



STAFF REPORT

TO: Environment & Planning Subcommittee

FROM: Ross Shirley, Subdivision Officer

REFERENCE: RM050370

SUBJECT: **GALEO ESTATES LIMITED REPORT EP07/04/03.** – Report prepared for 18 April 2007 hearing

1. INTRODUCTION

Resource Consent was granted by a hearings committee to Galeo Estates Limited in January 2006 for a Rural 3 development in Maiseys Road. The subdivision component of the resource consent included a number of conditions relating to services and structures. In particular there was a requirement for a licence to occupy to cover the situations where the water supply and fish passage were located in roads to vest in the Council.

Galeo Estates Limited represented by their consultants Staig & Smith Limited have been unable to agree with Council's Engineering Department, as asset manager of the road, on the form of the licence to occupy.

Galeo Estates Limited have therefore applied for a variation to the condition of consent effecting the licence to occupy. A number of other minor changes are also sought where conditions need clarification or have become redundant following refinement of the engineering design.

2. THE APPLICATION

A copy of the application lodged by Staig & Smith for a change to the condition is attached under separate cover but can be summarised as follows:

a) Water supply

To delete the requirement for a licence to occupy on grounds that the pipeline, being the Redwood Valley Community Scheme, is a public supply to be located in public land (legal road).

b) Wastewater

To volunteer a licence to occupy in a form attached to the application. No such licence to occupy was required in the original consent.

c) Fish passage

To delete the requirement for a licence to occupy for the fish passage on grounds that monitoring and maintenance is subject of a separate consent, all workable parts are located on private land and the fish passage has a public environmental benefit in keeping with Council's responsibilities as a unitary authority.

d) Entrance walls

To volunteer a licence to occupy for the entrance wall in a form attached to the application. The entrance walls were not contemplated in the original consent but were shown on engineering plans subject to a licence to occupy being entered into.

3. SECTION 127 RESOURCE MANAGEMENT ACT 1991

Section 127 RMA provides for holders of resource consents to apply to the Consent Authority for a change or cancellation of a condition of consent. Such applications are deemed to be discretionary activities, are subject to Section 88 to Section 121 of the Act and can be made at any time (before deposit of survey plan) without the need to establish a change of circumstances as was the case prior to the 2003 amendment to the Act.

I have considered every person who made a submission on the original application and every person who may be affected by the new application. No person could be identified as being adversely effected.

4. VALIDITY OF CONDITIONS

Section 108 provides for councils to impose any condition that it considers appropriate. However for a condition to be valid it must, inter alia, be certain and not delegate decisions.

Any condition should enable the applicant to know with certainty what is required for compliance. Any lack of finality, vagueness or uncertainty may render a condition invalid or unenforceable. In other words the drafting of a condition should be clear and unambiguous. Any technical standards or documents need to be specified in full unless specified by a reference to a clearly identified standard or document.

Also any condition should not be drafted in a way that reserves to Council the power to later approve conditions. This is different from Council or some other person with particular skills or experience acting as a certifier. It is the Council, or other person acting as an "arbitrator" to determine if a condition has been complied with that would render a condition invalid.

5. THE CONDITION

The condition that is subject of this variation under water supply states:

“A licence to occupy road reserve for the private services shall be required”.

And under fish passage states:

“And a licence to occupy road reserve shall be entered into.”

There is no requirement for a licence to occupy with respect to the wastewater pipes located in Council road.

The licence to occupy is not specified in full or referred to in a clearly identified standard or document. There is not a Council policy (that I am aware of) that can be referred to. This is the first consent (that I am aware of) that requires a licence to occupy.

Under those circumstances it would be quite reasonable for a consent holder to expect a licence to occupy to be in the same or similar form as used by neighbouring territorial authorities.

6. THE MANAGEMENT COMPANY

Conditions 15 and 17(a) of the existing consent requires the registered proprietor of each allotment to be a member of the management company (residents association). The purpose of the management company is to manage and maintain communal assets and utilities including wastewater disposal systems, water reticulation and the fish passage. Such conditions are enforceable as are any conditions of a resource consent.

7. THE LICENCE TO OCCUPY

I understand the licence to occupy proposed by the Engineering Department is a substantial document and includes causes relating to payment of bonds, annual licensing fees and a requirement for indemnity insurance. I further understand that this document has been approved as to its legal form by Council's solicitor.

The licence to occupy proposed by the consent holder is in a simpler form with no requirement for bonds, annual licence fees or indemnity insurance. I understand it is in a similar form to that used by other territorial authorities. Clause 1(g) requires any damage to Council's asset caused by the pipeline or entrance walls or by the landowner or his agents to be immediately made good by the landowner. A memorandum of encumbrance is to be registered on the title to the land to give ongoing notice of the existence of the licence to occupy.

8. SUMMARY

The purpose of this hearing is to make a decision on an application to change certain conditions of an existing resource consent. The Committee may agree to the changes in whole or in part or decline the application. Any decision of the Committee is subject to normal appeal rights to the Environment Court.

In determining the application the Committee should have regard to the resource management matters I have discussed above. They may also have regard to matters raised in other staff reports. If in the opinion of the Committee the existing condition is not valid, it should be changed. The consent holder has volunteered an alternative condition.

The purpose of this report is to provide the Committee with the background in the resource management issues effecting the application. At this stage I am not in a position to make a recommendation to the Committee as other staff are also providing reports.

R D Shirley
Subdivision Officer

Engineering Department

TO: The Hearings Committee
FROM: Dugald Ley – Development Engineer
DATE: 10 April 2007
FILE NO: RM 050370 – Caleo Estate / Maisey Road
RE: **127 RMA – CHANGE ON CANCELLATION OF CONSENT CONDITIONS**

1. INTRODUCTION

The above application to subdivide a property into 29 lots off Maisey Road was consented to the applicant by the Committee on 19 January 2006.

As part of the consent, conditions were imposed, inter alia that a “licence to occupy” legal road for the private services within the subdivision was required to be entered into with Council and a legal agreement was drafted by Council’s solicitor to put this into effect.

The applicant has rejected the Council’s “licence to occupy” agreement and the applicant now wishes to substitute this with one of their own.

2. BACKGROUND

The subdivision has a number of services that Engineering class as “private” but laid within future Road Reserve. These include the following:

1. Private wastewater reticulation system being a gravity main plus a pressure rising main.
2. A fish “bypass” passage pipe associated with the construction of a private pond/lake.
3. An erosion protection apron slab associated with the construction of a private pond/lake
4. A permanent stone entrance structure advertising the subdivision.

The above are all required as part of the consent and are therefore reconfirmed at this time. Council will present further evidence to the Committee as this is not available at the time of writing this report.

At the time of writing the consent conditions, Council were of the mind that the applicant would need a “private” system for fire fighting supply in the future road reserve. However as the subdivision and design progressed, it became clear that the requirements for fire fighting would be left to the individual property owners and storage on each site required.

The requirement therefore to have a “licence to occupy” for ‘water supply’ can be removed from the consent.

3. ISSUES FOR COUNCIL

The primary issue is to protect Council from private infrastructure failure in Council’s roads. The fundamental protection is achieved by 3 inherent clauses in the “licence to occupy” agreement:

1. Bond amount as surety - \$20,000
2. Public liability insurance - \$2million
3. Yearly licence fee - \$400/year

As mentioned, these areas will be covered in detail on the day of the hearing but in general summary, all give Council ‘protection’ should a failure occur and where the “Body Corporate” or otherwise ceases to exist.

The applicant has given a draft of their preferred “licence to occupy” agreement which was submitted to Council’s solicitor for comment. Our letter dated 27 February 2007 to Staig & Smith (attached) advise that Council was not prepared to substitute the “Staig & Smith” LTO for Council.

4. RECOMMENDATION

The Committee will hear further evidence on the above issues at today’s hearing and in essence officers confirm that a “licence to occupy” agreement as per Council’s standard will be required to be entered into for items 1) to 4) as highlighted above.

Dugald Ley
Development Engineer