

MINUTES

TITLE: Environment & Planning Subcommittee
DATE: Wednesday, 18 April 2007
TIME: 10.30 am
VENUE: Council Chamber, 189 Queen Street, Richmond.

PRESENT: Cr E M O'Regan (Chair), Crs R G Kempthorne and T B King

IN ATTENDANCE: Manager, Consents (J S Hodson), Subdivision Officer (R D Shirley), Development Engineer (D Ley), Council Solicitor (S Ritchie), Administration Officer (B D Moore)

1. GALEO ESTATES LTD, MAISEY ROAD, REDWOOD VALLEY– APPLICATION RM050370V1

1.1 Presentation of Application

Mr N A McFadden, solicitor, introduced the application on behalf of Galeo Estates Ltd. He described changes which the applicant sought to Conditions 6, 7 and 8(e) of the subdivision consent granted by Council (RM050370) at Redwood Valley.

1.2 Condition 6, Water Supply

The applicant sought to delete the requirement for a licence to occupy on the grounds that the pipeline, being the Redwood Valley Community Scheme, is a public supply to be located in public land (legal road). The applicant sought that the wording of Condition 6 be amended as follows:

6. *Water Supply*

That each residential site be serviced with a reticulated potable water supply from the Redwood Valley Community Scheme, as generally shown on the Truebridge Callender Beach plan for water reticulation submitted with the application. The existing Tasman District Council rural main shall be located in the road to vest, without disruption to supply.

1.3 Condition 7, Wastewater

The applicant volunteered a licence to occupy in the form attached to the application. The original condition as imposed did not require the entry of a licence to occupy.

1.4 Condition 8(e), Power, Telephone, Electricity Substation Plus Shelter Area and Fish Passage

The applicant sought the deletion of the requirement to occupy for road reserve for fish passage (in the subdivision consent), as all the relevant parts are located on public land and the fish passage has a public environmental benefit in keeping with Council's responsibilities as a unitary authority. The applicant volunteered a licence to occupy, in a

form attached to the application, for the entrance walls to be constructed on road reserve. The applicant sought that the requirements for a licence to occupy agreement under Conditions 7 and 8(e) be imposed as an advice note to those conditions. Mr McFadden sought changes to the Council's proposed licence to occupy, including a reduction to the required amount of public liability insurance and the requirements of Conditions 15 and 17(a) of the existing consent, which required the registered proprietor of each allotment to be a member of the management company.

The Committee proceeded to hear the application, presentation of submissions and staff reports as detailed in the following report and decision.

The Subcommittee reserved its decision

RESOLUTION TO EXCLUDE THE PUBLIC

**Moved Crs O'Regan / King
EP07/04/04**

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

Galeo Estates Ltd

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:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under Section 48(1) for the passing of this resolution
Galeo Estates Ltd	Consideration of a planning application	A right of appeal lies to the Environment Court against the final decision of Council.

**Moved Crs King / Kempthorne
EP07/04/05**

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

**Moved Crs O'Regan / King
EP07/04/06**

**THAT pursuant to Section 104D of the Resource Management Act, the Committee GRANTS consent to Galeo Estates Ltd as detailed in the following report and decision.
CARRIED**

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

held in the Tasman Room, Richmond

on Wednesday, 18 April 2007, commencing at 10.30 am

A Hearings Committee (“the Committee”) of the Tasman District Council was convened to hear the application lodged by Galeo Estates Ltd relating to change conditions 6, 7 and 8(e) of RM050370. The application, made in accordance with the Resource Management Act 1991 (“the Act”), was lodged with the Tasman District Council and referenced as RM050370V1.

PRESENT: **Hearings Committee**
 Cr O’Regan, Chairperson
 Cr King
 Cr Kempthorne

APPLICANT: Mr N McFadden –Legal Counsel
 Ms L Gibellini- Planning Consultant

CONSENT AUTHORITY: **Tasman District Council**
 Mr R Shirley- Subdivision Officer
 Mr D Ley- Development Engineer
 Mr S Ritchie- Legal Counsel

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

1. DESCRIPTION OF THE PROPOSED ACTIVITY

The applicant has proposed to change and cancellation of conditions 6, 7 and 8(e) of the existing subdivision consent. The purpose of the change is to remove the requirement to enter into a Licence to Occupy agreement with Council prior to the issuing of the Section 224 certificate and to retrospectively accommodate the engineering plans for the water reticulation, as approved by Council’s Engineering Department.

2. PROPOSED TASMAN RESOURCE MANAGEMENT PLAN (“PTRMP”) ZONING, AREAS AND RULE(S) AFFECTED

According to the PTRMP the following apply to the subject property:

Zoning: Rural 3
Area(s): n/a

The proposed change and cancellation of conditions is deemed to be a discretionary activity in accordance with Section 127 (3)(a) of the Resource Management Act 1991,

3. NON-NOTIFICATION

The application was not notified.

4. PROCEDURAL MATTERS

A procedural matter arose as the result of the tabling of evidence by staff which had not been circulated the required five days before the hearing. The matter was dealt with by the Chair asking the applicant if they wished to have an adjournment to consider the new material. This was not required and therefore the hearing continued.

The Committee was concerned to ensure that in the future all material intending to be provided as part of a hearing staff report be circulated as required under the provision of Section 42A(3) of the Resource Management Act 1991.

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

Mr N A McFadden, solicitor, introduced the application on behalf of Galeo Estates Ltd. He described changes which the applicant sought to Conditions 6, 7 and 8(e) of the subdivision consent granted by Council (RM050370) at Redwood Valley.

The applicant sought to delete the requirement for a licence to occupy on the grounds that the pipeline, being the Redwood Valley Community Scheme, is a public supply to be located in public land (legal road).

The applicant volunteered a licence to occupy in the form attached to the application with regards to the private wastewater reticulation. The original condition as imposed did not require a licence to occupy for this aspect.

The applicant sought the deletion of the requirement to enter into a licence to occupy road reserve for the fish passage, as all the "working" parts are located on private land and the fish passage has a public environmental benefit in keeping with Council's responsibilities as a unitary authority.

The applicant volunteered a licence to occupy, in a form attached to the application, for the entrance walls to be constructed on road reserve.

The applicant sought that the requirements for a licence to occupy agreement under Conditions 7 and 8(e) be imposed as an advice note to those conditions. Mr McFadden sought changes to the Council's proposed licence to occupy, including a reduction to the required amount of public liability insurance, bond and the wording which may limit the transfer of land.

Resource management consultant, Ms L Gibellini, tabled and read planning evidence for the applicant. This included an explanation of the proposed amended conditions of consent and the proposed licence to occupy agreement. The evidence questioned the need for a licence fee of \$400 per year required by the Council's Engineering

Department. The applicant disputed having to pay the legal costs for the preparation and execution of the licence to occupy road reserve agreement. The applicant maintained that a bond of \$20,000 proposed by the Council Engineering Department was too high and that if a bond was necessary, the amount should be \$5,000. The evidence included a summary of correspondence between the applicant's representatives and the Council, which occurred between July 2006 and March 2007. The evidence sought that the conditions of consent are clear, certain and enforceable and do not rely on the agreement of a third party, or delegate decisions.

The evidence included a letter dated 17 April 2007 from Mr R B O'Callaghan of Truebridge Callender Beach, which in summary said that the risks of failure and consequences of failure of the sewerage reticulation to the public roads in Galeo Estates are very low.

5.2 Council's Reporting Officer's Report and Evidence

Council Subdivision Officer, Mr R D Shirley, referred to his report of 10 April 2007 contained within the agenda. Mr Shirley said he was not aware of a Council policy that required a licence to occupy agreement for pipes located in Council road. He said that a licence to occupy for fish passage is unnecessary and unwarranted.

Development Engineer, Mr D Ley, spoke to his report of 10 April 2007 contained within the agenda. He recommended that the licence to occupy contain a bond of \$20,000, public liability insurance of \$2 million and a yearly licence fee of \$400. Mr Ley tabled a folder of evidence, including plans, letters and photographs for the benefit of the hearing panel and applicant. During the explanation of this evidence, he displayed a copy of the "Draft Tasman District Council Rooding Policy and Procedure Manual", which he said had been amended and adopted by the Engineering Services Committee at its meeting in August 2005. Cr King said he was concerned that this information was not available to the applicant and hearing panel at an earlier time.

Council's legal representative, Mr S Ritchie, spoke about Council's public liability and statutory duty in regard to public roads.

The Chair adjourned the hearing for 15 minutes to allow the applicant's representatives to read and consider the information tabled as evidence by Mr Ley. When the meeting reconvened, Cr O'Regan asked if the applicant wished to proceed or have an adjournment and reconvene the meeting on another date. Mr McFadden said that he was happy to proceed; otherwise it would be unfair to the applicant, as the matter had gone on too long.

Mr Ley said that he had difficulty finding the rooding policy document and noted that it was not out in the public arena.

Cr King questioned if Mr Shirley was aware of this rooding policy document. Mr Shirley said he was not aware of this rooding policy document and had not been informed of it during prior staff meetings.

Mr Ley was questioned by the hearing panel and confirmed the Engineering Department's requirements for a licence to occupy, a bond and public liability insurance.

Mr Ritchie provided his opinion's on the level of security of a memorandum of encumbrance, the proposed public liability insurance and the need for a bond. Mr Ritchie said that a memorandum of encumbrance needed to make clear that it covers all lots within the subdivision.

6. PRINCIPAL ISSUES

The principal issues that were in contention were:

- a) Was it necessary for a "licence to occupy" agreement to be entered into prior to the approval of the Section 224 certificate or is it appropriate to leave the matter to be dealt with outside of the resource consent process?
- b) Should the fish passage and the entrance wall and other structures be included in the "licence to occupy" or not?

7. MAIN FINDINGS OF FACT

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

- a) The Committee was satisfied that there was no necessity for the consent holder to enter into the "licence to occupy" agreement prior to the approval of the Section 224 certificate and that the matter could be alluded to by way of an "advice note" and thus dealt with outside of the resource consent process.
- b) The Committee considered that the fish passage, the entrance wall, the rock protection work and road embankment linked to the dam spillway should remain the responsibility of the Management Company and should be included in the terms of a licence to occupy, but again, the entering into such an agreement should not be linked to the approval under Section 224 for the subdivision.

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:

- (i) Tasman Regional Policy Statement (TRPS);
- (ii) the proposed Tasman Resource Management Plan (TRMP);

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 change and cancel conditions as follows:

10. REASONS FOR THE DECISION

The Committee noted that there was fundamental agreement between the applicant and the Council over the need for a "licence to occupy" for private structures within future road reserve, however, there was currently a disagreement over the exact wording and form of the agreement which was causing a hold up in the issuing of the Section 224 certificate. The Committee understood that such an agreement provides rights and protection to both the consent holder and the Council and without such an agreement being in place, creates uncertainty and risk for both parties.

The Committee considered that the licence to occupy documents could be the subject of further action after the signing of the Section 224 Certificate. The Committee was advised that the Local Government Act 2004 contained provisions and powers for Council to require a licence to occupy whether or not it was the subject of a resource consent condition.

In the original consent, the requirement for a licence to occupy agreement to be entered into was linked to the water supply reticulation as it was intended that part of the reticulation and supply system would be privately owned and managed by the Management Company. This is no longer the case and this condition is agreed to be amended accordingly so a licence to occupy is not required for water reticulation as it will all vest in Council and will not be privately owned infrastructure.

In the original consent, there was no requirement for the wastewater system to be the subject of a licence to occupy prior to the Section 224 approval. This may have been an oversight, but in the situation before the Committee, the applicant has come forward with an offer of an advice note to sit alongside condition 7. The Committee accepts that an advice note is a logical way of dealing with the situation.

In the original consent, there is a requirement for a licence to occupy for the fish passage pipe to be entered into prior to the approval of the Section 224 certificate. The Committee accepts that this is not necessary in terms of the timing, but as there will be a licence to occupy document required, including the fish passage structure will be appropriate. The Council considers that the pipe should be maintained by the Management Company and therefore that part of the original condition 8 (e) shall remain.

The Committee noted that the circumstances of the construction of the entrance wall within the road reserve. The Committee accepted the amended wording of Condition 8 as suggested by the applicant so that the entrance wall becomes part of the conditions of the consent. In addition, the Committee concluded that it made sense to include the entrance wall in the licence to occupy, along with the road embankment and rock protection associated with the dam spillway.

The Committee considered that the requirement to maintain the fish passage, rock protection and road embankment as per the original consent to dam water should remain with the Management Company as per the conditions of RM 050680.

The Committee was concerned about the apparent delays and frustration caused to the applicant regarding the process of formulating the licence to occupy. The Committee considered that this situation may not have occurred if the Council's policy on such matters had been made known to the applicant. It is clear that more work needs to be done on section 25.4.5 of the Council's Roding Policy and Procedure Manual so that all

the details and circumstances surrounding licences to occupy can be put to Council for adoption and they are then available for applicants in the future.

In the meantime the Committee hopes that the licence to occupy agreement between Galeo Estates Ltd and Council can be formulated on acceptable terms with good will on both sides.

The Committee has chosen not to charge for its time for the hearing.

Issued this 26th day of April 2007

Councillor O'Regan
Chair of Hearings Committee

RESOURCE CONSENT NUMBER: RM050370V1

Pursuant to Section 104B and 127 of the Resource Management Act 1991 ("the Act"), the Tasman District Council ("the Council") hereby grants resource consent to:

Galeo Estates Ltd

(hereinafter referred to as "the Consent Holder")

ACTIVITY AUTHORISED BY THIS CONSENT: Change and cancellation of conditions of consent 6,7 and 8(e) of RM 050370

LOCATION DETAILS:

Address of property: Maisey Road,
Legal description: Section 1 SO 15642, Lot 1 DP 343461 and Lots 3 and 4
DP 352521
Certificate of title: 215329

Pursuant to Section 108 and 127 of the Act, this consent is issued subject to the following conditions:

CONDITIONS

Cancel conditions 6, 7 and 8 of the original consent and replace them with the following conditions:

6. Water Supply

That each residential site be serviced with a reticulated potable water supply as from the Redwood Valley Community Scheme as generally shown on Truebridge Callender Beach plan for water reticulation submitted with the application.

The existing TDC rural main shall be relocated in the road to vest without disruption to supply.

7. Wastewater Servicing

That a wastewater treatment plant, effluent disposal field, reserve disposal field, and reticulation to each residential site be designed and constructed generally in accordance with the Truebridge Callender Beach report and plans submitted with the application and details provided up to and including at the hearing and otherwise in accordance with resource consent RM050377.

Advice Note: A licence to occupy road reserve for any private wastewater reticulation services to be located within road to vest will be required.

8. Power, Telephone, Electricity Sub-station, Bus Shelter area, Entrance Walls and Fish Passage.

- a) That each residential site, Lots 1-29, and utility site Lots 31 and 32 be serviced with underground power and telephone connections to the satisfaction of the relevant authority.
- b) Electricity substation sites shall be provided as required by the supply authority. Substations shall be shown as "Road to Vest" on the survey plan if adjacent to a road or road to vest.
- c) That the Maisey Road legal road reserve be widened by the vesting of land in Council at no cost to Council, to include the proposed bus shelter and bus bay area as shown on Traffic Design Group Plan dated 17/10/05 number CAD: 8179W1/5.
- d) That the Maisey Road seal be extended to include the area intended for the bus bay and shelter as indicated in the Traffic Design Group Plan dated 17/10/05 number CAD: 8179W1/5. This work shall be completed prior to the issue of the Section 224 certificate for the stage C of the subdivision.
- e) That the fish passage by-pass pipe under the road to vest shall remain the responsibility of the Management Company (Residents Association).
- f) The entrance walls located on road to vest shall be constructed in accordance with Staig and Smith Plan DWG 7958BB "Proposed Entry Wall Feature" dated 13-07-06 and shall comply with the requirements of 6.19 Street Name Signs in the TDC Standards and Policies 2004.

Advice Note: A licence to occupy road reserve for the entrance wall, road embankment, rock protection and fish passage to be located within road to vest will be required.

Issued this 26th day of April 2007

Councillor O'Regan
Chair of Hearings Committee

Date Confirmed:

Chair: