

MINUTES

TITLE: Environment and Planning Subcommittee
DATE: Monday, 11 April 2005
TIME: 9.30 am
VENUE: Council Chamber, 189 Queen Street, Richmond.

PRESENT: Cr R G Kempthorne (Chair), Crs M J Higgins and E C Wilkins.

IN ATTENDANCE: Manager, Consents (J S Hodson), Planning Consultant (G Rae), Administration Officer (B D Moore).

1. THOMAS BROTHERS LTD, DEHRA DOON ROAD, RIWAKA – APPLICATION No. RM040946

1.1 Proposal

The applicant sought subdivision consent for a 37.4 hectare Rural 1 property into three allotments: Lot 1 of 1.32 hectares, Lot 2 of 1.24 hectares and Lot 3 of 34.4 hectares. Lots 1 and 2 will be used for construction of residences by the applicants and Lot 3 (balance) will contain the existing orchard, two dwellings and orchard buildings.

1.2 Presentation of Application

Mr G Thomas, resource management consultant, attended the hearing with Mr F C Thomas representing the applicant company. Mr Thomas tabled and read a statement of evidence and described the location and use of the present property, together with some background information of the history of use of the subject site. The evidence noted that of seven submissions, six were in support and one from Transpower New Zealand Ltd opposed the application in part.

A statement of planning evidence was presented by Mr H Briggs, who identified the proposed building sites on Lots 1 and 2, which are on minor ridges and have low productivity soils. The orchards are on the lower slopes and river flats where there is better soil quality. Mr Briggs addressed the consultation and issues regarding submissions and the matters raised in the consultant planner's report. He said that the application is not contrary to the objectives and policies of Council's plans and statements. Mr Briggs tabled a copy of suggested conditions of consent for the subdivision and two new dwellings.

Mr F Thomas read a statement of evidence on behalf of the applicant and provided some history of the use of this property by the Thomas family since the late 1850s. He confirmed that the applicant company did not want to subdivide high quality horticultural land.

Mr G Thomas said that it would not be practical to have a covenant in perpetuity to restrict further subdivision of the balance area as this would not allow such things as boundary readjustments.

Mr F Thomas confirmed that houses of only one level were intended on proposed Lots 1 and 2.

Mr G Thomas said that it was not practical to provide a further dwelling under the worker accommodation rules, as this is required to be under one roof and possibly with ablutions in a separate building.

Mr F Thomas said that the Eurogap rules may mean that public access through the orchard will be restricted to comply with Eurogap requirements for food safety.

Landscape architect, Mr R Langbridge, tabled and read a statement of evidence. He spoke about the location, context, visibility and natural character of this site. He provided details of the proposal and an assessment of the proposal with regard to its impact on amenity values and landscape and natural character values. He spoke of the use of a proposed planted spray buffer between the house site and the existing orchard block south-west of the site of proposed Lot 1 and further extensive revegetation planting proposed on the relatively steep slope north of the proposed house site.

Mr Langbridge noted that the planning officer did not see proposed Lot 2 as creating a problem or major effect on landscape values. Mr Langbridge explained how the proposed separation between the two proposed house sites and the proposed planting will contribute to the openness and greenness, providing for the retention of rural character.

Mr G Thomas then resumed his evidence and clarified that the Council's consultant planner was seeking an esplanade strip adjacent to the bank of the Riwaka River. The evidence said that in terms of the permitted baseline, there would not be any extra adverse effect created by the two dwellings over and above what could happen as of right. Mr G Thomas said it was permitted to erect buildings on the property such as barns or even replacement packhouses and coolstores. He said it was difficult to understand why dwellings are considered to have more of an adverse effect on the rural environment than farm buildings. Mr G Thomas said that this application had sufficient unique qualities to not encourage similar applications for retirement blocks.

1.3 Staff Report

Planning consultant, Mr G Rae, spoke to the staff report contained within the agenda. He said he was no longer concerned about the appearance of proposed Lot 2 and although Council should not allow additional dwellings on prominent slopes, the proposed screen planting will help. Mr Rae said that Council should be cautious about granting consent to applications based on personal circumstances of the applicant. Mr Rae spoke to the proposed conditions of consent and acknowledged that a condition to restrict further subdivision cannot be relied on. He said that Council should be consistent with its decision-making and consider the possibility of future similar applications. Mr Rae said he was not persuaded that the application for this property is unique and that this is the main issue for consideration.

1.4 Right of Reply

Mr G Thomas responded for the applicant and reminded the Subcommittee that this application was for the economic well-being of the applicant's orchard operation, which employs 28 full-time staff and up to 300 extra seasonal staff. He spoke of the unique differences of this application and said that all views of Lot 1 are long distance and the nearest orchard property is 800 metres away. The right of reply clarified the proposed conditions of consent. The buildings on proposed Lots 1 and 2 would be single-storey, with a curtilage area not exceeding 1,000 square metres. It was confirmed that the applicant would enter into a covenant to not apply to further subdivide proposed Lots 1 and 2 unless the rules of the Tasman Resource Management Plan change to allow this to occur as a controlled activity.

The Subcommittee reserved its decision at 2.55 pm.

Moved Crs Higgins / Wilkins EP05/04/05

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

Thomas Brothers Ltd

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
Thomas Brothers Ltd	Consideration of a planning application.	A right of appeal lies to the Environment Court against the final decision of Council.

CARRIED

Moved Crs Kempthorne / Higgins EP05/04/06

THAT for the purposes of discussing the application of Thomas Brothers Ltd as an "In Committee" item, the Manager Consents be authorised to be in attendance as advisor.

CARRIED

Moved Crs Higgins / Wilkins EP05/05/07

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

CARRIED

2. THOMAS BROTHERS LTD, DEHRA DOON ROAD, RIWAKA – APPLICATION No. RM040946

**Moved Crs Kempthorne / Higgins
EP05/05/08**

THAT pursuant to Sections 104, 104B and 104D of the Resource Management Act 1991, the Council DECLINES consent to Thomas Bros Ltd to subdivide Part Section 93 (CT 13B/1146) into three allotments and to construct a dwelling on each of proposed Lots 1 and 2.

The consent is DECLINED for the following reasons.

REASONS FOR THE DECISION - SUBDIVISION AND LANDUSE:

The land is zoned Rural C under the Transitional District Plan (Waimea County Section) under which subdivision below 25 hectares is deemed to be a non-complying activity.

Under the proposed Tasman Resource Management Plan the land is zoned Rural 1 and the minimum lot size for a controlled activity is 12 hectares and therefore the subdivision is considered as a discretionary activity. The building of dwellings on lots less than 12 hectares is a discretionary activity.

The Committee is aware of an unresolved reference seeking further investigation of the extent of Class A soils and associated non-complying status of subdivision thereof; or, alternatively make subdivision of both Rural 1 and Rural 2 land containing Class A soils non-complying activities (Klaus Thoma v Tasman District Council - dated 24 December 1998 - RMA 001/99). The application has therefore been considered as non-complying in relation to the subdivision and discretionary in relation to dwelling construction. However, greater weight has been accorded to the policies and objectives of the Proposed Plan than the Transitional Plan as it has progressed a significant way through the public process under the Resource Management Act 1991.

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 104D which states that the Committee may only grant the application if one of the two gateways of Section 104 D are met i.e:

- If the adverse effects on the environment will be minor, or
- If the activity will not be contrary to the objectives and policies of the relevant plan (including the proposed plan if one exists).

In addition Section 104 requires the Committee to have regard to:

- a) any actual and potential effects on the environment of allowing the activity
- b) the relevant provisions of:
 - Regional Policy Statement
 - Plan or Proposed Plan

- Any other matter considered relevant and reasonably necessary to determine the application.

The subject land comprises 37.4094 hectares of land that contains:

- 29 hectares of apple and kiwi fruit orchard
- 6 hectares of pasture
- Two dwellings
- One coolstore complex
- One horticultural packhouse facility
- Various other ancillary sheds, offices etc

The Committee understands that the property serves as the headquarters of the Thomas Bros family orchard operation which employs some 20 permanent staff and 90 seasonal workers plus providing employment for the family.

The reason for the application to subdivide the two small lots as explained by the applicants is to provide a block of land for each of the two Thomas brothers to build their “retirement” homes on so that two sons could move into the two existing dwellings on site. It is understood that the intention is that those sons will eventually assume a full-time management role in the business allowing the fathers to provide an on-going support role.

The Committee noted that there were seven submissions received, six in support and one partly in opposition. This submitter raised issues in relation to the potential effects on the transmission line that traverses the site.

The Committee noted that there were no special provisions in the planning documents referring to “retirement blocks” (as there used to be prior to 1995) and thus the application was required to pass one of the two gateway tests of Section 104D.

The Committee did not consider that the “permitted baseline” was a relevant consideration as there are no “permitted” subdivision provisions in the Proposed Plan.

The Committee determined that the key issues to be considered were:

- Land fragmentation issues ,
- Visual amenity and rural open space character values,
- Cross boundary effects,
- “Precedent” and consistent Plan administration.

In terms of land fragmentation, the Committee noted that the land sought to be subdivided into the two residential allotments was land which was not able to be planted or managed as part of the orchard operation because of its slope. The Staff Planning consultant considered that the removal of the two blocks from the title would not have a significant effect on the productivity of the orchard and the Committee agreed with this view. The land is appropriately zoned Rural 1 and this is despite the fact that the property contains some land which may not be as highly productive or versatile as the majority of the land. The Committee considered that this pattern of land class variation within properties would exist in many Rural 1 zoned blocks. There seemed to be an advancement of the argument that the subdivision would not result in any loss of land used for productive purposes.

The Committee was concerned about the subdivision which intended to create residential allotments within an existing productive block. 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 PTRMP, particularly Objective 7.1.0. The general aim of these objectives and policies is to ensure that the allotments created in the Rural 1 (and 2) zones as a result of subdivision are of a size to ensure the allotments 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 productive potential of the land in question. However, it was considered that the policy in relation to the creation of lots with a degree of versatility applied both to land of high productive potential as well as land comprising Proposed Lots 1 and 2 which may not necessarily meet the definition of highly productive land. The policy applies to all rural land. The Committee agreed that the principle associated with the PTRMP was that the less productive the land the greater the lot size should be to ensure versatility of the use of the land for future generations. Therefore the argument was not accepted that the subdivision of the allotments of 1.24 and 1.32 hectares (well below the 12 hectare threshold) would achieve the policy of the PTRMP (Policy 7.1.3).

The Committee acknowledges that the size of the subject land means that it could be divided into three lots of 12 hectares as a controlled activity under the provisions of the Proposed Plan. (Currently such an application would still technically be a non-complying activity due to the existence of the outstanding reference.) Clearly such a subdivision is not on the table, but if it were, the division of such a productive land use as this orchard would be an unfortunate event for the area.

In terms of visual amenity and rural open space character effects, the Committee considered that the effects of two additional dwellings on relatively small sites would be out of character with the pattern of development in this part of Derha Doon Road. Although the information provided highlighted the fact that a dwelling on proposed Lot 2 would be less visible than the one on the higher ground comprising proposed Lot 1, and that screening from plantings may eventually assist with blending the buildings into the landscape, in this case, creating two small allotments within an area characterised by larger allotments, would contribute to the loss of rural character, amenity and open space values. The area is clearly not that of a rural residential enclave although it is acknowledged that there are a number of dwellings further down Derha Doon Road. Thus the proposal could be seen as allowing sporadic ad hoc development.

The Committee noted the issue of potential cross-boundary effects and that the applicant indicated that a spray shelter would be planted to deal with the effects of spray drift which would be almost inevitable with the proposed dwelling sites being within the orchard. Other cross-boundary effects which would seem inevitable would be noise from the machinery used in the orchard and also the uses of the proposed right-of-way through the orchard and the commercial activities associated with the packhouse and coolstore. It was acknowledged that the problems associated with cross boundary effects would be very unlikely to arise while the properties were owned by members of the Thomas family but the Committee considered they had to take a longer term view of these issues and it was clear that circumstances may eventually change which may result in the problems becoming manifest. The concern is that cross boundary effects can often lead to pressure to limit the effects of legitimate productive rural activities such as orchards.

The Committee was also concerned about the issue of precedent, potentially leading to cumulative adverse effects of further fragmentation of Rural 1 zoned land, if this application was to be granted. It was considered that the approval of this application would send a signal to the community that rural residential subdivision of rural land was acceptable and this message is incorrect.

The Committee wish to emphasise that they do not believe that speculative subdivision or development is the intent of the applicants.

However, despite this view, the approval of this application would cause the creation of two new lots which could legally be sold to people unrelated to the orchard and thus in a legal sense are simply rural residential sized allotments within a rural title. The framework established by the PTRMP 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 PTRMP and that like applications should be treated as like in the future. It was acknowledged that the applicant put forward a list of characteristics which they considered distinguished the proposal from other possible future applications. The most persuasive of those reasons was that the subdivision was intended for the accommodation of people involved in the family business which is obviously a large, successful rural activity. The Committee have no doubt as to the authenticity of the case before them. However, even that matter cannot be said to be distinguishing, as there are no doubt many other operations, big and small where family members are involved.

It is acknowledged that the applicant volunteered several conditions such as the dwellings to be single storey and no higher than 5.5 metres above ground level, a curtilage limited to 1000 m², recessive, non-reflective building materials, landscaping and spray shelter planting, acceptance of conditions sought by Transpower NZ Ltd, a 5 metre esplanade strip (subject to negotiations) and a covenant regarding further subdivision. However, these volunteered conditions did not mitigate the effects identified in the view of the Committee.

In summary, the Committee did not consider that the application could be said to have effects which were no more than minor and nor could it be said to be consistent with the policies and objectives of the PTRMP. The adverse effects on the environment are those of land fragmentation , reducing rural character and amenity values of the area and cross boundary effects. In forming a judgement whether these effects are more than minor, the Committee considered the cumulative and precedent effects and by the clear importance given in the PTRMP to avoidance of fragmentation of rural land and to protecting rural character and amenity values.

CARRIED

Confirmed:

Chair: