

# MINUTES

**TITLE:** Environment & Planning Subcommittee  
**DATE:** Friday, 27 October 2006  
**TIME:** 9.30 am  
**VENUE:** Council Chamber, 189 Queen Street, Richmond

**PRESENT:** Councillors T B King (Chair), M J Higgins and E J Wilkins

**IN ATTENDANCE:** Manager Consents (J Hodson), Subdivision Officer (R D Shirley),  
Administration Officer (B D Moore)

## 1. A J GUY FARMS, WAIWHERO/THORPE-ORINOCO ROADS, NGATIMOTI – APPLICATION RM060045

### 1.1 Proposal

The applicant sought consent for a subdivision involving the land in CT NL100/1295 and NL27/180 and 4,000 m<sup>2</sup> from an adjacent closed road to create Lot 1 of 2 hectare and Lot 2 of 54 hectares. The subject property is zoned Rural 2 and the creation of Lot 1 is a discretionary activity.

The Committee reserved its decision at 12.30 pm.

### RESOLUTION TO EXCLUDE THE PUBLIC

Moved Crs King / Higgins  
EP06/10/23

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

A J Guy Farms

**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 passing this resolution are as follows:**

<b>General subject of each matter to be considered</b>	<b>Reason for passing this resolution in relation to each matter</b>	<b>Ground(s) under Section 48(1) for the passing of this resolution</b>
A J Guy Farms	Consideration of a planning application	A right of appeal lies to the Environment Court against the final decision of Council.

**Moved Crs Higgins / Wilkins**  
**EP06/10/24**

**THAT the open meeting be resumed and the business transacted during the time the public was excluded be adopted.**  
**CARRIED**

- 2. A J GUY FARMS, WAIWHERO/THORPE-ORINOCO ROADS, NGATIMOTI – APPLICATION RM060045**

**Moved Crs Higgins / King**  
**EP06/10/25**

**THAT Pursuant to Section 104B of the Act, the Committee GRANTS consent to A J Guy Farms to subdivide land at Orinoco to create Lot 1 of 2 hectares and a balance lot being Lot 2 of 54 hectares as detailed in the following report and decision.**

**Report and Decision of the Tasman District Council through its Hearings Committee**

**Meeting held in the Tasman Room, Richmond**

**on Friday, 27 October 2006, commencing at 9.30am**

A Hearings Committee (“the Committee”) of the Tasman District Council was convened to hear the application lodged by A J Guy Farms relating to the proposed subdivision of land. The application, made in accordance with the Resource Management Act 1991 (“the Act”), were lodged with the Tasman District Council and referenced as RM060045.

**PRESENT:**

**Hearings Committee:**

Cr King, Chairperson  
Cr Higgins  
Cr Wilkins

**APPLICANT:**

**A J Guy Farms:**

Mr G Praat- Counsel  
Mr P Newton-Surveyor  
Mr A Guy

**CONSENT AUTHORITY:**

**Tasman District Council:**

Mr R Shirley- Subdivision Officer

**SUBMITTERS:**

Mr E Kiddle  
Mr M Edmunds  
Mr B Parkinson

**IN ATTENDANCE:**

Ms J Hodson , Manager Consents- Assisting the Committee  
Mr B Moore- Committee Secretary

## 1. DESCRIPTION OF THE PROPOSED ACTIVITY

A J Guy Farms have applied to Council to subdivide a 56 hectare block of land in the Rural 2 zone, Orinoco, to create a rural residential site of 2 hectares and a balance rural site of 54 hectares. Two titles exist which have the following legal description:

- Part Section 67, Square 3 and Section 1, SO 370333 (CT 307910 limited as to parcels) containing 55.73 hectares and
- Section 11, Blk 10, Motueka Survey District (CT NL27/180) containing 2125 m<sup>2</sup>.

The applicant has recently purchased a portion of unformed legal road from Council being Section 1, SO 370333 containing 3380 m<sup>2</sup>. The purchase was completed after the subdivision application was lodged with Council. The stopped road adjoins the western boundary of Lot 1 and is to be included in that allotment. Other than increasing the area of Lot 1 from 1.6 hectares to 2.0 hectares there are no effects of the change.

The site is located near the intersection of Thorpe-Orinoco Road and Waiwhero Road. The large title has frontage and access to both roads while the smaller title fronts to Waiwhero Road only. The site is a regular shaped parcel of land located at the intersection of Waiwhero Road and Thorpe-Orinoco Road. Both roads are sealed. Waiwhero Road is classed as a collector and Thorpe-Orinoco Road is classed as an access road in Council's roading hierarchy. A partially formed legal road forms the eastern boundary of the site.

There are no dwellings on the land but there are a number of farm sheds with access from Thorpe-Orinoco Road. Topography varies from gently sloping valley floors through to moderately steep higher land. Most of the land is in productive pasture with scattered patches of native bush scrub and plantation forestry. The surrounding land is a mixture of small farms, plantation forestry and rural residential sites.

## 2. PLAN RULE(S) AFFECTED

The proposed activity does not comply with Controlled Activity Rule 16.3.8(b) of the Proposed Tasman Resource Management Plan and is deemed to be a discretionary activity in accordance with Rule 16.3.9 of the Plan.

## 3. NOTIFICATION AND SUBMISSIONS RECEIVED

The application(s) was notified on 19 August 2006 pursuant to Section 93 of the Act. A total of 12 submissions were received. The following is a summary of the written submissions received and the main issues raised:

### Submissions in Support

- **Kevin W H McLean** – no reasons given.
- **Catherine Roberta Martin** – similar size to neighbouring properties.
- **Steve Malcolm** – shifts title to an uneconomic and unproductive part of the farm.
- **Linda Guy** – a dwelling could be erected on proposed Lot 1 as of right.

- **Burnella Guy** – boundary adjustment is usually a permitted activity in rural 2.
- **Andrea Guy** – applicant has existing rights to build a dwelling on each of his two titles.
- **Brian Parkinson:**
  - Productivity is limited.
  - Site maximises farming enterprise.
  - Enhances the existing development in the valley.
- **Thomas Gordon Hewetson** – rural landowners should have the right to adjust boundaries where a new allotment is not created.

Note: This is a late submission – received 17 September 2006.

### **Submissions in Opposition**

- **Angela F Winters-Dodd and Michael Edmunds:**
  - It goes against the TRMP rules on subdivision size.
  - 2125 m<sup>2</sup> is an insignificant amount of productive land and considerably less than the 2 hectares proposed.
  - The detrimental effect we feel it would have on us being at such close proximity.
  - The extra impact it would create in this particular part of the valley and its setting.
  - Native bush would have to be destroyed through boundary fencing.
  - It will set a precedent on the farm.
  - The status quo would have the least impact, it would have distance between neighbours, it would not be looking into other properties, access would be better, it is a more stable site.
- **Derek MacDonald Bolt:**
  - Decrease of rural amenity.
  - Dangerous access.
  - Loss of productive value.
  - Building site highly visible.
  - Engineering works pre-empt resource consent decision.

- **Russell Edwin Kiddle:**
  - Significant change to the rural character of the region.
  - Leads to effectively a ribbon style rural residential development.

#### **Submission which was neutral but seeking conditions**

- **New Zealand Fire Service Commission:**
  - Seeks a condition requiring the accessway to be constructed to a certain standard and the installation of a domestic water sprinkler in any new dwelling or a static water supply of at least 45,000 litres for dedicated fire fighting purposes.

#### **4. PROCEDURAL MATTERS**

The Committee was told that the submission period closed on 15 September 2006 and the submission was sent by email on Sunday, 17 September 2006. The Committee has considered the matters contained within Section 37A.

The late submission from T Hewittson was accepted by the Committee pursuant to Section 37.

#### **5. EVIDENCE HEARD**

The Committee heard evidence from the applicant, expert witnesses, submitters, and the Council's reporting officer. The following is a summary of the evidence heard at the hearing.

##### **5.1 Applicant's Evidence**

The applicant, Mr A J Guy, appeared at the hearing together with Counsel G J Praat. Mr Praat tabled and read submissions for the applicant. Mr Newton, surveyor for the applicant, also appeared at the hearing and provided plans of the proposed subdivision.

Mr Praat explained that the applicant had recently purchased a portion of unformed legal road, containing 3,380 m<sup>2</sup> which adjoins the western boundary of Lot 1 increasing the area of Lot 1 from 1.6 hectare to 2 hectare.

Mr Praat referred to the planning and statutory provisions and discussed the subjects of avoiding loss of productive land, providing opportunities for non soil based activities and avoiding, remedying or mitigating adverse effects on rural character and amenity. He addressed the concerns of submitters. Mr Praat explained that the proposal would amalgamate the good pastoral land and provide for a rural residential allotment on the steeper land which contains native bush and has less productive value. Mr Praat explained that the applicant has had the road area resurveyed and made his own arrangements with neighbouring property owner, J McFadgen, to ensure the clearance of roadside vegetation and provide better road safety.

Mr Praat referred to the land quality description contained within the farm management consultant report compiled by Mr J Bealing and submitted with the application.

Mr A J Guy said that the proposed subdivision will provide funds from the sale of the residential lot and allow the farm operation to continue. He advised that the land contained in CT 27/180 be about 2,145 m<sup>2</sup> was of better quality than proposed Lot 1 and is currently part of the pastoral use of the property. Mr Praat reminded the Committee that a dwelling could be located on Lot 1 as of right and that two lots exist at the present time and only two will exist following the subdivision.

## **5.2 Submitters' Evidence**

Mr R E Kiddle expressed his opposition to the subdivision because of its potential effect on rural character and amenity values. He said that the Section 11 of 2,145 m<sup>2</sup> was significantly smaller than proposed Lot 1 and that he did not consider this to be a boundary adjustment type subdivision.

Mr M Edmunds was concerned about the loss of the rural landscape and claimed that the proposal does not make the land more productive. He said that the potential for additional housing will have a detrimental impact and extra effect on the locality. He called Mr N Scott, an adjoining landowner, as a witness who opposed the application saying there was a considerable difference between the narrow strip of Section 11 and proposed Lot 1. He also opposed the boundary fence through the bush block.

Mr B Parkinson supported the subdivision application and referred to Orinoco-Ngatimoti as a village. He said that the land in Section 11 was restrictive for the construction of a house and to amalgamate this with Lot 2 and use the less productive area of Lot 1 for a dwelling was a better choice. He said that cash input is needed to farm this area.

## **5.3 Council's Reporting Officer's Report and Evidence**

Subdivision Officer, R Shirley, noted that the applicant tabled a slightly different plan at this hearing to include the strip of ex-road land on the north side of Lot 1 and this would now provide an area of Lot 1 of 2 hectares. Mr Shirley explained the location of submitters' properties and used photographs to demonstrate the distance and altitude separation between these and the subject site. He said there were no additional land fragmentation effects from the application and he referred to the application as a relocation of titles as opposed to a boundary adjustment.

Mr Shirley said that a fence line could be constructed through the bush block without any ill effects. He did not propose the restriction of a building site to be applied to proposed Lot 2. Mr Shirley said he accepted the expert evidence from farm consultant Mr J Bealing on land productivity. He suggested that the proposed condition of consent shown under paragraph 17.2(e) of his report should read: "That the existing roadside fence on the northern side of the road east of the crossing, be relocated to achieve a 145 metre sight distance with all vegetation on the road reserve to be cleared and the land planted in grass to form a grassed road verge."

Mr Shirley acknowledged that there could be an advice note added: "The applicant had tabled an agreement made with a neighbouring landowner Mr J McFadgen regarding relocation of the road boundary fence away from the roadside in order to provide better maintenance of vegetation and improved sight distances along the road."

## 5.4 Right of Reply

Mr Praat responded for the applicant and acknowledged the concerns expressed by submitters and advised the applicant's response to mitigate those concerns. He reminded the hearing panel that the proposed subdivision is not out of keeping with the existing pattern of subdivision in this locality and that fragmentation of land is not an issue. He said the preservation of rural character and amenity would best be suited by the avoidance of building on the narrower Section 11 site. He said traffic safety and sight distance has been improved.

Mr Praat said that the applicant is concerned about the relatively harsh requirement for a financial contribution as this is not a subdivision that gives rise to an additional allotment. Mr Praat said that in summary the application is to use the better part of the farm for farming purposes and Lot 1 for rural residential. He said proposed Lot 1 is a far more practical and sensible place for a dwelling.

## 6. PRINCIPAL ISSUES

The principal issues that were in contention were:

- a) Would the relocation of Section 11, being title NL 27/180, to the position shown on the plan as Lot 1, cause adverse effects on the environment which are unacceptable in terms of land fragmentation and loss of land of productive value? Submitters in opposition contend that the application will create fragmentation of rural land and an unacceptable loss of land of productive value. They are concerned that the area of Section 11 being only 2,145 m<sup>2</sup> compared with Lot 1 of 2 hectares will lead to the loss of more productive land and that Lot 1 has productive values too. The applicant contends that the land in Section 11 is of greater productive value than the land in proposed Lot 1 and therefore there is no significant loss of productive land and as no additional titles are created there is no additional fragmentation.
- b) Would the relocation of the title NL 27/180 to the position shown on the plan as Lot 1 cause adverse effects to the environment which are unacceptable in terms of loss of privacy and amenity and rural character and open space values? Submitters in opposition contend that unacceptable adverse effects will result in terms of their privacy and amenity and the rural character of the area if the subdivision is allowed. The applicant contends that there will be no adverse effect in terms of loss of privacy or rural amenity given that a certificate of compliance is held for a dwelling on the building site proposed for Lot 1 and section 11 and therefore the effects cannot be considered as they are not beyond the permitted baseline of what is allowed currently.

## 7. MAIN FINDINGS OF FACT

The Committee considers that the following are the main facts relating to this application:

- a) In relation to the issue of fragmentation and loss of productive land, the Committee consider that although Lot 1 is larger than Section 11, the expert evidence provided and their own observations are consistent with the fact that the land contained within Lot 1 is of less productive value to the farm than Section 11. In addition, the productive value of Lot 1 will not be significantly affected as there will

only be a small loss of land available for productive use such as tree crops being that land associated with the building site and access. The Committee is satisfied that this proposed title relocation will not cause a significant effect in terms of fragmentation or the loss of land of productive value.

- b) In relation to the issue of effects on privacy and amenity values, the Committee could not overlook the fact that a certificate of compliance for a dwelling in the location of Lot 1 had been granted and therefore the effects of that matter on the privacy of adjoining property owners could not be given any weight. It was also considered that given the situation where two titles and two certificates of compliance exist for two dwellings and the application did not propose any additional dwellings beyond two, there would be no additional effect in terms of the amenity of the area.

## **8. RELEVANT STATUTORY PROVISIONS**

### **8.1 Policy Statements and Plan Provisions**

In considering this application, the Committee has had regard to the matters outlined in Section 104 of the Act. In particular, the Committee has had regard to the relevant provisions of the following planning documents:

- a) the Tasman Regional Policy Statement (RPS);
- b) the proposed Tasman Resource Management Plan

### **8.2 Part II Matters**

In considering this application, the Committee has taken into account the relevant principles outlined in Sections 6, 7 and 8 of the Act as well as the overall the purpose of the Act as presented in Section 5.

## **9. DECISION**

Pursuant to Section 104B of the Act, the Committee **GRANTS** consent to A J Guy Farms to subdivide land at Orinoco to create Lot 1 of 2 hectares and a balance lot being Lot 2 of 54 hectares, subject to conditions which are set out below.

## **10. REASONS FOR THE DECISION**

As set out in the main findings of fact, the Committee was satisfied that the proposal to relocate title NL 27/180, would not create any significant effects in terms of land fragmentation or the loss of land of productive value. They were mindful of the existence of the two titles, both of which had been granted a Certificate of Compliance for a dwelling. Therefore it was considered that the effect associated with two dwellings on this land was within the permitted baseline. It was considered that the relocation of the title to where Lot 1 is shown would have benefits in terms of it having a more attractive location and would not lead to a significant loss of productive land despite the fact that it had a greater area than NL 27/180. An important feature of this proposal is that a dwelling was already approved on the building site of Lot 1 by way of the Certificate of Compliance and therefore the effects in terms of amenity values could not be considered. The Committee also noted that the proposal involves the protection of part of the native bush area on the land which would not otherwise be protected by any



legal mechanism, therefore this is considered to be a positive effect resulting from the proposal.

The Committee considered that it was inappropriate to impose the conditions suggested by the Fire Service. The reason here is that not all new rural subdivisions or dwelling applications are dealt with by way of notified resource consents and therefore the Council would be acting inconsistently if a higher standard (ie over and above the requirements for permitted activity dwellings in the rural zone) was imposed on the odd consent that comes through the Committee. The majority of dwellings in the rural areas are permitted activities and are dealt with under staff delegations in accordance with the existing standards in the Plan. The Committee suggests that if the Fire Service considers that enhanced fire safety standards are required that amendments need to be made across the board, either through the Building Act or through a change to the Plan which would then be open to the normal public consultation processes.

## **11. COMMENTARY ON CONDITIONS OF CONSENT**

The Committee considered that traffic safety is a fundamental issue to be dealt with and it was vital that Council ensures that the fence across the road be relocated and vegetation removed and able to be controlled to ensure safe sight distances can be achieved for the new access to Lot 1. The Committee noted the agreement tabled by the applicant which was designed to facilitate this work, thus it was considered a reasonable condition to apply to the consent.

The Committee considered that it was important to include the recommendations of the engineering report into the consent to ensure the subsequent development was design appropriately.

## **RESOURCE CONSENT DECISION**

**RESOURCE CONSENT NUMBER: RM060045**

Pursuant to Section 104B of the Resource Management Act 1991 ("the Act"), the Tasman District Council ("the Council") hereby grants resource consent to:

A J Guy Farms

(hereinafter referred to as "the Consent Holder")

### **ACTIVITY AUTHORISED BY THIS CONSENT:**

To subdivide 56 hectares of land contained in two titles (CT 307910 and NL 27/180) into two lots being Lot 1 of 2 hectares and Lot 2 of 54 hectares.

### **LOCATION DETAILS:**

Address of property: Thorpe-Orinoco Road and Waiwhero Road  
Legal description: Part Section 67, Square 3 and Section 1, SO 370333 containing 55.73 hectares and Section 11, Blk 10, Motueka Survey District containing 2125 m<sup>2</sup>.

Certificate of title CT 307910 limited as to parcels and CT NL27/180.  
Valuation number 1928055400

Pursuant to Section 108 of the Act, this consent is issued subject to the following conditions:

## **CONDITIONS**

### **1. Amalgamation Covenant**

That the owner of the land enter into a covenant with the Council that Lot 2 hereon shall not without the consent of the Council be transferred, leased or otherwise disposed of accept in conjunction with Section 11, Blk 10, Motueka Survey District (CT NL27/180) and vice versa.

LINZ Ref.....

### **2. Vehicle Crossing**

That the vehicle crossing to Lot 1 be designed and constructed to comply with Diagram 1 of Schedule 16.2(c) TRMP with the following modifications.

- a) That the first 6 metres be more or less level.
- b) That the seal extend for a minimum distance of 5 metres from the edge of the carriageway seal.
- c) That a culvert be installed if necessary to prevent ponding of water.
- d) That any gate be set back a minimum of 10 metres from the carriageway seal and be inward swinging.
- e) That the existing roadside fence on the northern side of the road east of the crossing (on land owned by A M and J K McFadgen) be relocated to achieve a sight distance of 145 metres from the Lot 1 accessway to the northeast , with all vegetation to be cleared and the land sown in grass to form a grassed road verge.

#### **Advice Note:**

The applicant provided Council with a written agreement which offers / facilitates condition (e) above.

### **3. Power and Telephone**

That Lot 1 be provided with underground power and telephone connections to the satisfaction of the relevant authorities.

### **4. Consent Notices – Lot 1**

#### **a) Bush Protection**

The following acts are prohibited with the area marked A on Lot 1 DP ....

- The removal or damage of native trees, shrubs and other native plants.
- The keeping of browsing animals (goats, deer, cattle, horses, sheep).
- The introduction of exotic plant or animal species.

b) Wastewater

That the onsite wastewater treatment and disposal system be specifically designed and constructed by a suitably qualified wastewater specialist based on the results of a site specific soil investigation and having regard to the report prepared by Tasman Consulting Engineers dated 14 June 2006.

Treatment of domestic wastewater shall be by way of a treatment system that treats the wastewater to a secondary standard prior to being discharged to land. Secondary 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
- the treated wastewater shall be discharged to land by way of pressure compensating drippers at an aerial rate not exceeding 2.85 millimetres per day (equivalent to 2.85 litres per square metre per day).

c) Foundations

That the foundations for any building be specifically designed by a suitably qualified Chartered Professional Engineer (CPEng) based on the results of a site specific soil investigation and having regard to the report prepared by Tasman Consulting Engineers dated 14 June 2006.

The above conditions are to be complied with on a continuing basis and are therefore to be subject of consent notices issued under Section 221 of the Act, such notice to be prepared by the applicant.

## 5. Financial Contributions

That a financial contribution be paid in accordance with Chapter 16.5 TRMP assessed as follows:

5.5% of the assessed market value of a notional 2500 m<sup>2</sup> building site contained within Lot 1 which includes the identified building site.

### Advice Note A

Council will not issue the Section 224(c) certificate in relation to this subdivision until all relevant development contributions have been paid in accordance with the Council's Development Contributions Policy under the Local Government Act 2002. The power to withhold a Section 224(c) certificate is provided under Section 208 of the Local Government Act 2002.

The Development Contributions Policy is found in the Long Term Council Community Plan and the amount to be paid will be in accordance with the requirements which are current at the time the relevant development contribution is paid in full. This consent will attract a development contribution in respect of roading.

## **Advice Note B**

The TRMP and the LTCCP both provide an exemption for “the number of separate certificates of title pertaining to the land being subdivided which have resulted from a previous subdivision consent or equivalent proposal”.

In this instance, CT NL27/180 seems to have resulted from a road stopping and not a subdivision consent and therefore the title is not exempt from the financial or development contributions.

### **6. Engineering Works, Services and Supervision**

All works undertaken and services and plans provided shall be in accordance with the Tasman District Council Engineering Standards 2004, or to the Engineering Manager’s satisfaction. Tasman District Council shall be contacted at least 48 hours prior to commencement of any works on the subdivision.

The applicant shall engage a suitably qualified consultant to observe and test the construction of the work. The certificate pursuant to Section 224(c) will not be released by Council until the certificate of supervision signed by the consultant is provided and all levies and fees have been paid.

**CARRIED**

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**Date Confirmed:**

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**Chair:**