



STAFF REPORT

Attachment 4

TO: Environment & Planning Subcommittee

FROM: Rosalind Squire – Planner, Community Services

REFERENCE: RM060419

SUBJECT: **ST ARNAUD TRUSTEE SERVICES LIMITED – REPORT EP07/05/13** – Report prepared for 14 May 2007 hearing

1. INTRODUCTION

The report by the principal planner outlines the proposed subdivision. This memorandum summarises the issues with respect to the acquisition of reserves and reserve fund contributions in relation to this subdivision proposal. Staff from the Community Services Department have visited the application site, considered it in the wider context and make the following recommendations. The recommendations are made without prejudice, subject to Council approving the application.

2. BACKGROUND AND LEGISLATIVE CONTEXT

The application involves the subdivision of a 4 hectare Rural 2 zoned title into six allotments:

- Proposed Lot 1 is 6,850 square metres in area and is proposed to be used for rural residential development.
- Proposed Lots 2 and 4 which are bisected by Black Valley Stream are proposed to be held together and will accommodate the existing dwelling on the site.
- Proposed Lot 3 comprises a 6,700 square metre area of regenerating native forest on the northern side of Black Valley Stream which is proposed to be vested in the Department of Conservation to add to the conservation estate.
- Proposed Lots 5 and 6 which have areas of 4,300 square metres and 1,000 square metres respectively are proposed to be vested in the Tasman District Council as Local Purpose Reserves (Esplanade) in accordance with section 230 of the Resource Management Act 1991 (RMA).

Proposed Lot 3 – Land to Vest in the Crown

The suggestion to vest land in the Department of Conservation was submitted as part of the application. The Department confirmed in a letter dated September 5, 2006 that they would accept the vesting of proposed Lot 3 as a Scenic Reserve. The application requested that this offer be made subject to the value of the area being offset against the reserve fund contribution required in conjunction with the creation of proposed Lot 1.

Rule 16.5.3 (e) states that the financial contribution may be waived or reduced where, upon request, the Council considers it fair and reasonable having regard to the particular circumstances. Circumstances which may warrant a reduction or waiver include:

- (i) where work is or has been undertaken or services provided, by agreement between the Council and the subdivider, that are greater than those necessary to manage adverse effects arising from the subdivision;
- (iii) where an activity is to be established which will have no adverse impact on the environment, particularly the infrastructure, reserves or community services of the District;
- (iv) where work is or has been undertaken or land set aside that will result in substantial environmental compensation.
- (v) where the applicant has previously carried out work or provided services or land, with the agreement of Council, that exceeded the requirements that applied to an earlier subdivision, and the applicant has not been compensated by any other means.

It is considered that the proposed subdivision does not fall within any of the criteria listed in (i) to (v) above. While the vesting of this area of land in the Department of Conservation is applauded (particularly due to the presence of an identified significant natural area on the adjoining property), the waiving of reserve fund contributions for proposed Lot 1 in lieu of its vesting is not supported by the Community Services Department. Reserves and community services are essential facilities for the wellbeing of the people of the District and new growth places a demand to upgrade existing services, to expand, and to develop new facilities. An additional dwelling will result from the proposed subdivision which will in turn create additional pressures on Council's reserves and community services. Reserves and community services are available to the total community and the cost of enhancing facilities is funded in part by reserve fund contributions on subdivision. The vesting of the land in question will have benefits for the national conservation estate but will not provide sufficient public benefit for the local community to warrant an off set of the reserve fund contribution.

Proposed Lot 5 and 6 – Proposed Local Purpose Reserves (Esplanade)

Section 230 requires that where any proposed allotment created by a subdivision is less than 4 hectares a 20 metre esplanade reserve or strip be created adjacent to rivers which have widths greater than 3 metres at their annual fullest flow (AFF). However, the Act allows specific Plan rules, or any resource consent, to waive or amend the width of an esplanade reserve.

The application as lodged requested that the esplanade provisions be satisfied by the creation of a 5 metre strip. This was not supported by the Community Services Department for a number of reasons and the application plan was amended accordingly.

The reasons for opposing a esplanade strip were that the incised nature of Black Valley Stream means that it is unlikely to be subject to significant movement in the foreseeable future, as such it is considered more appropriate to vest an esplanade reserve rather than creating an esplanade strip. The vesting of a reserve is also consistent with the esplanade provisions for other streams in the wider St Arnaud urban area and its periphery.

Community Services also considered the request to reduce the width of the esplanade provision from 20 to 5 metres. However, following a site visit with staff from the Department of Conservation, it was concluded that the most appropriate width in this location would be 10 metres. Any lesser width would not adequately provide for both public access and use and the protection and enhancement of conservation values.

3. RESOURCE MANAGEMENT ACT 1991

The purpose of the Resource Management Act 1991 is to manage the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety. Providing access to and along rivers and the coast is a matter of national importance. These are both reflected in the objectives and policies in chapters 8 and 14 of the Proposed Tasman Resource Management Plan.

4. PROPOSED TASMAN RESOURCE MANAGEMENT PLAN

Objectives and Policies

Chapter 8 outlines Councils objectives and policies for the margins of rivers, lakes and the coast.

Objective 8.1.0 aims to maintain and enhance public access to and along the margins of lakes, rivers, wetlands and the coast, which are of recreational value to the public.

Policy 8.1.1 aims to maintain and enhance public access to and along the margins of water bodies while avoiding, remedying or mitigating adverse effects on other resources or values, including: indigenous vegetation and habitat; public health, safety, security and infrastructure; cultural values; and use of adjoining private land.

Policy 8.1.1 states that notwithstanding Policy 8.1.1, public access by way of esplanade requirements will not be sought in areas where risks to public health and safety cannot be avoided, remedied or mitigated; or in areas where it is necessary to maintain security, consistent with the purpose of any resource consent, such as operational port areas.

Policy 8.1.4 provides for the setting aside of esplanade reserves, esplanade strips or access strips at the time of subdivision of land adjoining water bodies where there is a priority for public access.

Policy 8.1.5 seeks to provide public access linkages between reserves and public access adjoining water bodies.

Policy 8.1.7 aims to ensure that adequate public access is available to outstanding natural features and landscapes except where the impact of such access is incompatible with the duty to protect these areas or access across private land cannot be negotiated.

Objective 8.2.0 aims to maintain and enhance the natural character of the margins of rivers and the protection of that character from adverse effects of the subdivision, use and development.

Policy 8.2.1 aims to maintain and enhance riparian vegetation, particularly indigenous vegetation as an element of the natural character and functioning of rivers and their margins.

Policy 8.2.4 aims to set aside or create an esplanade reserve, esplanade strip or access strip at the time of subdivision of land adjoining water bodies where there is a priority to protect the natural character of the those margins.

Policy 8.2.15 aims to pursue and encourage restoration and enhancement of riparian areas where natural character has been degraded by past human activities

TRMP Rules Relating to Esplanade Reserves

The subdivision of land adjacent to a river whose bed has an average width of 3 metres or more (AFF) is a discretionary activity pursuant to 16.4.2. Under this rule Councils discretion is limited to the following:

Whether an esplanade reserve is required for any of the following purposes:

- provision of public access;
 - provision for public recreation;
 - protection of conservation values, including:
 - landscape
 - natural character
 - heritage sites
 - indigenous vegetation
 - water quality
 - aquatic habitat and ecosystems
 - water quantity
 - potential for regeneration
 - natural functioning of the river and its margin and mitigation of natural hazards.
- (1A) whether an esplanade reserve should not be required, for reasons of public health and safety, or to ensure a level of security consistent with the purpose of a resource consent, or in other exceptional circumstances.
- (2) The width of esplanade reserve needed to meet the purpose(s) for which the reserve is required.
- (3) n/a
- (4) n/a
- (5) n/a

- (6) Where any part of the allotment being subdivided is foreshore or seabed or the bed of a river or lake, whether that land should be vested in the Crown (for land in the coastal marine area) or in the Council (for land that is river or lake bed);
- (7) n/a
- (8) Whether an esplanade strip should be created instead of an esplanade reserve. Circumstances where this may be an appropriate option include (but are not limited to):
- locations where the line of mean high water springs, or of a river bank or lake margin, is likely to change position due to erosion, accretion, or a change in water level;
 - situations where riparian land use and land management are able to meet esplanade purposes without full surrender by the landowner and acquisition by Council.
- (9) n/a

5. SUBMISSIONS

There were four submissions to the application; two specifically refer to esplanade reserve issues.

J and S Coote

This submitter is neutral with regard to the application but does not support the creation of an esplanade reserve adjoining the southern bank of Black Valley Stream. The submission states that the esplanade is likely to be a potential source of conflict between the owners and members of the public who may use the reserve. They submit that once travelled along there is no option for the public except to return the way they came. They also state that, due to the thick scrub on the northern side of the stream, the public will shortcut across private land and try to leave in some cases by the access off SH63. They state that TDC and/or DoC have an obligation to fence the new boundary and that the stream would provide a clearer boundary than the reserve.

It is noted that the RMA requires Council to vest an esplanade reserve or create an esplanade strip in situations such as this and there needs to be sufficient reason to seek consent from the Minister of Conservation for a reduction in the width of a reserve. Although the vesting of an esplanade reserve on the south side of Black Valley Stream in isolation may not appear to be logical from the point of view of walkway connections, it is intended that the progressive vesting of esplanade reserves adjoining rivers and lakes will ultimately form a network of reserves and walkways which will provide enhanced access between the lakes, rivers, reserves and conservation estate in the wider St Arnaud area.

It is also noted that the purpose of esplanade reserves and strips is for the protection and enhancement of conservation values in addition to the maintenance and enhancement of public access to and along rivers. The proposed reserve will provide for the protection of conservation values including landscape, natural character, indigenous vegetation, water quality, aquatic habitat and ecosystems, water quantity, potential for regeneration and the natural functioning of the river and its margin in addition to forming an important link within a future reserve and walkway network.

Department of Conservation

The Department supports the application as shown on Plan # 2 by Survey Solutions (NZ) Ltd dated 16 February 2007 which provides for the vesting of proposed Lot 3 in the Crown (Department of Conservation) for scenic reserve purposes, and the vesting of Lots 5 and 6 in the Tasman District Council as Local Purpose Reserve (Esplanade). The submission states that proposed Lot 3 would be a worthwhile addition to the adjacent protected land and that the vesting of esplanade reserve would provide the opportunity to enhance the conservation values of Black Valley Stream and to provide for public access and recreational use. The submission notes that section 405A will apply to this application and as such consent is required from the Minister of Conservation for a reduction in the width of the esplanade reserve from 20 to 10 metres.

6. RECOMMENDATIONS AND REASONS

In accordance with section 230 of the Act (and subject to approval from the Minister of Conservation) it is recommended that Proposed Lot 5 and 6 shall vest in the Tasman District Council as Local Purpose Reserve (Esplanade) and that reserve fund contributions be payable for proposed Lot 1 in accordance with Rule 16.5.2. of the Tasman Resource Management Plan.

It is not considered fair or reasonable to waive reserve fund contributions nor is it considered appropriate to waive vesting reserves for reasons of public health and safety, or to ensure a level of security consistent with the purpose of a resource consent, or for any other exceptional circumstance.

It is considered appropriate in this instance to vest an esplanade reserve with a reduced width as opposed to an esplanade strip as the creek is incised and is unlikely to revert to a naturally meandering creek in the foreseeable future and the width of the reserve will be sufficient to enhance public access and protect and enhance the conservation values adjoining Black Creek.

The vesting of the proposed esplanade reserve is consistent with Part II of the Resource Management Act 1991, which states that in achieving the purpose of the Act, all persons exercising functions and powers under it shall recognise and provide for the maintenance of public access to and along the coastal marine area, lakes and rivers as a matter of national importance and shall preserve the natural character of rivers and their margins.

The vesting of an esplanade reserve is also considered to be consistent with the objectives and policies in the Tasman Resource Management Plan. The reserve will enhance access to and along Black Valley Creek and will ultimately facilitate access to other reserves and the conservation estate in and around St Arnaud. It will also provide for the enhancement of the natural character of the margins of Black Valley Stream.

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