

MINUTES

TITLE: Environment & Planning Sub-Committee
DATE: Wednesday, 16 March 2005
TIME: 10.45 am
VENUE: Council Chamber, 78 Commercial Street, Takaka

PRESENT: Crs E M O'Regan (Chair), M J Higgins, N Riley

IN ATTENDANCE: Manager Consents (J Hodson), Consent Planner (P Gibson), Development Engineer (D Ley), Resource Scientist (Land) (A Burton), Corporate/Engineering Administrator (V M Gribble)

1. J L AND J M RIORDAN, CORNER OF LANSDOWNE STREET AND NEWMAN STREET, CLIFTON - APPLICATION NO. RM041185

1.1 Presentation of Application

Mr Bacon presented the application on behalf of Mr and Mrs Riordan. The application seeks a subdivision consent to subdivide Lot 3 DP 304980 into two allotments. Proposed Lot 1 contains the existing dwelling and is 2.5981 hectares in area. Proposed Lot 2 is for rural residential purposes and is 1.4927 hectares in area. Access to Lot 1 and Lot 2 is proposed from Boyle Street. Also, sought is a land use consent to establish a dwelling on proposed Lot 2.

Mr Bacon read his evidence and tabled a copy of the Hill planning consent decision of 2001.

Cr O'Regan asked where the slip in the 1920s that was referred to had come from.

Mr Bacon said supposedly it came off the hills to the east, whereas the soil type in Mr Burton's report talks of deep topsoil and more rounded stones.

Mr Riordan said the slip is documented in "Yesterdays of Golden Bay", talking about a vineyard up towards Thorp's property which was demolished by a massive slip that came right across the valley, depositing wine barrels and soil in 1925.

Cr Higgins asked what sort of financial contributions the applicants would be looking at providing towards Boyle Street upgrade and sealing.

Mr Riordan suggested something between \$20,000 and \$40,000 would be considered.

Cr Higgins noted the volunteered condition on building coverage which effectively constrains development.

Mr Bacon said nearby landowners' concern is the area being built up more and the way to answer that concern in a way that can't be answered in any other way is to put a building coverage limit. 500 square metres would allow for a generous-sized house and out buildings. It would prevent glasshouses being built on it unless an application to vary conditions was granted.

Cr Higgins asked what water is available on site at the moment.

Mr Riordan said there is a well on the property for the house. The well was there when the property was bought. Availability of the well is unknown, but there is a reasonable flow going in.

Mr Bacon said the water supply would be sufficient to establish crops until they grow when they don't need so much, but not enough to sustain horticulture development.

Cr Riley asked where the photo of the soil was taken and if it is possible to see it during a site visit.

Mr Riordan said the soil profile is where they built their house and encouraged the Committee to visit and look at it.

Mr Bacon said a lot of the smaller allotments in Clifton would be historic.

Cr Riley asked why the property is not split equally.

Mr Riordan said if we did it equally along the same line, it would probably encroach on the well and we wanted to retain the well on our property.

Mr Riordan said they have had the water tested and it didn't have major problems regarding quality, apart from e-coli, but they have since fenced it off. Stock were getting access to the well itself. It hasn't been tested again.

Mr Bacon said he had looked at traffic movement on the road once, about three weeks ago. It couldn't be regarded as representative, but there were 18 movements from the golf club, one vehicle visited the art gallery and there was one other campervan.

Mr Bacon said he wrote to DOC and Historic Places record keeper and they replied there wasn't any archaeological records on the site, but accepted that that doesn't preclude the possibility there could be artefacts and standard advice is if anything was found to contact them.

Cr O'Regan asked Mr Ley to check the record of movements on the road.

Cr O'Regan asked if the applicant had any comment on whether it is advisable or preferable to use Lansdowne Street for Lot 2.

Mr Bacon said a condition on Hill subdivision precluded that so no thought was given to it. If it had to be formed to full standard it would be questionable for use for one lot. There are other properties, with a rough turn around area when you get off the formed part. It is not a publicly used road.

Cr O'Regan asked if the applicant had given consideration to establishing a wastewater system to the Wastewater Standard.

Mr Bacon asked if there is a standard that would apply in the area, but said if there isn't there are systems available to provide a higher standard. It is not a technically difficult thing to do.

Mr Bacon said in the old National water and soil classification which was standard for the country this would not be class 1, it would be class 3.

Cr O'Regan said Mr Burton will comment on it when presenting his report.

Cr O'Regan said Mr Amos had said in his submission a previous application had been refused a consent application and asked how long ago.

Mr Bacon said he didn't believe it was relevant.

Cr O'Regan said it would have the same relevance as the Hill subdivision.

Mr Bacon said he doesn't have knowledge of the applications.

Cr O'Regan asked for copies of Mr Bacon's evidence to be provided for the submitters.

2. PRESENTATION OF SUBMISSIONS

2.1 Mr and Mrs P and K Keen

Mrs Keen tabled photographs showing the rural character of the land in question and read their evidence.

Cr Riley asked if Keens have indications of traffic flow in regard to their activity.

Mrs Keen said they keep numbers of people visiting their gallery and would have 30 vehicles per day visiting during late December to February. Vehicle movements to the golf course are all year round.

Mr Keen said there has been an increase in traffic to the reserve. Traffic to the gallery over this summer was up because of the wet weather. They would expect about two vehicles per day at this time of the year.

Cr O'Regan asked if there was a problem with dust on this road.

Mrs Keen said there is, not so much for them but for the Burrows. Dust mitigation was one of the concerns of the previous subdivision of the Hill land and there were certain conditions set with regard to dust mitigation, ie a line of natives close to boundary of road. They discussed sealing the road but the quote was enormous and out of the question.

Mrs Keen said their resource consent was granted approximately two years ago. She said they had to screen out car parking from the neighbours view and reduce vehicle movements to between 10.00 am and 5.00 pm.

Cr O'Regan asked if the applicant volunteering various conditions, particularly with relation to building coverage caused any change in your attitude.

Mr Keen said Hill had offered a sealing contribution towards sealing of the road in his application, but Council turned that down.

Cr O'Regan said the condition offered related to all buildings and has to be compared with what is possible under the rules and wondered if it was taken into account.

Mrs Keen said building of greenhouses would visually impact on neighbours, with regard to reflective glass. That condition wouldn't make a lot of difference.

Mr Keen said the smaller the block the less viable it becomes. At the moment it has commercial viability.

Cr O'Regan said that commercial viability may well involve placing of buildings.

Mr Keen said the buildings would be maybe a packing shed and/or pump shed.

Cr O'Regan asked what mechanism would you propose for the Rata tree protection.

Mrs Keen said it should be listed with TDC's heritage trees. There are trees of equal stature that are on the list.

2.2 Submission - R M and J E Burrows

Mr Burrows read their submission.

Cr O'Regan commented on the statement that the application does not comply with planning documents and said it needs to be clearly understood the applicant has a right to make an application and having made the application the Council has to hear it and deal with it.

Mr Burrows said dust is very bad and they have been asking to have the road tar sealed.

Mrs Burrows invited the Committee to go to their house to see the views.

Cr O'Regan asked having heard the permitted building rules and having heard applicants offer of limitation of all buildings on each proposed lot to 500 squares metres does that make any difference to your position in regard to your concerns.

Mr Burrows said not really. He said 500 square metres is equivalent to two houses. As it is there is a cow shed and a number of buildings on it that probably exceed 500 square metres.

2.3 Submission – D Amos

Mr Amos asked if he could elaborate on points in his submission.

Cr O'Regan said he could elaborate on all points in his submission and any point made by any other submitter or applicant.

Mr Amos said he was also speaking for Mrs P Hayter, joint owner of his property.

Cr Riley asked where Mr Amos gets his water from.

Mr Amos said from collection of rainwater and from Robilliards property. There was no water when the section was bought.

Mr Burrows said they have two separate titles, one with the house and one where an old house was.

3. STAFF REPORTS

3.1 Consent Planner (Land) - Mr P Gibson

Mr Gibson presented and spoke to his report which was contained in the agenda.

Mr Gibson said it is a discretionary activity under the proposed plan and Council may or may not approve it, but must have regard to the Act and proposed plan. Policies and objectives are quite clear on what it is trying to achieve. The Plan is a dynamic document and is subject to change. This is the document we have currently got and need to assess the applicant against it.

Cr O'Regan said the suggestion you have made is that the rural residential zones are the only means of complying with policies and rules, whereas discretionary nature would indicate that other matters may be taken into account.

Mr Gibson said if, as the plan says, the subdivision is not contrary to objectives and policies within the plan then a discretionary activity can be granted.

Cr O'Regan asked for comments on volunteered conditions, particularly with limitation on buildings.

Mr Gibson said it is an improvement on offering nothing, but affect on rural amenity would still be greater than minor.

3.2 Resource Scientist (Land) Mr A Burton

Mr Burton spoke to his report contained in the agenda.

Cr O'Regan asked if Council has information on availability of water. He said the applicant had mentioned a well.

Mr Burton said he is not aware of any information available.

3.3 Development Engineer Mr Ley

Mr Ley spoke to his report contained in the agenda.

Mr Ley said vehicles per day counts were undertaken in 2001, with 130 vehicles per day and just recently (2005) with up to 162 per vehicles. That traffic count was taken just off Abel Tasman Drive into Boyle Street. This applicant would have 5% to 6% more traffic, hence the condition to upgrade the unsealed section. He said he hasn't measured the width of the road. The minimum standard for roads is 5 metres. If seal extension is wanted, then the existing width would be acceptable. Mr Ley said he was unaware of consent notice limiting access to Boyle Street. They (Boyle and Lansdowne) are both public access roads and people have the right to have access off public roads but they would need to be brought up to new standards of five metre width.

The applicant had offered between \$20,000 and \$40,000 for seal extension. He said it looked like 176 metres seal extension would be required and \$20,000 would probably cover that of 3.5 metres width, as long as there are no major drainage works. Mention was made of the roading contribution as per the LTCCP, and it should be noted it is for other roading infrastructure rather than being spent on this particular road.

Cr O'Regan asked whether Lansdwone Street is a piece of road Council would like to see upgraded. He said he presumed it is not on the maintenance list.

Mr Ley said it is just a piece of paper road. Right now we are going around the district and removing the names off unformed roads with the ultimate aim of closing and selling them to adjoining neighbours. This is an unformed track, not maintained by Council, but open for public use.

Cr Riley asked if Boyle Street was upgraded to 3.5 metres would there be any subsidy to Council on that.

Mr Ley said probably no, as it is only benefiting residents of the road, but we would certainly try to get money from Transit.

Cr O'Regan said with usage the road is getting, would it be, in your opinion, desirable to have the current sealed portion of the road upgraded from Abel Tasman Drive.

Mr Ley said Boyle Street has some major bends in it. Not going to achieve anything by widening it unless we improve the curves.

4. RIGHT OF REPLY

Mr Bacon exercised his right of reply. He emphasised that provisions in the plan relating to rural residential subdivision and variation 32 and how it affects proposals to create smaller allotments was debated in the Collis hearing and Judge Bollard said if Council was so committed to ensuring that rural/residential zones and Rural 3 were to be the answer then discretionary subdivision provisions in the plan should have been removed or been modified to confine them to subdivisions for very special purposes and that is not the way the rules are. His view was that as long as the discretionary rule remains in the plan it has to be looked at with a fair and open mind.

Whilst zoning is the basis for establishing areas for various activities, zone delineation is not as precise as one might suppose. A lot has been carried out on the basis of desktop exercises. An important issue is whether the land is highly productive, moderately or low. He acknowledged limitations that would rule out activities that require either constant irrigation or large volumes of irrigation at certain times.

The application is made on the basis that only a few years ago Council had considered an application to have this land removed or reorganised out of an area of dairy farm and it was said the land is not of high quality. Mrs Geen said it refers to her land, and that is correct as it refers to influences of the estuary, but looking at the wording of the decision, it is quite clear the whole of the allotments created were to be considered of that lesser quality. The productive potential of the land will by and large remain. Council can't make the land be used productively but it can do things to retain the opportunity for it to be used productively. If Lot 1 is created and a house is built there will be an area of land unavailable to grow or graze. With a 500 square metre limitation, a 250 square metre dwelling would take out a very small percentage area. He said Mr Gibson omitted talking about objective 7.2 and policy 7.2.1 which provide the other side of the rural land use picture. That doesn't mean rural residential areas it means the whole rural zone and that was debated and discussed in the Collis case.

Mr Gibson mentioned several recent Environment Court decisions but he didn't mention some that have allowed small subdivision in Rural 1 area, the most significant one for an 11 block rural residential block in Redwood Valley on rural 1 land. It is important to emphasise the benefits from conditions relating to building coverage on sites and benefits that are quite substantial for nearby landowners. It is open to all of that land to be covered in buildings, if an owner so chooses. Mrs Geen referred to Rural Futures meeting recently and suggested that everyone is opposed to further subdivision. We don't know who was there and no more reliance can be placed on that than can be placed on a workshop I attended in Richmond recently and it can't be taken into account.

The economics in relation to lot size vary considerably by what you are doing. You need a lot of land for dairying, but if you are into specialised horticulture, you only need a few thousand square metres. He said It is dangerous to say when you make small lots they will be uneconomic.

As far as protecting the Rata tree, he agreed that the best protection is to have it listed in the district plan, however with the state of the plan, no member of the public can do that, it has to be Council decision. If you want immediate protection a consent notice would do it until more comprehensive protection can be afforded.

Mr and Mrs Burrows submission tried to create a picture of the applicants having deliberate intent of subdivision, and that is entirely irrelevant. An analysis of actual effects that the application would have on the environment are in all senses, minor.

Relating to the Boyle Street road upgrading, Mr Riordan is comfortable with making a contribution of a bit more than would be necessary to extend the seal.

The meeting adjourned at 3.12 pm and the Committee undertook a site visit.

**Moved Crs Higgins / Riley
EP05/03/32**

THAT the public be excluded from the following part of the proceedings of this meeting namely:

J L and J M Riordan

The general subject of the matter to be considered while the public is excluded, the reason for passing this resolution in relation to the matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

Subject	Reasons	Grounds
J L and J M Riordan	Consideration of a planning application.	A right of appeal lies to the Environment Court against the final decision of Council.

CARRIED

**Moved Crs O'Regan / Higgins
EP05/03/33**

THAT for the purposes of discussing the application of J L and J M Riordan as an "In Committee" item, the Manager Consents be authorised to be in attendance as advisor.

CARRIED

**Moved Crs Riley / O'Regan
EP05/03/34**

THAT the public meeting be resumed and that the business transacted during the time the public was excluded adopted and that the following resolutions be confirmed in open meeting.

CARRIED

2. J L AND J M RIORDAN, CORNER OF LANSDOWNE STREET AND NEWMAN STREET, CLIFTON - APPLICATION NO. RM041185

**Moved Crs Riley / O'Regan
EP05/03/35**

THAT pursuant to Sections 104 and 104D of the Resource Management Act 1991, Council declines consent for J L and J M Riordan to subdivide Lot 3 DP 304980 into two allotments and to construct a dwelling on the land shown as proposed Lot 2.

The reasons are stated below.

REASONS FOR THE DECISION – SUBDIVISION AND LAND USE:

The land is zoned Rural 1 under the Proposed Tasman Resource Management Plan. The subdivision is a discretionary activity under Rule 16.3.7A of the Proposed Tasman Resource Management Plan in that the proposed lots are less than the 12 hectares required under rule 16.3.7(b) for a controlled activity subdivision in the Rural 1 zone. Schedule 16.3A of the Proposed Plan sets out the matters the Council will have regard to in assessing the application.

The land is zoned Rural A under the Transitional Plan and the status of the activity is non-complying.

The Committee is aware that there is one reference pertaining to the subdivision rules and policies and objectives particularly relating to the Rural 1 zone and therefore the application is considered as a non-complying activity. However, more weight has been given to the policies and objectives of the Proposed Plan due to the stage of its progression through the statutory process.

The application has been considered subject to Part 2 of the Act i.e. the purpose and principles of sustainable management of natural and physical resources, and Section 104.

In relation to non-complying activities, Section 104D states that Council may only grant such an application if it is satisfied that either;

- The adverse effects of the activity on the environment are no more than minor or,
- The activity is not contrary to the objectives and policies of relevant plan and the proposed plan.

The applicants explained that the subdivision was desired to dispose of land which will comprise proposed Lot 2. It is understood that there are lease agreements for grazing which may not be renewed in the future. This matter was considered to not carry any significant weight.

The Committee was told about the consent history of the land and how the previous owner had sought a boundary adjustment whereby six existing titles were changed to put the best land into a large title and the less productive land disposed of for rural residential use. This outcome was deemed to be compatible with the purpose of the Act.

The Committee noted that four submissions were received, all in opposition to the application.

The issues raised by the submitters included:

- Proposal is inconsistent with Plan objectives and policies
- Productive value of the land will be reduced through reducing the size
- Ad hoc decision making may reduce public confidence in the Council's Plan administration
- Loss of rural character and amenity values

- Cumulative effects and precedent effects of granting this subdivision
- Adverse effects on substandard roading
- Land has significant natural and coastal values which should be protected
- Rata tree needs to be protected

The proposed subdivision is in a very attractive area characterised by the estuary, rural open space and some rural residential uses, the golf course and small businesses in the area. The land was previously part of a dairy farm but is now used for grazing in conjunction with other surrounding land.

The Committee considered that the proposed subdivision of this rural residential sized lot in this location was unacceptable both in terms of the policies and objectives and the actual effects of the subdivision on the environment.

The Committee noted the mitigation measures offered by the applicant in terms of placing a limitation on the size of buildings on both lots and also a consent notice regarding no further subdivision of the lots for 10 years. However, it was considered that these measures would be unable to mitigate the concerns held in terms of the creation of another rural-residential sized allotment in this area. The Committee considered that the existence of the smaller lots in this area was very much a historical legacy and they should not be seen as a reason for granting further subdivisions. Such further subdivision is considered to be unacceptable.

Fragmentation of rural land is a matter which is of major concern to the Council and features prominently in the issues, policies and objectives of the Proposed Tasman Resource Management Plan, particularly Objective 7.1. The general aim is to ensure that the lots created in the Rural 1 and 2 zones are of a size to ensure the lots have a degree of versatility of productive uses. This is stated in Policy 7.1.3. It was considered that the subdivision of the land in this case would not achieve this outcome.

The Committee noted the discussion about the soil type and productivity of the land in question. However it was clear to the Committee that the soil had high productive value and they did not accept that any slip that had occurred in the area had significant effect on the versatility of the land today.

The Committee were concerned about the precedent effect of granting such an application in the absence of any distinguishing features. It was considered that the approval of this application would send a signal to the community of Golden Bay that rural-residential subdivision of rural land was acceptable and this message is incorrect. The framework established by the Proposed Plan is such that rural residential subdivision and development should be focused in the areas zoned for that purpose or where distinguishing features mean that there would be no adverse effects. There was concern about consistent administration of the Plan and that like applications should be treated as like in the future.

In regard to the references to recent Environment Cases, the Committee is clear that the principal theme of Chapter 7 is the protection of rural values and a subservient theme is the provision of opportunities for rural residential activities in the rural area. While it is accepted that the Plan does not prevent applications for rural residential subdivision being made as a Discretionary activity, but in order to grant consent to such an application, it must not have an adverse effect on a variety of rural values including protection of rural character and amenity, protection of rural areas from fragmentation, protection of rural areas from adverse visual impacts and preventing loss of productive potential of the rural land resource.

In summary, the Committee considered that the application was inconsistent with the purpose and principles of Part 2 of the Resource Management Act and the policies and objectives of the Proposed Plan and the Regional Policy Statement. The Committee did not consider that this case could meet either of the tests in Section 104D.

CARRIED

Confirmed:

Chair: