

MINUTES

TITLE: Environment & Planning Consents Subcommittee
DATE: Monday, 14 November 2005
TIME: 9.30 am
VENUE: Motueka Service Centre, 7 Hickmott Place, Motueka

PRESENT: Cr E M O'Regan (Chair), Crs M J Higgins and T B King.

IN ATTENDANCE: Consents Manager (J Hodson), Consent Planner (M Bishop) and Administration Officer (B D Moore).

1. **STEPHEN TATE, AS TRUSTEE FOR THE PROPOSED MARAHAU VALLEY FARM COMMUNITY (MVFC), MARAHAU VALLEY ROAD, MARAHAU, RM040763, RM050296, RM050728**

The application sought to undertake the following activities associated with the operation of an eco-village community known as "Marahau Valley Farm Community":

Application RM040763 - Land Use Consent

A retrospective consent is sought to increase the number of authorised dwellings on the property from five to eleven "residential situations" (the term "residential situation" is defined for the purpose of the application) to cater for the existing situation whereby 12 groups of buildings are used for residential activities. As part of this application, it is proposed that some of the existing buildings will be relocated on the property and there will be one conversion of a dwelling to a sleep-out. All the buildings will comply with the permitted setback and height standards for the Rural 2 Zone of the proposed Tasman Resource Management Plan (PTRMP). The applicant seeks a term of 10 years to give effect to the consent before it expires.

The application also seeks to "use water that may not be potable" in terms of the PTRMP permitted or controlled activity standards for the Rural 1 and Rural 2 zones. The property is located in the Rural 1 and Rural 2 zones and partly within Land Disturbance Area 2.

Application RM050296 - Water Permit

To take up to 36 cubic metres of water per day from two unnamed streams on the western side of the property for domestic use and irrigation.

A 35 year term is sought for this consent.

Application RM050728 - Land Use Consent (Weir)

To use, and erect to the extent necessary, an existing small weir structure (or weir structures, depending upon the interpretation of the nature of a "natural weir" located on one of the streams) on the bed of an unnamed stream(s) on the property for the purpose of enabling screened water supply intake pipe(s) to be located in a small pool in behind the weir(s).

The application site is located at Marahau Valley Road, Marahau, being legally described as Section 27 Square 9 District of Motueka, (CT NL5c/273 and leasehold title 208595).

1.1 Presentation of Application

Mr N McFadden tabled and read an introductory submission and explained how the application referred to the term residential situations as defined in the application. He described this as a full discretionary activity which was restricted to increasing the number of residential situations from five to 11, the proposed water take and the associated small weir.

He reminded the Hearing Panel that the application does not involve consent to discharge black water or domestic wastewater.

Mr McFadden referred to the four submissions received to the application and addressed those concerns. He then referred to the Council Officer's report contained within the agenda. He said a proposed covenant was unnecessary and inappropriate and advised that the applicant held the land in the leasehold title and referred to the need for any condition of consent to pass the Newbury test.

Mr S H Tate described how he lives and works on the subject Marahau site and described the history and development of the applicant community. He described how the community had obtained a flood hazard report and an independent report on building structures and wastewater systems.

Council had served an abatement notice on the applicant requiring that discharge of domestic wastewater cease, but this abatement notice was appealed and had since been withdrawn by Council.

An amended application for 11 residential situations was lodged with the Council in July 2005. The applicant had recently installed 11 new grey water systems, five composting toilets and a sixth composting toilet is presently being installed.

Mr D R Smythe tabled and read planning evidence on behalf of the applicant and discussed the submissions received. He used an aerial photograph to identify and locate the residential situations within the subject site. He referred to the upgraded grey water systems and said he believed a certificate of acceptance could be issued under the Building Act for those systems. The issue of water supply and the matters raised in the submission from Nelson Marlborough District Health Board were addressed and the steps required for compliance were acknowledged.

Mr Smythe concluded that the application has no adverse effects on the environment. Mr Smythe addressed proposed conditions of consent and the evidence included a report on the grey water management system.

1.2 Submissions

A copy of the submission from Nelson Marlborough District Health Board was tabled and the Consents Manager read the recommendations contained in that submission about registering and monitoring the community drinking water supply.

A letter of 11 November 2005 from Wakatu Incorporation advised of the submitter's non attendance at the Hearing and indicated support to the proposed recommendations and conditions concerning upgrading the buildings and services.

The submission from J M and A P Hollingworth, Abel Tasman Deer Farm Limited, was introduced by M A Lyle. The submission sought that a 12 to 18 month term should be applied to the consent. The submitter sought that the applicant be required to comply with proposed conditions of consent and that this be monitored for compliance.

Mr Hollingworth then read a submission providing a background history of his knowledge of the neighbouring applicant property. He said that he and his wife had made a formal complaint to the Council, about six years ago, when there was an estimated total of 20 dwellings on the subject property with most having no electricity, grey water treatment or sewage treatment. He said that the Hearing Panel should read the report on Council building files, prepared by Housecare Limited about the conditions of buildings currently occupying the subject site.

1.3 Staff Reports

Consent Planner M Bishop spoke to her report of 2 November 2005 contained within the agenda and advised the Hearing about the types of permits and consents that had been issued relating to the subject site, without addressing resource consent matters. The report included proposed conditions of consent which had been generally accepted by the applicant. Ms Bishop concluded that the effect of the 11 residential situations on the rural environment, will be no more than minor, subject to compliance with recommended conditions.

She acknowledged the applicant's community use of the subject property and that it is unlikely that subdivision of the subject land would be a direct result from the granting of this consent. The report recommended that the water take be granted because of its minor effect.

1.4 Right of Reply

Mr McFadden said that it was accepted that things haven't gone right in the past concerning the subject site and that it is not all attributed to the applicant. He said that the Council cannot use the application consent process as some form of punishment. Mr McFadden said that any concerns can be addressed by a grant of consent and the imposition of conditions.

Mr McFadden acknowledged that a lack of building consents is a concern. He said that the Council cannot incorporate other documents into the conditions for this application such as proposed legislative changes for water supply. He said that compliance with conditions including time limitations, should be reasonably achieved. He explained about the existence of the reticulated water supply and existence of water tanks and described the fire fighting water capability including ponds.

Mr McFadden acknowledged that the Council may be able to impose a covenant on the leasehold estate title. He said the purpose of any bond must be stated and may only be used to secure ongoing performance of conditions relating to long term effects. He said the application was lodged prior to the introduction of development contribution provisions and prior to the LTCCP. He said that the use of development contributions is discretionary and Council may charge them, but it is not obligatory.

He asked Council to consider the exceptions regarding the development contributions.

The applicant wished that sealing of the access be limited to five metres onto the site. Reference was made to the Council "Notice to Fix" and that inspection of the grey water disposal beds have not yet been carried out by Council. He referred to the Hollingworth submission and said that there was nothing inherently wrong with retrospective planning consents.

Mr McFadden said that the application has not been restricted to the use of the accommodation by the shareholders and referred the Committee to the definition of dwelling contained within the proposed Tasman Resource Management Plan. He said that the applicants can rent these homes or dwellings and that there is a lot of self sustained on site food production.

Mr McFadden said that the applicant sought a five year timeframe for the implementation of the consent and opposed a 12 to 18 month term suggested by submitters. He said that the application is complete in its terms and the applicant has made it clear what is proposed and where these things are proposed. He encouraged the Hearing Panel to carry out a site visit.

The Committee reserved its decision at 3.00 pm.

**Moved Crs O'Regan / Higgins
EP05/11/37**

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

S Tate

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
S Tate	Consideration of a planning application.	A right of appeal lies to the Environment Court against the final decision of Council.

CARRIED

**Moved Crs King / Higgins
EP05/11/38**

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

CARRIED

**Moved Crs Higgins / King
EP05/11/39**

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. STEPHEN TATE, AS TRUSTEE FOR THE PROPOSED MARAHAU VALLEY FARM COMMUNITY (MVFC), MARAHAU VALLEY ROAD, MARAHAU, RM040763, RM050296, RM050728**

**Moved Crs King / Higgins
EP05/11/40**

DECISION- LAND USE RM040763

THAT pursuant to Sections 104 and 104B of the Resource Management Act 1991, Council **DECLINES** consent RM 040763 to increase the number of authorised dwellings on the property from five to eleven "residential situations".

The reasons are stated below.

DECISION- WATER PERMIT - RM050296

THAT pursuant to Section 104 of the Resource Management Act 1991, the Council **GRANTS** consent for the *take and use* of water for community supply and irrigation subject to the following conditions and for a period expiring on *31 May 2015*.

1. Location, Take and Use Details:

Location:	Marahau Valley
Property Valuation:	1931008200
Legal Description (at take point):	Sq 9 Sec 27 District of Motueka
Category of Water Source:	Surface water
Tributary:	Marahau River tributary
Catchment:	Marahau
Zone:	Abel Tasman
River Number:	R.571

Map references at take points:

Easting: 2508839 Northing: 6023995

Easting: 2508725 Northing: 6024126

Maximum rate of take:

2 litres/second

36 cubic metres/day

252 cubic metres/week

2. At no time shall the rates of taking and use of water exceed those stated in Condition 1.
3. The permit-holder shall keep such records as may be reasonably required by the Council and shall, if so requested, supply this information to the Council. If it is necessary to install a water meter or other measuring devices to enable satisfactory records to be kept, the permit-holder shall, at his or her own expense, install, operate and maintain suitable devices.
4. At all times the supply of 2 m³ per day to each of the five authorised dwellings (on SQ 9 Sec 27 District of Motueka) shall take precedence over irrigation usage.
5. The permit holder shall provide to Council no later than 31 May 2006 a plan of the water reticulation system showing:
 - a) the points of take
 - b) all races, flumes and pipelines
 - c) all tanks, reservoirs, and flow restriction devices
 - d) fire hydrants and the access thereto
 - e) all individual dwelling off-take points
 - f) all discharge points.
6. The permit holder shall ensure that the scheme is inspected at least every six months after the date of this permit and shall maintain a record of each inspection.

The records shall list:

- a) the date of each inspection
- b) the state of the scheme with regard to leaks, restrictions, overflows and hydrant pressures
- c) any component replacement and all scheme modifications undertaken since the last inspection
- d) any such replacement or modification recommended.

A copy of this record shall be made available, upon request, to the Council's Co-Ordinator Compliance Monitoring.

7. The Council may within three months following the anniversary of the granting of the consent each year review any or all of the conditions of the consent pursuant to Section 128 of the Resource Management Act 1991 for all or any of the following purposes:
 - a) to deal with any unexpected adverse effect on the environment which may arise from the exercise of the consent; and/or
 - b) to require the adoption of the best practical option to remedy or reduce any adverse effects on the environment; and/or

- c) to comply with requirements of an operative regional plan including any allocation limit, minimum flow regime, rate of use limit, or rationing restriction; and/or
 - d) to comply with relevant national environmental standards made under section 43 of the Resource Management Act 1991; and/or
 - e) to reduce the quantities of water authorised to be taken if the permit is not fully exercised.
8. This permit may be cancelled upon not less than three months notice in writing by the Council to the permit-holder, if the permit remains unexercised without good reason for any continuous period exceeding two years, but without prejudice to the right of the permit-holder to apply for a further permit in respect of the same matter.

Advice Notice Monitoring 1:

Monitoring of this resource consent is required under Section 35 of the Resource Management Act 1991, and a deposit fee is payable at this time. Should monitoring costs exceed this initial fee, the Council will recover the additional amount from the resource consent holder. Monitoring costs are able to be minimised by consistently complying with the resource consent conditions.

Advice Notice Monitoring 2:

Pursuant to Section 36 of the Resource Management Act, 1991, the permit holder shall meet the reasonable costs associated with the monitoring of this permit.

Advice Notice Access:

Access by the Council or its officers or agents to the land subject to this water permit is reserved pursuant to Section 332 of the Resource Management Act.

DECISION- LAND USE CONSENT (WEIR) - RM050728:

THAT pursuant to Section 104 of the Resource Management Act 1991, the Council GRANTS consent for the *use and maintenance* of two intake structures subject to the following conditions and for a period expiring on *31 May 2015*.

Location Details:

Location:	Marahau Valley
Property Valuation:	1931008200
Legal Description (at take point):	Sq 9 Sec 27 District of Motueka
Tributary:	Marahau River tributary
Catchment:	Marahau
Zone:	Abel Tasman
Map references at intake points:	
	Eastings: 2508839 Northing: 6023995
	Eastings: 2508725 Northing: 6024126

1. The intake structures shall not present a barrier to fish migration and adequate passage shall be provided and thereafter maintained for native fish present in both tributary streams past each intake. Rock shall be placed below intake weir No. 2 to provide a functioning fish ladder as described in the *Water Supply Report* by *EnviroLink* dated May 2005.

The permit holder shall supply Council's Consent Planner – Water, no later than 31 May 2006, photographs (in digital format if possible) of the intake weir No. 2 structure showing particularly that fish passage has been provided.

2. That both authorised intakes shall be screened so as to avoid the entrainment of fish. The screen shall have a mesh size not greater than 5 millimetres and shall be constructed such that the intake velocity at the screen's outer surface is less than 0.7 metres/second. The screens shall be maintained in good working order at all times.
3. The intakes shall not result in scouring of the bed or banks of the streams but, if erosion or scour does occur, then this damage shall be repaired to the satisfaction of the Council's Asset Engineer (Rivers).
4. The consent holder shall take all practical measures during any construction or maintenance activities to avoid introducing sediment to the Marahau River.

In addition, no discharge of sediment shall decrease the visual clarity of the water 50 metres downstream of the intake structure by more than 40%, as measured by the black disk method, compared to immediately upstream of the site.

5. Council may, for the duration of this consent and within the three month period following the anniversary of its granting each year, review the conditions of the consent pursuant to Section 128 of the Resource Management Act 1991 for the purposes of:
 - Dealing with any adverse effect on the environment which may arise from the exercise of the consent and which is appropriate to deal with at a later stage; or
 - When relevant national environmental standards have been made under Section 43 of the Resource Management Act 1991; or
 - Requiring the adoption of the best practical option to remove or reduce any adverse effects on the environment.

Advice Notice Monitoring 1:

Monitoring of this resource consent is required under Section 35 of the Resource Management Act 1991, and a deposit fee is payable at this time. Should monitoring costs exceed this initial fee, the Council will recover the additional amount from the resource consent holder. Monitoring costs are able to be minimised by consistently complying with the resource consent conditions.

Advice Notice Monitoring 2:

Pursuant to Section 36 of the Resource Management Act, 1991, the permit holder shall meet the reasonable costs associated with the monitoring of this permit.

Advice Notice Access:

Access by the Council or its officers or agents to the land subject to this water permit is reserved pursuant to Section 332 of the Resource Management Act.

REASONS FOR THE DECISIONS:

The land is zoned Rural 1 and 2 under the Proposed Tasman Resource Management Plan. The proposed additional dwellings/ "residential situations" fall to be considered as a discretionary activity under rule 17.5.6 of the Proposed Tasman Resource Management Plan and the associated water take application and weir structure are also discretionary activities.

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 which 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 background history of land use on this property is generally as follows. In 1977 consent was granted "to permit the maintenance and occupation of workers accommodation buildings erected accessory to an existing dwellinghouse" which followed from the "discovery" in 1975 of various buildings being constructed without planning permission or building permits. The consent was granted for a period of five years. A prosecution took place in 1978 relating to non-compliance with conditions of consent namely that dwelling and workers accommodation buildings be brought up to building by law standard prior to 30 October 1977.

Following a reminder from Council in 1982 regarding the lapsing of the consent, in 1983 the continued use of four dwellings was granted. In 1983 an additional building to be used as "workers accommodation" was approved. Since that time building consents have been granted for sheds, garages, studios, yurt, sleepout and glasshouse, additions and extensions, heaters and wood burners. It is not clear whether or not due consideration was given to the planning implications of all these building permits/consents.

Following a complaint in December 2002, MVFC was informed that a resource consent was necessary to address the expanded situation. It appears there has been building work undertaken over time including drainage systems (and water supply) without consents and the occupation of structures and vehicles not intended for full time occupation. The Committee noted the report dated 10 November 2003 by House Care Ltd which itemises the buildings and drainage systems on the property.

The Committee acknowledged that recent work had been undertaken to upgrade grey water systems as a result of the Abatement Notice regarding discharges (and the number of dwellings on the site), but no building consent has been obtained for that work.

The applicant explained that the additional “residential situations” were needed to provide for group members who were shareholders in the lease of the land. It was also explained that the group had not yet formed an entity such as a trust or company although some exploration of the various legal structures had been undertaken. Mr Tate explained that he would be personally responsible for the consent on behalf of the group and that in the future all matters would be dealt with in a legal and complying manner.

The Committee noted that four submissions were received, two in opposition and one in conditional support and one neither in support or opposition. The submissions raised the following concerns:

- Adverse effects on rural character and amenity of the area including visual impact.
- Lack of certainty regarding what would be the outcome of the application for 11 “residential situations” including the number of people able to live on site and whether the application is to regularise the existing situation or increase it,
- Actual situation is not in accordance with the “philosophy” as put forward in terms of the land use practices being sustainable, productive, prolific and discreet etc.
- Increased occupation of the site over summer and associated adverse effects
- Poor level of information provided with application to assess visual and landscape effects
- Concern over composting toilets which may not meet permitted activity standards
- Unreasonable amount of time required to carry out enforcement and monitoring of the activity
- Need for the water supply to become a registered Community Water Supply with associated Risk Management Plan being needed
- All existing buildings and wastewater systems should be brought up to Council and Building Act requirements
- Granting the consent may set a precedent so that others may expect to be able to have 11 dwellings, plus potentially other structures such as sleepout, buses, caravans etc.

The Committee considered these issues and also the policies and objectives in relation to the Rural zone.

The Committee considered that it was necessary to assess the effects of the proposal with regard to what had been legally established and not to consider all that existed on the property as a “baseline”.

The Committee was concerned about the expanded nature and density of the activity proposed.

The Committee was concerned about the adverse effects of the increased density of development on the visual amenity and rural character and considered these effects to be greater than generally permitted in rural areas. The Committee did not agree with the “permitted baseline” assessment as put forward by the staff regarding the visual effects of hypothetical structures such as shade cloths and glasshouses covering a significant part of the site as it was considered that such “rural” buildings and structures had quite a different effect on rural amenity than that of dwellings.

The Committee was also concerned about the standard of access provided within the site to the various residential areas. The standard was well short of what would be expected in the district to adequately service the density of dwellings proposed with the associated number of vehicle movements. There was no offer made to upgrade the access and it was stated that this substandard access was preferred. However, there was concern about adequate access for emergency vehicles and services should they ever be required.

The Committee acknowledged the history of the development of the MVFC but the fact that the level of occupation of the site had increased over time, did not create an obligation on the Council to have to “regularise” that which had been developed without consent.

The Committee was concerned about the lack of assessment information provided with the application in relation to visual, traffic, landscape and other matters. In all the application was considered to be insubstantial and dependant on assessing the situation as an “as it is” basis. This presented particular difficulties in terms of the assessment of the application for residential situations shown as “P5-8” on the application plan.

The Committee did not consider that the philosophical beliefs of the group as put forward (self-sufficiency, environmentally friendly, low impact etc) could be given much weight as clearly the Council has no control over these things, people can move on and new scenarios can occur. The consent sought would be attached to the land and therefore the Council was bound to consider the effects of six additional “residential situations” which could be developed by anyone.

The Committee was concerned that the concept of “residential situations” as put forward was unacceptably loose and did not align to the terms in the Tasman Resource Management Plan which could lead to numbers of people not anticipated by the application and further enforcement difficulties. There was also concern about the looseness of the structure of the group with regards to who the Council would approach if further non-compliance was encountered.

The Committee did not accept the land use proposed was similar to that of Papakainga which had a special meaning, zone and provisions in the Plan which was designed to allow Maori people to live on their land. Those provisions are not relevant to this application. Papakainga development is a restricted discretionary activity and therefore would be assessed against the kinds of effects which this application must be assessed against.

The Committee was mindful of the submission “conditionally in support” made by the land owner, Wakatu Inc. The Committee considered that conditions relating to the upgrading of existing structures/systems to comply with the current Building Act requirements could not be imposed as conditions of resource consent under the Resource Management Act 1991, and therefore the consent could not be granted on the terms desired by the land owner. The Building Act has its own set of requirements and processes to deal with substandard structures.

The Committee considered that it was inappropriate to attempt to impose conditions of the nature which had been recommended by staff in relation to the covenant intended to prevent subdivision in the future and upgrades of buildings and the requirement for a statement relieving Council of liability regarding unconsented buildings. The Committee considered that had the staff recognised the difficulty with attempting to impose such conditions, the recommendation may not have been positive as the effects of the development that these conditions were attempting to remedy or mitigate could not therefore be achieved.

In terms of the policy of the Plan designed to protect the potential productive value of land, the Committee was not persuaded that the additional "residential situations" were needed in order to enhance the productive potential of the land. The Committee considered that the approval of additional residential development could lead to the loss of productive potential of the land in the future.

The Committee was concerned about issue of precedent, potential cumulative effects and consistent administration of the Plan. It was considered that the approval of this application would send a message to the public that it was acceptable to undertake illegal building work and occupation of land and that this would eventually lead to a retrospective consent. This process appeared to be unreasonable when compared to other cases where applications had been made to construct a second dwelling on rural land for family members or others and those applications had been declined by Council. The reasons given in those cases often related to the need to maintain rural character and amenity which would be eroded by the ad hoc allowance of increased residential development. This was clearly the case with this application and therefore in order to be fair and consistent, the Committee considered the application should be declined for similar reasons. Simply because there is a greater number of leaseholders than approved dwellings does not create an obligation on the Council to approve additional residential development on this rural land.

The Committee did not consider that there was sufficient points of difference regarding this land physically compared to much of the other rural land in the district that such a departure should be considered in a positive light. The matters laid out in the policies and objectives guide residential development to particular areas which are appropriately zoned.

In summary, the Committee considered that the proposal for the six additional dwellings would be inconsistent with the objectives of the Plan and also is inconsistent in relation to traffic safety, and therefore with the purpose and principles of Part 2 of the Resource Management Act 1991.

In terms of the applications to take water and to allow the weir structure in the stream, the Committee generally accepted the evidence of Mr Hewitt (of EnviroLink Ltd) and agreed that the effects would be no more than minor subject to the conditions imposed.

However, the Committee notes that the five authorised dwellings on this site have not been required to maintain a 23,000 litre water storage capacity that Council has generally required in rural areas (this requirement is in part to maintain some fire protection). In this instance the hydrants on the water line are to provide a fire fighting capability and it is seen as important that the system is maintained to a high standard. Hence the Committee has imposed conditions (5 and 6 of RM050296) to ensure continued maintenance. Those conditions will also control overflows and leaks that could result in unnecessary reduction in creek flows.

The Committee has imposed conditions to ensure that native fish passage is maintained.

It was accepted that the water supply for the use of the approved dwellings was appropriate and any not needed for that purpose could be utilised for irrigation of crops etc.

CARRIED

Confirmed:

Chair: