



STAFF REPORT

TO: Environment and Planning Committee

FROM: Mark Morris, Consent Planner, Subdivision

REFERENCE: RM041312

SUBJECT: **W and G BAIGENT – REPORT EP05-04-06** – Report prepared for 26 April hearing.

1. APPLICATION BRIEF

1.1 Proposal

The application is for a subdivision and landuse consent.

The proposal is to subdivide existing title CT 12B/1054 of 1.522 hectares into two allotments, Lot 1 being 0.64 hectares and Lot 2 being 0.88 hectares.

A landuse consent to erect a dwelling on each allotment.

1.2 Location and Legal Description

The property is located between Redwood Valley Lane and the Moutere Highway.

The site is relatively steep on the southern side and is covered in trees and scrub.

The certificate of title for the property is what is referred as a “Crown Title” in that it has never been approved or assessed by a territorial authority for residential use or access.

Because of this, there is no as-of-right ability under the Council’s Rural 1 zone rules to erect a dwelling on the site, and instead it is a restricted discretionary activity.

The legal description of the land is Section 2 Survey Office Plan 15080, Certificate of Title 13B/1222.

1.3 Zoning and Consent Requirements

The land is zoned Rural 1 under the proposed Tasman Resource Management Plan. Under the Transitional Plan (Waimea Section) the land is zoned Rural B. The only outstanding references in relation to Rural zone are those relating to Class A land which would not include this site. Therefore in relation to this site the Rural 1 zone is considered to be essentially operative, and no assessment is required under the Transitional Plan.

The subdivision is considered to be a Discretionary Activity under the relevant rules of the Proposed Tasman Resource Management Plan in that the minimum lot size is less than 12 hectares required under the controlled activity rule 16.3.7 for the Rural 1 zoned land.

Consent is required to erect a dwelling under rule 17.4.6 as a restricted discretionary activity.

There are 22 matters of discretion listed, but the most relevant are listed below:

1. *The location of the building on the site and the effects of the building on the potential availability of productive land, including any effects relating to the extent of the building and capitalisation of the site.*
2. *Location and effects of servicing, including wastewater disposal, water supply, access and traffic safety.*
3. *Effects on the amenities and rural character of the area.*
13. *The extent to which the proposed building would detract from the openness and rural character of the locality.*
14. *The extent to which the building would be compatible with existing development in the vicinity.*

2. INTRODUCTION

2.1 The Proposal

The applicant wishes to subdivide his existing title into two allotments Lot 1 being 0.64 hectares, Lot 2 being 0.88 hectares.

3. NOTIFICATION AND SUBMISSIONS

The application was publicly notified on 12 February 2005.

Eight submissions were received.

Redwood Valley Cellars

Concerned that if the subdivision is approved, that a dwelling may be placed a lot closer to Redwood Cellars which may result in noise issues.

Stated that although manufacturing is done during normal working hours, that it may be necessary to have some plant running 24 hours a day.

Wanted some sort of noise barrier between Lot 1 and Redwood Cellars such as double glazing on the dwelling.

C Wallis-Tomlins and B Tomlins

Supported the subdivision in regard to the building sites and the access coming off Redwood Valley Lane.

Opposed to any access coming off the Moutere Highway.

Pointed out that Tomlins Engineering Ltd has recently bought the 2295 m² section SO 15080 which adjoins the middle of the northern boundary of the site and fronts on to the Moutere Highway.

W J Edmund and E L Lynch

Do not object in principle to the subdivision, but before any application was approved, wanted Council to rectify any serious traffic safety and infrastructure issues.

Concerned about access off Redwood Valley Lane, which they claim is one of the most dangerous roads in the district, with many vehicles travelling over 80 km/hr and low visibility for many entrances.

There are already 16 access points on to this road in the first 850 metres.

The Redwood Valley Lane is often used by pedestrians, and have having more entrance points would increase the risk of accidents.

In winter there is a frost problem at the bottom of the property, which would affect access safety in winter.

W J Page

Owns a commercial apple orchard immediately opposite the Baigent land on southern side of Redwood Valley Lane.

Opposed to the application for the following reasons:

1. The land is zoned Rural 1, and the Council should uphold it own zoning and not allow further subdivision.
2. There has been marked increase in the amount of traffic on Redwood Valley Lane, with high traffic speeds and a high accident rate.

Redwood Valley Lane below the application site is shaded and frost bound in winter which would cause problems for access.

3. The stormwater from the site discharges through road culverts straight into our orchard. These will be aggravated by increased housing development on the proposed titles.
4. The site is typical Moutere gravel country, which typically has poor soakage, and the potential for surface water contamination into our orchard if there is a malfunction or failure of the effluent disposal system on site.

GCL Mason

Opposed to the application for the following reasons:

1. No water available in the Redwood Valley Scheme.
2. Concern over stormwater effects, which at present discharges into adjoining farmland and orchard land across the other side of Redwood Valley Lane.
3. Concern over the effects of effluent disposal as there is no drainage on the land. The proposed house site on Lot 1 appears to be very wet.
4. The houses will be exposed to all the noises of orchard stock farming activities which could lead to problems with cross boundary effects.
5. Redwood Valley Lane already has a high number of entrances. It is becoming more difficult to move stock down the road and is dangerous for pedestrians.

D Richards

Conditional support for the proposal, on the basis that:

1. There is sufficient setback from the Redwood Valley cellars and the existing orchard to minimise cross-boundary effects. A 100 metre setback from existing neighbouring landuses is suggested.
2. That improvements are made to the Redwood Valley Lane intersection, such as the widening of the Moutere Highway to improve sight distances. The building site on Lot 2 would need to be shifted to allow for this.

N Maisey

Opposed to the application, stating that it will set a precedent to allow residential type sections in a rural area.

The Redwood Valley intersection needs to be upgraded to make it safer because it is very accident prone.

The site should be limited to one dwelling and the speed on Redwood Valley lane reduced to 50 km/hr. The extra dwellings should not be allowed to adversely affect existing land uses such as the orchards and winery, which often happens when "city folk" move to the country.

G Henderson

Opposed to the application with concerns over the following:

1. Visual effects. Houses should not be built on ridgelines. The surrounding countryside is farmland and orchards. Having two dwellings on such a small block is not in keeping with the surrounding land uses.
2. Additional dwellings on the property

3. Effluent & stormwater disposal on the lots

4. STATUTORY CONSIDERATIONS

4.1 Resource Management Act

Part II Matters

In considering an application for resource consent, Council must ensure that if granted, the proposal is consistent with the purpose and principles set out in Part II of the Act.

If consent is granted, the proposed subdivision must be deemed to represent the sustainable use and development of the land resource. The critical issue of this consent is the potential effect of that subdivision and development on rural land values.

These principles underpin all relevant Plans and Policy Statements, which provide more specific guidance for assessing this application.

Section 104

Subject to Part II matters, Council is required to have regard to those matters set out in Section 104. Of relevance to the assessment of this application, Council must have regard to:

- Any actual and potential effects of allowing the subdivision to go ahead (Section 104 (1) (a));
- Any relevant objectives and policies in the Tasman Regional Policy Statement, and the Proposed Tasman Resource Management Plan (Section 104 (1) (b));
- Any other relevant and reasonably necessary matter(s) to determine the consent (Section (1) (c)).

In respect of Section 104 (1) (b), the Proposed Tasman Resource Management Plan is now considered to be the dominant planning document, given its progress through the public submission and decision-making process.

Section 104B sets out the framework for granting or declining consent based on the status of an activity as set out in the relevant Plan.

4.2 Tasman Regional Policy Statement

The Regional Policy Statement seeks to achieve the sustainable management of land and coastal environment resources. Objectives and policies of the Policy Statement clearly articulate the importance of protecting land resources from inappropriate landuse and development.

Because the Proposed Tasman Resource Management Plan was developed to be consistent with the Regional Policy Statement, it is considered that an assessment under the Proposed Plan will satisfy an assessment against Policy Statement principles.

4.3 Tasman Resource Management Plan

While the activity is being considered as a Discretionary activity under the Proposed Tasman Resource Management Plan.

The most relevant Objectives and Policies are contained in: Chapter 5 'Site Amenity Effects' and Chapter 7 'Rural Environment Effects'. These chapters articulate Council's key objectives: To protect rural land from inappropriate subdivision and development and to ensure character and amenity values are maintained or enhanced.

The most relevant Rules which follow from these imperatives are contained in Chapter 16.3 'Subdivision' and Chapter 17.4 'Rural 1 Zone'. The assessment criteria set out in 16.3A, which are provided to guide Council in evaluating the proposed subdivision.

Detail of the assessment of the proposed subdivision and landuse consents in terms of these matters is set out in the chapters following.

5. ASSESSMENT

In accordance with Section 104 of the Resource Management Act, Council must consider the actual and potential effects on the environment of allowing the activity, have regard for any relevant objectives, policies, rules, and consider any other matters relevant and reasonably necessary to determine the application.

5.1 Assessment of Environmental Effects

Pursuant to Section 104 (1) (a) of the Resource Management Act, the following effects assessment has been set out. For the sake of brevity, both subdivision and landuse matters will be considered within the following assessment.

Rural Land Productivity

It is acknowledged that the soil productivity is likely to be relatively low.

The south facing nature of the property, the relatively steepness of the property mean that the property will have limited potential for any horticultural uses.

According Council's soil mapping data base, the site is likely to be dominated by Mapua Hill Soils, which generally have low fertility and limited horticultural use, but with fertiliser application are suitable for pastoral farming and some tree cropping, based on the soil's good water holding capability.

The plan seeks to avoid the effects of fragmentation on all productive land (Objective 7.1.0). To achieve this, Council has set down minimum lots sizes of 12 hectares for the Rural 1 zone and 50 hectares in the Rural 2 zone. This is considered to be the sizes, where the adverse effects are considered to be no more than minor.

The general policy thrust of the Plan, is the less productive the land is, the larger the minimum lot size, apart from the specific rural-residential zones where opportunities are provided for rural residential allotments. In 7.1.30 it states that the Rural residential zones are *“intended to relieve ongoing pressure for fragmentation of the rural land resource.”*

The Council could have decided to not have specific rural residential zones and instead made all the Rural zones open to rural residential subdivision by setting a minimum lot size of say two hectares. This would be a clear policy change.

However the Council has deliberately chosen a different course which involves provided specific areas for rural residential development over 39 individual zoned areas and seeking to prevent further fragmentation of the Rural 1 and 2 zoned area.

Increased subdivision of Rural 2 land and less productive Rural 1 land into smaller rural- residential allotments can lead to a distortion of land values, whereby land becomes more valued for its lifestyle and non-productive use rather its soil based productive value, thereby further marginalising the economic and productive use of the existing rural properties, leading to calls for further subdivision.

The Environment Court case *Burnett.v. Tasman District RMA 320/94* involved the subdivision of a 5.5 hectare property in Awa Awa Road into three allotments, it was argued by the appellant that the property should be subdivided because it had little productive value based on its small size and low productive potential.

Judge Willy disagreed stating:

“ The point we wish to emphasise is that although there will be cases in which the question of productivity of the land in question is relevant to the outcome of an application for subdivision of rural land, an argument which carries the implication that rural land should be open for rural residential development merely because it is of low productivity, is in our view contrary to the provisions of the Act and in this case the planning instruments that we must have regard. Landowners must understand that having acquired small rural blocks which either have houses on them, or the right to build a dwelling, they cannot expect to further subdivide the property merely because there is no, or only limited productive use to which the land can be put”.
p 10 RMA 320/94

The appeal was declined and the Council’s decision to decline the application was upheld.

I acknowledge that the Awa Awa Road land has now been zoned Rural-residential. However in terms of the general thrust of plan, this how the matter should be dealt with. That is by way of rezoning, rather than sporadic ad-hoc consent approvals that undermine the integrity of the plan itself.

It is considered in the effects of the proposed subdivision in terms of productive values are more than minor.

Traffic Effects

There is a concern from a number of submitters over the traffic effects of the proposed subdivision.

The intersection of Redwood Valley Lane with the Moutere Highway has poor sight distances, particularly from the west and there have been a number of accidents at this intersection..

The subdivision will result in two additional crossings onto Redwood Valley Lane, which already has at least 16 crossing places.

The application has not included an adequate assessment of the traffic effects of the subdivision, or sight distances from the proposed access points, except that the lots will access from Redwood Valley Lane.

Servicing Effects

The applicant has given very little information on servicing of the subdivision.

In terms of water the applicant advises that *“Potable water will be supplied by the Redwoods Valley water supply and collection of rainwater”*.(p1 para 3)

I have been advised by Phil Benven of MWH, Council’s rural water supply consultants, that the Redwood Valley water scheme is fully allocated and no more new connections will be allowed.

This means that the only possibility for water supply will be roof tank supply. While I accept that Council does accept roof tank water supply, there are issues over water quality with roof tank water particularly in areas with commercial horticultural orchards and intensive spray regimes.

The applicant advises that *“domestic waste water will be disposed of on site after treatment”* (p1 para 3)

The site is on Moutere Clay soils which have very poor drainage qualities particularly in winter high water table conditions. This increases the chance of failure of waste water systems. There is concern from the adjoining orchardist in their submission, that if there was failure of the effluent disposal, that the runoff would end up in their orchard.

While it is acknowledged that there is technology available to design disposal systems in Moutere Clay soils, it is difficult to ensure that these systems will always be maintained and operated to ensure optimum efficiency. With small rural-residential lots there is very little “buffering” to deal with any failures, which means there is a greater potential for off-site contamination.

There is a cumulative effect issue, of continuing to allow on site disposal systems on small rural residential allotments in rural areas. Each system in itself may not have a significant effect, but cumulatively together they can have a significant effect on water quality and adversely affect the Waimea estuary which is a nationally recognised ecosystem.

This is one of the reasons that Council is seeking reticulation of the Rural 3 and 3A zones, so as to have greater control over waste water disposal in the area.

There has been no information on the disposal of stormwater from the subdivision. At present the site drains into the watertables on the northern side of Redwood Valley Lane. There few culverts draining this water table and it would appear that during heavy rain events the stormwater would overflow the road and flow into the adjoining orchard and farm blocks.

With the proposed residential building development and access on the two lots, there is potential for much faster runoff and sedimentation effects. There is concern from submitters that this will adversely affect downstream properties.

Rural Character and Amenity Values

The rural character of the upper Redwood Valley between the Moutere Highway and Redwood Valley Road is still predominantly characterised by relatively large farm and forestry allotments of varying sizes with an associated low density of built form and structures.

While it acknowledged that there may be some allotments that are of a small size, the overall character is still of a productive landscape of pastoral farming, forestry and commercial orcharding.

The proposed subdivision resulting in an additional rural-residential allotment will have an adverse effect on the rural landscape of the area.

The proposal is a form of development that is not specifically provided for in the Rural 1 and 2 zones. The PTRMP provides for a low-density of development (i.e. one dwelling per 50 hectares for Rural 1 and 12 hectares for Rural 1).

The Council's policies and objectives on the Rural Environment seek to protect the rural environment from the adverse effects of activities including of subdivision and urbanisation and thereby maintaining and enhance the rural character and amenity values of the area.

Amenity values, as defined in Section 2 of the Resource Management Act 1991, means:

“Amenity values” means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.”

The creation of an additional rural-residential lot, has the potential to detract from the amenity values of the natural and the rural character of the surrounding environment. This has been a concern of number of the submitters.

The Rural 1 and 2 minimum lot sizes for subdivisions and single dwellings act as a “density control mechanism” that, if consistently applied, should maintain the desired rural amenity that the Council planning documents are seeking.

It is accepted that the present title is already small, but this relatively common in the Rural 1 and 2 zones through historical subdivision in the past. The intention of the policies and objectives of the Plan is that these small lots remain as they are, rather than being progressively subdivided on the basis of their small size.

There is also a high likelihood that if this subdivision was allowed, then new owners could also seek to be further subdivided on the basis that the lots are already rural residential already.

If the subdivision was approved, then the integrity of the planning documents to maintain that rural amenity would be clearly undermined in that inevitably many other similar subdivision applications would seek similar treatment and lead to a cumulative effect on the existing rural character and amenity of the area.

Cross-Boundary Effects / Reverse Sensitivity.

The site adjoins a productive orchard that is dependent on a regular spray schedule to comply with export standards

There is potential for new residents to seek to curtail this orcharding operation because of noise and sprays.

The site adjoins a rural industrial zone (by way of a paper road).

While there do not appear to be existing concerns a over the industrial operation, the site could be sold in the future and could be sold to another operator who could develop the site to its potential.

The plan allows for up to 75 % coverage and 15 metres high buildings as a permitted activity (Section 17.10). This would allow for a very large industrial operation, that would likely impact on the Rural residential allotments. Residents could seek to curtail this industrial operation

It is this “reverse sensitivity, that the plan is seeking to avoid. The location of the site with a rural industrial zone on one side, commercial orchards on the other mean that the is a high potential for cross-boundary conflicts over the lifetime of the property, and therefore it would be unwise to allow further subdivision of the site that will result in additional dwellings.

5.2 Relevant Plans and Policy Statements.

The subdivision and resulting landuse activities must be deemed to be consistent with relevant objectives and policies pursuant to Section 104 (1) (c) and (d) of the Act. The most relevant Plan is considered to be the proposed Tasman Resource Management Plan and will be used in this assessment. Because this was developed to be consistent with the Regional Policy Statement, the assessment would also be considered satisfy an assessment under the Policy Statement.

The following summarises the most relevant plan matters and provides brief assessment commentary:

Chapter 5 - Site Amenity Effects Council must ensure that the rural character and amenity values of the site and surrounding environment are protected, and any actual or potential effects of the proposed subdivision must be avoided remedied or mitigated, including cross boundary effects.

Objectives: 5.1, 5.2, and 5.3 As detailed in the assessment of effects (Chapter 5.1), there will be an effect of the proposed activity on character and amenity values. An additional rural residential allotment

Policies: 5.1.1, 5.1.3A, 5.1.9, 5.2.1, 5.2.7, 5.2.8, 5.3.2, 5.3.3, 5.3.5 would be created in a rural landscape, contributing to 'rural residential' (as opposed to 'rural') character and amenity in the area.

Chapter 7 – Rural Environment Effects The productive potential of land resources must be protected, and used efficiently. Rural character and amenity values must be maintained or enhanced

Objectives: 7.1, 7.2, 7.3 A small area of productive rural land will be lost for use in soil-based production.

Policies: 7.1.1, 7.1.2, 7.1.2A, 7.1.3, 7.2.1, 7.2.2, 7.2.4, 7.3.1, 7.3.3, 7.3.7, 7.3.8. Rural amenity values may be affected by the additional residential activity in the area. These matters are discussed in more detail in the assessment of effects (Chapter 5.1).

Chapter 10 – Significant Natural Values and Cultural Heritage Archaeological sites of significance must be protected, including any sites of significance to Maori.

Objectives 10.1 A notation as part of consent if granted can be provided to alert the applicant of her obligations in terms of the Historic Places Trust. There are no known sites of heritage value.

Policies 10.1.3, 10.1.5.

Chapter 11 - Land Transport Effects The potential effects of the proposed subdivision on traffic safety must be avoided, remedied or mitigated.

Objectives 11.1, 11.2 The proposed subdivision and additional dwellings will result in additional traffic on to Redwood Valley Lane and the supporting roading network. There are safety concerns about the Redwood Valley Lane intersection

Policies 11.1.2B, 11.1.3, 11.1.4A.

This matter is discussed in more detail in the assessment of effects (Chapter 5.1).

Chapter 16.2 Transport – Permitted activity performance conditions that manage vehicle access, parking and road standards are contained in this rule.

Chapter 16.3 Subdivision – Requires Discretionary Activity resource consent for Rural 1 Zone subdivision, namely the creation of an allotment that will be less than 12 hectares.

Assessment Criteria: Rule 16.3A Assessment criteria set out in Rule 16.3A provide guidance in the assessment of the application for determining appropriate conditions. Key matters such as servicing, amenity values and the effect of the proposal on key resources must be addressed when assessing any application for subdivision consent. Matters most relevant to this application have been covered in the assessment of effects of this report (Chapter 5.1).

Chapter 17.4 Rural 1 Zone Rules – Any activity on the proposed lots is subject to permitted activity performance standards and conditions set out in Rule 17.4, Rural 1 Zone rules.

The proposed new dwellings and residential activity are a Restricted Discretionary Activity in the Rural 1 Zone.

Chapter 36.1 Discharges to Land – The discharge of wastewater to land must comply with performance standards and conditions of this rule or otherwise require separate discharge consent.

Standards for the discharge of domestic wastewater must be met. These can be ensured by way of conditions if consent to the dwellings is granted.

Chapter 7 *Rural Environment Effects* is concerned with the effects of land fragmentation on all productive land whether it be highly productive or not.

In Objective 7.1.0 it sets out its principle objective to:

“Avoid the loss of potential for all land of existing and potential productive value”.

Policy 7.1.2 seeks to: *“avoid, remedy or mitigate the effects of activities which reduce the are of land available for soil-based production purposes in rural areas.”*

In this case the subdivision will result in a result in rural-residential development over the entire site thereby reducing the potential for the block to be used for any soil-based productive purposes.

Policy 7.1.2A seeks to avoid, remedy or mitigate the *“cumulative effects on the soil resource and productive value of the land.”*

In this particular case, the actual effects on soil productive values may not be significant in terms of actual loss of productive land, but its approval is likely to lead to other similar applications in the Rural 1 and 2 zone, that if subsequently approved would create a significant cumulative adverse effect on the rural land resource.

Policy 7.1.3 requires land parcels *“upon subdivision”* to be of a size that *“retains the land productive potential”*, having regard to the *“versatility of the land”*.

The Proposed Plan has set down 12 hectares as the size whereby adverse effects on versatility and productive potential are “no more than minor” by way of it’s controlled status. It is clear that in the Rural 1 and 2 zones that the main criteria for subdivision is whether productive versatility and long term productive use can be achieved within each lot. If it can not, which is clearly not the case with this proposal, then the site should remain as it is and not be further fragmented.

It is my conclusion that Council’s planning documents and the policies that I have set out above, seek to avoid the adverse effects of fragmentation of productive land in both the Rural 1 and 2 zones. The priority given to higher productive land does not some how mean that less productive land should be available for rural residential subdivision.

In fact it clear through the explanation of objective 7.2 (which sets out that Council will provide for rural-residential activity in restricted locations), in 7.2.20 that this will be achieved through the specific rural residential and rural 3 and 3A zones. There is no mention of the Rural 1 and 2 zones.

In 7.1.30 under the *“Principal reasons and Explanation”* it states that these rural residential zones: *“are intended to relieve the on going pressure for fragmentation of the rural land resource.”*

The Council has provided ample opportunity for rural-residential development by zoning large areas of the district rural-residential.

In conclusion it is considered that the proposed subdivision is contrary to the policies and objectives in Proposed Plan in that it seeks to create allotments for rural residential purposes that is not envisaged in the Rural 1 zone.

5.3 Part II Matters

The proposed subdivision and landuse activities are considered to be inconsistent with the purpose and principles contained in Part II of the Resource Management Act.

Part II of the Act is concerned about “maintaining and enhancing amenity values” under Section 7 (c). As I have discussed earlier the proposal will adversely affect the open rural amenity of this area by introducing a higher density of rural residential development that is incompatible with its Rural 1 zoning.

This is a concern of submitters, who see that the subdivision and resulting dwellings will adversely affect the rural character of the surrounding area, particularly if it creates a precedent for other subdivisions in the area.

It is considered that the application is not consistent with the Act's purpose of achieving the sustainable management of natural and physical resources.

5.4 Other Matters

Precedence and Cumulative effects

Precedence in itself is not an "effect" but the subsequent approval of this subdivision is likely to lead to other similar applications from Rural 1 and 2 zoned properties each wanting like treatment. This can lead to a cumulative effect that is very much a relevant adverse effect under Section 3 (d) of the Act.

In resource management terms, the cumulative effect of establishing a pattern of consent decisions based on other applicants wanting similar outcomes, can have adverse effects on significant resource management issues.

In the case of this application to subdivide, the key issue is the potential for a cumulative loss of rural character and amenity values associated with more dense residential development in the rural landscape.

The issue of "precedence" must be acknowledged in practical terms as giving rise to cumulative adverse effects.

- Applications for consent are lodged on the basis that consent to previous applications have been granted under like conditions.
- Council can expect pressure to act consistently in its application of Plan objectives, policies, rules and assessment criterion. That is, Council is expected to be consistent in its decision-making.

In the *Corsan v Taupo District Council*(RMA 058/01) case the Court found that the integrity of the plans and the consistent administration of the planning documents was an important issue. In his conclusion Judge Whiting states:

"We find that the integrity of the plans and confidence in their consistent administration is the major determinant in this case."

This was in a case where the application only involved one additional allotment of around 2 hectares in an area where the minimum lot size is 4 hectares as a discretionary activity under the Proposed Plan.

There is a more recent case *Jennings v Tasman District Council W046/2003*, that involved the subdivision of 6 hectare block into three lots in Rural 1 zone, in Teapot Valley with low productivity values similar to this site.

In this case Judge Sheppard found that there was an issue of precedent and cumulative effects that would result if the subdivision was granted.

He stated:

“We also accept that the effect on the environment of other ad-hoc consents for rural residential subdivision on hill slopes around the Waimea Plain would be further fragmentation, loss of rural character and amenity, and as cumulative effects they would have high impact on the environment. There would also possibly be landscape effects and servicing effects as well, but we do not consider them.”[135]

Judge Sheppard concluded that:

“In short, we find that consenting to the proposed subdivision would have an adverse precedent effect.” [136]

In his assessment of cumulative effects, Judge Sheppard described how small incremental subdivisions such as this one, that may by themselves not have a significant actual effect, contribute to a cumulative effect on rural character.

He stated:

“Indeed it is the nature of rural character that it is vulnerable to being lost by incremental changes, each itself relatively small in scale.” [124].

It is considered that this subdivision, if approved, would also have adverse precedent effect, in that it would lead to further applications for similar Rural 1 & 2 zoned land that if approved would have significant cumulative effect on the environment.

In this case we have a 12 hectare minimum lot size under the Proposed Plan. Clearly the integrity of the Rural Zone rules in achieving a low density productive rural environment will be undermined by the approval of this application.

Permitted Baseline Test

Recent Environment Court and Court of Appeal cases have established the principle of the “permitted baseline test” as a way of assessing whether the effects are more than minor.

Under this principle the proposal is compared with what could be done as permitted activity under the relevant Plan.

While there is some potential for building development on the site, there is no as-of-right ability to erect a dwelling on the site. This is because the existing title has never been approved by a territorial authority, and instead is a “crown” title.

This means that the site does not meet the criteria under 17.4.5 (b) for a Controlled Activity, making it a restricted discretionary activity under 17.4.6.

The resulting subdivision with an additional rural-residential allotment and the resulting built development will clearly have a much greater effect on the environment.

It is considered that in terms of the permitted baseline test, that the adverse effects are more than minor.

6. CONCLUSIONS

- 6.1 The proposal is a Discretionary Activity under the Proposed Plan.
- 6.2 The property is zoned Rural 1 under the Proposed Plan.
- 6.3 The property is in an area of mainly extensive productive pastoral and forestry landuses. The northern side of Upper Redwood Valley is still dominated by relatively large holdings giving an open rural landscape. To approve this subdivision would adversely affect this rural amenity, in a way that is not envisaged by the Rural 1 and 2 zone rules and the related policies and objectives under the Proposed Plan.
- 6.4 The property does not have any unique characteristics that would enable Council to approve the subdivision without expecting further applications from similar sized Rural 1 properties all of which would expect similar favourable treatment.
- 6.5 The policies and objectives of the Proposed Plan seek to avoid the adverse effects of fragmentation on productive values of all rural land (objective 7.1.0) including those on less productive land.
- 6.6 It is acknowledged that the actual adverse effects of fragmentation on less productive land is less significant in terms of loss of productive potential and cross and this is acknowledged in plan under 7.1.30. However it is still a significant issue in the plan policies and objectives which under 7.1.1 seek to: *“Avoid the loss the loss of potential of all land of existing and potential productive value to meet the needs of future generation”*.
- 6.7 The Plan acknowledges that there will be demand for rural-residential subdivision in rural areas and has provided for it in “restricted locations” these being the 39 rural residential zoned areas. The rural residential zones are specifically intended to complement the Rural 1 and 2 zones in order to *“relieve the ongoing pressure for fragmentation of the land resource”* (7.1.30). This overall objective has been further enhanced by the Rural 3 and 3A zoning which are designed to specifically provide for rural-residential living with a planned approach to infrastructural servicing. For these above polices and objectives to successful in the long term, the Council needs to be consistent in retaining the availability of Rural 1 and 2 land for land based productive and production purposes while allowing rural residential subdivision in the specific rural residential zones. With this particular property that best way to achieve this is retain in its present form.
- 6.8 The application is against the general thrust of the council’s planning documents which seek to direct development to specified rural residential zones where the development can be consolidated. Instead this proposal seeks to create an ad hoc rural residential development in a productive rural area, which is contrary to the principles of sustainable development of resources required under Part II of the Resource Management Act 1991.
- 6.9 It is considered that the proposal is contrary to the policies and objectives of both the transitional plan and the adverse effects on the environment are more than minor. Therefore the application should be declined under Section 104B of the Resource Management Act 1991.

7. RECOMMENDATION

That pursuant to Section 104B of the Resource Management Act 1991 the Tasman District Council declines its consent to the application by W and G Baigent to subdivide CT NL 12B/1054 into two allotments (RM041312) and to erect a dwelling on each allotment.

8. CONDITIONS

In the light of my recommendation to decline consent as set out above, I consider that conditions cannot be imposed that would effectively mitigate the adverse effects of the proposal. Therefore, I have not included any recommended conditions.

Mark Morris
Consent Planner
(Subdivisions)