

# MINUTES

**TITLE:** Environment and Planning Subcommittee  
**DATE:** Monday, 18 April 2005  
**TIME:** 9.30 am  
**VENUE:** Council Chamber, 189 Queen Street, Richmond.

**PRESENT:** Cr M J Higgins (Chair), Crs S G Bryant and R G Currie.

**IN ATTENDANCE:** Manager, Consents (J S Hodson), Subdivision Officer (R D Shirley), Development Engineer (D Ley), Administration Officer (B D Moore).

**1. D and H STEWART, CHARLOTTE LANE, BRIGHTWATER – APPLICATION No. RM041139**

**1.1 Proposal**

The applicant sought consent to subdivide land located at Charlotte Lane off Ellis Street, Brightwater into four lots for the construction of residences on each lot, within the Commercial Zone. The application site is 2,630 square metres in CT 94/182.

**1.2 Presentation of Application**

The applicant, Mr D J Stewart, was not present at the hearing and he was represented by Mr J West, registered surveyor and supported by R Amberger. Mr West tabled a contour plan showing how the land falls from south to north by 1 metre and drains towards Charlotte Lane. He said there was not much demand for commercial land in Brightwater.

Mr West explained that the applicant wished to avoid proposed Condition A6 of the Subdivision Officer's report, requiring that Lots 1-4 be filled to provide a finished ground level the same height as adjoining Lots 52 and 53 DP 20400, for the purpose of mitigating potential flooding of the land. Mr West acknowledged that flooding and inundation is the prime concern of the officer's report.

Mr Amberger said that Lots 52 and 53 have a corrugated iron fence on their northern boundary and the sites are backfilled to the fence. He said that backfilling the site would impinge on the flow of floodwaters and direct that to other properties. Mr West explained that the subject site had a valid right-of-way over Charlotte Lane. He said that the subject site is higher than Charlotte Lane and floodwaters would pond within Charlotte Lane. Mr Amberger said that the applicant was trying to avoid site filling and the associated unnecessary costs. He said there was no evidence of on-site flooding.

Mr Amberger said that the site was not an attractive commercial proposition as it was not visible from Ellis Street.

### **1.3 Presentation of Submissions**

Mr M Donaldson expressed concern about Charlotte Lane not being a legal street and questioned which properties had a right-of-way over Charlotte Lane. He spoke about the legal access to the rear of the shops on Ellis Street and that this access to the rear of the shops is off Charlotte Lane. He said that during flooding which occurred about two years ago, the subject site was not affected.

Mr C Fish said that he and his wife lived at Lot 53 and that drainage soakholes had been installed to assist drainage at the northern side of the property. He sought that the boundary of Lot 53 adjacent to the subject site would not be undermined. He said the old shed that exists on the subject site has the common boundary running through it.

Mrs J Leef said that the northern boundary of their property is presently over the fence into the subject site. She did not wish to be responsible for any run-off from her property onto the subject site. She sought that the subject sites have a covenant registered on the title to restrict the heights of future dwellings to a height similar to those on the neighbouring Ben Nevis subdivision.

### **1.4 Staff Reports**

Subdivision Officer, Mr R D Shirley, spoke to his report contained within the agenda. He explained that the subdivision would normally be expected to be approved by delegated authority as a controlled activity, however, the subject land is zoned commercial, so the construction of ground floor dwellings is a restricted discretionary activity. Mr Shirley said that although consent to the application would result in a loss of commercially zoned land, his investigations had revealed that there is not a demand for commercial land in Brightwater, especially at the location of the subject site.

Mr Shirley described the current ownership of Charlotte Lane and said that an easement-in-gross to Tasman District Council was registered to allow unrestricted public access. Mr Shirley said that now is the opportune time for Council to reconsider the ownership of Charlotte Lane. He said that the application satisfies the legal requirements of Section 106 of the Resource Management Act 1991 for the purposes of road frontage.

Mr Shirley said that construction of four dwellings will have less of an adverse effect in terms of general amenity than the commercial activity that could be undertaken as of right. Mr Shirley said that to assist Council in making Charlotte Lane a legal street, there would need to be an undertaking from the applicant that the right-of-way will be surrendered or extinguished, before the Section 224 certificate is issued or an appropriate consent notice registered on the title. He said that a building envelope relates to daylight control for the proposed dwellings.

Development Engineer, Mr D Ley, said that the proposed fill condition could be amended to raise the land slightly, making it the same height as the residential sections to the south and sloping down towards Charlotte Lane at a lower level.

## **1.5 Right of Reply**

Mr West responded for the applicant and reminded the Subcommittee that the commercial use of the subject site is not desirable. He said that the applicants would be happy to surrender their rights-of-way over Charlotte Lane so that in future Charlotte Lane may be vested in the Council as legal street. He said that the applicant is required to connect to the sewer which runs in the service lane behind the existing commercial premises. However, this service lane would not be required for vehicle access. Mr West said that the proposed filling of the site is still a concern of the applicant and that filling does not improve the drainage. He said that the front lots will be lower than the adjacent residential zoned land of Lots 52 and 53.

Mr West said he did not think filling the site would create any improvement. Mr West said that there is potential for houses on a raised site to look into the rear sites. He said that the applicant was not prepared to volunteer that proposed dwellings on the subject site would be limited to single-storey and for a covenant to be put on the title. He reminded the Subcommittee that commercial buildings on the subject sites would be allowed to be higher than residential dwellings.

Mr Amberger acknowledged that daylight angles must be complied with and said that filling the site would inhibit drainage. He suggested that a drain could be installed at the south side to the site.

The Subcommittee reserved its decision at 11.20 am.

### **Moved Crs Higgins / Bryant EP05/04/09**

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

D and H Stewart

**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:**

<b>Subject</b>	<b>Reasons</b>	<b>Grounds</b>
D and H Stewart	Consideration of a planning application.	A right of appeal lies to the Environment Court against the final decision of Council.

**CARRIED**

**Moved Crs Currie / Bryant  
EP05/04/10**

**THAT for the purposes of discussing the application of D and H Stewart as an "In Committee" item, the Manager Consents be authorised to be in attendance as advisor.**

**CARRIED**

**Moved Crs Higgins / Currie  
EP05/04/11**

**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. D and H STEWART, CHARLOTTE LANE, BRIGHTWATER – APPLICATION No. RM041139**

**Moved Crs Higgins / Currie  
EP05/04/12**

**THAT pursuant to Sections 104,104B and 221 of the Resource Management Act 1991, Council grants consent to D Stewart to subdivide the land comprised in Pt Section 18 District of Waimea South, Certificate of Title NL 94/182 to create:**

- Lot 1 of 540 square metres;
- Lot 2 of 540 square metres;
- Lot 3 of 930 square metres (nett area of 810 square metres);
- Lot 4 of 620 square metres

The application is granted subject to the following conditions and for the following reasons:

**SUBDIVISION CONDITONS:**

**1. Roading**

“Give Way” limit lines and marking shall be formed at the intersection of Charlotte Lane and Ellis Street.

**2. Vehicle Crossings**

Concrete vehicle crossings (residential) to be designed and constructed from existing kerb in Charlotte Lane to property boundary to service Lots 1-4.

### **3. Water Supply**

Lots 1-4 shall be serviced with a water supply connection at the front boundary to each lot. Provision of the water supply connection will require the existing 25 millimetre lateral in Charlotte Lane to be upgraded to comply with fire fighting flows and Tasman District Council Engineering Standards.

### **4. Sewerage**

Lots 1-4 shall be serviced with connections to Council's reticulated sewerage system. The connections are to be provided to at least 1.0 metre inside the main body of the lot and shall include all necessary manholes and lamp hole cleaning eyes.

### **5. Stormwater**

Lots 1-4 shall be serviced with connections to Council's reticulated stormwater system. The connections are to include all necessary manholes, sumps and inlets.

### **6. Filling**

Lots 1-4 shall be filled to provide a finished ground level grading from 20.5 metres at the boundary of Lots 52, 53 and 54 DP 20400 and Lot 2 DP 17413 evenly down to no less than 300 mm above the kerb in Charlotte Lane. This fill is for the purpose of mitigating potential flooding of the land.

#### **NOTE:**

The owners of lots 52-54 DP 20400 and the consent holder may wish to enter into discussions to resolve the issue of the different land level at the rear of their properties so that future problems with stormwater are avoided. The Council is not able to require that the level of adjoining land be changed or drainage installed on other land as a condition of this consent.

### **7. Electricity and Telephone**

That Lots 1-4 be serviced with underground electricity and telephone connections to the satisfaction of the relevant authorities.

### **8. Certification**

- a) The applicant is to provide certification from a registered engineer or geotechnical engineer experienced in the field of soils engineering (and more particularly land slope and foundation stability) that a site has been identified on each new lot suitable for the erection of a residential dwelling. The certificate shall define on each lot the area suitable for the erection of the dwelling.
- b) Where fill material has been placed on any part of the site a certificate shall be provided by a suitably experienced, registered engineer to certify that the filling has been placed and compacted in accordance with NZS 4431:1989.

## **9. Engineering Plans**

That prior to undertaking any works or the provision of services, engineering plans are to be submitted to Council for approval. All works to be undertaken in accordance with the approved plans. As-built plans to be provided at the completion of works.

## **10. Engineering Works, Services and Plans**

All works undertaken and services and plans provided shall be in accordance with the Tasman District Council Engineering Standards 2004, or to the Engineering Manager's satisfaction. Tasman District Council shall be contacted at least 48 hours prior to commencement of any works on the subdivision.

The applicant shall engage a suitably qualified consultant to observe and test the construction of the work. The certificate pursuant to Section 224(c) will not be released by Council until the certificate of supervision signed by the consultant is provided and all levies and fees have been paid.

## **11. Easements**

- i) Any 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.
- ii) The consent holder shall either:
  - surrender the interest in Charlotte Lane held by the subject land before the Section 224 certificate is approved (if the matter of the vesting of Charlotte Lane has been progressed by that time) or;
  - create a consent notice on the titles of Lot 1-4 to the effect that the owners will surrender their interest in Charlotte Lane when it is to be vested in the Council as road.

## **12. Street Numbers**

The following street numbers are to be shown on all engineering plans:

Lot 1, 46 Charlotte Lane  
Lot 2, 46A Charlotte Lane  
Lot 3, 46B Charlotte Lane  
Lot 4, 46C Charlotte Lane

## **13. Financial/Development Contributions**

Payment of financial contributions in accordance with Chapter 16.5 of the Tasman Resource Management Plan assessed as follows:

### **Reserves and Community Services**

5.5% of the assessed market value of three of the lots.

## **ADVICE NOTE:**

Council will not issue the Section 224(c) certificate in relation to this subdivision until all relevant development contributions have been paid in accordance with the Council's Development Contributions Policy under the Local Government Act 2002. The power to withhold a Section 224(c) certificate is provided under Section 208 of the Local Government Act 2002.

The Development Contributions Policy is found in the Long Term Council Community Plan and the amount to be paid will be in accordance with the requirements which are current at the time the relevant development contribution is paid in full. This consent will attract a development contribution in respect of roading, water, wastewater and stormwater.

## **DECISION - LAND USE:**

THAT pursuant to Sections 104 and 104B of the Resource Management Act 1991, Council grants consent to D Stewart to construct a dwelling at ground floor level of Lots 1-4 of RM041139.

The application is granted subject to the following conditions and for the following reasons:

## **CONDITIONS - LAND USE:**

1. The consent to construct a dwelling on each of Lots 1-4 commences on the date of deposit of the survey plan of subdivision RM 041139.
2. All buildings comply with the permitted activity rules for the Residential Zone as list in Appendix 1.

## **REASONS FOR THE DECISION - SUDIVISION AND LAND USE:**

1. The land is zoned Commercial under the Tasman Resource Management Plan. The application for subdivision complies with the requirements for a controlled activity. The proposal to construct dwellings on the four new lots created is a discretionary activity under the Tasman Resource Management Plan as the Plan requires dwelling to not be constructed at ground level, thus the application falls to be considered as a discretionary activity.
2. It is understood that there are no references to the zoning or relevant rules pertaining to the Commercial zone and therefore in accordance with Section 19 of the Amendment Act, no weight is given to the Transitional Plan. The application has been considered pursuant to Part 2 and Sections 104B of the Resource Management Act 1991.
3. The Committee noted that eight submissions were received, one in support, three conditional and four in opposition.

The concerns raised by the submitters include the following matters:

- Kowhai tree should be protected
- Height of dwellings should be restricted to single storey
- Drainage problems
- Fencing issues

- Traffic safety
- Loss of Commercially zoned land
- Cross boundary effects for adjoining commercial businesses
- Historic significance of old barn
- Issues regarding the service lane and Charlotte Lane not being legal road.
- Loss of open space

4. The Committee considered the matters raised by submitters and considered as follows:

- The kowhai tree was not significant enough to warrant formal protection through this consent.
- As the land is zoned Commercial, buildings up to 10 metres in height could be constructed as of right on the land. In terms of the consideration of the permitted baseline, this was considered to be a relevant matter. It was considered that the normal residential requirements for height, building setbacks and daylight angles would provide sufficient protection for the adjoining dwellings.
- The Committee recognised the benefit in dealing with the land levels in a manner which did not create adverse effects in terms of drainage affecting adjoining properties. For this reason the Committee considered that it was reasonable to require the land to be filled in a manner which would not impact on the land and would be graded as per the existing drainage pattern out to Charlotte Lane.

The level is not required to be as high as the fill on the adjoining land comprised in Lots 52-54 DP 20400. The question of minimum floor levels applicable to future dwellings will be assessed at under the requirements of the Building Act 2004 at the time of application for a building consent. The Committee is aware of the possibility for co-operation between the consent holder and the adjoining property owners to resolve the issue of the “dip” and the fence at the rear of the properties, but this is not a matter which can be addressed as a condition of this consent.

- The Committee did not consider that the matter of the existing fence possibly not being on the true boundary was a matter that could be dealt with as part of this consent. The provisions of the Fencing Act 1978 should be referred to if necessary.
- The Committee considered that the matter of vesting Charlotte Lane in the Council as legal road should be pursued by staff but it was a separate matter to the considerations of this consent. It was considered inappropriate to allow any vehicle access onto the service lane beside proposed Lots 1 and 3 and that all accesses should be onto Charlotte Lane. The existing formation of the road was considered adequate for the proposed subdivision.
- The Committee considered that the loss of this land for commercial development was not significant. The information provided suggested there was little demand for commercial land in Brightwater and that as this location did not have a main road frontage, it would be unlikely to be taken up for this purpose. In addition, as the land was mainly surrounded by residential development, the proposed use of it for four dwellings was considered to be more compatible than would a commercial activity.
- The Committee did not consider that there was any likelihood of cross-boundary effects which could adversely affect existing businesses in the area.



- The Committee was not made aware of the old barn having any historic significance.
  - The Committee did not consider that the loss of open space was a matter it could consider as the land was not Commercial.
5. In summary, the Committee considered that the proposal was consistent with the objectives and policies of the Proposed Tasman Resource Management Plan and the Resource Management Act 1991 and subject to the conditions imposed, the effects on the environment will be no more than minor.

## **Appendix 1 Building Coverage**

(d) Maximum building coverage is 33 percent, provided:

### *Maximum Dwellings per Site*

- (i) There is no more than one dwelling per site.

### Outdoor Living Space

- (j) Each dwelling has an area of outdoor living space for the exclusive use of the occupant of that dwelling which:
  - (i) has a minimum area of 60 square metres;
  - (ii) contains a circle with a diameter of at least six metres;
  - (iii) is located to receive sunshine in midwinter;
  - (iv) is readily accessible from a living area of the dwelling.

### Walls

(m) A step-in plan of at least 2.5 metres is required at intervals no greater than 15 metres along any wall.

(n) Detached buildings on a site separated by less than six metres are arranged on the site so that the alignment of outside walls is stepped at least 2.5 metres relative to each other.

### Building Envelope – Daylight Over and Around

(o) No building projects beyond a building envelope constructed by daylight admission lines commencing from points 2.5 metres above ground level from all side and rear boundaries. The angle to be used is to be determined using the diagram in Schedule 17.1A.

(p) Where a single gable end with a base (excluding eaves) of 7.5 metres or less faces a boundary, and a daylight admission line strikes no lower than halfway between the eaves and the ridgeline, the gable end may penetrate the building envelope.

(pa) As an **alternative** to Conditions (o) and (p), buildings on south-facing slopes (between west and east) over 10 degrees comply with the following on any nominated boundary:

A building must fit within the arms of a 110-degree angle shape placed 35 degrees from the boundary (as shown in Schedule 17.1B). Only one angle may be used on any one boundary. Permitted intrusions into the daylight around angle are:

- (i) Eaves (not more than 600 millimetres).
- (ii) Buildings and structures complying with the special height limiting lines outside the angle.

The following applies with respect to (ii). Parts of the building or detached outbuilding may be outside the daylight around angle but only up to a certain height. To find out how high a building outside the arms may be, use the following steps:

- (a) Apply the daylight around angle (Schedule 17.1C) to find out how high exceptions may be. Start at two metres above ground level at point "P". The maximum height then increases 0.5 metres for each two metres distance from the boundary. All heights are measured relative to point "P".
- (b) The right-hand side of the indicator is at 1:200 scale, and 1:100 on the left-hand side. Apply the one that is appropriate to your site plan.

## Height

- (q) The maximum height of buildings is:
  - (i) 5 metres on sites of less than 400 square metres net area;
  - (ii) 7.5 metres on sites of more than 400 square metres net area;
  - (iv) 3.6 metres for accessory buildings;subject to condition 16.6.2(i).

## Setbacks

- (r) Buildings are set back at least 4.5 metres from road boundaries, in the case of buildings; except that telecommunication and radiocommunication facilities less than 100 square metres in area and less than 3 metres in height are exempt from this requirement except also that buildings are at least:
  - (i) 5.5 metres from road boundaries in the case of garages if the vehicle door of the garage faces the road;
- (s) Buildings are set back at least 1.5 metres from the internal boundaries on one side and at least three metres from all other internal boundaries (side and rear), in the case of all buildings except:
  - (ii) no setback is required from side or rear boundaries for buildings with a common wall on the boundary along that part of the boundary covered by the common wall;

(iii) where a garage or carport is an integral part of a dwelling and forms an external wall adjoining a site boundary; or a carport is attached to an external wall of a dwelling; the provisions of (u) apply to that part of the dwelling that is a garage or carport;

(iv) accessory buildings;

(t) Buildings are set back at least 1 metre from any access located within the site if that access serves another site or dwelling.

(u) Accessory buildings are set back at least 1.5 metres from side and rear boundaries, but less than 1.5 metres if all of the following apply:

(i) the wall of the building adjacent to the boundary contains no windows;

(ii) the length of the wall of the building adjacent to the boundary does not exceed 7.2 metres or 50 percent the length of the boundary, whichever is the lesser;

(iii) stormwater is contained within the site.

#### Wastewater Disposal

(x) All buildings (other than accessory buildings) which generate wastewater and are connected to a reticulated wastewater system where the service is available.

#### **CARRIED**

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**Confirmed:**

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**Chair:**