided by Thursday, 4 May 2006 and sought that Mr Morris provide written conditions of consent and any further written comments to her by Wednesday 10 May 2006.

Commissioner Dwyer then declared the hearing adjourned until Friday, 12 May 2006.

The hearing of 1 May 2006 concluded at 5.55 pm.

2. C AND G PETRY ENTERPRISES LIMITED, COLLINGWOOD-PUPONGA ROAD, GOLDEN BAY- APPLICATION RM040782, RM060092

DECISION – ALL CONSENTS

That pursuant to Part II and Sections 104, 104B and 104C of the Resource Management Act 1991, consent is **refused** to the applications of G & C Petry Enterprises Limited to undertake the above proposals (as amended at hearing) for the reasons specified in the schedule appended hereto.

REASONS FOR DECISION

Decisions on Resource Consent Applications RM040782 & RM060092

Parties

1. The following parties attended or were represented at the hearing:

Applicant : Camilla Owen (Counsel)
Tom Carter (Landscape Architect)
Hugh Briggs (Resource Management Consultant)

Submitters: Alan Vaughan (Representing Royal Forest and Bird Protection Society – Golden Bay Branch)
Joanne Vaughan
Nichola Basham
Fiona Wilson
Jane Dixon

Tasman District
Council: Mark Morris (Senior Consent Planner, Subdivisions)
Rosalind Squire (Planner – Community Services)
Eric Verstappen (Resource Scientist Rivers and Coast)

The Applications

2. G & C Petry Enterprises Limited (the Applicant) made application to Tasman District Council (TDC) on 29 June 2004 for resource consents:
 - To subdivide CT NL8/19 (1.7654 ha) into 10 Lots (existing house site, 7 new Lots, seabed to vest and road to vest) (the subdivision consent); and
 - To erect dwellings in the Coastal Environment Area on Lots 1-6 and 8 of the land so subdivided (the land use consent).
3. Both applications were contained within the same document. At some stage during the Council process different RM numbers were allocated to the separate components of the application so that the subdivision application was numbered RM 040782 and the land use application RM 060092. The applications were however made, processed and heard as a *package*.
4. The application site is situated at Pakawau, Golden Bay and is included in the Rural 2 Zone of TDC's Proposed Tasman Resource Management Plan (the Proposed Plan). In addition to being situated in the Rural 2 Zone the application site is also contained within an area described in the Proposed Plan as Coastal Environment Area. The Coastal Environment Area has been so delineated *for the purposes of guiding the management of the District's coastline* (Para. 18.14.1 – Proposed Plan). I understand that it is common ground between the Applicant and TDC that as a consequence of the Rural 2 zoning and inclusion within the Coastal Environment Area:
 - The subdivision application requires consent as a discretionary activity.
 - The land use application requires consent as a restricted discretionary activity.
5. There was some evolution of the subdivision proposal from the time of its lodgement up to the date of hearing. The subdivision proposal which I have described above (Para. 2) reflected the initial application and plan dated 23/02/04. Subsequently an amended subdivision plan was lodged dated 29/07/04. However a very substantially amended proposal was presented on the Applicant's behalf at the hearing of the application.

6. The amended proposal (being the proposal which I considered for the purposes of consent) was shown on a subdivision plan dated 28/04/06 appended to the Applicant's opening submissions. The principal differences between the original subdivision plans and the plan presented at the hearing were described in para. 7 and 8 of Ms. Owen's opening submission but can be briefly summarised as follows.
- The number of *residential* allotments proposed was reduced from 8 to 6 (including an allotment containing the existing house).
 - Lots 1, 2, 3 and part of Lot 4 of the initial subdivision proposal were incorporated into a new large Lot 1 (3620m²) for the purpose of providing an open space area between houses on the subdivided land and the residential land to the south.
 - As a result of creation of the new large Lot 1 there was some consequential *re-jigging* of the remaining allotments' shapes and sizes.
 - A system of right-of-way easements was proposed giving access to all of the subdivided allotments from a common access point onto the Collingwood – Puponga Main Road.
 - The plan identified proposed building sites 10m x 10m on Lots 1, 2, 3, 4 and 6 (Lot 5 containing the existing house).
 - Reserve proposals were altered from the original proposals.
 - Indicative effluent disposal areas (400m²) were shown on Lots 1, 2, 3, 4 and 6 (Lot 5 presumably having an existing effluent disposal area).
7. No party to the hearing challenged the Applicant's right to make the amendments proposed. The amended proposal clearly constituted a reduction in scale of the original application but still within the original boundaries and accordingly the amendments proposed were permissible.
8. The applications were publicly notified on 11 November 2005 and 14 submissions were received in respect of them. Some of the submissions supported the applications, some opposed and one (Department of Conservation) neither supported nor opposed. The contents of the submissions and issues raised by the submitters are summarised in the staff report prepared for the hearing by Mr. Mark Morris, Senior Consent Planner, Subdivisions – TDC and it is not proposed to repeat those here. By and large they will be dealt with later in this decision.

Background

9. The application site is presently contained in certificate of title NL8/19. The title contains 1.7654 ha more or less and was issued on 30 October 1883.
10. The land is part of a natural spit lying between Pakawau Inlet to the west and Golden Bay to the east.

11. On its northern boundary the site borders a Department of Conservation reserve which extends to the end of the spit. On its western side the boundary of the property is formed by the Collingwood - Puponga Main Road, although it seems from the various plans and aerial photographs provided that the formed road intrudes over the application site boundary in a number of places (quite substantially in some). On the eastern side the title extends below Mean High Water Springs (MHWS). Lot 10 of the subdivision, incorporating seabed to vest, (being the land below MHWS) contains 1,500m² and extends the full length of the property.
12. On its southern boundary the property borders legal road. The road is unformed and the vegetation contained on it hinders its use for access to the beach. On the southern side of the legal road is the northern boundary of a substantial Residential Zone which extends for some distance (I am told 1.7km) back to, including and through the settlement of Pakawau.

Issues

13. The application, submissions, planning report, evidence and Applicant's opening and closing submissions all identified a number of issues for consideration in connection with the Applicant's subdivision proposal. I propose to deal with the various issues on an individual basis starting with easiest and finally dealing with what I see as the issue which is fatal to success of the subdivision application.

Services

14. Water to the subdivided allotments is to be provided by way of rain water storage tanks. I am advised that this is acceptable to TDC as long as the tanks have a storage capacity of 23,000 litres. I note Mr. Carter's recommendation (para. 44 Statement of Evidence) that the rain water tanks are to be partially buried under the houses on each site. The Applicant had indicated a willingness to be bound by the same effluent disposal standards as applied in the adjacent Residential Zone to the south which is situated in the Special Domestic Waste Water Disposal Area of the Proposed Plan and TDC technical staff accept that can be achieved. It is common ground that power and telephone services would be available to each of the new allotments.

Fire Service Requirements

15. New Zealand Fire Service Commission had lodged a submission seeking the imposition of conditions on the subdivision relating to water volume, pressure and flows, tank storage and provision of sprinklers. The Applicant had agreed to comply with those requirements.

Iwi Consultation

16. There has been some consultation with Manawhenua Ki Mohua. The archaeologist's report indicates that an Iwi representative was present (for least part of the time) during the archaeological assessment. By letter of 13 January 2006 Manawhenua Ki Mohua indicated that consultation had taken place and that they were satisfied with both the archaeologist's recommendations and the proposed resource consent conditions.

Cats/Dogs

17. A number of submitters had raised the issue of potential effects of bringing cats and dogs into this particular area which is a bird habitat of considerable significance. Mrs. Vaughan provided information regarding *no pet subdivisions* where covenants were imposed on titles, precluding such pets from being kept by property owners. I have two specific concerns about the proposed covenants in this case:
- Firstly, in this instance, the imposition of such covenants seems futile because of the very substantial residential development in place at Pakawau already which is not subject to such restrictions. I note from the material provided by Mrs. Vaughan that domestic cats can have a range of 4-6 kilometres so that pets from the nearby Residential Zone may already be affecting the bird habitat. At best, in this case, the imposition of a no cats/dogs covenant (presumably by way of consent notice) could be seen to *send a signal* to prospective property owners, and to ensure that the existing situation is not made worse.
 - Secondly, I have a concern about the practical enforceability of such covenants and whether it is fair to impose the obligation for enforcement on Council officers who would be charged with the task of finding out who owned a particular cat or dog and whether or not it resided in the covenanted or non covenanted area.
18. In any event because I have determined to decline consent to the subdivision it is not necessary for me to consider the imposition of such condition.

Access Issues

19. These really formed two categories, firstly access to and along the coastal marine area and secondly access onto/off the road.

Access to and along coastal marine area

20. Section 6(d) RMA provides that the maintenance and enhancement of public access to and along the coastal marine area is a matter of national importance. One of the *positives* which the Applicant advanced in support of the subdivision proposal was that the proposal would enhance that access. There were two aspects to that enhancement:
- The provision of an esplanade reserve extending 20 metres westward from MHWS.
 - The vesting of an area containing 1,500m² being part of the title to the application site which presently extends out over the seabed. This area to be vested in the Crown.

21. In the view of TDC staff the extent of these benefits is debatable. It is a consequence of the subdivision that an esplanade reserve would be vested and TDC would become liable for its maintenance and upkeep. TDC staff considered that there is already practical physical access along the foreshore and seabed except when the tide is right in. Their experience is that there are practical difficulties with use of the esplanade reserve fronting the residential properties to the south where access is limited by vegetation and the presence of a rock wall which effectively separates (due to its elevation) the esplanade reserve from the beach. The staff report acknowledges possible conservation value benefits arising out of establishment of the esplanade reserve.
22. Insofar as the vesting of seabed is concerned, it must be accepted that there is some benefit arising from that. In reality however the area of the title in seabed appears to be no more than about 15 metres from MHWS at its widest point so that there remain ample (at times vast) areas of beach available for access other than at high tide.
23. Accordingly I accept that there will be some potential benefits arising from creation of esplanade reserve and vesting as seabed. However I believe those benefits are limited.

Road Access

24. The Applicant's initial proposal was for each of the allotments contained in the subdivision to have its own point of access onto and off the Collingwood – Puponga Highway. TDC's Development Engineer, Mr. Ley, provided a report to the hearing opposing that proposal instead indicating preference for a lesser number of Lots with direct access to the highway or one entrance at an appropriate location with rights of way servicing the allotments.
25. The amended proposal advanced by the Applicant at the hearing met that concern by way of a proposal to serve all allotments from one common right-of-way. I asked for that proposal to be referred to TDC Engineering staff because of my concern about the proposal for the northern most residential allotment (Lot 6) to be served by right-of-way which would run parallel to but inside the main road and along the road reserve, with vehicles potentially using the right-of-way/road reserve travelling in the opposite direction to traffic on the formed road.
26. There were clearly legal and traffic safety issues involved in that aspect of the proposal. I note that TDC Engineering Section (Mr. Karaitiana) responded with advice recommending that Lot 6 be provided with a separate access directly onto the main road. I took it that otherwise, the amended proposal was at acceptable from a traffic point of view.
27. Again, because I have determined not to approve the application, it is not necessary for me to consider the imposition of appropriate conditions in respect of road access.

New Zealand Historic Places Trust

28. Historic Places Trust had requested that the application be declined on grounds that there was inadequate information about potential archaeological sites within the subdivision area. The Trust stated that the entire project area should be subject to a thorough archaeological assessment. The Applicant submitted that there was no basis for such request as (according to Ms. Owen's submission) *all areas for proposed development had been assessed*. A standard archaeological condition had been volunteered from the outset requiring that if any artefacts were located work was to cease etc.
29. At the hearing Ms. Owen produced a report dated 31 October 2005 from Dr. Charles Sedgwick relating to the archaeological assessment which he had undertaken. I had not previously seen this document. Dr. Sedgwick's assessment involved digging 179 test pits. He noted in his report that no assessment had been undertaken of the areas designated for esplanade reserve, road reserve nor the legal (paper) road to the south as there was no intention to disturb those, a point made by Ms. Owen in her submission.
30. I also note however that the Dr. Sedgwick's report states that a strip of land adjacent and parallel to the esplanade reserve, 18-20 metres wide was not checked as it was intended that this would remain *intact* after subdivision and would be subject only to planting. In fact the amended subdivision proposal tabled by the Applicant at the hearing indicated that the buildings on proposed Lots 1, 2, 3 & 4 were all to be situated within this particular un-investigated strip so that there would certainly be disturbance within that area. Dr. Sedgwick further commented that the assessment was done *in accordance with Mr. Petry's specifications that all constructions on the 7 Lots would be on piles*. It is not clear to me at all that such a restriction is proposed as part of the subdivision application. I also note that Mr. Carter's landscape recommendations (para. 44) provided for the water tanks to be partially buried under each of the house sites so that there would in fact be excavations required for the tanks as well as for piles. Accordingly I do have concerns about the adequacy of the archaeological assessment in this case.
31. I note Dr. Sedgwick's finding that on the basis of the investigation which he did carry out that *there is no clearly substantiated archaeological evidence apparent*. On that basis it appears likely that there are no archaeological issues, however, Dr. Sedgwick was careful to identify the limitations of his investigations. Again, because I have determined to refuse the application, it is not necessary for me to draft an appropriate condition requiring further archaeological assessment before any development work occurs.

Natural Hazards

32. The TDC officer's report incorporated a staff report (attachment 4) from Mr. Eric Verstappen, Resource Scientist Rivers & Coast, employed by TDC. Mr. Verstappen's report identified four areas of coastal hazard which might potentially affect the subdivided land. Those being:
- Coastal erosion.
 - Seawater inundation.

- Climate change and associated sea level rise.
 - Tsunami.
33. The Petry land is low lying. Much of it lies between 3m and 4m amsl and in the north east corner a small area falls below 3m amsl. Mr Verstappen's view was that the property could be substantially protected from most of the coastal hazards which he had identified if the present rock revetment providing protection to the property was maintained at or had its height increased to a height of between 3.5m and 4m amsl for the length of the property. In conjunction with that it would also be necessary to build up the ground level in low lying areas behind the revetment particularly in the north east corner. Mr. Verstappen's evidence was that this work would probably meet the permitted activity standards of the Proposed Plan. A consequence of vesting of the esplanade reserve in TDC was that the Council would become responsible for ongoing maintenance of the revetment work which protected the land behind. There is some suggestion that upgrading of the revetment might be required before TDC took over liability for ongoing maintenance.
34. There was however a significant *rider* to Mr. Verstappen's report which he expanded on in response to questions from myself. His assessments of coastal hazard were based on an anticipated sea level rise of 0.3m by 2100. He described that as *very modest in planning terms*. I understood it to be Mr. Verstappen's position that there is a substantial degree of uncertainty as to the extent of any sea level rise within that period. In response to a question from me as to what sea levels are doing he stated *...They are rising. The uncertainty is as to how much and when*. In both his written report and in response to my question Mr. Verstappen postulated that if there was a sea level increase of 0.6m then serious erosion and inundation risk would eventuate which in his opinion would make the subdivision *an untenable proposition*.
35. Section 7(i) requires decision makers under RMA to have particular regard to the effects of climate change. Additionally Section 106 contains provisions relating to the grant or denial of subdivision consent where the land to be subdivided is likely to be subject to *material damage* by erosion or inundation.
36. There is an area of quite significant uncertainty raised by Mr. Verstappen's report and comments at the hearing. More particularly, the speed and extent of the anticipated sea level rise.
37. In addition to Mr. Verstappen's evidence there was a report from TDC's Development Engineer, Mr. Dugald Ley. I am not sure if Mr. Ley deferred to Mr. Verstappen's evidence on coastal matters or not. In any event he very strongly expressed the view that the application ought be declined because of potential inundation and sea level rise and Council's potential liability for future protection of private property. Included in Mr. Ley's report was a table produced by NIWA in 2004 identifying a number of climate variables. Included on that table was reference to a predicted sea level increase between 1990 and 2100 of 0.3-0.5m which although not entirely in accordance with Mr. Verstappen's 0.6m is consistent with his evidence of a possible increase above 0.3m.

38. Ultimately I am not required to decide between the views of Mr. Verstappen and Mr. Ley (to the extent that there differences). The evidence of both Council officers raises serious issues as to the subdivision of this (or any other) low lying coastal land. Mr. Verstappen was a little more conservative in his approach than Mr. Ley but even so was of the view that a sea level rise of 0.6m would make the subdivision untenable. Again, because I have determined to decline subdivision consent for other reasons I do not ultimately make a determination as to whether or not I should decline it or impose conditions for reasons associated with climate change and possible sea level increase.

Natural Character/Landscape Character/Coastal Environment Issues

39. I have *lumped* all the above together under one broad heading as it is that context which I wish to discuss various issues relating to effects, natural character etc, Sections 6(a) & (b) RMA, NZCPS and the objectives and polices of the Proposed Plan.
40. I am conscious of the obligation to reach a decision which achieves the purpose of promoting sustainable management provided for by Section 5 RMA and of the need to adopt a *broad judgment approach* to consideration pursuant to Section 5.

Boffa Miskell – Landscape Character Assessment

41. That portion of the TDC staff report which assessed landscape etc issues relied very heavily on the Tasman District Coast Landscape Character Assessment (the Landscape Assessment), a two document study prepared by Boffa Miskell Limited for TDC in August 2005. I was given copies of these documents at the hearing. The Landscape Assessment is a comprehensive document undertaken by a highly respected firm of landscape architects. However as I pointed out to TDC officers at the hearing it is not a document which has statutory force and as noted by Ms. Owen in her closing submission is a discussion document. It represents the views of its authors who were not witnesses at the hearing. To the extent which the Applicant's landscape witness took issue with conclusions contained in the Landscape Assessment I must prefer the views of that witness in the absence of evidence from the author of the Landscape Assessment. The corollary of that proposition is, to the extent that the Applicant's landscape evidence confirms the Landscape Assessment then I may have regard to those undisputed facts.

Section 6(a)

42. Section 6(a) RMA provides that preservation of the natural character of the coastal environment and its protection from inappropriate subdivision is a matter of national importance. Section 6(a) has two components. Firstly, preservation of natural character and secondly its protection from inappropriate subdivision.
43. The Applicant's subdivision proposal does nothing to preserve the natural character of the coastal environment in this vicinity. That present natural character is of an open rural space. The Landscape Assessment identified a number of **Key Landscape Characteristics** of the **Collingwood Coastal Area** where the application site is situated. Included in those **Key Landscape Characteristics** are:
- *The area's sense of remoteness and the low levels of development.*

- *The special qualities and scale of the landscape relative to the areas openness and sense of expansiveness.*
(Page 7)

44. I discussed with Mr. Carter the key landscape characteristics identified in the Landscape Assessment and I understood him to agree with those characteristics. I put to Mr. Carter that one of the adverse effects of residential development was the loss of open areas which contribute towards the character of the district and as I understood it, he agreed with me in a general sense.
45. The Proposed Plan similarly recognises the significance of openness, greenness, separation, style and scale of structures as being part of rural character (Policy 7.3.3). The Proposed Plan (Methods of Implementation 7.3.20(a)(i) - second bullet point) makes it clear that part of the reason for imposition of Rural Two Zone is the protection of rural character including *a more open and distinctive rural landscape*.
46. That open, rural character identified in both the Landscape Assessment and the Proposed Plan constitutes part of the natural character of the coastal environment in this area which Section 6(a) seeks to preserve as well as protect from inappropriate subdivision. In this case the houses on Lots 1-4 of the subdivision will be situated within about ten metres of each other, with those on Lots 5 and 6 approximately 20 metres away from each other (by my scale). In my view this close subdivision and development must reduce the natural character of the application site in a way which is adverse to a major extent. As Mr. Carter observed (Para 29 Statement of Evidence) *it is the presence of 'man' made elements such as the dwellings within the Pakawau residential zone and rip rap rock revetment, which reduce natural character in an area such as Pakawau.*
47. I consider that the development proposed will certainly not preserve the presently open nature of the site with a low level of development which both the Landscape Assessment and Proposed Plan have identified as being features of the natural character of the wider area. Notwithstanding the detailed mitigation measures proposed by Mr. Carter (and expanded on in Ms. Owen's closing submissions) I find that the proposal neither preserves nor protects the natural (rural) character of the site but considerably detracts from that natural character.

Section 6(b)

48. Section 6(b) RMA provides for the protection of outstanding natural landscapes from inappropriate subdivision use and development. Mr. Morris's staff report concluded that the application site was included within the outstanding natural landscape identified by the Landscape Assessment as the Collingwood Coastal Area and the development was accordingly contrary to the provisions of Section 6(b). However I note that the Landscape Assessment's recommendation was that the area ought to be considered for incorporation within an outstanding landscape classification without finally concluding that it should be so identified.

49. Mr. Carter however took a different view. He said (para 27 Statement of Evidence)

While the Collingwood District as defined in the TDCLCA may well be an ONL the Pakawau area containing as it does significant residential development must receive a lower rating albeit one still requiring great care and sensitivity with respect to new development.

50. In the absence of evidence from the authors of the Landscape Assessment I am unable to resolve the apparent difference in views and do not propose to do so. I note that Mr. Carter acknowledges the requirement for *great care and sensitivity with respect to new development* in this area and also the caution expressed in the Landscape Assessment as to the threat to this *sensitive landscape posed by incremental development* and its *particularly low threshold to absorb landscape change*. Other than that I cannot conclude that the application site or its surrounds do in fact constitute or form part of an outstanding natural feature or landscape. That however does not diminish the findings which I have made in respect of Section 6(a).

51. In making these comments I have had regard to the findings of the Environment Court in the Tasman Aquaculture case (Decision W42/2001). In those proceedings the Court found:

Golden Bay is an outstanding natural landscape/natural feature which is of national importance and is to be noted as such.

The Court's findings in that case were made on a *broad brush* basis and the Court was largely concentrating on sea based issues although I accept that its findings about Golden Bay being an outstanding natural landscape/natural feature encompassed the whole of Golden Bay, both land and sea. However I do not think that finding assists me in a consideration pursuant Section 6(b) when looking at this particular site.

New Zealand Coastal Policy Statement (NZCPS)

52. The particular policy of NZCPS which is relevant to this application is policy 1.1.1 which provides that:

It is a national priority to preserve the natural character of the coastal environment by:

(a) encouraging appropriate subdivision, use or development in areas where the natural character has already been compromised and avoiding sprawling or sporadic subdivision, use or development in the coastal environment.

(b) taking into account the potential effects of subdivision, use or development on the values relating to the natural character of the coastal environment, both within and outside the immediate location.

(c) avoiding cumulative adverse effects of subdivision, use and development in the coastal environment.

53. Much of the Applicant's case was based on the proposition/s that:

- The subdivision proposal was *a natural extension of the existing natural character of the Pakawau spit*.
- *It will not have any major visual impact on this coastal environment that is out of character with the adjacent residential developments, particularly as it is now designed.*
- *The natural boundary for the settlement is the DOC reserve and the inlet bridge.*

These and similar statements are repeated on a number of occasions throughout the submissions and evidence on behalf of the Applicant.

54. Despite the best endeavours of Ms. Owen and Mr. Briggs to convince me otherwise I cannot accept those propositions. I find that the subdivision proposal is contrary to Policy 1.1.1 NZCPS as well as Section 6(a). I make that comment for a number of reasons:

- I do not accept that this property is the *natural* limitation to the Pakawau subdivision. TDC certainly did not see that as being the case when it zoned the land Rural 2. Arguably the paper road at the southern end of the site could be regarded as the *natural* boundary. I accept that the subdivision pattern cannot be further extended along the coast because of the presence of the DOC reserve but I do not consider that justifies subdivision of this parcel of land.
- It is implicit in Mr. Briggs' evidence (cf Paras. 5.10 and 5.11) that the development of the application site will give it a similar character to the adjacent *rural settlement character* or *adjacent residential developments*. That is not only correct, it is also the problem. The development changes the natural character of the site and extends the effects of the residential subdivision and development to the south.

55. The existing subdivision development at Pakawau extends for a distance of 1.7km along the coast in a *strip* lying between the road and the coast. I have no doubt that it constitutes sprawling development of the kind referred to in Policy 1.1.1 NZCPS. It is neither possible nor appropriate to attempt to *turn back the clock* and do away what is already there. However the Applicant's proposal must now be considered in the light of Policy 1.1.1 NZCPS and it involves an extension of that existing sprawl. It constitutes the cumulative adverse effect of subdivision which Policy 1.1.1 (c) seeks to avoid. I accept (as is obvious) that the natural character of Pakawau has been compromised. I do not accept that the compromise which has already occurred provides justification for further compromise of the adjoining application site.

Proposed Plan

56. Mr. Morris's report dealt with the relevant objectives and policies of the Proposed Plan in some detail. Mr. Briggs similarly addressed objectives and policies as did some of the submitters (particularly Mrs. Basham). I do not propose to recite the various objectives and policies referred to in detail in this decision. I observe that as with most plans many of the objectives and policies are expressed in somewhat general terms. Guidance as to what the Proposed Plan has set out to do in specific terms may be found in a number of other *relevant provisions* of the Proposed Plan to which I will refer. I will briefly address some particularly relevant provisions.

57. Chapter 6 of the Proposed Plan addresses Urban Environments. Objective 6.3.0 is:

Containment of urban subdivision, use and development so that it avoids cumulative adverse effects on the natural character of the coastal environment.

58. Included in the policies which flow from that objective is Policy 6.3.2 which is:

To provide for future growth of key coastal settlements landward rather than along the coast.

59. Included in the Methods of Implementation (Para. 6.3.20) of the Objectives and Policies are the provision of:

(i) *Zones that limit the extent of settlements in the coastal environment.*

(ii) *Rules that limit the effects of residential lots in the rural coastal margin.*

60. Following the Objective, Policies and Methods of Implementation is a paragraph (6.3.30) titled Principal Reasons and Explanations. This paragraph explains precisely what the Proposed Plan sets out to do in the preceding paragraphs. It states as follows:

The coastal environment is a finite resource within the District. There are numerous small to medium size settlements which lie in the coastal environment. Some of these settlements such as Pohara and Pakawau already extend a considerable distance along the coast line. It is acknowledged that there is a strong demand for coastal allotments with a sea view and access to the coast. However, such allotments cannot be created indefinitely without adversely affecting natural character. It is proposed to encourage urban development in depth at key coastal serviced settlements such as Mapua, Kaiteriteri, Ligar Bay, Pohara, Pattons Rock and Collingwood where natural character has already been compromised, and so avoid sporadic development...

61. It is clear from the above that the purpose of the zoning pattern which has been imposed is to *limit the extent of settlements in the coastal environment*. Settlement is to be encouraged at *key coastal serviced settlements* and such development is to be *landward rather than along the coast*. I find that this subdivision proposal is directly contrary to those Objectives, Policies and other relevant provisions.
62. Chapter 7 of the Proposed Plan addresses Rural Environment Effects. Much of Chapter 7 is directed at the protection of productive values of rural land which in my opinion is not an issue in this particular case. However Objective 7.3.0 and its related policies and methods of implementation are relevant. Objective 7.3.0 is *Avoidance, remedying or mitigation of the adverse effects of a wide range of existing and potential future activities, including effects on rural character and amenity values*.
63. Policy 7.3.3 provides for *...the maintenance and enhancement of local rural character, including such attributes as openness, greenness ... and separation, style and scale of structures*.
64. Methods of Implementation 7.3.20(a)(i) is then instructive as to what TDC has intended to achieve by imposition of Rural 2 Zoning. It provides:
- The Rural 2 Zone covers areas that are generally of lower productive values, but which often have particularly important rural character and amenity values, resulting from a low intensity of use and development and consequently a more open and distinctive rural landscape. In these areas, rules addressing management of detailed effects through the imposition of standards, such as those relating to noise and air quality, are generally similar to those in the Rural 1 Zone, but rural character, general amenity and landscape is maintained through the absence of rules allowing for close subdivision and intensive development.*
65. It is clear from the Methods of Implementation provision that Rural 2 Zone is intended to have an *amenities function* and to maintain a more open and distinctive rural landscape. For that reason the Zone Rules do not allow for close subdivision and intensive development. That is not to say that land zoned Rural 2 may never be subdivided. In considering any subdivision application however it is necessary to have regard to the effects of the subdivision proposal on the rural features which the zoning clearly sets out to protect. In the case of this particular application site there is the added *gloss* that it is situated in the coastal environment thereby bringing into play the provisions of Section 6(a) and NZCPS. I find that the proposal is contrary to the relevant Objectives and Policies and other provisions of Chapter 7.
66. Chapter 8 of the Proposed Plan addresses the issue of the coastal margins. It is not proposed to repeat the relevant Objectives and Policies of Chapter 8 here but simply to observe that (as they must) they largely reflect the requirements of Section 6 RMA and NZCPS. Again however they identify matters of maintenance and enhancement of natural character, avoiding the adverse effects building and subdivision etc and again I find that the proposal is contrary to the relevant Objectives and Policies.

Overview

67. I find it difficult to see how the subdivision proposal (and the subsequent house construction) in this case can be viewed as anything other than contrary to the provisions of Section 6(a) RMA, Policy 1.1.1 NZCPS and the objectives, policies and other relevant provisions of the Proposed Plan. In reaching that conclusion I have had regard to the detailed and thoughtful mitigation measures proposed by Mr. Carter, the fact that further subdivision at Pakawau to the north cannot proceed past the site because of the presence of the DOC reserve and the extent of compromise which already exists at Pakawau. Notwithstanding, I conclude that the subdivision proposal will reduce, rather than preserve, the natural character of the application site and extend the existing sprawl of Pakawau in a manner which is contrary to the relevant provisions of RMA, NZCPS and the Proposed Plan. I am of the view that the subdivision is an *inappropriate subdivision* for those reasons. I have accordingly concluded that consent should not be granted to the applications.

B P Dwyer
Commissioner

Date Confirmed:

Chair: