

MINUTES

TITLE: Environment & Planning Subcommittee
Commissioner Hearing
DATE: Tuesday, 23 May 2006
TIME: 10.00 am
VENUE: Collingwood Volunteer Fire Brigade Building,
Elizabeth Street, Collingwood

PRESENT: Commissioner B Dwyer

IN ATTENDANCE: Consultant Planner (S Allen), Resource Scientist, Rivers & Coast (E L Verstappen), Development Engineer (D Ley), Consent Planner, Community Services (R D Squire), Property Manager (J K Frater), Administration Officer (B D Moore).

1. TASMAN DISTRICT COUNCIL, COLLINGWOOD-PUPONGA MAIN ROAD, COLLINGWOOD – APPLICATIONS RM041003, RM060112

1.1 Proposal

The application is for subdivision consent and two land use consents to create six separate titles and allow for the erection of two dwellings.

The proposal is to subdivide the existing title of 2.23 hectares being, DI 3/405, Section 1, Town of Seaford (CT NL 66/227), lying in and between Pakawau Inlet and Golden Bay, into six separate lots in the following fashion:

- Lot 1 comprising 1000 square metres to vest as esplanade reserve;
- Lot 2 comprising 1300 square metres as a rural-residential allotment;
- Lot 3 comprising 1900 square metres to vest as road;
- Lot 4 comprising 1400 square metres as a rural-residential allotment; and
- Lot 5 comprising 1200 square metres to vest as esplanade reserve;
- Lot 6 comprising 3200 square metres to vest as sea bed¹.

Proposed Lots 2 and 4 will each have a house site as identified in the landscape report attached to the application. The height, maximum dwelling size and other design details are outlined in the landscape report. House sites will have a maximum dwelling size of 120 square metres, with 90% of the dwelling within a specific area within the site, with specified design details provided.

1.2 Locality Description

The legal description of the land is DI 3/405, Section 1, Town of Seaford (CT NL 66/227), and it is currently owned by Tasman District Council.

¹ Lot assumed to be vested in the Crown pursuant to Section 237A of the RMA 1991.

The site is located on and is bisected by the Collingwood-Puoponga Main Road at Pakawau, Golden Bay. The site lies on the coastal strip of land that divides the Pakawau Inlet from Golden Bay. It includes the site of the former Collingwood dog dosing strip.

The site is bordered immediately to the west by the Pakawau Inlet and to the east is Golden Bay. The land includes blue water title of approximately 0.32 hectares on the eastern boundary.

1.3 Presentation of Submission

Commissioner Dwyer agreed to allow the first submitter to present out of order due to the submitter's other commitments.

Mrs J Vaughan, Secretary for Royal Forest and Bird Protection Society of New Zealand Inc (Golden Bay Branch), tabled and read an additional submission and opposed the proposed subdivision and expressed her disagreement with the reporting officer's assessment of values of the subject site. She said that the subject site should be rezoned for coastal or open space purposes and that the application would put wildlife at risk in this sensitive location next to the inlet, estuary and wetland. She spoke about this being a rich feeding ground for wading birds and a special part of the coastline. She said that the application is contrary to the New Zealand Coastal Policy Statement and Tasman Regional Policy Statement. Mrs Vaughan referred to the erosion which is still occurring along this coastline and said that the area should be required to be free of cats and dogs.

Commissioner Dwyer acknowledged the apology for non-attendance at this hearing presented by submitter, Mrs J Dixon.

1.4 Presentation of Application

Solicitor, Mr N McFadden, opened the application on behalf of Tasman District Council and described the land as being zoned Rural 2 within the Coastal Environment Area. He said that because the site is adjacent to the coastal marine area, the esplanade reserve provisions of the Plan are relevant and that element falls for consideration as a limited discretionary activity. Mr McFadden referred to the building of structures on Lots 2 and 4, not set back more than 100 metres from Mean High Water Springs, would be a restricted discretionary activity. The site is adjacent to the coastal marine area and matters relating to esplanade reserves require consideration and the unrestricted discretionary activity status will apply.

Mr McFadden tabled and read the legal counsel's introductory submission, referring especially to statutory matters. He said that the subdivision is neither sprawling nor sporadic but is infill and accords well with the pattern of the Pakawau settlement. He acknowledged the reporting officer's references to potential erosion and seawater inundation, with an unacceptable risk to a dwelling on Lot 4, unless a significant coastal protection structure is built.

Resource Management Planner, Mr G Rae, read a statement of evidence. He explained that vesting of proposed Lot 3 will formalise the legal status of the Collingwood-Puponga Road. He said that the building sites within Lots 2 and 3 will be situated in the elevated parts of those proposed titles. Mr Rae advised that the applicant volunteered the following consent notices:

- a) the location of dwellings be restricted to the "building site" in the landscape plan;
- b) a maximum height for dwellings of 4.5 metres;
- c) a maximum dwelling size of 120 square metres;
- d) requiring a particular form of dwellings in terms of roof pitch, eaves and overhang width;
- e) specifying cladding materials and colours.

The evidence referred to the relevance of the New Zealand Coastal Policy Statement and the objectives and policies of the proposed Tasman Resource Management Plan to the application. Mr Rae noted that the proposed subdivision will not increase erosion and if consent was to be declined and the land not subdivided, then an application could be made to erect a house on any part of the land presently contained within the title. Mr Rae summarised the issues raised by officers' reports and the concerns from submitters and in addition, commented on the proposed conditions of consent. He concluded that, subject to the proposed conditions of consent (including those volunteered by the applicant), that a grant of consent will enable the provision of sustainable management of this resource. Mr Rae also concluded that consent to the application will respect the preservation of the natural character of the coastal environment and enhance public access to and along the coastal marine area.

Dr L Basher, an erosion specialist, read a statement of evidence about the history of coastal erosion in the part of Pakawau where the application site is and assessed the inundation risk from storm surge on proposed Lot 4 to the west of Collingwood-Puponga Main Road. Dr Basher said that storm surge risk to the subject site would appear to be relatively low. He acknowledged the persistent trend of mild to moderate long-term erosion on the eastern shore of Lot 4. He did not see any reason why the erosion should preclude a grant of consent for Lot 4 and said there is no immediate need to install rock protection works along the proposed esplanade reserve fronting Lot 4. He acknowledged that some form of soft engineering work such as planting could assist in reducing coastal erosion.

Landscape architect, Mr R M Langbridge, read a statement of evidence, which included a landscape assessment and recommendations for proposed consideration as consent conditions. The evidence included aerial photographs, a landscape concept plan and site photographs. Mr Langbridge recommended development controls that could be applied to both the allotments for the new dwellings. The evidence commented on the officers' reports and concluded that the proposed house sites could be developed with impacts on the surrounding landscape, coastal and natural character values, as well as rural and productive values, that are less than minor.

This ended the presentation of the applicant's case.

1.5 Presentation of Submissions

The submission for the Royal Forest and Bird Protection Society of New Zealand Inc was spoken to by Mr A Vaughan and he referred to this application as inappropriate in this coastal location, where building setbacks would be 30 metres instead of 100 metres. He said that the building sites would be located on the most elevated parts of the lots and said that there be no dwelling on proposed Lot 2. He referred to the proposal as sprawling ribbon development and did not agree that it was infill development. Mr Vaughan said that coastal erosion and rising sea levels will threaten Lots 1 and 4. He said a continuous rock revetment would be required to withstand erosion. The submitter used photographs to refer to the extent of coastal erosion in the vicinity of the subject site.

Mr Vaughan referred to bird species which inhabit some of the adjacent coastal area, estuary and wetland area locations, including the spotless craik, the banded rail and the South Island fernbird. Mr Vaughan spoke of the permanent inundation of sedge grasses, which will cause them to die and additional erosion may occur.

The submission from Kotare Partnership Ltd was addressed by Mr J Loveridge. He said that the partnership owns a 58 hectare farm immediately adjacent to the subject site, where the farm is used to rear calves. He said that the Council should not subdivide on ecologically sensitive areas but rather lead by example. He said that Kotare Partnership Ltd owns a triangular-shaped piece of land abutting Lot 4. He questioned if the subdivision was necessary and he opposed the creation of the allotments for housing and wanted them turned into a reserve. He used an aerial photograph to demonstrate that the proposal is not infill but rather provides a sprawling effect. He said that this is an expensive, high risk process in order to get one further section. Mr Loveridge said that the existing and proposed houses are along the coast and not scattered and the proposal is located right against the road. Mr Loveridge said that the critical focus needs to extend to Lot 2 and that the subdivision is incongruent.

Mrs N Basham tabled and described a series of photographs of the subject location and tabled and read a further submission. She said that this coastal land is within an environment that has nationally significant natural ecosystem values. She said that the area is sensitive to changes and that a house on Lot 2 would have a high level of prominence, being located 10 metres from the road and 4 metres higher than the road. The house will block a view of the estuary and destroy amenity values. Mrs Basham said that the natural character would not be preserved or protected unless Lot 2 was included in the reserve. She said that she did not believe that the proposed landscaping will help to soften the visual effects. She said that in an ordinary tide the seawater is lapping at the seaward boundary wall. She said the water flow into the Pakawau estuary is considerable.

Mrs Basham spoke about Lot 4 being under threat from erosion and that this should become a reserve and that the Pakawau Coast Care Group could maintain the area. She said that the proposed effluent disposal fields on the subject sites could affect shellfish beds.

Ms F Wilson said she is a near neighbour of the proposed subdivision. She referred to the erosion of the sea coast and that the waves break over the high tide mark with turbulent water, causing scarring. Ms Wilson used photographs to illustrate this and said that the rate of erosion could become a problem for a future buyer. She said that at present proposed Lot 2 looks like part of a farm and that a house on this site would be out of character. She said it cannot be referred to as infill. She said that effluent disposal systems are difficult to operate in this area and there would be no protection for the inlet where the effluent disposal systems are located on these small allotments. She said that the Pakawau Inlet is a saltwater inlet of national importance. At present there is no human habitation on the fringes of the inlet except for proposed Lot 2. The house site on Lot 2 is proposed to be closer to the sea than the road. Ms Wilson said that the current lack of use of these properties is best for the birdlife. She advised that erosion is also occurring on the fringes of the estuary.

1.6 Officers' Reports

Consultant planner, Ms S Allen, spoke to her report contained within the agenda. She acknowledged that the effects of a dwelling on proposed Lot 4 are greater than the effects of dwelling on proposed Lot 2. She said that the level of coastal erosion may be affected by the future sea level rise and the increase in frequency of storms. She considered that proposed Lot 4 requires expensive rock protection and a resource consent for this to be carried out. She said this raised concerns regarding the natural character of the coastal environment.

Ms Allen said Council officers recommend that road widening occur and that effluent disposal areas should be located at least 20 metres from the sea and 1.5 metres from any adjoining property. Ms Allen said she believed that a dwelling on proposed Lot 2 could be adequately mitigated but a dwelling on Lot 4 could not benefit from adequate mitigation measures. She said that some benefits of the proposed subdivision can be seen in the formalisation of the reserve and seabed and road. Ms Allen said a restricted discretionary consent would be required to build on Lot 4, as it is.

Resource Scientist, Rivers & Coast, Mr E Verstappen, spoke about the effects of wind and sea on the rate of coastal erosion and that this can be mitigated by the installation of rock protection works linking up with other neighbouring similar rock work. Mr Verstappen directed the Commissioner to his report contained within the agenda and said that this provided a modest estimate of future sea level rise. He said that houses on the subject sites could be made relocatable.

Consent Planner, Community Services, Ms R Squire, said that if Lot 4 became part of an esplanade reserve, this would require additional maintenance costs on a site of no particular economic value. She said that there is a limited demand and use for a large reserve in this area.

Development Engineer, Mr D Ley, said there is some erosion on the side of the Collingwood-Puponga Main Road. His report provided some proposed conditions for access to proposed Lots 2 and 4, which he proposed would form part of the conditions of consent. He said that a bond would normally be required.

Mr Ley noted that the applicant had obtained a report on the on-site effluent disposal potential and that the present sea level and future rise in sea level could have an adverse effect on the proposed effluent disposal system. A letter of 12 July 2004 from Page & Associates Ltd said that Lot 4 is generally about 1.5-2 metres above the high water mark along the foreshore and the groundwater level had been assessed at least 1-1.5 metres below the surface. Mr Page was concerned that the free-draining nature of the ground and proximity to the foreshore, could lead to effluent plumes surfacing along the foreshore. Mr Ley noted that it appeared extreme rainfall events are becoming more frequent.

1.7 Right of Reply

Mr McFadden offered to provide a written response on behalf of the applicant, including a draft set of conditions of consent. Commissioner Dwyer agreed to this proposal and said that he required to receive the written reply by 31 May 2006 and that a copy is required to be provided to all submitters. Commissioner Dwyer also said that he wanted Ms Allen to send her draft conditions to him by 31 May 2006 and provide a copy to submitters.

The Commissioner closed the hearing at 4.45 pm.

2. TASMAN DISTRICT COUNCIL, COLLINGWOOD-PUPONGA MAIN ROAD, COLLINGWOOD – APPLICATIONS RM041003, RM060112

DECISION – ALL CONSENTS

1. Consent is **granted** to Resource Consent RM041003 to enable subdivision of the land presently contained in certificate of title NL66/227 upon the conditions set out in Appendix 'A'.
2. Consent is **granted in part** to Land Use Application RM060112 to allow a dwelling to be constructed on Lot 2 of the subdivision approved above and upon the conditions set out in Appendix 'A'.
3. Consent is **refused in part** to Land Use Application RM060112 in that consent is not granted to construction of a dwelling house on Lot 4 of the subdivision.

Dated this 14th day of June 2006

BP Dwyer
Commissioner to Tasman District Council

APPENDIX 'A'

CONDITIONS SUBDIVISION CONSENT (RM041003)

1. General

The subdivision shall be undertaken generally in accordance with the plan provided with the application dated December 2002, Job 1204. Lots 1, 3, 5 and 6 shall be vested as shown on the plan. Lot 4 shall vest as Local Purpose Reserve (Recreation).

2. Engineering Certification

- (a) At the completion of works relating to the subdivision a suitably experienced chartered professional engineer or surveyor shall provide Council with written certification that the works have been constructed to the standards required.
- (b) Certification that the site identified on Lot 2 for a future house site is suitable for the erection of a residential building shall be submitted from a chartered professional engineer or geotechnical engineer experienced in the field of soils engineering (and more particularly land slope and foundation stability).
- (c) Where fill material has been placed on any part of Lot 2, a certificate shall be provided by a suitably experienced chartered professional engineer, certifying that the filling has been placed and compacted in accordance with NZS 4431:1989.

3. Engineering Plans

- (a) All engineering works as outlined above shall be shown on engineering plans and to the requirements as set out in the Tasman District Council engineering standards and amendments. A section 223 certificate cannot be issued until the engineering plans have been received and approved by Council.
- (b) "As built" plans of services and engineers' certificates in accordance with Condition 2 will be required at the completion of the works and approved by the Engineering Manager prior to the issue of a 224C Certificate.

4. Access to Lot 2

- (a) Access shall comply generally with Diagram 1, Schedule 16.2C of the TRMP.
- (b) Access shall be located on the crest of the road reserve, as close as practicable to the esplanade reserve (Lot 1).

5. Wastewater

The following consent notice shall be registered on the titles of Lot 2 pursuant to Section 221 of the Resource Management Act 1991:

- (a) The design, construction and ongoing operation of the domestic wastewater disposal system shall be in general accordance with AS/NZS1547:2000. The wastewater shall be treated to the following standards:

- i. 5-day biological oxygen demand (BOD₅) shall be less than 20 milligrams per litre;
- ii. Total suspended solids (TSS) shall be less than 30 milligrams per litre; and
- iii. Total faecal coliforms shall be less than 5×10^3 colony forming units (cfu) per 100 millilitres.

The type of wastewater treatment system selected shall take into account the likely occupancy patterns of the property (for example, holiday versus permanent occupancy). The system installed shall be operated and maintained in accordance with the recommendations of the manufacturer.

6. Cabling

Live telephone and electric power connections shall be provided to the building site on Lot 2 and all wiring and connections shall be located underground (including across the road) and be to the standard required by the supply authority.

Confirmation that these requirements have been met shall be provided by way of a statement from the supply authority and a copy of the supplier's certificate of compliance shall be provided to the Council prior to a completion certificate being issued pursuant to Section 224(c) of the Resource Management Act 1991.

7. Building Site

The proposed building site shown on Lot 2 (see **Appendix 1, Subdivision Showing Identified House Sites** - attached) shall be clearly defined on the section 223 plan.

8. Consent Notices

Lot 2 is to be subject to a number of conditions to be complied with on an ongoing basis. These conditions shall be recorded in a consent notice to be registered against the title of Lot 2 pursuant to s. 221 RMA and providing for the following::

- (a) The building(s) on Lot 2 shall be restricted to the building site areas marked "A" on the Title Plan and shall not exceed 120 metres in plan area, except that up to 10% of the building area may be outside the area marked "A".
- (b) Any building on Lot 2 shall have a minimum floor level of at least RL 3.9 TDC datum and shall have a maximum height of no more than 4.5 metres above natural ground level.
- (c) No buildings shall be erected on Lot 2 within 10m of the esplanade reserve.
- (d) Wastewater as in (6) above.
- (e) The dwelling on Lot 2 shall have an on-site water storage tank that has a capacity of not less than 23,000 litres. This tank shall be fitted with an accessible 50 millimetre diameter "Camlock" coupling to enable connection with fire fighting equipment.
- (f) The keeping of domestic cats and dogs shall be prohibited on Lot 2.

- (g) A Landscape Management Plan shall be prepared by a qualified landscape architect at the cost of the consent holder for the approval of the Council's environment and planning manager and shall be submitted prior to the issue of the s. 223 Certificate for the subdivision. The Landscape Management Plan shall detail the following information:
- (i) Planting plan specifying the type, number and size of the plants for all the plantings shown on the Rory Langbridge layout and landscape concept plan lodged with the application. Establishment works required to implement the planting plan.
 - (ii) Ongoing maintenance of planted areas (developer and future owners).
 - (iii) Landscaping areas to be subject to land covenants to ensure their ongoing existence.

The framework planting shall be completed prior to the approval of the s.224(c) Certificate. A written statement shall be provided from a suitably qualified landscaping professional that the plantings have been fully completed in accordance with the above landscaping plan.

- (h) Fencing by chain-link wire and post or other method approved by the Council's Manager, Consents, of at least 1.2 metres high shall be provided prior to the construction of any house on Lot 2 and shall thereafter be maintained along the boundary of Lot 2 and the esplanade reserve (Lot 1).

The consent notices shall be prepared by the applicant's solicitor and submitted to Council for signing and approval.

10. Engineering Standards

All works and engineering plan details are to be in accordance with Tasman District Engineering Standards 2004 or to the satisfaction of the Tasman District Engineering Manager.

CONDITIONS LAND USE CONSENT (RM060112)

1. This land use consent applies only to Lot 2 on the application plan dated December 2002.
2. The commencement date for this land use consent shall be the issue date of the certificates of title for the respective allotments.
3. Any dwelling shall be located within the building site area shown on the document **Appendix 1, Subdivision Showing Identified House Sites** (attached) subject to the exception in Subdivision Consent Condition 8(a).
4. Any dwelling shall have a maximum height of 4.5 metres above natural ground level and a minimum floor height of 3.9 metres AMSL, TDC datum.

5. At least 70% of the building area (calculated in accordance with the building plan) shall have a pitched roof of between 30 and 40 degrees, and these areas shall have eaves with overhangs of a minimum 300mm. Any building shall be finished in recessive colours that blend in with the surrounding natural environment.
6. At or prior to the time of submission of plans for a building permit, the consent-holder shall prepare, to the satisfaction of the Council's Manager, Consents, a landscape plan which reflects the areas of planting (excluding an access area at the north end of the site) and the intent of the report by Rory Langbridge, Landscape Architect, submitted with the application. Particular attention shall be paid to appropriate screening of the future dwelling on the site from the view from the road, including screening in the vicinity of the site access. The landscape plan shall specify areas of vegetation to be retained on site, areas of new plantings, types and sizes of plants, timing of planting and methods of maintenance both for the first two years during establishment and of key landscape and/or planting elements in the long term, along with any fencing and gates. No building, vegetation clearance or earthworks shall take place on the site prior to acceptance of the landscape plan by the Council's Manager, Consents. (Note: key elements of the landscape plan will be required to be the subject of a consent notice on the subdivision).
7. Any dwelling shall have an on-site water storage tank that has a capacity of not less than 23,000 litres. This tank shall be fitted with an accessible 50 millimetre diameter "Camlock" coupling to enable connection with fire fighting equipment.
8. Fencing by chain-link wire and post or other method approved by the Council's Manager, Consents, of at least 1.2 metres high shall be provided prior to the construction of any house on Lot 2 and shall thereafter be maintained along the boundary of Lot 2 and the esplanade reserve (Lot 1).

Advice Notes

1. Parts of the coast at Pakawau have been identified as an area that has been subject to pre-European occupation. There have been a number of archaeological sites identified in this area and a precautionary approach is appropriate. In the event any archaeological site is discovered during works associated with any form of land disturbance, all works shall cease and the applicant shall contact the Tasman District Council, Manawhenua Ki Mohua and the New Zealand Historic Places Trust. The discovery of an archaeological site is subject to the provisions of the Historic Places Act and an application must be made to the Historic Places Trust for the required authority to modify or destroy the site.
2. Rural Numbering is 1225 Collingwood-Puponga Main Road.
3. Council will require payment of a development contribution in accordance with Council's Development Contributions Policy under the Local Government Act 2002 for the development subject of this resource consent. (Building Consent RM060112).

The Development Contributions Policy is found in the Long Term Council Community Plan (LTCCP) 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 for one dwelling (HUD) for roading at the time of building permit.

REASONS FOR DECISION

Decisions on Resource Consent Applications RM041003 & RM060112

Parties

1. The following parties attended or were represented at the hearing:

Tasman District Council – Applicant

Nigel McFadden (Counsel)
Rory Langbridge (Landscape Architect)
Gary Rae (Resource Management Consultant)
Les Basher (Geomorphologist)

Submitters:

Alan Vaughan (Representing Royal Forest and Bird
Protection Society – Golden Bay Branch)
Joanne Vaughan
Nichola Basham
Fiona Wilson
Steve Lavery (Kotare Partnership Ltd)

Tasman District Council (reporting consultants/staff):

Sylvia Allan (Consultant Planner)
Rosalind Squire (Planner – Community Services)
Eric Verstappen (Resource Scientist Rivers and Coast)
Dugald Ley (Development Engineer)

The Applications

2. Tasman District Council (TDC) has made application for resource consents:
 - To subdivide an existing title of 2.23 hectares into two rural residential allotments, with areas of 1,300m² (Lot 2) and 1,400m² (Lot 4). The application also includes the creation of the following allotments:
 - Two esplanade reserves, one of 1,000m² along the Pakawau Inlet foreshore (Lot 1) and one of 1,200m² along the Golden Bay foreshore (Lot 5), both to vest;
 - A 3,200m² allotment to vest as seabed (Lot 6); and
 - A 1,900m² allotment to vest as road (Lot 3).
 - Land Use Consent to erect a single dwelling on each of the two proposed rural residential allotments resulting from the subdivision described.

I note that the application as originally filed, also incorporated a third consent, *To the extent it is necessary, consent to discharge domestic effluent to ground*. I assume from the officer's report that no consent is required as domestic waste water discharge can be undertaken as a permitted activity.

3. The application site is situated at Pakawau, Golden Bay and is included in the Rural 2 Zone of TDC's Proposed Tasman Resource Management Plan (the Proposed Plan). In addition to being situated in the Rural 2 Zone the application site is also contained within an area described in the Proposed Plan as Coastal Environment Area. The Coastal Environment Area has been so delineated *for the purposes of guiding the management of the District's coastline* (Para. 18.14.1 – Proposed Plan). I understand that it is common ground that as a consequence of the Rural 2 zoning and inclusion within the Coastal Environment Area:
 - The subdivision application requires consent as a discretionary activity.
 - The land use application requires consent as a restricted discretionary activity.
4. The applications were notified on 25 February 2006. A total of 13 submissions were received. Two submissions gave conditional support. The remaining submissions were in opposition. The contents of the submissions and issues raised by the submitters are summarised in the report prepared for the hearing by TDC's independent consultants. It is not proposed to detail the contents of the submissions at this stage. By and large they will be dealt with later in this decision.
5. TDC has appointed an independent commissioner to hear and decide the application and additionally appointed independent planning consultants, MWH NZ Ltd (*MWH*) to report on the application. Ms. Allan of MWH appeared at the hearing and spoke to her report.

Background

6. The application site is presently contained in certificate of title NL66/227. The title contains 2.2258 ha more or less and was issued on 28 February 1931. Title is limited as to parcels and is in the name of the Collingwood County Council which I assume is a predecessor of TDC. The Application (Para 1.1) states that the land was originally the Collingwood dog dosing strip.
7. I note that although CT NL66/227 is described as having an area of 2.2258ha more or less, the total area of Lots 1-6 of the proposed subdivision add up to only 1ha. I am unsure of the reason for the discrepancy.
8. CT NL66/227 shows the land lying in an approximately east/west direction bordered on the east by *High Water Mark Golden Bay* and on the west by *Pakawau Mud Flat*. A matter of some debate which will be referred to later in this decision relates to the rate of erosion of the coast line in this vicinity and the extent of erosion since title issued in 1931. The certificate of title is however limited as to parcels and was issued to replace the previous Deeds Index Title DI3/405 which indicates to me that there was no accurate survey or delineation of boundaries undertaken at the time CT NL66 /227 was issued.
9. The certificate of title is now bisected by the Collingwood-Puoponga Main Road. Lots 1 and 2 of the proposed subdivision lie to the west of the road and Lots 4, 5 and 6 to the east. Lot 3 of the subdivision is road to vest and incorporates the existing formed, sealed carriage way.

10. A significant feature of the proposed subdivision is that Lot 6 (3,200m²) is to vest as seabed and represents land which was originally contained in the CT NL66/227 but has since been consumed by the sea. High Water Springs constitutes the dividing line between Lot 5 (esplanade reserve to vest) and Lot 6. On its northern boundary the site adjoins land subdivided under DP9663, a 14 Lot subdivision which sprawls along the coast between the road and Golden Bay. That subdivision was apparently undertaken in 1976/77. The land contained in DP9663 is zoned Residential.
11. On its southern boundary, at the western side of the road, the property adjoins a large rural allotment being land farmed by Kotare Partnership Limited. The Kotare Partnership land is zoned Rural 2, as is the application site. To the east of the main road, the southern boundary of the application site adjoins land zoned Open Space being part of the land owned by Kotare Partnership Limited whose title, CT NL1D/975, is also divided by the road (although only a small portion of the title is cut off from the rest) and similarly extends out into the seabed.

Issues

12. The application, submissions, planning report, evidence (from all parties) and Applicant's opening and closing submissions all identified a number of issues for consideration in connection with the subdivision proposal. I do not propose to set out all of the matters raised in evidence in detail. I have read and reread the evidence (and other relevant documents) on a number of occasions. Hopefully my views of the evidence will be reflected in my comments on the various issues.

Services

13. Water to the subdivided allotments is to be provided by way of well or rainwater storage tanks. I am advised that use of tanks is acceptable to TDC as long as the tanks have a storage capacity of at least 23,000 litres. A condition requiring provisions of tanks is proposed accordingly. It seems clear from the staff reports that effluent disposal to a satisfactory standard can be achieved on both proposed subdivision allotments and again a condition relating to domestic waste water disposal is incorporated in the draft conditions. It does not seem to be disputed that power and telephone services are available to each of the proposed allotments.

Fire Service Requirements

14. New Zealand Fire Service Commission had lodged a submission seeking the imposition of conditions on the subdivision relating to water volume, pressure and flows, tank storage and provision of sprinklers. The Applicant opposed imposition of a condition of this type and submitted that in the Tasman District the common practice was to require the provision of an on site water storage tank fitted with an accessible 50mm diameter *Camlock* fitting to enable connection with fire fighting equipment. Ms. Allan's planning report had included a condition to that effect which confirms Mr. McFadden's submission and I propose to impose a condition as recommended in the report accordingly.

Iwi Issues

15. A submission by Manawhenua Ki Mohua had raised the issue of how the land came into TDC ownership and whether or not it may have been a maori reserve. The submission requested that the history of the title be established. Mr. McFadden advised at the hearing and confirmed in his closing submission (Para. 2.4.3) that the land had been purchased in freehold from the Puponga Coal Company and that there was no question of maori ownership. I note that the title is an unencumbered freehold (general land) title and does not appear to be subject to any reservation of any kind.

Cats/Dogs

16. A number of submitters had raised the issue of potential effects of bringing cats and dogs into this particular area which is a bird habitat of considerable significance. In Mrs. Vaughan's evidence she described the Pakawau Inlet as an *inlet of national importance* and referred to Schedule 25.1F of the Proposed Plan. Mr. McFadden acknowledged that as being the case. In Mrs. Vaughan's submission she had requested that if consent was granted a condition requiring the subdivision to be free of cats, dogs and other inappropriate pets be imposed. She provided further information regarding such restrictions at the hearing.
17. Notwithstanding the reservations which I had previously expressed at the time of the Petry subdivision application as to the practicality of such conditions at Pakawau where there is already a large subdivided area not subject to such restraint, I note that TDC (as Applicant) has indicated a willingness to accept such a condition and inclusion of such a condition in the Planning Consultant's recommended conditions indicates a willingness on part of TDC to enforce the condition on an ongoing basis. A condition to that effect will be imposed on Lot 2 accordingly.

Access Issues

18. There are two matters of access. Firstly, access to and along the coastal marine area and secondly the matter of road access.

Access to and along coastal marine area

19. Section 6(d) RMA provides that the maintenance and enhancement of public access to and along the coastal marine area is a matter of national importance. One of the positives which can be advanced in support of the subdivision proposal is the vesting of seabed which is presently in private title and the provision of esplanade reserve around the Golden Bay foreshore and around the edge of Pakawau Inlet. Ms. Allan in her report notes that there are *beneficial effects* arising from these vestings. The extent of those benefits may be debateable because the land in question is already in public (Council) ownership in any case, however, I accept that there is some benefit in the vesting, albeit limited in extent.

Road Access

20. As with vesting of the seabed and esplanade reserve, the vesting of the formed public road as road *tidies up* legalisation of the existing formed road. Again because the land is already in Council ownership and because the formed road has occupied a title limited as to parcels for a good number of years, the extent of the benefit of vesting is debateable. In Para. 6.1 and 6.2 of his opening submission Mr. McFadden points to these various access benefits as positive effects. I accept that is the case in a legal sense although in a practical sense I am not sure that much changes from what is on the ground already. If the present title was owned by someone other than TDC that situation might well be different and I also accept that TDC could sell the freehold title tomorrow, although the question of the existing legal status of the road might be something of a hurdle in that regard. In any event I do acknowledge some benefit from legalisation of the road (and the esplanade reserves and seabed).
21. The other road access issue which needs to be resolved relates to the position of access from the road to Lot 2. The staff report filed by Mr. Ley had recommended that access to Lot 2 comply with Diagram 1, Schedule 16.2C of the Proposed Plan and be located on the crest of the road near the boundary of Lot 1 (esplanade reserve) and Lot 2. Ms. Allan had recommended an access condition to this effect which will be imposed accordingly.

Archaeological Sites Etc

22. An archaeological assessment of the sites had been undertaken by Mohua (Golden Bay) Archaeological Survey. Lot 2 was *extensively test pitted*. There was some localised evidence of fire but this was clearly not regarded as being of any particular significance. In the event that evidence of an archaeological site was uncovered during works the Historic Places Act 1993 provides sufficient protection to such a site.

Natural Character - Landscape Character - Coastal Environment Issues

23. It is under this heading that I propose to discuss various issues relating to effects, natural character, s.6a and s.6b RMA, NZCPS and the objectives and policies of the Proposed Plan. I have found these issues quite difficult in the context of this application.
24. In considering these issues in regard to this particular subdivision application I am conscious of the fact that I have recently (as commissioner) declined consent to a subdivision application by G & C Petry Enterprises Limited at the northern end of the Pakawau spit. The land in that case was also zoned Rural 2. In my decision in that matter I made a number of findings relating to the issues set out in Para 22 immediately above. There are a number of identifiable differences between the Petry proposal and the TDC proposal. In particular the Petry application proposed the creation of six residential lots on which five new houses would be established with the sixth allotment containing an existing house. Although the Petry subdivision provided for more allotments it related to a larger parcel of land (1.7654ha) as opposed to the TDC site (apparently 1ha). Ultimately I think that the scale of the Petry subdivision did make it considerably different to the TDC proposal although there are certain similarities. To the extent they are alike they ought to be treated alike.

Boffa Miskell – Landscape Character Assessment

25. A number of the submitters made reference to the Tasman District Coast Landscape Character Assessment (the Landscape Assessment) a two document study prepared by Boffa Miskell for TDC in 2005. I was given copies of those documents at the Petry application. The Landscape Assessment is a comprehensive document undertaken by a highly respected firm of landscape architects. However as I noted at both the Petry application and at this hearing, it is not a document which has statutory force but is a discussion document. It represents the views of its authors who were not witnesses at the hearing.

Section 6(a) RMA

26. S.6(a) RMA provides that preservation of the natural character of the coastal environment and its protection from inappropriate subdivision is a matter of national importance. S.6(a) has two components. Firstly preservation of natural character and secondly its protection from inappropriate subdivision and development.
27. The Proposed Plan recognises the significance of openness, greenness, separation, style and scale of structures as being part of the rural character in this area (Policy 7.3.3.3). The Proposed Plan (Methods of Implementation 7.3.2(a)(i)-second bullet point) makes it clear that part of reason for imposition of Rural 2 Zoning is the protection of rural character *including a more open and distinctive rural landscape*.
28. That open, rural character identified in the Proposed Plan constitutes part of the natural character of the coastal environment in this area which s6(a) seeks to preserve. Mr. Langbridge however observes:

- *I do not consider the subject site to be high quality or meaningful open space.*
(Para. 5.4 Statement of Evidence)

- *It is my opinion that the contribution that the current open space makes to natural character values of the wider landscape is relatively low and insignificant. I believe the impact of this development to be less than minor in this regard.*

(Para. 7.1 Statement of Evidence)

29. Ms. Allan seems to concur with those views but with reservations:

- *On the eastern side the strip of land between the road and the presence of existing dwellings nearby mean that the area does not have a strong rural coastal character, and the addition of further dwelling would affect the present character, but not to a significantly adverse degree.*

(Page 12 Independent Consultant's Report)

- *It is considered that the natural character values of the coastal environment on the eastern side of the road will be moderately adversely effected by the presence of an additional dwelling and associated infrastructure in this area. This is due to the visibility and active coastal processes affecting this area in the open space and the immediate area.*

(Page 13 Independent Consultant's Report)

Section 6(b) RMA

30. Mr. Langbridge noted that the coast of Golden Bay has been identified as an outstanding natural feature. However he concluded that the development proposed would not adversely effect the qualities of the wider environment or landscape. I understand Ms. Allan does not disagree with that view.

New Zealand Coastal Policy Statement (NZCPS)

31. Policy 1.1.1 NZCPS provides that:

It is a national priority to preserve the natural character of the coastal environment by:

- (a) encouraging appropriate subdivision, use or development in areas where the natural character has already been compromised and avoiding sprawling or sporadic subdivision, use or development in the coastal environment.*
 - (b) taking into account the potential effects of subdivision, use or development on the values relating to the natural character of the coastal environment, both within and outside the immediate location.*
 - (c) avoiding cumulative adverse effects of subdivision, use and development in the coastal environment.*
32. The crux of the Applicant's case in terms of Policy 1.1.1 was that the development proposed in this case was *infill*. The reason for that contention is that (according to the Applicant) the subdivided land is a small *gap* between the Pakawau residential area and the farmhouse situated in the north eastern corner of the Kotare Partnership property. There was some debate from Mr. Vaughan as to whether or not that was case.
33. NZCPS does not mention infill. I think that what the Applicant (or its advisors) was saying was that in a visual sense the area from the Kotare Partnership farmhouse through, to and including the Pakawau subdivision will *read* as one continuous development because the proposed subdivision (and more particularly the construction of houses) will fill in the presently empty gap between the subdivision and the farmhouse.
34. I note that Ms. Allan does not consider that the application directly contradicts NZCPS Policy 1.1.1 *in that the modest subdivision proposal is neither sporadic or sprawling given the traditional development in the area and Plan context*. That appears to be based on Ms. Allan's view that the site is an *anomaly in terms of its existing subdivision and zoning*. (Page 25 Independent Consultant's report) I do not agree with that view for reasons I will comment on further in due course.
35. In any event I have some reservations about the infill argument. Mr. Rae accepted the proposition that I put to him that the present subdivision pattern at Pakawau was sprawling and it appears arguable to me that this proposal extends the sprawl and its adverse effects contrary to Policy 1.1.1(c). At the end of the day I do not have to make a final determination in that regard but I am not sure that the issue is as clear cut as Mr. Langbridge and Ms. Allan consider.

Proposed Plan

36. The first issue relating to the Proposed Plan which I wish to address arises out of the suggestion in Ms. Allan's report that the land may be considered to be an anomaly in terms of its existing subdivision and zoning. This is also addressed in Mr. McFadden's closing submission. I do not accept that the zoning is an anomaly. An examination of Zoning Map 71 shows that the Rural 2 Zone applies to the Kotare Partnership land immediately to the south of the subdivision site and indeed over the bulk of the land in Map 71 lying between the Conservation Zone to the west and the sea. The exceptions to that are the Residential zoned land at Pakawau, the Open Space zoned land along the waters edge and the Conservation land at the end of Pakawau spit. Much of the Open Space zoned land appears to be esplanade reserve. It is apparent to me from my reading of the Proposed Plan that the Rural 2 land is intended to have the functions (inter alia) of providing open space or limiting the spread of residential development. I say that for the following reasons.
37. Chapter 6 of the Proposed Plan addresses Urban Environments. Objective 6.3.0 is:
- Containment of urban subdivision, use and development so that it avoids cumulative adverse effects on the natural character of the coastal environment.*
38. Included in the policies which flow from that objective is Policy 6.3.2 which is:
- To provide for future growth of key coastal settlements landward rather than along the coast.*
39. Included in the Methods of Implementation (Para. 6.3.20) of the Objectives and Policies are the provision of:
- (i) *Zones that limit the extent of settlements in the coastal environment.*
- (ii) *Rules that limit the effects of residential lots in the rural coastal margin.*
40. It is clear from the above that one of the purposes of the zoning pattern which has been imposed is to *limit the extent of settlements in the coastal environment*. Settlement is to be encouraged at *key coastal serviced settlements* and such development is to be *landward rather than along the coast*.
41. Chapter 7 of the Proposed Plan addresses Rural Environment Effects. Much of Chapter 7 is directed at the protection of productive values of rural land which is not an issue in this particular case. However Objective 7.3.0 and its related policies and methods of implementation are relevant. Objective 7.3.0 is *Avoidance, remedying or mitigation of the adverse effects of a wide range of existing and potential future activities, including effects on rural character and amenity values*.
42. Policy 7.3.3 provides for *...the maintenance and enhancement of local rural character, including such attributes as openness, greenness ... and separation, style and scale of structures*.
43. Methods of Implementation 7.3.20(a)(i) is then instructive as to what TDC has intended to achieve by imposition of Rural 2 Zoning. It provides:

The Rural 2 Zone covers areas that are generally of lower productive values, but which often have particularly important rural character and amenity values, resulting from a low intensity of use and development and consequently a more open and distinctive rural landscape. In these areas, rules addressing management of detailed effects through the imposition of standards, such as those relating to noise and air quality, are generally similar to those in the Rural 1 Zone, but rural character, general amenity and landscape is maintained through the absence of rules allowing for close subdivision and intensive development.

44. It is clear from the Methods of Implementation provision that Rural 2 Zone is intended to have an *amenities function* and to maintain a more open and distinctive rural landscape. For that reason the Zone Rules do not allow for close subdivision and intensive development.
45. When those *threads* of the Proposed Plan are pulled together I think it is clear that one of the functions of the zone is to limit the ongoing spread of the existing settlements and to provide the qualities of openness and absence of intensive development. Mr. Langbridge agreed to the proposition which I put to him that it was important to maintain the gaps between the various blocks of residential development in this area. In that context the zoning of this parcel of land adjoining other Rural 2 or Open Space land does not seem to me to be an anomaly.
46. I accept that there are some unusual features to the land particularly the manner in which it is effectively subdivided by the existing main road. I am also conscious of the fact that it must be a reasonable expectation for any land owner to build a house on a certificate of title (although that is not permitted as of right within the Coastal Environment Area). However I have reservations as to whether or not the proposal to subdivide and construct a house on each of the two small slivers of freehold land created by the subdivision is in accord with the various statutory provisions and documents to which I have referred. Even allowing for the mitigation measures proposed by Mr. Langbridge the proposal to subdivide and erect two houses is in my view *close to the borderline* when regard is had to the relevant provisions of s.6(a), NZCPS and the Proposed Plan. It seems apparent from the evidence of Mr. Langbridge and from Ms. Allan's report that (subject to appropriate design controls and planning) an additional dwelling on Lot 2 will be of less impact on natural character and amenity values than a dwelling on Lot 4.

Natural Hazards/Coastal Processes

47. Evidence relating to natural hazards arising out of coastal processes was given by Mr. Eric Verstappen (Resource Scientist Rivers and Coast – TDC), Mr. Dugald Ley (Development Engineer – TDC) and Dr. Les Basher (Geomorphologist and Erosion Specialist) for the Applicant. In addition to the *experts* the issue of coastal erosion, inundation and coastal processes was raised by most of the submitters in both their initial submissions and evidence. The evidence of Ms. Wilson, Mrs. Basham and Forest and Bird were supported by various photographs showing the effects of coastal processes, as was Dr. Basher's. It was Mr. Verstappen's conclusions about the potential effects of erosion and sea water inundation which had lead Ms. Allan to conclude in her report that:

It is considered that potential natural hazard effects are significant in respect of Lot 4, to the extent that consent for a dwelling should not be granted for this lot...

48. The statutory background for consideration of the issue of natural hazards is to be found in:

- S.7(i) RMA which requires decision makers under RMA to have particular regard to the effects of climate change when exercising their functions.
- S.106 RMA which contains provisions relating to the grant or denial of subdivision consent where the land to be subdivided is likely to be subject to *material damage* by erosion or inundation.
- Policies 3.4.5 and 3.4.6 NZCPS which provide:

Policy 3.4.5

New subdivision, use and development should be so located and designed that the need for hazard protection works is avoided.

Policy 3.4.6

Where existing subdivision, use or development is threatened by a coastal hazard, coastal protection works should be permitted only where they are best practicable option for the future. The abandonment or relocation of existing structures should be considered among the options. Where coastal protection works are the best practicable option, they should be located and designed so as to avoid adverse environment effects to the extent practicable.

49. Mr. Verstappen's report identified four areas of coastal hazard which needed to be taken into account when considering the subdivision and building applications. Those four areas were:

- Coastal erosion
- Climate change and associated sea level rise
- Seawater inundation.
- Tsunami

It is the first two of these issues which are of particular concern.

50. It was interesting that there was a very high degree of common ground between the witnesses as to what was happening in terms of coastal processes in this area. The contentious issue, as I see it, is not, what is happening, but rather the implications to be drawn from what is happening in terms of consent to the TDC (or any similar) applications.

51. It is evident that the coast in this region is being subject to an ongoing erosion process. That is the reason for the construction of the very substantial revetments which have been put in place at Pakawau. There is some debate as to the rate at which erosion is occurring. The disappearance of the title boundaries for the application site together with the presence of the old fence line in the seabed, provide graphic evidence of that erosion but little practical assistance in determining the erosion rate because of uncertainties as to accuracy of survey and the reasons for initial placement of the fence and its position in relation to the boundary.

52. The following estimates of erosion rates were given in the evidence of various witnesses:
- Mr. Vaughan calculated a rate as high as 1.0m/year based apparently on his views as to the placement of the fence. I do not think I do Mr. Vaughan a disservice when I say there was some element of speculation in his views.
 - Mr. Verstappen had calculated an erosion rate based on a *cursory comparison* of aerial photographs from 1950 to 2005 of 0.3 - 0.5m/year for that period.
 - In 1990 Mueller calculated an average annual erosion rate of 0.2 - 0.4m/year based on a comparison of aerial photographs from 1950 to 1988. Mueller observed that there was higher rate of erosion at the northern end of the spit and lower at the southern end where the application site is situated.
 - Finally, in both his report on the application and statement of evidence, Dr. Basher uses a 1988 photo, 2005 orthophoto and a survey undertaken in 2004 to calculate average rates of erosion of Lot 4 during that period (1988-2005) as being in the order of 0.54-0.83m/year with an average across the site of 0.68m/year. Dr. Basher urges caution as to the accuracy of those figures which he says are indicative rather than accurate.
53. Dr. Basher advised me that in this area the erosion was largely storm driven and that the rate of erosion would fluctuate from year to year. In a comment to me, he added however, *that if you were living on Lot 4 the erosion would be apparent and you would see it.*
54. Whatever the actual rate of erosion might be, averaged over the years, it is clear that there is a *persistent trend of mild to moderate long term erosion* along the shoreline of the application site as described by Mr. Verstappen in his staff report. Dr. Basher (Para. 10.2.1) agrees with Mr. Verstappen *that there is a persistent trend of mild to moderate long term erosion on the eastern shoreline of Lot 4.*
55. In considering the question of erosion another factor to be taken into account is the effect of sea level rise. Again, the fact that sea level rise is occurring appears to be common ground. There is some debate as to the rate at which it is occurring. Mr. McFadden attacked Mr. Verstappen's upper level estimate of 0.6m rise by the year 2100 (which in his view would make the subdivision unviable). Mr. Ley had attached to his report a NIWA table calculating sea level rise at 0.3-0.5m between 1990 and 2100 and Dr. Basher acknowledged that this was the *agreed estimate*. He said *it is a prediction, there is uncertainty*. Dr. Basher said, in response to a question from myself, that sea level rise would exacerbate erosion effects *as the sea would be up at the base of the bank more often.*
56. In his Statement of Evidence (Para 10.2.3) Dr Basher suggested that the appropriate solution to the erosion problem was the imposition of a consent notice on the title for Lot 4 recording that at some time either soft engineering (vegetation) or hard engineering (rock protection) would be required to protect Lot 4. I do not think that simply warning future owners that there is likely to be a problem is in fact an adequate response in terms of ss. 7(i) and 106 RMA or Policy 3.4.5 NZCPS. After some discussion between us during the course of the hearing Dr. Basher seems to have clearly come to a similar conclusion, notwithstanding his initial view.

In the course of that discussion Dr. Basher stated that it was clear that Lot 4 and any house constructed on it needed protection from erosion, that if a house was established on the allotment the form of protection would need to be hard engineering to give certainty and that the appropriate time for protection works to be done was at the time of subdivision.

57. On the face of it Dr. Basher's views on the need to for protection of the subdivided residential land appear to put the subdivision proposal in direct conflict with Policy 3.4.5 NZCPS. The complicating factor in that regard however is that it appears inevitable that at some time in the future TDC will be faced with the need for erosion protection works in respect of the Collingwood – Puponga Road in this vicinity in any case. The road immediately abuts the sea to the south of the Kotare Partnership land. Protection works have been undertaken at the point where the road is closest to the sea, (approximately 2m according to a photograph provided by Ms. Wilson), near a small culvert but it seems inevitable that those protection works may have to be upgraded and extended. Dr. Basher was of the view that erosion would persist and would have to be dealt with sooner or later. If a house was established on Lot 4 it would be sooner. Dr. Basher expressed the view that the houses in the Pakawau subdivision to the north of the application site were probably adequately protected by the existing works in the long term.
58. Mr. Verstappen's staff report and subsequent verbal comments did not differ in essence from those of Dr. Basher although there was probably some difference in emphasis. Mr. Verstappen was of the view that over the long term the average rate of erosion would be in the order of 0.5m/year and that this would be accelerated by sea level increase. The appropriate way to mitigate erosion effects according to Mr. Verstappen was by protection works. In the first instance it might be appropriate to try soft engineering (i.e. vegetation) to protect Lot 4 although Mr. Verstappen expressed doubt as to whether or not that would be effective long term.
59. If residential development was permitted on Lot 4 Mr. Verstappen was of the view that hard engineering must be done at the outset to guarantee protection (which was also Dr. Basher's view). Mr. Verstappen considered that if Lot 4 was to be adequately protected it would be necessary for any works to extend well past the southern boundary of Lots 4 and 5 probably down to the small culvert to which I have referred earlier. That would appear to require works to be undertaken on the Kotare Partnership land. Mr. Verstappen acknowledged the inevitability of hard engineering work being required to protect the road in due course but was of the view this may not necessarily need to extend right along to the boundary with Lots 4 and 5.
60. Ms. Allan had addressed the erosion issue in her report and it was her concerns in this regard which had led her to recommend that no house be constructed on proposed Lot 4. Ms. Allan has expertise in physical geology and has advised central government and local authorities on climate change. She referred me to the Environment Court decision in *Fore World Developments Limited v Napier City Council* (Decision No. W029/2006) where the Environment Court expressed the view that 100 years is an appropriate period for considering coastal issues (Para. 15, page 7). Ms. Allan did not add to the technical discussion but expressed the view that the presence of a house on Lot 4 might complicate the nature and extent of any protection works because of the need to protect the house as well as road. She stood by the view expressed in her report that a dwelling house should not be allowed on Lot 4 because of her concerns regarding coastal erosion.

61. During the course of the hearing I raised the question as to whether or not a resource consent was required for any coastal protection works. Mr. Verstappen was of the view that it would be necessary. Mr. McFadden addressed this in his closing submissions. In summary as I understand the position, it is:

- If the protection works were all undertaken landward so that they did not intrude into the coastal marine area then possibly no consent is required.
- If the protection works extend into the coastal marine area then a consent is probably required unless the works fall under the category of *maintenance, repair, replacement or reconstruction* of existing authorised works.

62. With respect to Mr. McFadden, it appears to me highly likely that works will in fact need to be undertaken in the CMA. My inspection of the site indicated that the extent of existing protection works presently fronting the land area is quite limited so that there is a strong possibility that such works would not fall into the maintenance repair etc category. Mr. McFadden urged on me the view that there was no need to withhold consent to the proposed development while any resource consent was obtained and that it was appropriate to impose a condition on the consent precluding the uplift of a s.224 Certificate until such time as the necessary work had been done. If consent was not obtained the work could not be done and subdivision could not proceed.

63. I have considered the various issues raised in Mr. McFadden's submissions in this regard as well as the views of Ms. Allan. It is common ground between all the witnesses that if a house is to be constructed on Lot 4 it will be necessary for hard engineering protection works to be established along Lot 5 (esplanade reserve) protecting Lot 4. There are the following issues in undertaking such work which is very likely to require resource consent. Those issues being:

- Establishment of protection works is integral to undertaking residential activity on Lot 4 whether or not resource consent is required for such protection works. No information has been provided with the application as to the nature of such works (although I assume it would be similar to work to the north) and the effect (if any) which the works would have on natural character or other adjoining land.
- The extent of the protection works has not been identified but it seems likely that in order to be effective the work would need to occupy land owned by Kotare Partnership which has not given its consent.
- The construction of a house on Lot 4 precludes the option of trying a soft engineering solution to erosion protection.
- The presence of a house on Lot 4 possibly complicates the ability to do work in the future and the nature and extent of that work because of the need to provide protection to the house as well as just the road.

All of the above issues arise in a situation where Policy 3.4.5 NZCPS requires that development be undertaken in a fashion which avoids the need for hazard protection works.

64. Ms. Allan's recommendation in respect of Lot 4 is that;

...Lot 4 is not recommended to be approved as a future residential lot and the land use consent for this lot is also not recommended to be approved. The main reasons for this relate to the erosion potential of the site, particularly taking into account sea level rise and climate change and the likely need for future remedial protection works. However, there are other difficulties associated with the site including access, long term waste water management if there is erosion of the foreshore, and visual impacts of future development.

I concur with that view and for similar reasons, as I have endeavoured to set out in this discussion. I note that similar considerations would apply to the construction of a dwelling house on Lot 4 even if a subdivision was not proposed. Consideration under the restricted discretionary activity status seems to largely encompass the same range of issues as are relevant in this case to the subdivision/development proposal.

65. I also concur with Ms. Allan's recommendation in respect of Lot 2 (namely that consent can be granted for residential development). In particular I note Dr. Basher's view that the erosion and other similar issues applicable to Lot 4 do not apply in the case of Lot 2 which adjoins the Pakawau Inlet.

Conditions

66. Ms. Allan had submitted a suggested suite of conditions as part of her report. Amended conditions were provided by her after the hearing and additionally Mr. McFadden included proposed conditions with his closing submission. The principal difference between the two was that Mr. McFadden's conditions had been drawn on an assumption that consent would be granted to building on Lot 4 which is not the case. Additionally Mr. McFadden had recognised the need for the landscape management plan requirement to be brought under the subdivision conditions and covered by consent notice if it was to be practically enforceable. I have largely followed Ms. Allan's suggestions but with some amendments to reflect the matters set out above.

67. The most difficult matter to be dealt with in conditions arises from the decline of consent to any dwelling on Lot 4. That raises the issue of what to do with Lot 4:

- Ms. Allan had suggested that Lot 4 should be amalgamated with Lot 5 to vest as esplanade reserve. That cannot be done. S.230(3) RMA provides that on subdivision into allotments of less than four hectares an esplanade reserve *20m in width shall be set aside from that allotment along the mark of mean high water springs of the sea*. S.230(3) RMA contains a provision enabling waiver or reduction in the width of the esplanade reserve but there does not appear to be any power to increase the width of the esplanade reserve beyond 20m which accordingly precludes the vesting of Lot 4 as esplanade reserve.
- Ms. Allan's report raised the possibility that Lot 4 could be amalgamated within the same CT as Lot 2. That could be achieved by use of the provisions of ss.220(1)(b) and 220(2) RMA however in my opinion that would be quite impractical and indeed undesirable. It would mean that owner of the residential site of Lot 2 would be *lumbered* with an area of land across the road which is of little or no use to them.

- Lot 4 could possibly vest as part of the road reserve or alternatively as some other form of reserve. I note from the staff reports that the Community Services Department of TDC has signalled a lack of enthusiasm for Lot 4 being incorporated into Council reserves. Ms. Allan observes that because the area involved is not extensive and is close to other reserves and open spaces that the additional planting and maintenance burden should not be great. The other point of course is that Council already owns the land in any event.
- Ultimately, because of the uncertainties surrounding Lot 4 (particularly relating to erosion issues) it seems inappropriate to have it simply as a small parcel of freehold land zoned Rural 2. Ms. Allan was also of that view, although for the reasons previously given I do not believe that Lot 4 could vest as esplanade reserve as she had recommended. It appears to me that the appropriate status of Lot 4 should be Local Purpose Reserve (Recreation).

Conclusion

68. For all the reasons set out above I have determined that:

- Consent should be **granted** to Resource Consent RM041003 to enable subdivision of the land presently contained in certificate of title NL66/227 upon the conditions set out in Appendix 'A'.
- Consent should be **granted in part** to Land Use Application RM060112 to allow a dwelling to be constructed on Lot 2 of the subdivision approved above and upon the conditions set out in Appendix 'A' but should be **refused** to construction of a dwelling house on Lot 4 of the subdivision.

Dated 14th day of June 2006

B P Dwyer
Commissioner

Date Confirmed:

Chair: