



STAFF REPORT

TO: Environment & Planning Subcommittee

FROM: Mark Morris, Senior Consent Planner, Subdivision

REFERENCE: RM050394

SUBJECT: **V and K THOMAS – REPORT EP05/10/08** – Report prepared for 31 October Hearing

1. INTRODUCTION

The Proposal

The proposal is to subdivide Pt Sec 161 Moutere District (CT NL 9C/1017) as a boundary relocation with the resulting allotments being Lot 1 of 3.2 hectares and Lot 2 of 15.4 hectares being amalgamated with Pt Sec 160 Moutere District (CT NL 5A/667).

The applicant currently owns both titles.

The existing two titles do not have any dwellings on them at present. The proposal is to rearrange the title boundaries so that one large amalgamated farm block of 35.4 hectares is created and a smaller block (Lot 1) of 3.2 hectares is created. A land use consent has been applied to erect a dwelling on the proposed Lot 1.

It was considered by Council staff that the adverse effects of the proposal subdivision were no more than minor, but adjoining neighbours consent was required.

This was not able to be obtained, and therefore the consent was notified under limited notification.

2. STATUS UNDER TRANSITIONAL AND PROPOSED PLANS

2.1 Transitional District Plan

The site is zoned Rural B in the Transitional District Plan (Waimea) and the activity is a non-complying activity in that both of the allotments are less than 15 hectares.

2.2 Proposed Tasman Resource Management Plan

The site is zoned Rural 1 under the Proposed Tasman Resource Management Plan. Under Section 16.3.7 the minimum area for a controlled activity subdivision is 12 hectares. Because one of the allotments does not meet this standard it is considered to be a discretionary activity. The land use consent for the proposed dwelling on Lot 1 is a restricted discretionary activity under rule 17.4.6, in that the allotment is less than 12 hectares.

3. STATUTORY CONSIDERATIONS

The operative plan is the Waimea Section of the Transitional District Plan. However, the Proposed Tasman Resource Management Plan was publicly notified on 25 May 1996. Under Section 104(d) of the Resource Management Act 1991 Council is required to have regard to any relevant objectives, policies, rules or other provisions of an operative plan or a proposed plan.

The proposed subdivision requires consent for a non-complying activity. As such the Council, subject to Part II of the Act, shall have regard to the matters set out in Section 104 being:

- (i) Any actual or potential effects on the environment of allowing the activity;*
- (ii) Proposed Regional Policy Statement;*
- (iii) Relevant objectives, policies, rules or other provisions of a plan or proposed plan;*
- (iv) Any other matters Council consider relevant and reasonably necessary to determine the application.*

Under Section 104B Council has the discretion to either grant or refuse the consent, and if granted may impose conditions pursuant to Section 108 to avoid, remedy or mitigate likely adverse effects.

4. SUBMISSIONS

The application was notified under Limited Notification on 2 August 2005.

Four parties were served notice.

- J H and M L Daubney
- A J and M J Reid
- B A and L D McLachlan
- D A Hodges

The following submissions were received:

Summary of Submissions

J and M Daubney

Opposes the application on the following reasons:

- The subdivision establishes small blocks in Rural 1 land
- The subdivision will create an adverse environmental impact on ourselves and other neighbours and would devalue the neighbouring properties.
- The proposed dwelling will be very visible from the Daubney house.

- There is an unsafe entry/access to the proposed subdivision.
- The application is against the Council's land management plan for Rural 1 land by allowing small blocks to be cut from larger economic units of farm land.

B and L McLachlan

Opposed to the application for the following reasons:

- The proposed dwelling would be close to the McLachlan boundary. It should be at least 150 metres.
- The access will be alongside of the McLachlan access, which is on the crest of a ridge on a school bus route.

A Reid (LATE) (one day)

Would oppose the application if the owner of the new allotment could dictate farming practises on adjoining properties.

At present the adjoining Reid property farm apples and boysenberries and during the harvest berry harvesting machines are running through the night.

Wanted a statement on the proposed title pointing this out to subsequent owners.

5. ASSESSMENT

5.1 Part II, Resource Management Act

Part II of the Resource Management Act states several matters to which regard must be had, or which must be recognised and provided for in order to achieve sustainable management of natural and physical resources.

Section 5 - Sustainable Management - means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables communities to provide for their social, economic, and cultural well-being and for their health and safety.

Section 6 - Matters of National Importance – This Section sets out the matters that Council shall recognise and provide as matters of national importance.

None are considered to be particularly relevant in this case.

Section 7 - Other Matters - In this instance the Council is required to have particular regard to:

- (b) The efficient use and development of natural and physical resources;
- (c) The maintenance and enhancement of amenity values;
- (f) The maintenance and enhancement of the quality of the environment, and;

- (g) Any finite characteristics of natural and physical resources.

Section 8 - Treaty of Waitangi

Although the Resource Management Act is generally enabling, and recognises that the needs of people and communities should be met with respect to their social, economic and cultural well-being, this should not be achieved at the expense of other matters set out in Section 5, which are the environmental parameters which must be observed. In particular the ability of natural and physical resources to meet the needs of future generations must be sustained, and the adverse effects must be avoided, remedied and mitigated.

With respect to the matters of national importance in section and Treaty of Waitangi principles in section 8 and any other matters in Part II of the Act, none are considered to be particularly relevant to this application. However, Section 7 (b) is of relevance.

Part II – Matters

The proposed subdivision is considered to be consistent with the purpose and principles of Part II of the RMA. The proposal for a boundary adjustment between two existing rural lots and subject to the recommended conditions, is not considered to compromise the efficient use and development of natural and physical resources.

The other major issue with a subdivision of this nature is the need under Section 7(c) to have particular regard to the “maintenance and enhancement of amenity values”. Under Section 2, amenity values means:

“those natural and physical qualities and characteristics of an area that contribute to peoples’ appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.”

The fact that the subdivision will not result in any additional titles, and although a dwelling is proposed, this potential already exists, for a dwelling could be erected as-of-right in the same location on the present title as a controlled activity. Because of this, it is considered that the adverse effect on amenity values from this proposal is no more than minor.

In conclusion it considered that the proposed subdivision is not contrary to Part II of the Resource Management Act.

5.2 Actual or Potential Effects on the Environment

5.2.1 Loss of Productive Land

One of the concerns of Council with rural subdivision is the loss of productive land for non-productive purposes. This particular site has a classification of Class B under the Agriculture New Zealand Land Capability classification system.

Class B soils have potential for horticultural and viticultural uses though this would be limited by the availability of water.

Many of the adjoining properties with a similar land classification are in orchard or viticultural use. At present the property is mainly in pasture with a small amount of viticulture on CT NL 5A/667.

A recent trend among farm operations in this district that is that many farm blocks are being amalgamated to make large more economic units. The Council's policies in 7.1.4 and 7.1.4A seek to encourage or facilitate amalgamation in to more versatile and productive farm units. This is what is happening with Lot 2 in that it will become a 35ha single title. This size is now common with many of the commercial orcharding and viticultural operations in the District.

It is becoming clear in this District that 12 hectares is now too small for most commercial farming operations, particularly in horticulture and viticulture.. Because of this, boundary relocations such as this one that enable amalgamation into larger more versatile units is becoming more common place.

I accept there is a "trade off" in that in achieving a larger more versatile block, a smaller block is being created as a result. However because the subdivision is not creating additional titles it would not add to the cumulative effects of progressive fragmentation of rural land in the District.

5.2.2 Effects on Amenity Values

Small lot subdivisions in rural areas have the potential to adversely affect amenity values.

There is concern from some of the submitters about the effects of the proposed dwelling on the Rural amenity of the area.

The effect on the rural amenity has to be seen in the context of the fact that the applicant, at any time, could "as of right", build a dwelling on the existing title in the same location, as a controlled activity.

While Council has some discretion on the appearance of the building, it could not refuse consent. It is only the subdivision that makes it a discretionary activity.

The size of the proposed Lot 1(3.2 hectares) does appear to be very similar in size to the adjoining Daubney (4 hectares) and McLachlan (1.58 hectares) properties. In this sense the location of the proposed Lot 1, is not totally out of character with the adjoining properties.

Overall, in the context of what can be erected as-of-right on the property at present, and resulting enlarge of the main farming title, the adverse effects on rural amenity are considered to be no more than minor.

5.2.3 Cross-boundary Effects

It is considered that proposed subdivision will not create significant cross boundary effects. The proposed dwelling will be at least 100 metres from adjoining Rural 1 land that is in commercial production. However I have recommended that "rural emanations" easement be created over Lot 1 in favour of Lot 2 and the Reid property, pointing out that the property is an area of commercial horticultural production that may result in noise, dust and spray effects and that the subsequent owners would not take action to stop legitimate farming activities taking place on the adjoining properties.

5.2.4 Traffic Effects

These are dealt with in Dugald Ley's report in Attachment 1.

5.2.5 Archaeological sites

According to Council's records there are no known archaeological sites on this property or the immediate area.

5.2.6 Servicing

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

5.2.7 Natural Hazards

According to Council's records, there are no known natural hazard issues on this property.

5.3 Proposed Regional Policy Statement

Relevant policies and objectives are:

Objective 6.1

Avoidance of the loss of the potential for land of productive value to meet the needs of future generations, particularly land with high productive values.

Objective 6.3

Avoidance, remedying, or mitigation of adverse cross-boundary effects of rural land uses on adjacent activities.

Policy 6.1

Council will protect the inherent productive values of land from effects of activities which threaten those values, having particular regard to:

- (i) the effects of land fragmentation on productive values; and*
- (ii) the protection of land with high inherent productive values; and*
- (iii) the protection of significant natural or heritage values; and*

(iv) *the availability of water to support productive values.*

Policy 6.2

The Council will ensure that subdivision and uses of land in the rural areas of the District avoid, remedy or mitigate adverse effects on:

- (i) *the productive qualities of land; and*
- (ii) *provision of services, including roading, access, water availability, waste treatment or disposal; and*
- (iii) *amenity, natural and heritage values of sites, places or areas including landscape features such as karst terrain; and*
- (iv) *bulk mineral values of areas; and*
- (v) *socioeconomic viability of adjacent areas;*

and that are not unnecessarily exposed to adverse effects from:

- (a) *adjacent land uses across property boundaries; and*
- (b) *natural hazards.”*

5.4 Transitional District Plan (Waimea Section)

The property is zoned Rural B in Waimea section of the Transitional District Plan. As the Proposed Tasman Resource Management Plan is very close to becoming operative, I consider that very little weight have been given to the Transitional Plan. Because of this, I have not included an assessment of the Objectives and policies of the Transitional District Plan.

5.5 Proposed Tasman Resource Management Plan

The area of land which is the subject of this application is zoned Rural 1 in the Proposed Tasman Resource Management Plan. Relevant issues, objectives and policies are as follows:

“Objective 5.1.0

Avoidance, remedying or mitigation of adverse effects from the use of land on the use and enjoyment of other land and on the qualities of natural and physical resources.

Policy 5.1.1

To ensure that the adverse effects of subdivision and development on site amenity, natural and built heritage and landscape values, and contamination and natural hazard risks area avoided, remedied or mitigated.

Policy 5.1.10

To exclude from rural areas, those uses or activities (including rural-residential) which would have adverse effects on rural activities and amenity values where those effects cannot be avoided, remedies or mitigated.

Issue 7.1(a)

Cumulative adverse effects of the subdivision, development, and non-soil based production uses of rural and on:

- (i) The availability of land for soil-based production opportunities.*
- (ii) Service provision, site amenity, contamination and natural hazard risk, and on heritage and landscape values.*

5.1.0 Objective

Avoidance, remedying or mitigation of adverse effects from the use of land on the use and enjoyment of other land and on the qualities of natural and physical resources.

Policies

5.1.1 *To ensure that the adverse effects of subdivision and development on site amenity, natural and built heritage and landscape values and contamination and natural hazard risks are avoided, remedied, or mitigated.*

5.1.2 *To prevent degradation of the quality of groundwater and surface water from urban development or rural activities.*

5.1.3 *To limit the intensity of development where sewage reticulation and treatment are not available.*

Objective 7.1.0

Avoidance of the loss of potential for land productive value to meet the needs of future generations, particularly land of high productive value.

Objective 7.3.0

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

Policies

7.3.3 *To provide for the maintenance and enhancement of rural character, including such attributes as openness, greenness, productive activity, absence of signs, and separation, style and scale of structures.*

7.3.5 *To exclude from rural-residential areas, uses or activities which would have adverse effects on rural residential activities, health or amenity values, where those effects cannot be avoided, remedied or mitigated.*

7.3.6 *To ensure that adequate physical or spatial buffers or other techniques are applied when allowing new allotments or building primarily or exclusively for residential purposes in rural areas, so that productive land use opportunities are not compromised.*

7.3.9 *To avoid, remedy or mitigate servicing effects of rural subdivision and development, including road access, water availability and waste water disposal.*

These policies seek that subdivision and associated development, do not adversely affect site amenity, and landscape values.

In conclusion, in the context of its two existing titles, and what can be done already on the property in terms of development, I consider that the proposed subdivision and land use is not contrary to the policies and objectives of the Regional Policy Statement and Proposed Tasman Resource Management Plan.

6. RECOMMENDATION

Having considered the application for subdivision and land use consent, I recommend that Council approves consent pursuant to Section 104 of the Resource Management Act 1991.

7. REASONS

The reasons for my recommendation are outlined on the course of this report, but in summary they are:

- 7.1** While Lot 1 is smaller than what is allowed for in the Proposed Plan as a controlled activity, the overall effect of the proposed subdivision in creating a larger farming block, in exchange for the smaller block is no more than minor. The two existing titles already have the potential to become three titles. Although the balance title can be further subdivided, this potential already exists in the current property.
- 7.2** It is considered that the proposed subdivision and land use is not contrary to the policies and objectives of the Regional Policy Statement and the Proposed Tasman Resource Management Plan.
- 7.3** Because the applicant does not have any dwellings on the property at present, he could build, as-of-right a dwelling on the existing title in the same location as the proposed dwelling. In context of this, it is considered that the adverse effects on the environment of the proposed development are no more than minor.

8. CONDITIONS

If the Committee is of a mind to grant consent, I recommend that the following conditions be imposed.

SUBDIVISION CONSENT

8.1 Amalgamation

That Lot 2 heron be amalgamated with Pt Section 160 Moutere District (CT NL 5A/667) and one certificate of title issue.

DLR reference: 462196.

8.2 Access

- i) A sealed access crossing shall provided in the north-western corner of Lot 1 in accordance with Schedule 16.2C of the Proposed Tasman Resource Management Plan.
- ii) The access shall have a sight distance of at least 90 metres in both directions in accordance with rule 16.2.2(v) of the Proposed Tasman Resource Management Plan.
- iii) The access sealing shall extend 5 metres inside the property.
- iv) Culverts for stormwater drainage shall be installed, if required.
- v) The fence along the road reserve boundary of Lot 1 shall be relocated back to the actual boundary line and any road reserve vegetation removed.
- vi) The access crossing shall be constructed in accordance with Tasman district Engineering Standards 2004, or to the satisfaction of the Council's Engineering Manager.

8.3 Easements

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

8.4 Rural Emanations

That an easement for the benefit of Lot 2 and Pt Sec 162 Moutere District (Reid Property) be registered on the title of the proposed Lot 1. The memorandum granting the easement to be generally in the form attached as Attachment 2.

8.5 Servicing

The proposed Lot 1 shall be serviced for power and telephone to the boundary in accordance with Tasman District Engineering Standards 2004. Written confirmation of connection shall be provided from the relevant utility provider.

LAND USE CONSENT

8.6 Building Site

The dwelling shall be erected in accordance with the site plan submitted with the application.

The dwelling shall be at least 30 metres from the north-western boundary and set back at least 50 metres from the road reserve boundary.

8.7 Dwelling

The dwelling shall be single storied with a height of no more than 5 metres above natural ground level.

The total site coverage of the proposed dwelling and associated garaging shall be no more than 300 square metres.

A minimum of 23,000 litres of potable water storage shall be provided in association with the dwelling with an approved 50mm camlock firefighting connection.

8.8 Access

If the dwelling is constructed prior to the above subdivision being completed, then the access shall be constructed in accordance with condition 8.2 of the subdivision consent RM050394.

8.9 Effluent Disposal

The dwelling shall be connected to an effluent disposal system designed, constructed, maintained and operated in accordance with the standards in 36.1.4 of the Proposed Tasman Resource Management Plan.

M D Morris
Senior Consent Planner, Subdivision

Memorandum

To: M Morris
From: Duglad Ley
Re: RM050394 Thomas ,Best Road

Boundary Relocation at Best Road - no new lots created.

Background

Best Road is an access road of approx 6.0 metre seal width and carries some approx 140 VPD. It has grassed shoulders and generally lies centrally within a 20.0 metre road reserve. Adjoining properties have fenced close to the road carriageway giving a restricted feel to the road. The general speed of the road would be considered to be between 50 and 70 Kph

This application shows a new entrance (on the North side of Best Road) to a proposed dwelling to be constructed adjacent (east of) to an existing access serving the adjoining property i.e NL9C/1016.

At this position at the top of a slight rise gives adequate sight distance in both directions.

Discussion

Austrroads design manual recommends a safe stopping sight distance for a 70 Kph road as 90 metre which can be met at the above locality, but would not be met if the access crossing was moved to the East.

Adequate sight distance can only be achieved if fencing and vegetation are removed each side of the access (fencing to be relocated back onto the boundary) and this may require works on the road frontage of the western adjoining property.

The access will be required to be sealed onto the site from the sealed carriageway to at least 5.0 metres.

Telecom and Power supply to be provided to Lot 1.

Recommendation

That the above engineering requirements be included into the conditions of consent

Dugald ley
Development Engineer

Right to Emit Noise from Hail Cannons and Agricultural machinery and Drift from Agricultural and Horticultural Sprays

1. Definition

In this easement the term "authorised farming activities" means all rural activities, including farming and horticultural crop production (and in particular the spraying for weeds and horticultural pests and diseases and the use of hail cannons to protect against hail damage to fruit crops) together with any other activity permitted under the relevant District Resource Management Plan for the time being in force and any existing uses and any activity permitted by any resource consent(s). The term "authorised farming activities" shall also include any other activity ancillary to the activities already defined or necessary therefore.

2. Rights and Powers

The owners or occupiers from time to time of the Dominant Tenement shall have the full, free, uninterrupted and unrestricted right, liberty and privilege for themselves and their respective servants, tenants, agents, licensees and grantees from time to time to emit noise from hail cannons and drift from agricultural and horticultural sprays and to allow such emanations to escape, pass over or settle on the Servient Tenement in the course of the use of the Dominant Tenement for rural purposes with the intent that such aforementioned rights shall run with the Servient Tenement and be forever appurtenant to the Dominant Tenement.

3. Terms, Conditions, Covenants, or Restrictions in Respect of the Above Easement

- a) The owners or occupiers from time to time of the Servient Tenement shall allow authorised farming activities to be carried out on the Dominant Tenement without interference or restraint.
- b) All noise emitted from hail cannons shall not exceed the maximum level permitted in any relevant District Resource Management Planning document.

The owners or occupiers from time to time of the Servient Tenement shall not:

- i) make or lodge; nor
- ii) be party to; nor
- iii) finance nor contribute to the cost of

any submission, application, proceeding or appeal (either pursuant to the Resource Management Act 1991 or otherwise) designed or intended to limit, prohibit or restrict the continuation or recommencement of the authorised farming activities by the owners or occupiers from time to time of the Dominant Tenement.

- c) The owners or occupiers from time to time of the Dominant Tenement shall at all times use sprays in accordance with usual agricultural and horticultural practices in the district.