

MINUTES

TITLE: Environment & Planning Subcommittee
DATE: Monday, 21 November 2005
TIME: 9.30 am
VENUE: Council Chamber, 189 Queen Street, Richmond

PRESENT: Crs P K O'Shea (Chair), S G Bryant and E J Wilkins

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

1. P J BEATSON, 394 THORPE-ORINOCO ROAD, NGATIMOTI - RM050134

1.1 Proposal

The applicant sought consent to undertake a subdivision of land having an area of 33.742 hectare to create Lot 1 of 30.7 hectare and Lot 2 of 4 hectare. The subject land is Section 33, Square 7, SO 3875 and CT NL11/274.

1.2 Presentation of Application

Mr F C Bacon tabled and read planning evidence on behalf of the applicant. He described the topography of the subject site which is bordered on the east side by Orinoco Creek and the Thorpe-Orinoco Road. There is an area of flat land bounded by the Thorpe-Orinoco Road where all buildings are located except for a large greenhouse used for plant propagation. There is an area of lower lying flat land which is periodically affected by flooding. Part of the property contains a ridge running the length of the property in a north south direction and this is partly in pasture and part in plantation forest.

The tenants who rent the main dwelling wish to purchase this house and some land around it to keep horses. This use has occurred for a number of years and the tenants wish to secure their living environment by owning the house and land. The applicant operates a flower growing business using the best quality land in the valley floor and this business is still developing. A location plan showed a potential building site for a new replacement dwelling and this was located about 200 metres from the road and screened by vegetation along the streambank and intervening shelterbelts.

Mr Bacon spoke about the District Plan provisions which apply to this application as a discretionary activity. He commented on the assessment criteria rules in Schedule 16.3A. Mr Bacon used a plan to show the areas of allotment sizes in the vicinity of the subject site and said that the proposed subdivision, results in a pattern of land holdings which coincides very closely with what exists in the neighbourhood.

He described how the proposed site had been designed to accommodate an existing dwelling with its access and an area of land for grazing, including a small area of higher land where stock can be placed, in the event of the main paddock being flooded. He said that this land has limited productive potential, owing to the flood hazard and there is little point in making the title larger, to contain land at lesser flood risk, as this would merely compromise the versatility of Lot 1 for no good purpose. The proposed subdivision is not likely to alter productive potential, inherent in the land, either as a single unit or as two units.

Mr Bacon said that in his opinion, the proposed subdivision is able to satisfy all relevant assessment criteria. The evidence provided comment on the issues raised by submitters and rejected the concept that the amenity and open space character, will be diminished by the addition of another household unit. The property has had two dwellings on it for at least 25 years. The evidence said that there would be no loss of productivity from the subject site. The land uses that are carried on now will not be altered through the subdivision process.

Mr Bacon said that granting consent to an activity with discretionary status, does not in law set a precedent. The current water right will be retained for the benefit of the flora culture activity. This subdivision does not create a potential for more built development in the form of additional dwellings and so has no tangible adverse effects on the local environment.

Mr Bacon said that the proposed subdivision will not conflict with the principal of sustainable use, development and protection of natural and physical resources, nor with the objectives and policies of the proposed Tasman Resource Management Plan, in relation to land in the Rural 2 Zone.

1.3 Submissions

Mr C H MacMurray said he lives on a 17.5 hectare site and said that the proposed subdivision would detract from the rural amenity, diminish productivity and viability, serve as a cumulative effect and precedent and have an element of irreversible fragmentation of rural land. Mr MacMurray said that all local lot sizes are substantially greater than 4 hectares.

Mr E Kiddle said he owns a property at 397 Thorpe-Orinoco Road and that his position on the subject application was neutral. He said the application is against the Rural 2 Zone requirements and decreases the economic viability of the current unit and most importantly it is a fragmentation of rural land and risks setting precedents for other subdivisions. He said there are already two dwellings on the subject site and the existing business should not be used as a reason for subdivision. He said that the Rural 3 Zone and similar areas of rural residential zoning have been provided by the Council for the purpose of creating smaller blocks. He said that if consent is granted to this application that appropriate conditions and clear reasons should be given.

1.4 Officer's Report

Consultant Planner, Mr G Rae, referred to the potential for Council to grant consent to the application following consideration of the assessment criteria set out in Schedule 16.3A of the Tasman Resource Management Plan. He said the property is being well used and the proposed subdivision would not create an inefficient use of the resource. He said that the nominated house site on Lot 1 is the site of the original homestead but that the applicant did not wish to construct a replacement dwelling in the near future.

Mr Rae discussed the potential for there to be a waiver of financial contributions for the subdivision as any future dwelling would attract the requirement to pay levies. The report discussed potential flood hazards and although the lower lying pasture area may be affected by inundation, the existing buildings are situated above those flats.

Mr Rae said that the application meets the assessment criteria for subdivision. He reminded the Subcommittee that this discretionary application does not require that the applicant demonstrate that the application has unique features. The Consultant Planner's report contained within the agenda had attached recommended conditions of consent which Mr Rae recommended to the Subcommittee except for the Reserves and Community Services financial contribution.

1.5 Right of Reply

Mr Bacon responded for the applicant and said that the proposed subdivision is not creating additional effects which may attract a financial contribution. He said that the proposal will not result in any change but there could be a small increase in traffic if a bigger replacement house was built.

Mr Bacon said that a no resubdivision condition may be appropriate subject to any future changes to the Tasman Resource Management Plan that may be available to the applicant.

The Subcommittee reserved its decision at 12.00 pm.

Moved Crs Wilkins / O'Shea
EP05/11/45

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

P J Beatson

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
P J Beatson	Consideration of a planning application.	A right of appeal lies to the Environment Court against the final decision of Council.

CARRIED

**Moved Crs Wilkins / O'Shea
EP05/11/46**

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

CARRIED

**Moved Crs Wilkins / O'Shea
EP05/11/47**

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. P J BEATSON, 394 THORPE-ORINOCO ROAD, NGATIMOTI - RM050134

**Moved Crs Bryant / O'Shea
EP05/11/48**

THAT pursuant to Sections 104 and 104B of the Resource Management Act 1991, Council DECLINES consent for J Beatson to subdivide Section 33 Square 7 Block XIV Motueka SD into two allotments.

The reasons are stated below.

REASONS FOR THE DECISION - SUBDIVISION:

The land is zoned Rural 2 under the Proposed Tasman Resource Management Plan. The subdivision is a discretionary activity under Rule 16.3.9 of the Proposed Tasman Resource Management Plan in that the proposed lots are less than the 50 hectares required under rule 16.3.8(b) for a controlled activity subdivision in the Rural 2 zone. Schedule 16.3A of the Proposed Plan sets out the matters the Council will have regard to in assessing the application.

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. It is not considered that this reference could have the effect of altering the relevant rule or zoning of this land and therefore the provisions of the Transitional Plan are not considered to be relevant and all the weight will be placed on the Proposed Plan.

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 applicants explained that the subdivision was desired to create a small block of land which could be sold to the present tenants of the existing dwelling on the land, along with sufficient land to graze their horses.

The Committee noted that four submissions were received, two in support, one neither in support or opposition and one in opposition.

The concerns raised were:

- Adverse effects on rural amenity and open space character of the locality
- The subdivision will diminish the productivity and viability of the land
- Approving the subdivision will have a cumulative effect and create a precedent which would lead to an effectively Rural 3 zoning in the valley
- Subdivision causes an irreversible fragmentation of the rural land resource.

The proposed subdivision is in an area of mixed land use including horticulture, grazing, forestry and some small blocks but the character of this part of the Valley is considered to be very rural in nature and not rural residential. The property is currently used for growing flowers commercially, grazing cattle and horses, growing fodder crops and some forestry.

The Committee noted that the case for the subdivision proposal was linked to the existence of two dwellings on the property. The applicant stated that the subdivision will not create any additional development opportunity and the use of the land will remain as it currently is, therefore the subdivision would have “no tangible effect on the local environment.”

The Committee acknowledged that the applicant is living in a small building located near a range of existing agricultural type buildings and that the existing house on the property is rented out. However, the Committee considered that the small building being occupied by the applicant was more akin to an accessory building possibly originally used for worker accommodation. The Committee was aware that there were many such occupied buildings in the District on rural properties and did not consider this to be a sufficient justification for subdivision. Throughout the District, baches, sheds and other buildings exist on rural properties which have been occupied seasonally for rural farm workers and perhaps subsequently full-time but this does not mean a subdivision of either small or larger lots around such existing building is appropriate. Therefore the situation presented does not represent an unusual situation and therefore would have an impact in terms of the consistent administration of the Plan, which is a matter the Committee is concerned about.

Considerable thought was given to the issue of precedent and cumulative effects arising from the granting of such an application. The Committee considered that the creation of a rural-residential style allotment would not be appropriate. The incremental addition of residential

activities in the rural zone contributes to a loss of rural character and amenity and open space values that the Plan identifies as issues to be protected. The Committee considered that approval of the subdivision would contribute to a rural-residential character thus causing an erosion of the existing rural character, amenity and open space values and may well lead to more pressure for further such sporadic subdivision. This has been seen in other areas in the district. The Committee are clear that the Council has made provision in a wide range of areas throughout the District for rural residential development (including the Rural 3 zone) and that the Rural 2 zone in general is not intended for this purpose.

To approve this subdivision (and thus allow an additional dwelling to be constructed as a permitted activity on Lot 1) would be inconsistent with the policies, objectives and rules under the Proposed Plan in terms of the issue of fragmentation and inappropriate development in the rural area. The applicant explained that at some point in the future the existing small occupied building would be removed and a new dwelling constructed. This would be a permitted activity. Therefore, the act of subdivision would create a development opportunity which would not exist otherwise, as any replacement of the small occupied building with anything bigger would fall outside of the "existing use" rights and would require a resource consent for a second dwelling.

The Plan contains a considerable framework of policies and objectives relating to rural subdivisions. These have been examined in detail by the Environment Court in a number of cases. In the decision of Jennings and Burnaby Orchards the Court said there are two main themes. *"One is the protection of the character and amenity values of rural areas from fragmentation, adverse visual impacts and loss of productive potential of the land.... The other theme is provision of opportunities for rural residential activity.... The second theme is subservient to the first."* The Committee is in agreement with this finding.

The Committee is aware that throughout the Rural 2 zone there are many small properties less than 50 hectares which contain land not of high productive value. It is clear that this feature is not a reason for further subdivision of land. The Committee did not accept the argument that because the land intended to be subdivided off and sold is currently used for grazing, and would continue to be, that this fragmentation would not affect the productive potential of the land.

The Committee noted the support from surrounding property owners but the issue of rural character and amenity protection is a "public good" therefore the effects on it cannot be signed away by private parties.

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 granting of the consent would not result in sustainable management of the land. In addition, the granting of the consent would be inconsistent with the policies and objectives of the Proposed Plan and the Regional Policy Statement and the adverse effects on the rural character, amenity and open space values of this location and the cumulative adverse effects of the long term trend of subdivisions and loss of land to non-productive activities such as rural residential activity would be unacceptable.

CARRIED

Confirmed:

Chair: