



STAFF REPORT

TO: Environment and Planning Committee

FROM: Mark Morris, Consent Planner, Subdivision

REFERENCE: RM041389

SUBJECT: **D A HODGES – REPORT EP05/04/07** – Report prepared for 26 April hearing.

1. APPLICATION BRIEF

1.1 Proposal

The application is for a subdivision consent.

The proposal is to subdivide existing property of 51.3 hectares into four allotments, between 12 and 14.8 hectares in area.

1.2 Location and Legal Description

The property is fringed by Bests Road on the Eastern side, Moutere Highway on the western side and George Harvey Road on the southern side.

Most of the property slopes gently towards the north-east and is covered in pasture except for the far western edge which is steeper has scrub in some of the steeper gully areas.

1.3 Zoning and Consent Requirements

The land is zoned Rural 2 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 zones are those relating to Class A land which would not include this site. Therefore in relation to this site the Rural 2 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 50 hectares required under the controlled activity rule 16.3.8 for the Rural 2 zoned land.

2. INTRODUCTION

2.1 The Proposal

The applicant wishes to subdivide his existing property into four allotments Lot 1 between 12 hectares and 14.8 hectares.

3. NOTIFICATION AND SUBMISSIONS

The application was publicly notified on 12 February 2005.

Three submissions were received.

J Daubney

Opposed to the application for the following reasons:

1. Dividing the land into smaller blocks is essentially changing the Resource Management Plan.
2. There is a need to retain larger economic farming blocks. There are already plenty of small blocks available in this area, particularly around Dawsons and Old Coach Roads.
3. The proposed access to Lot 4 has poor sight distances and needs to be repositioned to a safer location which should be George Harvey Road.
4. The subdivision should not be allowed as it is more for economic reasons rather than land management.

S and D Ball

Neither support or oppose the proposed subdivision, but made the following comments:

1. Stormwater runoff from the western part of the site discharges on to their property and has caused minor flooding in the past. Further development on the site could increase this storm water flow and exacerbate the problem.
2. Concern that there could be increased runoff from pesticides, fertilizer, animal waste and septic tank discharges.

Transpower New Zealand Limited

Opposed to the application on the basis that the application has not given consideration to the potential effects of the transmission line that runs through the property.

This is the main Stoke-Takaka Transmission line. The submission pointed out the actual and potential adverse effects of having development below or near transmission lines.

If consent was granted Transpower wanted a number of conditions included in the decision that are deigned to protect the long term functioning of the transmission lines running across the property.

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 17.5 'Rural 2 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.

Rural Land Productivity

I accept Mr Bealing's assessment of the soil productivity of the property.

Mr Bealing finds that the majority of the soils on the property are Mapua Sandy Loams which are generally associated with the Rural 1 zone because of their suitability for horticultural crops, in spite of its low natural fertility.

Mapua Sandy Loams have a higher degree of versatility of productive uses than the Mapua Hill soils which are generally associated with Rural 2 zoning, though irrigation is usually required bring out this potential.

The applicant is using the fact of the soils being more associated with the Rural 1 zoning as justification that the 12 hectare lot size, used in the Rural 1 zone, is the more appropriate lot size. The applicant states that:

“The effect of subdividing the land as proposed will create opportunity for it to be put into productive use, or to remain in pastoral use but under several ownerships rather than single ownership.”

This is contrary to underlying philosophy of the Council’s planning documents which is that as allotments get smaller the ability of them to be used productively and for soil based production gets less.

The emphasis of the policies and objectives in Chapter seven is that should be less fragmentation of the highly productive land rather than more.

The layout of the allotments does not appear to have a lot to do with productive values. Most of the allotments have a mixture of Mapua Sandy loams and Mapua Hill soils. So that at least two of the allotments (Lots 2 and 3) would have less than 12 hectares of the Mapua sandy Loams.

John Bealing’s report does not make any mention of the lot layout and relationship between each lot and soil based productive value.

Mr Bealing’s report points out that high horticultural production is dependent on availability of irrigation water (p5) and that the availability of this would be a problem (p6), though there may be some crops such olives and grapes which you can grow without irrigation.

The application does not involve any particular productive use such planting out in olives or grapes prior to title issue. There are no plans to provide irrigation water to each allotment. Instead it would appear that the lots would be sold as large “lifestyle” lots, whereby much of the value would be based on the ability to erect a dwelling on the lot.

I accept that the present title has the right to erect a dwelling but the value of the land is more based on the productive use rather than rural-residential use.

My experience with 12 hectare allotments on the fringes of Rural 1, that do not have irrigation water, and are generally Mapua Sandy Loam soils, is that they are purely large lifestyle lots with the much of their value (or price) based around rural-residential use, rather than productive use. In these cases, because the allotments can be rightfully created as a controlled activity, Council has to approve them, even though it is dubious whether productive use will be enhanced or retained by the subdivision.

My understanding is of the horticultural and viticultural industry is that while in 1996, 12 hectares could have been a productive unit, the situation is quite different now and you need a much larger area of land to have a sustainable economic unit.

I accept that in the Rural 1 zone with the 12 hectares controlled activity status, landowners have the right to subdivide to that level. However in this case, the property is zoned Rural 2, the subdivision is discretionary, and I do not believe that productive versatility will be enhanced in short term or the long term.

Instead the land will be valued more for its rural residential use, rather its productive use. This further distorts the values of surrounding land, leading to demand for further subdivision.

The issue with fragmentation is that it is a progressive process. In this case you may have four 12 hectare lots, but what going to stop those new landowners seeking to further subdivide their lots on the basis of low productivity and a lack of irrigation water?

The applicant has in the past, already sought to subdivide this same property into nine rural residential allotments under RM040221, but this was later withdrawn.

It is my opinion that if Council was to approve this subdivision proposal then it is highly likely that there will be further subdivision of the property into yet smaller allotments.

It is clear from Objective 7.1.0 that Council wants to “avoid” the loss of potential for all productive land, not just for this generation but for future generations. Council is taking a long term approach to the sustainability of the rural land resource.

The emphasis is on “avoiding” the effects rather than mitigating or remedying those effects.

It is my conclusion that this will not be achieved by this subdivision, and it will result in productive land being fragmented, in such a way that will not protect the long term productive potential of the soil resource for future generations.

The way for the property to retain a flexibility of soil based productive uses, over the long term, is for the property to be retained in its present size.

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

Traffic Effects

There has been some concern over the position the Lot 4 access crossing. This could easily be changed to comply with standards in 16.2.2 of the Proposed Plan.

Servicing Effects

It is considered that there are no major servicing issues with this subdivision.

Rural Character and Amenity Values

The Rural 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.

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 the Rural 2 zone).

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 enhancing 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 three additional lots, has the potential to detract from the amenity values of the natural and the rural character of the surrounding environment.

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.

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.

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

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 An 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
Policies 10.1.3, 10.1.5. A notation as part of consent if granted may be provided to alert the applicant of her obligations in terms of the Historic Places Trust. There are no known sites of heritage value.

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
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.

The standards can be met by the applicant, though further works may be required to meet sight distance requirements in 16.2.2.

Chapter 16.3 – Subdivision – Requires Discretionary Activity resource consent for Rural 2 Zone subdivision, namely the creation of an allotment that will be less than 50 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 17.5 – Rural 2 Zone Rules – Any activity on the proposed lots is subject to permitted activity performance standards and conditions set out in Rule 17.5, Rural 2 Zone rules.

Subject to performance standards and conditions for buildings in this Zone, the proposed new dwellings and residential activity are permitted in the Rural 2 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 area of land available for soil-based production purposes in rural areas.”*

In this case the subdivision will be fragmented into four blocks, with associated residential areas, thereby reducing the potential for the block to be used primarily 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.”*

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 50 hectares as the size whereby adverse effects on versatility and productive potential are “no more than minor” by way of its controlled status. I accept that the land has higher productive values than most Rural 2 properties, but I believe the productive potential will better protected and “retained” in the long term by keeping the property as it is, rather than being subdivided into four lots.

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. In conclusion it is considered that the proposed subdivision is contrary to these policies and objectives in Proposed Plan.

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 Rural 2 zone rules act as a density control mechanism that if consistently applied, should achieve an open rural amenity. This will not be achieved by this subdivision, that it will create four times as many dwellings as would normally be allowed as a permitted activity.

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 2 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.

In this case we have a 50 hectare minimum lot size under the Proposed Plan. Clearly the integrity of the Rural 2 Zone rules in achieving an low density 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, and there is potential for one dwelling as a permitted activity.

The subdivision will result in three additional dwellings and all the other associated buildings that would result from the four allotments.

The resulting subdivision and the resulting built development on each lot 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 2 under the Proposed Plan.

6.3 The surrounding area 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 2 zone rules and the related policies and objectives under the Proposed Plan.

6.4 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) for the benefit of future generations. It is considered that this will not be achieved by this application.

6.5 It is acknowledged that the soils of the property have a higher productive value than most Rural 2 soils. However I do not accept that fragmenting the property into four allotments will adequately protect the protective potential in the long term.

Instead it is likely that the lots will be large lifestyle blocks, with the likelihood of further requests for subdivision in future. It is this progressive fragmentation and resulting cumulative effects that the Plan is seeking to avoid.

6.6 It is considered that best way to protect and retain the long term productive potential of the property is for it to remain in its present size and form.

6.7 The application is against the general thrust of the council's planning documents which seek to protect the long term productive potential of land, particularly high productive land and is contrary to the principles of sustainable development of resources required under Part II of the Resource Management Act 1991.

6.8 It is considered that the proposal is contrary to the policies and objectives of both the Regional Policy Statement and the Proposed 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 D A Hodges to subdivide CT 104281 into four allotments (RM041389).

8. CONDITIONS

Based on my recommendation to decline consent it is considered that conditions cannot be imposed on this consent to satisfactorily mitigate the adverse effects of the proposal. Therefore I have not included any recommended conditions.

Mark Morris
Consent Planner
(Subdivisions)