



STAFF REPORT

TO: Environment & Planning Subcommittee

FROM: Jack Andrew, Consent Planner

REFERENCE: RM050497

SUBJECT: **E R and S J HORDER – REPORT EP05/09/21** – Report prepared for 5 September 2005 hearing.

1. INTRODUCTION

1.1 Outline of proposal

The applicants are seeking land use consent to erect a second dwelling at 72 Headingly Lane, Richmond. At present one of the applicants, Mrs Horder, who is 77 years old, lives in the dwelling on the property and she would like to build and move into a small one bedroomed cottage to be sited behind the existing dwelling. The proposed dwelling has a gross floor area of approximately 67 m². The other applicant is Mrs Horder's daughter who, with her husband and child, lives in Otago and they propose to come and live in the existing dwelling on the property.

The applicants have no intention of subdividing the new dwelling from the existing one and would be prepared to register a covenant to that effect on the property title. The applicants do not want any requirement for the new dwelling be removed when Mrs Horder leaves as the new dwelling may be able to be used by other family members and there would be a loss of capital.

1.2 Property details

The subject site being 72 Headingly Lane is legally described as Lot 2 DP 5752 and has an area of 8481 m². The site is grazed and is essentially a small rural residential one with attractive landscape planting.

The site is zoned "Rural 2" in the Proposed Tasman Resource Management Plan (the Plan) and zoned Rural in the Operative Transitional District Plan (Richmond Section).

The site access is to Headingly Lane via the existing access and the sight distances are adequate. Power and telephone services are available from existing overhead reticulation. Water is obtained from a Council mains and effluent is disposed of via a 2000 litre septic tank.

There is a small tidal creek (Borcks Creek) running alongside the carriageway in Headingly Lane, which provides the main stormwater drainage for the locality. The present capacity of the drain is insufficient to cope with a 2% AEP rainfall event, and this may result in localised inundation where such an event coincides with a high tide. There are plans for upgrading the capacity of this portion of Borcks Creek at some stage in the future. The upgrading of Borcks Creek should not affect the applicants' proposal as the proposed dwelling is well set back from Headingly Lane.

Overall the applicants' site appears to be quite capable of containing an additional dwelling without risk from hazards or requiring any extension of Council services.

1.3 Headingly Lane Environment

Headingly Lane is a narrow no exit sealed country road of about 750 metres long located off Queen Street in Richmond. The intersection of Queen Street and Headingly Lane is approximately 1 kilometre northwest of the Richmond Urban Area. On the eastern side of Headingly Lane the land is zoned light industrial and heavy industrial. This land was recommended to be zoned industrial by the 1986 Nelson Urban Growth Study and the rezoning of some of the land recommended for rezoning to industrial by that study was eventually achieved through plan changes W11 and W14 by the Tasman District Council.

The zoning of the land from rural to industrial was strongly opposed by Headingly Lane residents because of the land use conflict between residential and industrial land uses. The re-zoning went to the Planning Tribunal on two occasions before it became operative. This industrial land adjoining Headingly Lane is now the only reasonably large vacant block of industrial land left within or adjoining the main Nelson-Richmond urban area and in a planning sense is a very important resource.

On the eastern side of Headingly Lane and at its seaward end there are nine sites, including the subject site, that front Headingly Lane. Use of the nine sites are essentially rural residential in character. The property at the Queen Street entrance to Headingly Lane was Mr and Mrs Carter's with Mr Norm Carter being a well known and respected builder. That property was purchased by the Grace Church Trust with church related development proposed to Council at a time when community activities, including churches and schools, were permitted as of right in the Rural 1 and 2 zones. Variation 29 which was notified on 28 September 2002 changed the status of community activities to "discretionary" in the Rural 1 and Rural 2 zones. Council has subsequently granted discretionary activity resource consents to the Grace Church Trust and also to a school (Tasman Education Trust) at Headingly Lane.

Some properties on Headingly Lane have been modified to accommodate dependant relatives with the most recent proposal being RM031262 - L G and J F Heslop who were granted consent to erect a building for a dependent relative on 15 April 2004. That proposal was very similar to the Horder's current proposal except that the consent requires the dependent relatives dwelling to be relocated within six months of it no longer being used as residential accommodation or upon sale of the property (see conditions 4 and 6 of RM031262 attached).

1.4 Dependent Relatives' Accommodation

The Tasman District Council has generally tried to accommodate temporary family needs by consenting to dependent relative's accommodation. The plans Rural 1 and 2 and rural residential zones provide that:

"A dwelling may contain no more than two self-contained housekeeping units, provided both are contained within the same building and one is clearly subsidiary and is no more than 60 m² in floor area."

Council has also consented to dependent relative's accommodation being in a separate dwelling provided these are located close to the existing dwelling, shares the existing water and effluent disposal systems and is to be relocated from the property when the particular dependent relatives for whom it is for no longer need it. More recently we have also required that a covenant be registered on the properties certificate of title so that it is not recognised as a basis for subdivision.

2. STATUTORY STATUS AND CONSIDERATIONS

2.1 Status of the Application Discretionary

The subject site is zoned Rural 2 in the Proposed Tasman Resource Management Plan and is not affected by any area map overlays except for the fire sensitive discharge area and the obstacle limitation surfaces for Nelson Airport neither of which are relevant in determining the application.

The proposed second dwelling on an 8481 m² is excluded from a discretionary activity building under Rule 17.5.6 and until the Resource Management Amendment Act 2003 was a non-complying building using the cascade approach of the Proposed Tasman Resource Management. However because of Section 67(C) of the Resource Management Act 1991 introduced by the Resource Management Amendment Act 2003 the application cannot now be deemed to be non-complying and must be assessed as a discretionary activity building.

2.2 Statutory Considerations – Resource Management Act 1991 (The Act)

Power to grant or refuse consent and impose conditions

After having considered the matters in Section 104 of the Act, the consent authority may grant or refuse resource consent for a discretionary activity in accordance with Section 104B of the Act.

In regard to this particular application, the decision must be based on consideration of the following matters set out in Section 104(1) of the Act:

- (a) Part II matters;
- (b) the any actual and potential effects on the environment of allowing the activity;
- (c) any relevant provisions of national or regional policy statements;
- (d) any relevant provisions of a plan or proposed plan;
- (e) any other matters considered relevant and reasonably necessary to determine the application.

In having regard to the above matters, primacy is given to Part II of the Act, the purpose and principles of sustainable management of natural and physical resources.

If consent is granted, conditions may be imposed pursuant to Section 108 of the Act. All Councils are expected to be consistent in their administration of their district plans and in this instance the Council's recent decision in RM031262 is relevant to consider under (e) above (Section 104(1)(c) of the Act).

2.3 Written Approvals

The consent authority must not have regard to any actual or potential effect on any person who has provided a written approval in accordance with Section 104(3)(b) of the Act.

In this regard, written approvals have been provided from the following persons in the locality as detailed in the application.

1. Knalman (78 Headingly Lane)
2. Heslop (61 Headingly Lane)
3. Fitzpatrick (70 Headingly Lane)
4. Nelson Pine Industries
5. LQS Properties Limited

The location of these properties is shown on Map 1.

None of these persons have subsequently indicated in submissions that they wish their approvals to be withdrawn.

A copy of these approvals is held on Council file RM050497.

3. ADVERSE ENVIRONMENTAL EFFECTS

The absolute effect of granting consent to the proposed dwelling on the productive soil values of the subject site, on infrastructure services, on land disturbance and visual amenity will be no more than minor. There is a potential adverse cumulative effect in allowing a dependent relatives dwelling to remain as a permanent dwelling as the applicant proposes. There is nothing especially distinguishing about the applicants' proposal that could give Council confidence that other potential and existing developments for either dependent or accommodation for anyone else would not follow suit. The reverse sensitivity issues of this for the industrial zoning in Richmond cannot be completely dismissed, particularly as the Nelson-Richmond urban area is short of industrially zoned land and options for providing more industrial sites close to Richmond are limited.

The potential cumulative effect and the potential impact on industrial zoned land at Headingly Lane can be remedied with conditions as was done with the Heslop's dependent relatives dwelling by requiring its removal and registration of a covenant (refer RM031262, conditions 4 and 6).

4. PLAN POLICIES AND OBJECTIVES

The proposed development must be in accordance with relevant objectives and policies of the Proposed Tasman Resource Management Plan. Because the Proposed Tasman Resource Management Plan was developed to be consistent with the Regional Policy Statement, the assessment is also considered to satisfy an assessment under the Regional Policy Statement.

The following text summarises the most relevant plan matters and provides a very brief assessment commentary.

Chapter 5 – Site Amenity Effects In the introduction to this chapter the Council acknowledges that “the urban/rural boundary is an area of particular sensitivity” where cross boundary effects can create problems and that buffer areas are needed in some locations.

Objective: 5.1.0
Policy: 5.1.9A The subject site is very close to the main heavy industrial zone and vacant light industrial zone which is a particularly sensitive area. Creating additional residential housing stock close to important industrial areas can create a precedent and undermine the long term sustainability of industrial authorities.

Chapter 6 – Urban Environmental Effects The plan recognises that “there is a limited availability of land for industrial activities” and for Richmond the scarcity of industrial land is an issue. With the exception of the industrial zone at Headingly Lane the other industrial zones near Richmond can now be regarded as full. For industrial development reverse sensitivity from nearby residential development is a major planning issue that is best avoided by not encouraging permanent housing in close proximity to industrial zones. Adding additional permanent housing on properties in Headingly Lane is contrary to the plans, settlement objectives and policies.

Objective: 6.4.0
Policies: 6.4.1, 6.4.2, 6.4.3

Chapter 7 – Rural Environmental Effects This chapter generally requires that the productive potential of the rural land resource is protected and that in some instances its value as a buffer to protect important resources be retained.

Objective: 7.2, 7.3
Policies: 7.2.1A(d), 7.3.3

In relation to planning in the Tasman District the east side of Headingly Lane to some extent functions as a rural buffer area for the industrial zones consent to additional permanent residential dwellings reduces the buffer value of the Headingly Lane rural zone.

Overall Policy Assessment

The creation of an additional permanent dwelling on the site of the application is not consistent with the plans policies for the important interface between an industrial and rural environment. The subject site is located in an area where there is a need to protect a relatively scarce industrial land resource in close proximity to Richmond from additional permanent dwellings over what is permitted by the plan.

5. PART II MATTERS

As noted in Section 2.3.1 of this report, Part II is over-arching. Section 5 and Section 7 of the Act are relevant to the application.

In terms of Section 5 of the Act providing for the temporary needs of an elderly relative either within an existing dwelling or as a temporary relocatable building that shares existing services in my opinion is in accordance with Section 5 and 6 of the Act. However, providing for a permanent second dwelling on this property which is located close to a major industrial zone is not sustainable development or indeed good planning practice.

In my opinion consenting to a permanent second dwelling at Headingly Lane would be quite contrary to Section 5 and 7 of Part II of the Act.

6. OTHER MATTERS

The subject site is located within the Lower Queen Street Development Area Study. The study was adopted by Council on 18 May for release for consultation with the current landowners and the community with an interest in the area. The studies options for the subject site ranged from Industrial, Mixed (service, Light industry, education, big box) to Residential. The applicants' proposal would fit in with a residential option but would be out of kilter with the "Industrial" and "Mixed" options. While the study does not have any statutory status consenting to a temporary second dwelling as was the case with the Heslops, should not prejudice any option.

7. CONCLUSION

The application is for a discretionary activity building for a second dwellinghouse on a relatively small 8481 m² Rural 2 zoned property at 72 Headingly Lane, Richmond. The subject site is in a peri-urban location close to one of Richmond's main industrial zones. Industrial land is a scarce resource in Richmond. The Rural 2 zone at the subject site has several functions and one function is as a buffer to help protect the large industrial zones from closer residential development undermining their sustainability. In this situation granting consent to a second permanent dwelling would be contrary to sound resource management practice, the Councils objectives and policies for the area and to Part II of the Resource Management Act 1991. On the other hand granting a temporary dwelling consent for Mrs Horder would not be considered to be contrary to the Act and would be consistent with Council's recent decision RM031262 being the Heslop decision.

8. RECOMMENDATION

That pursuant to Section 104B of the Resource Management Act 1991, I recommend that while consent be declined to Mrs Horder to construct a permanent second dwelling with a gross floor area of approximately 67 m² I consider that consent should be granted to a relocatable second dwelling with a gross floor area of approximately 67 m².

Should the Council follow this recommendation then the conditions attached to the Heslop consent would be appropriate with the proviso that condition 3 be deleted and an additional advice notice as follows be added:

“Any discharge of domestic wastewater on this property must meet the relevant permitted activity requirements of the proposed Tasman Resource Management Plan unless otherwise authorised by resource consent if these criteria cannot be met.”

The reasons for this recommendation are summarised in the conclusion section of this report and in the reasons given with the Heslop decision.

J R Andrew
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