



## STAFF REPORT

**TO:** Environment and Planning Committee

**FROM:** Mark Morris, Senior Consent Planner, Subdivision

**REFERENCE:** RM041338

**SUBJECT:** **R J CALLAGHAN – REPORT EP05/05/03** Report prepared for 10 May hearing.

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### 1. APPLICATION BRIEF

#### 1.1 Proposal

The application is for a subdivision consent.

The proposal is to subdivide existing certificate of title NL 12B/567 of 2.035 hectares into two allotments. Proposed Lot 1 has an area of 0.97 hectares. Proposed Lot 2 will be 1.07 hectares.

The application originally include two site plans, one of which had a third allotment (Lot 3) of 1700 square metres. However, as Council's Community Service's department have advised they are not interested in having this land vested as reserve, I have focused my report on the two lot proposal.

#### 1.2 Location and Legal Description

The property is located on State Highway 60 at Parapara Inlet.

The legal description of the land is Lot 1 DP 18457 Certificate of Title NL 12B/567

#### 1.3 Zoning and Consent Requirements

The land is zoned Rural 2 under the proposed Tasman Resource Management Plan. As there are no outstanding references on the Rural 2 zoning it is considered that the Rural 2 zoning is operative pursuant to Section 19 of the Resource Management Act 1991. Therefore no assessment is required under the Transitional District 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.

The proposed building site for Lot 2 is within the Coastal Environment Area, as set down in the Proposed Plan. This means that any new building would require resource consent as a controlled activity under rule 18.14.3 of the Proposed Plan. However the applicant has not applied for resource consent for a new dwelling on the proposed Lot 2.

## **2. INTRODUCTION**

### **2.1 The Proposal**

The applicant wishes to subdivide his existing title into two allotments Lot 1 being 0.97 hectares and Lot 2 of 1.07 hectares.

The site consists of relatively steep bush country overlooking the Parapara Inlet. The site adjoins the State Highway 60 on the eastern side. At present the site shares an access with two other properties.

The State Highway is now a limited access road with all access on an off the State Highway controlled by Transit New Zealand.

The applicant has gained consent from Transit New Zealand to form a new access to the existing site. As far as I am aware, this is only for the existing site and is not for the proposed subdivision. Transit New Zealand have opposed the subdivision and a summary of their submission is set out below in 3.0.

## **3. NOTIFICATION AND SUBMISSIONS**

The application was publicly notified on 19 February 2005.

Seven submissions were received.

### **T H Riley**

Opposed to the application for the following reasons:

1. The operative zoning is Rural 2 with a minimum lot size of 50ha.
2. The original 10 acre blocks were created in a crazy manner with no regard given to Soil and Water Conservation values. To allow further subdivision will completely destroy those values.
3. No precedence should be given for of the Rose block of 0.96 ha which was created for a special purpose, (industrial use) even though that use has discontinued.
4. If allotments are continually split up, you will end up with "table-top" sized allotments in the Rural zone.
5. The applicant has destroyed an attractive area of public reserve in putting in the new access.
6. Effluent disposal will not work in this high rainfall area.
7. Sedimentation runoff from development in these steep hillside areas will be extreme in this high rainfall area.
8. This area is not suitable for more intensive rural residential development.

## **L W Robinson**

Opposed to the application for the following reasons:

1. The Council has declined the previous rural residential subdivision in this area (Kowhai Point Eco Park). Council needs to be consistent in its decision making.
2. The previous Rose subdivision was an anomaly, and this should not be used as a reason to approve another.
3. Allotments less than 1hectare do not allow for a reasonable separation of dwellings that exists at present.
4. There are already plenty of smaller lots available in Collingwood and Pohara.

## **A J Bell**

Opposed to the application for the following reasons:

1. Granting the application would be inconsistent with previous decisions to decline consent to subdivide in the immediate area.
2. The rural character of the area would be compromised by creating allotments of a higher density than the existing pattern of allotment sizes in the area.
3. Granting consent would send a signal that rural residential subdivision in this area is acceptable. If Council is going to allow this then this should be done through a Plan Change, which would allow the community input into this strategic planning issue. This would be more appropriate than having sporadic and ad hoc rural residential development occur.
4. The public require fair and consistent administration of the Plan through the consent process. The plan contains specific Rural–Residential zoned areas and thus there is a clear direction to the community that sporadic ad-hoc rural residential development should not be encouraged. To undermine this application would undermine the integrity of the Plan and the community's confidence in the resource consent process.
5. Concerned at the adverse cumulative effect of fragmentation in the Rural 2 zone. Each individual subdivision may have limited adverse effects, but cumulatively they can add up to a major and significant erosion of the potentially productive land resource and also affect other aspects such as character and amenity values, servicing needs, roading improvements and cross boundary effects.
6. There are no unusual features that could distinguish it from other Rural 2 land.
7. The allotment size proposed is far smaller than most other properties in the area.
8. The precedent effect of granting this application would lead other landowners to lodge other similar applications.

9. Approving this application would add to the cumulative effect of undesirable ad hoc ribbon development.
10. The fact that the property does not have land of high productive value, should not be a reason to approve further subdivision.
11. Rural character and amenity values are a “public good” and detrimental effects on these cannot be signed away through ad hoc ribbon development.
12. The new driveway access is initially quite steep and there is limited visibility until the vehicle is near to the edge of SH60. The present access will still have to remain for the neighbour’s use, so another access will compound the access problems. This is a particularly fast and dangerous stretch of state highway with a number of accidents occurring. This was seen as reason to decline previous consents in the area such as RM940597 (L and A Robinson).
13. The tight soil type in this high rainfall area is marginal for effluent disposal. It is important that the Parapara estuary, that is accorded national significance, is not put at risk from sewage pollution.
14. The proposed subdivision has little merit and does not present sustainable management of the District’s natural resources. The effects will be more than minor and granting consent would be contrary to the policies and objectives and policies of the relevant planning documents and Part II of the Resource Management Act.

**H Wallace**

Opposed to the application, stating that the proposal was poor and ad hoc planning and that approval would create an expectation of smaller subdivisions.

**W E Adams**

Opposed to the application, stating that smaller lot size should be opposed in order to maintain the rural coastal character of the area. Instead any further subdivision should be dealt with by a zone change.

If the application was approved, wanted the following conditions imposed:

1. No further subdivision of the new titles.
2. Power lines underground.
3. Height restrictions to be imposed, so that buildings do not detract from the natural character of the Parapara Inlet.

Council needs to be aware that the proposed house site is close to my established woodlot, which is a permitted activity in the Rural 2 zone.

## **M E and C M A Randall**

Supported the application on the basis that this piece of land has already been compromised by earlier subdivision by the former owner LW Robinson.

Requested that this subdivision not set a precedent for future applications as all other landowners who purchased on this stretch of State Highway, did so on the understanding that this land would not be further subdivided.

Wished to continue the regeneration of the native bush which makes subdivision incompatible, and we value our privacy.

## **Transit New Zealand**

Opposed to the application for the following reasons:

1. The access does not meet the minimum 300m sight distance on both sides required for a 100kmph speed limit. The additional lot will contribute additional traffic movements to substandard access that is likely to adversely impact on highway safety and sustainability.
2. The allotments are well below the size envisaged by the Rural 2 zoning and approval would harm the integrity and objectives/policies of the TRMP.
3. The subdivision as proposed, would compromise the operation of an integrated, safe, responsive and sustainable land transport system, in direct contravention of s.77 (1) of the Land Transport Act 2003.

## **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 relevant planning document, given the operative status of the Rural 2 zone rules.

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**

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. For the sake of brevity, both subdivision and landuse matters will be considered within the following assessment.

### Rural Land Productivity

According to the Agricultural New Zealand Assessment of Land Capability (1994), the soils of this property are classified as Class E which has limited productive potential, mainly for grazing and forestry. This particular property, because of its steep terrain would have limited productive use, and so it is likely that it would remain in its current vegetated state. However these Class E soils are very common in the Rural 2 zone and much of the less well drained areas in the Aorere Valley are in this soil type.

The Proposed Plan seeks to avoid the effects of fragmentation on all productive land (Objective 7.1.0) which includes the Rural 2 land that may be of low productive value. To achieve this, Council has set down minimum lots sizes of 50 hectares for the Rural 2 zone. This is considered to be the size, where the adverse effects are considered to be no more than minor.

The general, the policy thrust of the Plan, is that the less productive the land, 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 1 and 2 zone open to rural residential subdivision by setting a minimum lot size of say four 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 zoned land into small 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.

While it is considered that the actual effects of the proposed subdivision in terms of productive values may be no more than minor, there would significant cumulative adverse effects if the approval of this subdivision led to other small lot Rural 2 subdivisions being approved in the Golden Bay Rural 2 zone.

## **Traffic Effects**

The property accesses on to State Highway 60. This highway is a limited access, highway with all access controlled by Transit New Zealand. Transit New Zealand in its submission (set out above in 3.0) is concerned about the effect of additional traffic movements from the additional allotment.

While the new access point improves sight distances, according to the Transit New Zealand submission, the sight distance on the northern (Collingwood) side (210m) does not achieve the 330m required on a 100 kph highway.

## **Servicing Effects**

The applicant has provided a report from Lets Go! Enterprises confirming that on site disposal will be possible using an Aerated *STEMPFLOW* Wastewater Treatment system with a 211 square metre land application area based on a Designed Irrigation Rate (DIR) of 3.6mm per day.

It is accepted that if all the recommendations of the above report are followed then the effluent disposal standard under section 36.1.4 of the Proposed Plan would be able to be met. However there is no guarantee that over the long term that the system would always be maintained properly and with the property so close to the Parapara estuary, there is potential for contamination effects on the coastal ecology.

There are cumulative effect issues of allowing more and more on-site effluent disposal systems in sensitive coastal areas such as this.

The property can be serviced for power and telephone, through the overhead lines that cross the existing property.

The applicant proposes to provide a water supply to each allotment by way of a pump supply from the adjoining Randall property, together with 25,000 litre storage tanks on each allotment.

## **Rural Character and Amenity Values**

The rural character of the area of western Parapara is predominantly characterised by high level of natural amenity with an associated low density of built form and structures.

While it is acknowledged there are a number of the small blocks in the immediate area, the regenerating bush cover helps provide a high degree of natural amenity. However this natural amenity is likely to be compromised if Council continue to approve small allotments such as this one, particularly if approval led to other similar application in the area.

Once the lot size goes down below 1 hectare it is much more likely that buildings will dominate the landscape and less likely that the vegetation will be able to mitigate the effects of the buildings. While the Coastal Environment rules control building height and setback, there is no control on dwelling site coverage except boundary setbacks.



This means you could end up with a substantial area of buildings on both allotments.

There is widespread concern amongst submitters of the adverse effects on the rural amenity of approving further rural residential of the size proposed in this subdivision.

The area has important coastal values and the Parapara Inlet is listed as an "Area with Nationally Important Natural Ecosystem Values" under Schedule 15.1F of the Proposed Plan with the presence of "*banded rail, Caspian Tern and white heron*".

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 2 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 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 an additional rural-residential lot, has the potential to detract from the amenity values of the property and the rural character of the surrounding environment.

The area of the subdivision has a high degree of natural and rural amenity, with a corresponding low level of built development.

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.

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. 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* The actual adverse effects on productive values is not considered to be significant.

*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.

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.

*Objectives 10.1*

*Policies 10.1.3, 10.1.5.*

*Chapter 11 - Land Transport Effects* The actual and 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 the State Highway network.

*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 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 controlled activity performance standards and conditions set out in Rule 17.5.4, Rural 2 Zone rules.

*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.

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 have minor adverse effects on productive values, but if the effects are repeated through the cumulative effect of further subdivisions in the Rural 2 zone, it could have a significant adverse effect.

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 actual loss of productive land, but its approval is likely to lead to other similar applications in the Rural 1 zone, that if were 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 50 hectares as the size whereby adverse effects on versatility and productive potential are “no more than minor” by way of it controlled status.

7.1.30 sets out the explanation for the above policies and objectives:

*The rural zoning pattern is the basis for administration of the objective and policies. The Rural 1 Zone comprises the most inherently productive and versatile land in the District and includes about five percent of the total land area. Threshold subdivision standards in this area provide flexibility for a range of productive uses to be made of the soil and land resource, while sustaining its long-term availability. Subdivision below the threshold will be limited to that which supports the objective.*

Objective 7.2.0 sets out Council’s intention to provide opportunities for rural-residential activities.

*Provision of opportunities to use rural land for activities other than soil-based production, including papakainga, tourist services, rural residential and rural industrial activities in restricted locations, while avoiding the loss of land of high productive value.* **D 10/98**  
**D 8/99**

While objective 7.2.0 does allow for the use of sites for rural residential activities in restricted locations, it is clear from 7.2.20 that the zone framework to achieve this objective is the rural residential and Rural 3 and 3A zones and does not include the Rural 1 and 2 zones.

The additions to 7.2.20 were put in as part of Variation 32 (Dec 2003) to avoid any confusion over interpreting Objective 7.2.0 which some people had assumed that any land of low productive value ( ie 95% of the district) was available to rural residential subdivision and use. The variation made it clear that these objective and policies were to be achieved by the provision of specific zoned areas for rural-residential development.

Objective 7.3.0 states:

*“Avoidance, remedying or mitigation of the adverse effects of a wide range of existing and potential future activities on rural character and amenity values.”*

The following policies are relevant to this application:

- 7.3.3 *To provide for the maintenance and enhancement of local rural character including such attributes as openness, greenness, productive activity, absence of signs, and separation and style and scale of structures.*
- 7.3.4 *To exclude from rural areas, uses or activities (including rural residential) which would have adverse effects on rural activities, health or amenity values, where those effects cannot be avoided, remedies or mitigated.*
- 7.3.9 *To avoid, remedy or mitigate servicing effects of rural subdivision and development, including road access, water availability and wastewater disposal.*

Under Methods of Implementation 7.3.20, it states how the Rural 2 zoning framework applies to the above objectives and policies.

- *The Rural 2 Zone covers areas that are generally of lower productive values, but which often have particularly important rural character and amenity values, resulting from a low intensity of use and development and consequently a more open and distinctive rural landscape. In these areas, rules addressing management of detailed effects through the imposition of standards, such as those relating to noise and air quality, are generally similar to those in the Rural 1 Zone, but rural character, general amenity and landscape is maintained through the absence of rules allowing for close subdivision and intensive development.*

I note the second half of the last sentence in this explanation which states:

*“...but rural character, general amenity and landscape is maintained through the absence of rules allowing for close subdivision and intensive development.”*

It is clear from this, that with the 50 ha minimum lot size in the Rural 2 zone, that the Council does not anticipate smaller lot rural residential subdivision in the Rural 2 zone.

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 all productive land in both the Rural 1 and 2 zones. The priority given to high productive land does not mean that less productive should be available for rural residential subdivision.

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

In conclusion it is considered that the proposed subdivision is contrary to the policies and objectives in Proposed Plan in that it seeks to further fragment what is already a small rural block for rural residential purposes that is not envisaged in the Rural zones.

### **Recent Environment Court Decisions.**

Recent Environment Court decisions such as Jennings v Tasman District Council (RMA0350/02) and Collis v Tasman District Council (RMA 876/03) all focused the Council policies and objectives in relation to creation of rural residential allotments in areas that were generally of low productive value. In these cases the Court upheld Council’s decision to decline consent.

It is important that Councils decision are in accordance with the Courts interpretation of the Plan in these cases.

The Jennings decision in particular is relevant in that it involved less productive land, similar to this site, an existing small lot and the creation of rural residential allotments.

In the Jennings case Judge Sheppard found that:

*“although the site is not land of high productive value, Objective 7.1.0 is not limited to land of that quality, and the effects make the subdivision contrary to that objective, and to Policies 7.1.2 and 7.1.2A for achieving it.”* [156]

Also in terms of cumulative effects, the Court found that:

*“ the development the subdivision is intended to enable would, in combination with other rural-residential development in the vicinity, have cumulative effects on the fragmentation of land, and on the rural character and rural amenities of the locality. In that regard, the adverse effects are significant.”* [127]

It is important that Council’s decisions are in accordance with the Court’s interpretation of the Objectives and Policies of the Plan, and it is my opinion that based on these recent cases, that it is clear that this proposal is contrary to the relevant policies and objectives of the Proposed Plan.

### **5.3 Part II Matters**

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

Section 6 (a) requires, as a matter of national importance, the “preservation of the natural character of the coastal environment”, and the protection of the coastal environment from “inappropriate subdivision, use and development.”

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 2 zoning.

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 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 Zone rules in achieving a low density productive rural environment will be undermined by the approval of this application.

### **Permitted Baseline Test**

Under Section 104 (2) of the Resource Management Act, a consent authority may use what is called the "permitted baseline test" to assess what are the actual and potential effects on the environment of allowing the activity.

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

In this case because most of the site is within the Coastal Environment Area which requires Controlled Activity consent for all new buildings, very little building development could occur as a permitted activity.

As there is no subdivision as a permitted activity under the Proposed Plan, and no land use has been applied for, it is considered that the permitted baseline test is not relevant to this application.

## **6. CONCLUSIONS**

- 6.1 The proposal is a Discretionary Activity under the Proposed Tasman Resource Management Plan.
- 6.2 The property is zoned Rural 2 under the Proposed Plan.

- 6.3 The property is in an area of scrub and regenerating native bush. It is an area that has a high degree of natural amenity and in spite of having a few small allotments, still has relatively low level of built development. 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 Parapara Inlet and the surrounding hills have very scenic values and the combination of the relatively undeveloped coastal inlet and regenerating bush give it special landscape qualities that are immediately apparent to the high number of visitors using the State Highway running through the centre of the Inlet. It is these landscape qualities and natural amenity that will be compromised by this subdivision, and significantly compromised if granting of consent leads to further subdivision in the area.
- 6.5 The property does not have any unique characteristics that would enable Council to approve the subdivision without expecting further applications from similar sized Rural 2 properties all of which would expect similar favourable treatment.
- 6.6 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 in less productive soils the Rural 2 zone.
- 6.7 It is acknowledged that the actual adverse effects of fragmentation are less significant on less productive in terms of loss of productive potential and cross boundary effects and this is acknowledged in the plan under 7.1.30. However it is still a significant issue in the plan policies and objectives which under 7.1.1 which seek to: *“Avoid the loss the loss of potential of all land of existing and potential productive value to meet the needs of future generations”*.
- 6.8 The Proposed Plan under objective 7.3.0 seeks to avoid, remedy or mitigate the adverse effects of subdivision and associated development on rural character and amenity and under policy 7.3.4 seeks to avoid further rural residential development in Rural Zones. It is considered that the proposed subdivision is contrary to these objectives and policies.
- 6.9 The Plan acknowledges that there will be a demand for rural-residential subdivision in rural areas and has provided for it in “restricted areas” these being the 39 rural residential zoned areas. The rural residential zones are specifically intended to complement the Rural 1 and 2 in order to *“relieve the ongoing pressure for fragmentation of the land resource”* (7.1.30). 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 purposes and maintaining the existing rural amenity while allowing rural residential subdivision in the specific rural residential zones. With this particular property that best way to achieve this is to retain the property in its present form.
- 6.10 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 rural area with a high natural amenity which is contrary to the principles of sustainable development of resources required under Part II of the Resource Management Act 1991.



6.11 Part II of the Resource Management Act includes a matter of national importance in Section 6, the protection of the Coastal Environment from inappropriate subdivision and development. In this regard it is considered that the proposed subdivision is contrary to Part II of the Resource Management Act.

6.12 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 R J Callaghan to subdivide CT NL 12B/567 into two allotments (RM041338 ).

## 8. RECOMMENDED CONDITIONS

As I have recommended decline of consent and believe that the adverse effects of the proposal cannot be avoided, remedied or mitigated by conditions, I have not included a detailed list of conditions. However if the committee was going to grant consent, the following matters would need to be addressed through conditions:

- Development Impact Levies on one allotment, based on the value of a 2500 square notional building site.
- Access off the State Highway in accordance with Transit Zealand's requirements. However there is no recommended condition for State Highway access because Transit New Zealand is opposing the application and Council cannot impose a condition on a third party, in this case works on the State highway that have not been consented to by that requiring authority.
- Power and telephone servicing to Lot 2 in accordance with TDC engineering standards.
- Metalled access to the building site on Lot 2 with a maximum gradient of 1:6 or 1:5 if sealed.
- Certification of the building site on Lot 2 by a Chartered Professional Engineer in accordance with TDC Engineering standards Section 11 Appendix B and certification that all engineering works have been completed in accordance with TDC Engineering Standards or to the satisfaction of the Council's Engineering Manager.
- Consent notices on the proposed Lots including the recommendations of the onsite effluent disposal report submitted with the application.

- Easements for all services located outside the allotments that they serve, including easements for water supply and power.

Mark Morris  
**Senior Consent Planner**  
**(Subdivisions)**