



STAFF REPORT

TO: Environment & Planning Subcommittee

FROM: Subdivision Officer

REFERENCE: RM041139

SUBJECT: **D J STEWART – REPORT EP05/04/05** – Report prepared for 18 April 2005 hearing.

1. INTRODUCTION

The following report is my assessment of a resource consent application to subdivide a commercial property in Brightwater for residential purposes.

2. LEGAL DESCRIPTION

The legal description of the land is Pt Section 18 District of Waimea South, being the land described in Certificate of Title NL 94/182 and containing 2,630 square metres.

The registered proprietor of the land is Douglas John Stewart.

3. ZONING AND AREA OVERLAYS (Map 90, TRMP)

The land is zoned commercial under the Tasman Resource Management Plan (TRMP).

There are no area overlays affecting the land.

4. PROPOSAL

4.1 Subdivision

To subdivide the land to create:

- Lot 1 of 540 square metres;
- Lot 2 of 540 square metres;
- Lot 3 of 930 square metres (nett area of 810 square metres);
- Lot 4 of 620 square metres;

as shown on resource consent application plan RM041139 (refer Appendix A).

4.2 Land Use

Once subdivided, to construct dwellings on each of the four lots in accordance with the permitted activity Residential Zone rules.

5. STATUS OF THE APPLICATION

5.1 Subdivision

The subdivision complies with the standards and terms to be a controlled activity in the Commercial Zone (Rule 16.3.5).

However, as the subdivision is for residential purposes rather than commercial, it needs to be assessed against residential standards and terms and not the commercial standards and terms.

The relevant residential standards and terms (Rule 16.3.3) to be a controlled activity are:

- minimum net area 450 square metres;
- average net area 600 square metres;
- minimum frontage 3.5 metres;
- shape factor of 16 metre circle diameter;
- compliance with access standards and terms;
- serviced with reticulated wastewater.

The subdivision proposal complies with the above standards and terms and therefore can be considered as a controlled activity.

The matters over which Council has reserved control include such things as servicing, earthworks and financial contributions.

5.2 Land Use

The construction of a dwelling in the Commercial Zone is a permitted activity only if the dwelling is located above ground floor level (Rule 17.2.2(d)), otherwise, it is a restricted discretionary activity (Rule 17.2.7). The matters over which Council has restricted its discretion are based on a commercial activity being undertaken but with a degree of non-compliance relating to building coverage, height, building envelope, setbacks, building design and appearance, servicing, outdoor storage space or verandahs. They are not particularly relevant or helpful in assessing ground level dwellings in a Commercial Zone.

However, in terms of this particular application, the construction of ground floor dwellings is a restricted discretionary activity.

6. SITE DESCRIPTION

The site is located at 46 Charlotte Lane, Brightwater and is a 2,630 square metre commercially zoned property. The site is flat, relatively low-lying and is currently in long grass. There are no buildings on the land apart from an old storage shed which is to be demolished.

Access is via Charlotte Lane, which is a right-of-way off Ellis Street. Charlotte Lane also provides access to three other residential properties, as well as a kindergarten and Brightwater Domain (refer also paragraph 9.3).

The property is bounded on two sides by existing residential development, with a residential property immediately opposite on the other side of Charlotte Lane. The fourth boundary is a service lane that services the rear of the commercial properties fronting Ellis Street (refer Appendix B).

7. SUBMISSIONS

The proposal was publicly notified on 8 January 2005 and attracted eight submissions, one in support, three conditional and four in opposition.

7.1 J and N Makan – Support

- Protection of kowhai tree.

7.2 C J Fish – Neither Supports Nor Opposes

- Fence not on boundary.
- Same covenant as DP 20400.
- Erect retaining wall.
- Drainage.
- New fence.

7.3 S and J Leef – Neither Supports Nor Opposes

- Fence not on boundary.
- Same covenant as DP 20400.
- Erect retaining wall.
- Drainage.
- New fence.

7.4 P J de Weck - Neither Supports Nor Opposes

- Unsuitable for commercial activities.
- Water and sewerage drainage.
- Fencing on right-of-way boundary.
- Traffic safety on Charlotte Lane and intersection with Ellis Street.

7.5 K T Stewart – Opposes

- Development of four houses.
- Loss of only commercial section left in Brightwater.
- Traffic safety.

7.6 M Simpson and A Donaldson – Oppose

- Access and parking issues.
- Change of land use.
- Future issues for existing commercial activities.
- Purchase land for car parking.

7.7 P Norris – Opposes

- Subdivision of next door property.
- Development of four houses.
- Traffic safety.
- Servicing.
- Historical significance of old barn.
- Noise and disruption during development.
- Rate increase.
- Loss of open space.

Also late submission regarding protection of kowhai tree.

7.8 M Donaldson – Opposes

- Issues with Charlotte Lane being a right-of-way.

7.9 Comment

The issues and concerns raised by submitters are covered in later parts of this report.

8. RELEVANT STATUTORY PROVISIONS

As stated previously, the subdivision component is a controlled activity and the land use component is a restricted discretionary activity. However, the matters over which Council has restricted its discretion are not particularly relevant. I therefore consider the most relevant statutory provision is provided by Section 104 of the Act, and in particular and subject to Part II, the actual and potential effects on the environment of allowing the activity.

9. ASSESSMENT AND EVALUATION

9.1 Loss of Commercial Land

The potential loss of commercial land is probably the biggest issue that need to be considered. This is because approval of this application will effectively rezone the land from commercial to residential, which in turn can impact on the future growth and commercial development of the Brightwater township.

I therefore sought comment from Policy Planner, Rose Biss. Those comments are attached as Appendix C.

Brightwater has a land area of 1.287 hectares zoned Commercial.

All of that land, with the exception of the subject land and a Council owned block off Starveall Street, has frontage to Ellis Street.

Historically, there has been virtually no demand for commercial land in Brightwater.

In the event of any future commercial development it would likely seek main road frontage (Ellis Street) rather than side road frontage (Charlotte Lane).

The Council owned block of commercial land off Starveall Street was acquired by Council in 1997 for the purpose of car parking. It is only partially developed for that purpose.

Plan Change W8 sought to rezone the Part Section 18 directly opposite the subject land from commercial to residential. That was approved by Council on 27 September 1990 for the reason:

“The land was zoned commercial in 1984 to ensure that there was sufficient land available for a range of commercial development in Brightwater. However, since 1984 there has been little demand for land for commercial development. The residential zoning will be compatible as the land adjoins residential zoning. The removal of this part of the property will still leave substantial areas of unutilised or under-utilised commercial land in Brightwater.”

Those same reasons apply today to the subject land.

9.2 Permitted Baseline

Section 104(2) provides for when councils are considering an application for a resource consent, or any submissions received, the Council may disregard any adverse effect if the plan permits an activity with the same effect. In this instance the subject land is zoned commercial and the TRMP permits building coverage of 75% of land area, with building height up to 10 metres compared to the Residential Zone of 33% and 7.5 metres respectively. Therefore, the visual and amenity effects of four dwellings that comply with the Residential Zone rules will likely have less impact on surrounding properties than the commercial development that could be undertaken as of right. This is particularly so for the residential properties that surround the subject land on three sides.

9.3 Charlotte Lane

Charlotte Lane has historically been described as a private road and a right-of-way. It is currently an access lot owned in two undivided one-half shares by the owners of Lots 1 and 2 DP 17413. There are also various rights-of-way over the land.

In 1992 a survey plan was approved showing Charlotte Lane to vest in the Tasman District Council as road. However, the legalisation process never proceeded because of difficulties in extinguishing some of the existing rights-of-way over the land.

Therefore to protect public access, an easement-in-gross to Tasman District Council was registered. The easement document requires repair and maintenance of the land by Council as if it were a legal road. The easement further provides for the owners of the two undivided shares to transfer the land to Council at no cost when Council is able to vest the land as legal road.

A consent notice is also registered over the land requiring the owners to *“always provide public access, the land having been for many years accepted as road, used by the public and having been improved and maintained out of Council funds”*.

The attached memorandum from Dugald Ley, Development Engineer, confirms that Charlotte Lane complies with Council's Engineering Standards and is capable of handling the extra traffic generated by the subdivision (refer Appendix D).

The intersection of Charlotte Lane with Ellis Street has marginal sight lines due to verandah posts, planting and parked vehicles. However, there is limited scope to improve sight lines without removing car parking along the frontage of the existing shops.

In view of the easement-in-gross to the Tasman District Council the registered consent notice and compliance with Council's Engineering Standards, I am satisfied that in terms of Section 106 of the Act, sufficient provision has been made for legal and physical access to the allotments to be created by the subdivision.

9.4 Fencing/Encroachment

The subject property (as are neighbouring ones) is currently subject to the Fencing Act 1978. The Fencing Act deals with the erection and repair of fences between properties. The relevance of this Act is not changed by virtue of the application and therefore the erection of new fences or relocation of existing fences is not a relevant consideration.

9.5 Servicing

Any newly created residential section is required to be fully serviced, including water and sewage drainage without adverse effect on adjoining properties. Appropriate conditions have therefore been recommended.

9.6 Kowhai Tree

Using Council's standard tree evaluation method, the kowhai tree does not qualify to be listed as a protected tree. However, the applicant may choose to retain the tree to enhance the amenity of the subdivision.

10. SUMMARY

10.1 The proposal is to subdivide and thence construct four dwellings on a commercially zoned property at Brightwater.

10.2 The subdivision is a controlled activity whereas the construction of the dwellings is a restricted discretionary activity.

10.3 The most significant adverse effect is the potential loss of the commercially zoned land.

10.4 However, there is very little demand for commercial land in Brightwater and that demand can be satisfied within the remaining commercial land and with main road frontage.

10.5 Construction of four dwellings will have less of an adverse effect in terms of general amenity than the commercial activity that could be undertaken as of right.

10.6 Charlotte Lane is legally and physically able to handle the extra traffic generated by the subdivision.

10.7 Conditions can be imposed to ensure the land is adequately serviced without adverse effects on the environment or other persons.

11. CONCLUSION

The purposes of the Act in terms of promoting the sustainable management of the land resource is better served by approving the application than declining it. Conditions can be imposed to ensure the adverse effects on the environment are no more than minor.

12. RECOMMENDATION

That the Committee approves the subdivision and land use application under Sections 104A and 104C respectively, subject to the following conditions.

13. CONDITIONS

A. SUBDIVISION

A1. Roading

“Give Way” limit lines and marking shall be formed at the intersection of Charlotte Lane and Ellis Street.

A2. Vehicle Crossings

Concrete vehicle crossings (residential) to be designed and constructed from existing kerb to property boundary to service Lots 1-4.

A3. Water Supply

Lots 1-4 be serviced with a water supply connection at the front boundary to each lot. Provision of the water supply connection will require the existing 25 millimetre lateral in Charlotte Lane to be upgraded to comply with fire fighting flows and Tasman District Council Engineering Standards.

A4. Sewerage

Lots 1-4 to be serviced with connections to Council’s reticulated sewerage system. The connections are to be provided to at least 1.0 metres and inside the main body of the lot and to include all necessary manholes and lamp hole cleaning eyes.

A5. Stormwater

Lots 1-4 to be serviced with connections to Council’s reticulated stormwater system. The connections are to include all necessary manholes, sumps and inlets.

A6. Filling

Lots 1-4 to be filled to provide a finished ground level the same height as adjoining Lots 52 and 53 DP 20400 for the purpose of mitigating potential flooding of the land.

A7. Electricity and Telephone

That Lots 1-4 be serviced with underground electricity and telephone connections to the satisfaction of the relevant authorities.

A8. Certification

- a) The applicant is to provide certification from a registered engineer or geotechnical engineer experienced in the field of soils engineering (and more particularly land slope and foundation stability) that a site has been identified on each new lot suitable for the erection of a residential dwelling. The certificate shall define on each lot the area suitable for the erection of the dwelling.
- b) Where fill material has been placed on any part of the site a certificate shall be provided by a suitably experienced, registered engineer to certify that the filling has been placed and compacted in accordance with NZS 4431:1989.

A9. Engineering Plans

That prior to undertaking any works or the provision of services, engineering plans are to be submitted to Council for approval. All works to be undertaken in accordance with the approved plans. As-built plans to be provided at the completion of works.

A10. Engineering Works, Services and Plans

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.

A11. Easements

Any services located outside the boundaries of the lots that they serve to be protected by an appropriate easement referenced in Council's Section 223 recital.

A12. Street Numbers

The following street numbers are to be shown on all engineering plans:

Lot 1, 46 Charlotte Lane
Lot 2, 46A Charlotte Lane
Lot 3, 46B Charlotte Lane
Lot 4, 46C Charlotte Lane

A13. Financial/Development Contributions

Payment of financial contributions in accordance with Chapter 16.5 of the Tasman Resource Management Plan assessed as follows:

Reserves and Community Services

5.5% of the assessed market value of three of the lots.

Advice Note:

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, water, wastewater and stormwater.

B. LAND USE

For the avoidance of doubt, the land use consent commences on date on deposit of survey plan of subdivision.

- B1.** All buildings comply with the permitted activity rules for the Residential Zone (building construction or alteration Rule 17.1.4).

R D Shirley
Subdivision Officer