

MINUTES

TITLE: Environment & Planning Committee
DATE: Monday, 11 June 2007
TIME: 9.30 am
VENUE: Council Chamber, 189 Queen Street, Richmond

PRESENT: Crs E M O'Regan (Chair), Crs R G Kempthorne and P K O'Shea

IN ATTENDANCE: Consents Co-Ordinator (R Lieffering), Consultant Planner (H Briggs), Administration Officer (B D Moore)

1. R BROOKS ESTATE LTD, MOTUEKA VALLEY HIGHWAY, NGATIMOTI - APPLICATION RM070094

1.1 Proposal

The applicant sought consent to subdivide Lot 2 DP 361432 in CT 249870 of 50.7 hectares to create Lot 1 of 3.0 hectares and Lot 2 of 47.7 hectares. Lot 1 is intended to provide for a new dwelling and Lot 2 will retain the existing dwelling and farm implement sheds. The farm is at 1245 Motueka Valley Highway, Ngatimoti.

1.2 Presentation of Application

Solicitor for the applicant, Mr N McFadden tabled and read the opening submission and referred to the application as a discretionary activity and outlined the actual and potential effects of the proposal which he described as not in any way adverse. He addressed the issues raised by the six submissions to the application and noted that the NZ Fire Service Commission would not appear at the hearing.

Resource Management Consultant, Mr D R Smythe read a statement of evidence and also addressed the concerns of submitters. He said that the NZ Fire Service submission was unreasonable and unnecessary to achieve the development of the subdivision, as it relates solely to establishment of a dwelling on the site at some future date.

Mr Smythe described how the submission from G and L Anderson could be addressed and mitigated through conditions of consent. Mr Smythe acknowledged the issues raised by all other submitters and described the way in which the applicant has addressed those concerns. Mr Smythe explained how the application generally fits and is in accord with what the objectives and policies of the Tasman Resource Management Plan sets out to achieve.

The written evidence from Mr Smythe provided his comment in proposed amendments to conditions 3, 4, 11 and 8 of the proposed conditions of consent recommended by Planning Consultant Mr H Briggs.

Mr McFadden said that the applicant had authorised a voluntary rural emanations easement to be registered against Lot 1 in favour of Lot 2.

Mr Smythe said that the applicant's preference is for landscaping to occur at the time of a building consent rather than the subdivision stage.

1.3 Presentation of Submissions

The submission from G and L Anderson was presented by solicitor Mr G J Pratt. G and L Anderson were not present at the hearing, but Mr D A Anderson and Mrs J A Anderson attended the hearing to respond to questions. Mr Pratt tabled and read a submission for G and L Anderson and explained their concerns in regard to potential land fragmentation, lose of potential productive value of this land and the impact of privacy and amenity of the existing Anderson dwelling. He also spoke about how the subdivision will increase the traffic on the shared right-of-way. The submission spoke about the potential increased sensitivity over land use and cross-boundary effects and the potential for this application to have an effect on similar future applications for subdivision. The submitter was concerned that the area may loose rural character. In conclusion Mr Pratt said that the Anderson were concerned about the impact of the subdivision and the effect that a proposed dwelling would have. He said that rural amenity would be reduced and that the proposal relies on vegetation screening to be maintained. He said that soil productivity on proposed Lot 1 is just is good, if not better, than the surrounding land.

Mr V Hall said that she is a neighbour of the applicant and was concerned that the applicant will continue to subdivide his property. She claimed that the proposal will significantly compromise the amenity of her property as there would be a house constructed that would overlook her land. She said that she runs a bed and breakfast business and that further houses would urbanise the area.

Mr L Hislop explained that he lives across the other side of the river from the subject property and his land is slightly lower than this. He explained his concerns about further fragmentation of this fertile land and that rural amenity will be impaired by the proposal. He said that this would increase population density and create an urban feel. Mr Hislop said that further subdivision should be stopped.

1.4 Planning Consultant's Report

Mr H Briggs spoke to his report EP07/06/01 of 31 May 2007 contained within the agenda. He said that the land proposed to be taken out of productivity is not considered great. Additional copies of the soils report prepared for Council by Mr A Burton were tabled. This report contained an assessment of environmental effects and the most critical potential effects were discussed. These included the rural land productivity and the land use efficiency, reverse sensitivity, and the land fragmentation cumulative effects of further subdivision. Matters referred to were land stability and natural hazards, amenity values, rural character and visual impact and traffic effects. Mr Briggs recommended that proposed conditions of consent should the application be granted. Mr Briggs said that the proposed subdivision would not diminish the level of openness or character in this location and that adjacent dwellings are not readily visible from this site and the nearest one is well screened from this site. Mr Briggs said the he considered the proposed subdivision will not have an adverse effect on the present rural character.

1.5 Right of Reply

Mr McFadden responded for the applicant and noted that no evidence was presented by submitters on the reduction of productive potential of the land. He said that no evidence was presented to illustrate the views from the Anderson property. Mr McFadden suggested that the Hearing Panel should view the subject site from the submitters' property. He also said that trees exist on the river banks which would provide screening from the other side of the river. He said that the implement shed and the deer shed are about 120 metres from the Anderson lodge accommodation and radiata trees have been planted in between those building and the subject site.

Mr McFadden asked the Panel to assess the degree of conflicting considerations and said that all the evidence must be supportable, tenable, and must not be based on emotional issues. Mr McFadden said that mere opinions or views as presented by some submitters, do not carry much weight. He said that Mrs Hall will not be able to see Lot 1 and that proposed Lot 2 only contains one dwelling. Mr McFadden said that the applicant volunteer that any house placed on Lot 1 would be single storied. He said that landscaping requirements should be specified to include such things as a management plan, and stating when the landscaping is to be planted and a required maintenance programme and specified the type of planting and replacement of any vegetation, and Council must decide if a consent notice is required.

Mr McFadden said that the weight to be given to residents' views is only one part of the things to be considered. He said Council must also consider the proposal bearing in mind the conditions imposed.

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

The Committee reserved its decision at 12.15 pm.

RESOLUTION TO EXCLUDE THE PUBLIC

**Moved Crs O'Regan / King
EP07/06/01**

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

R Brooks Estate 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
R Brooks Estate Ltd	Consideration of a planning application	A right of appeal lies to the Environment Court against the final decision of Council.
CARRIED		

Moved Crs King / O'Shea
EP07/06/02

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

2. R BROOKS ESTATE LTD, MOTUEKA VALLEY HIGHWAY, NGATIMOTI -
APPLICATION RM070094

Moved Crs
EP07/06/03

THAT pursuant to Section 104D of the Resource Management Act, the Committee DECLINES consent to R Brooks Estate 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 Monday, 11 June 2007, commencing at 9.30 am

A Hearings Committee ("the Committee") of the Tasman District Council was convened to hear the application lodged by **R Brooks Estate Limited** to subdivide land adjacent to the Motueka Valley Highway at Ngatimoti. The application, made in accordance with the Resource Management Act 1991 ("the Act"), was lodged with the Tasman District Council and referenced as RM070094.

PRESENT: **Hearings Committee**
Cr E M O'Regan, Chairperson
Cr R G Kempthorne
Cr P K O'Shea

APPLICANT: Mr R Brooks (Representative of Applicant Company)
Mr N McFadden (Counsel for Applicant)
Mr D Smythe (Applicant's Planning Consultant)

CONSENT AUTHORITY: **Tasman District Council**
Mr H Briggs (Planning Consultant)

SUBMITTERS: Mr G Praat (Counsel for G & L Anderson)
Mr DA and Mrs JA Anderson (on behalf of G & L Anderson)
Mrs V Hall (for V & A Hall)
Mr L Hislop (for L Hislop and S Bradshaw)

IN ATTENDANCE:

Dr R Lieffering, Coordinator Resource Consents – Assisting the Committee
Mr B Moore – Committee Secretary

1. DESCRIPTION OF THE PROPOSED ACTIVITY

The applicant has applied to the Council for resource consent to subdivide Lot 2 DP 361432 (CT 249870) of 50.7 hectares to create Lot 1 of 3.0 hectares and Lot 2 of 47.7 hectares. Lot 1 is intended to provide for a new dwelling and Lot 2 will retain the existing dwelling and farm implement sheds. The property is at 1245 Motueka Valley Highway, Ngatimoti.

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 2

Area(s): Land Disturbance Area 2

There are no permitted activity rules for subdivision in the Proposed Tasman Resource Management Plan (TRMP). The proposed activity does not comply with Controlled Activity Rule 16.3.8 of the TRMP as the proposed allotments are less than 50 hectares. The activity is therefore deemed to be a discretionary activity in accordance with Rule 16.3.9 of the TRMP.

3. NOTIFICATION AND SUBMISSIONS RECEIVED

The application(s) was notified on 3 March 2007 pursuant to Section 93 of the Act. A total of six submissions were received. The following is a summary of the written submissions received and the main issues raised:

Submitter	Support/Oppose	Main Issues	Present at Hearing?
G & L Anderson	Oppose	<ul style="list-style-type: none"> the land has already been subdivided and thus this will create increased fragmentation the subdivision is out of step with Rural 2 the subdivision will adversely affect their privacy and amenity of the existing dwelling the subdivision will increase traffic over the shared right of way the subdivision will give rise to increased sensitivity over land use for production purposes the subdivision will give rise to further pressure for residential subdivision in the Rural 2 zone 	Yes
D Yerbury	Oppose	<ul style="list-style-type: none"> there have been previous subdivisions, now below 50ha minimum small lot area used for deer grazing, thus will reduce overall area 	No

		<ul style="list-style-type: none"> • ample lifestyle blocks in Motueka valley slow to sell • lack of visual privacy for neighbours • no demonstrable benefits from subdivision 	
Halcyon Days Ltd	Oppose	<ul style="list-style-type: none"> • need to maintain separation of dwellings from each other in the enclave • existing separation should not be compromised by further subdivision 	No
V & A Hall	Oppose	<ul style="list-style-type: none"> • fragmentation of land creating a suburban quality in Rural 2 zone • will limit use of land for rural activities • set precedent for other sites 	Yes
L Hislop & S Bradshaw	Oppose	<ul style="list-style-type: none"> • impairment of rural amenity • fragmentation of land resource 	Yes
NZ Fire Service	Neutral	<ul style="list-style-type: none"> • Requires condition for adequate fire fighting supply to be provided on sites to be imposed 	No

4. PROCEDURAL MATTERS

No procedural matters were raised at the hearing. A letter from the New Zealand Fire Service was tabled by Mr McFadden which advised the Committee that it would not be attending the hearing.

5. EVIDENCE HEARD

The Committee heard evidence from the applicant's Counsel and Consultant Planner, 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 McFadden, Counsel for the applicant, tabled and read an opening submission and referred to the application as a discretionary activity and outlined the actual and potential effects of the proposal which he described as not in any way being adverse. He addressed the issues raised by the six submissions to the application.

Mr D R Smythe, the applicant's Planning Consultant, read a statement of evidence and also addressed the issues raised by the written submissions. He said that the NZ Fire Service submission was unreasonable and unnecessary to achieve the development of the subdivision, as it relates solely to establishment of a dwelling on the site at some future date.

Mr Smythe described how the matters raised in the submission from G and L Anderson could be addressed and mitigated through conditions of consent. Mr Smythe acknowledged the issues raised in all the other submissions and described the way in which the applicant has addressed those concerns. Mr Smythe explained how the application generally fits in with, and is in accordance with, the relevant objectives and policies of the Tasman Resource Management Plan.

Mr Smythe provided comments in relation to a number of the recommended conditions of consent, in particular conditions 3, 4, 11 and 8.

Mr McFadden said that the applicant was prepared to volunteer a rural emanations easement to be registered against Lot 1 in favour of Lot 2.

Mr Smythe said that the applicant's preference is for landscaping to occur at the time of a building consent rather than the subdivision stage. Likewise, the construction of the on-site wastewater system which would service the new dwelling on proposed Lot 1 would best be assessed at building consent stage rather than at Section 224 stage.

5.2 Submitters' Evidence

G and L Anderson

Mr G J Praat presented a submission on behalf of G and L Anderson, who were not present at the hearing, but Mr D A Anderson and Mrs J A Anderson attended the hearing to respond to questions. Mr Praat tabled evidence explained the concerns of his clients in regard to potential land fragmentation, loss of potential productive value of this land and the impact on privacy and amenity of the existing Anderson dwelling. Mr Praat advised the Committee that the previous subdivision undertaken by the applicant was based on an argument that the remaining 50 hectare allotment (being the subject of the current application) was of a sufficient size to be a productive unit and could not see what circumstances had changed to alter this position.

Mr Praat also spoke about how the subdivision will increase the traffic on the shared right-of-way. Mr Praat stated that granting this consent would set a precedent to have an effect on similar future applications for subdivision and that there were many similar parcels of land in the Motueka Valley which had similar attributes as the subject site which could also be the subject of subdivision applications should this one be granted.

Mr Praat stated that his clients were concerned that the area may lose its rural character if another rural residential property were allowed. In conclusion, Mr Pratt said that the Andersons were concerned about the impact of the subdivision and the effect that a proposed dwelling would have. He said that rural amenity would be adversely affected and that the proposal relies on vegetation screening to be maintained.

V Hall

Mrs V Hall said that she is a neighbour of the applicant and was concerned that the applicant will continue to subdivide his property. She claimed that the proposal would significantly compromise the amenity the area because it would allow another house to be built where there is currently a rural aspect. She said that she runs a bed and breakfast business and that further houses would urbanise the area.

Mrs Hall said a previous subdivision of the subject property had allowed a house to be built overlooking her property and the trees planted for screening were slow growing. She said that this indicated that the proposed screening for the dwelling on proposed Lot 1 would take some considerable years to have any effect.

L Hislop

Mr L Hislop explained that he lives across the Motueka River from the subject property and his land is at a slightly lower level. He explained his concerns about further fragmentation of this fertile land and that rural amenity will be adversely impacted by the proposal. He said that this would increase population density and create an urban feel. Mr Hislop said that he had not opposed the original subdivision application lodged by the applicant but that further subdivision should be stopped.

Mr Hislop tabled a photograph taken of the subject site from an area adjacent to the Motueka River which he and his family used frequently during the summer period for swimming. Mr Hislop stated that the subject site was clearly "open space" and the positioning of a dwelling on any part of the landscape shown in the tabled photograph would be an eyesore. Mr McFadden indicated on the photograph where the proposed dwelling would be.

5.3 Council's Reporting Officer's Report and Evidence

Mr H Briggs spoke to his report which was contained within the hearings agenda. He said that the area of land proposed to be taken out of productivity is not considered large. Additional copies of the soils report prepared by Mr A Burton were tabled. This report assessed the soil types present across the property. Most of the property was Class E soil with smaller areas of Class C and Class A soils.

Mr Briggs went on to discuss rural land productivity and the land use efficiency, reverse sensitivity, land fragmentation, cumulative effects of further subdivision and traffic effects. Mr Briggs recommended that the consent should be granted and he proposed conditions of consent which should be imposed if the Committee was of the mind to grant consent. Mr Briggs was of the view that the proposed subdivision would not diminish the level of openness or adversely affect the rural character in this location and that adjacent dwellings are not readily visible from this site and the nearest one is well screened from this site.

6. PRINCIPAL ISSUES

The principal issues that were in contention were:

- a) Will this development result in adverse effects in respect of rural amenity and character?
- b) Will the granting of this consent result in land fragmentation and cumulative effects?
- c) Will the granting of this consent set a precedent?

7. MAIN FINDINGS OF FACT

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

- a) The Committee heard evidence from the applicant, the Council's reporting officer, and submitters on how the proposed development would affect the rural amenity and character of the area. There were conflicting views on this and therefore the Committee had to make its own assessment. Having undertaken a site visit, the Committee considers that the adverse effects on the rural amenity and character of the new building on proposed Lot 1 would be significant. Further, the Committee is not convinced by the evidence presented by the applicant that the proposed mitigation measures would be effective in reducing the adverse effects to an acceptable level.
- b) The Committee considers that the granting of this consent will lead to fragmentation of a productive farm which could only reduce the future capabilities of the land. The Committee heard evidence in relation to the previous subdivision of the subject site (RM050386), and in particular the justification of that proposal being that the resultant 50 hectare block (being the subject of the current application) comprised mainly productive pasture and that it would be maintained as a manageable unit. The Committee heard no evidence that the subject site was now no longer a manageable unit.

The Committee notes that if this consent were granted, it would result in 1.2 hectares of Class A soil being removed from the larger balance allotment, with this 1.2 hectares representing 30% of the Class A soil of the 50 hectare subject site.

- c) The Committee considers that granting of this application is likely to lead to a domino effect of further subdivision based on reduced productive potential of smaller farms in the area. The Committee does not consider that there are any unique features of this property which separates it from others in the district.

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) Tasman Regional Policy Statement (TRPS);
- b) the Proposed Tasman Resource Management Plan (PTRMP);

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 purpose of the Act as presented in Section 5.

9. DECISION

Pursuant to Section 104B of the Act, the Committee **DECLINES** consent.

10. REASONS FOR THE DECISION

The Committee has decided to decline this application because the granting of this consent would result in adverse effects on the rural amenity and character of the local environment and fragmentation of Rural 2 zoned land which are significantly beyond those anticipated by the TRMP.

Whilst the subdivision of land as proposed (in the Rural 2 zone) is, as the applicant promoted, “*specifically provided for in the Plan as a discretionary activity*”, the Committee must, pursuant to Section 104(1) “*have regard*” to the relevant objectives and policies of the TRMP. Having regard to the objectives and policies does not bind the Council in making its decision, however it is considered that there would need to be a good reason for going against the Council’s objectives and policies. In addition, Schedule 16.3.9 of the TRMP sets out the assessment criteria which the Committee has taken into account when considering this application.

The applicant considers that Policy 7.2.1A of the TRMP was particularly relevant in this case in that it *enabled* sites in specific locations to be used for rural residential purposes with any farming or other rural activity being ancillary, as would be the case for this application. However, the Committee notes that the TRMP further presents methods of implementation for the policies 7.2.1-7.2.4, which make it clear that the way in which the Council will enable non-productive uses in the rural environment is by specifically zoning areas for rural residential, rural industrial and other specific zones. The subject site is zoned Rural 2, with a minimum allotment size of 50 hectares required for a “controlled activity” subdivision. This application seeks to establish an allotment (proposed Lot 1) which is significantly less than 50 hectares.

The proposed subdivision is in an area of mixed land uses including grazing, forestry and some small blocks of a rural residential nature.

The Committee considers that the creation of another small rural residential style allotment in this location would not be appropriate. Considerable weight was given to the issue of precedent and cumulative effects arising from the granting of such a consent. To approve this subdivision (and thus allow an additional dwelling to be constructed as a permitted activity) would be inconsistent with Objectives 5.1.0, 5.2.0, 5.3.0, 7.1.0 and 7.3.0, and Policies 5.1.1, 5.2.1, 7.1.1, 7.1.2, 7.1.2A, 7.1.3, 7.3.3, 7.3.6 of the TRMP in terms of the issue of fragmentation and inappropriate development in the rural zone. The incremental addition of residential activities in the rural zone contributes to a loss of rural character and amenity and open space values that the TRMP identifies as issues to be protected. The Committee considers that the loss of rural amenity at this site as a result of the construction of a dwelling would result in a significant adverse effect on the current “open” rural amenity.

The Committee has come to a different conclusion from that of the Council’s reporting officer, whose opinion is acknowledged and is not without some basis. However, after hearing all the evidence and undertaking a site visit the Committee considers that the adverse effects are significantly greater than those contemplated by the TRMP.

The Committee considers that approval of the subdivision would add to the existing degree of rural residential development in the area and may create more pressure for further subdivision. The Committee is unable to find any features of the site or of the application that distinguished the proposition from numerous other possibilities for subdivision of similar Rural 2 land.

The Committee does not consider that the subdivision was necessary for the land to be used more productively as claimed by the applicant. The subdivision would allow capital development by way of construction of a new dwelling, but this was not seen as an appropriate resource management reason to allow the subdivision of land in the Rural 2 zone. It is the potential cumulative effect of land fragmentation which is of concern.

The Committee noted the mitigation measures offered by the applicant in terms of single storey construction, screen planting, and building location, but considers that these measures can not mitigate the adverse effects associated with land fragmentation as well as the precedent and cumulative effect on rural character and amenity.

The Committee considered that the application was inconsistent with the purpose and principles of the Resource Management Act 1991 as set out in Section 5 of the Act and the granting of the consent would not result in sustainable management of the land.

Issued this 27th day of June 2007

Cr E M O'Regan
Chair of Hearings Committee

Date Confirmed:

Chair: