

MINUTES

TITLE: Environment and Planning Subcommittee
DATE: Monday, 4 September 2006
TIME: 9.30 am
VENUE: Motueka Service Centre, 7 Hickmott Place, Motueka

PRESENT: Councillors E M O'Regan (Chair), Councillors E J Wilkins and T B King

IN ATTENDANCE: Manager Consents (J Hodson), Development Engineer (D Ley), Consent Planner (D A Hewitt), Administration Officer (B D Moore).

1. T AND L EDWARDS, OLD HOUSE ROAD, UPPER MOUTERE - APPLICATIONS RM050770 AND RM060384

1.1 Proposal

Subdivision Consent (RM050770)

To subdivide an existing certificate of title comprising 22.3588 hectares into two titles. The two proposed titles would be:

1. Lot 1 DP 17020 comprising 1.49 hectares (containing an existing dwelling and accessory buildings); and
2. Section 150 Moutere District and proposed Lot 1 amalgamated together comprising 20.8698 hectares.

Land Use Consent (RM060384)

To construct a dwelling on Section 150 Moutere District of the subdivision outlined above along with the provision of associated services (telephone, power, water, waste-water disposal).

Attachment 1 shows the application plan.

1.2 Location, Legal Description and Background

The application site is located at Old House Road, Upper Moutere, approximately 2.8 kilometres from the Moutere Highway turnoff and 0.8 kilometres from the Central Road and Old House Road intersection.

The legal description of the land is Lot 1-2 DP 17020 and Section 150 Moutere District, Certificate of Title NL11A/1042.

1.3 Zoning and Special Area Overlays

The existing title has a split zoning comprising both Rural 1 and Rural 2 in the Tasman Resource Management Plan (PTRMP). The dominant zoning pattern for the site is Rural 1 (21 hectares). Lot 1 DP17020 and proposed Lot 1 are entirely within the Rural 2 zone. Section 150 Moutere District is zoned Rural 1 as set out below:

Rural 1 Zone: Section 150 Moutere District comprising 20.7199 hectares

Rural 2 Zone: Lot 1 and Lot 2 DP 17020 comprising 1.6389 hectares

The Rural 1 and Rural 2 zones are separated from one another by Old House Road and unformed legal road. The existing dwelling and accessory buildings are contained on Lot 1 DP 17020; in the Rural 2 Zone.

Cr O'Regan ruled that the further submissions received from Wakatu Incorporation and NZ Fire Service Commission after the closing date for submissions on 3 July 2006 were ruled inadmissible.

Counsel for the applicant, Ms C Owen, tabled and read a submission and provided an amended version of the conditions proposed by staff. The amended conditions included six conditions which the applicants have volunteered. She reminded the committee that all neighbours have provided written approvals in support of the application and all submissions are in conditional support.

The submission referred to the fragmentation caused by Old House Road which runs through the subject site. The two lots already divided by Old House Road have different topographies with the smaller lot not well suited to intensive rural uses. Ms Owen said the proposal enhances the future productivity of the larger northern property, so that it can be used and managed as one unit.

Ms Owen said the applicants are willing to volunteer a condition requiring the rerouting of Old House Road on the applicants land so as to avoid a blind corner. This would result in a significant improvement to the road and to the local community's road safety.

Ms Owen said the applicant seeks to construct a new dwelling and said that would have less effects than a farm shed built as a permitted activity.

Planning and Resource Management Consultant, Mrs J Hilson, tabled and read a submission to address the planning aspects of the application. She described how the applicant had volunteered encumbrances mainly to satisfy the concerns of submitters. The submission provided an assessment of effects and said that the potential fragmentation of rural land resources, as a result of this subdivision, will be minor. The submission disagreed with the Council's proposed engineering requirements regarding formation and sealing of Old House Road in the vicinity of the subject site. The submission concluded that any adverse effects on the environment arising from this proposal will be no more than minor. The submission said that TRMP objective 7.2.0 allows for rural-residential activity in areas and in a manner that ensures the factors in policy 7.2.1A are not compromised. Mrs Hilson said that in her opinion the proposal reflects these values.

No local residents or landowners have expressed concern about the amenity impacts of this subdivision on their own property. An appropriate standard of on-site amenity for the new lots and longer-term maintenance of the rural amenity of immediate adjoining properties, can be achieved by appropriate conditions of consent.

Mrs Hilson addressed the suggested amendments to the proposed conditions of consent from Council staff and responded to questions from the committee.

Consent Planner Subdivision, D A Hewitt, spoke to her report contained within the agenda. She said that the key issue is the fragmentation of rural land as a result of this subdivision. Ms Hewitt reminded the committee that the PTRMP states that the effects of rural land fragmentation can lead to a reduction in the opportunities available to use the productive versatilities of soils. This can have a detrimental effect on amenity values, the quality of the environment and rural character. Subdivision of rural land and its fragmentation can cause a reduction of productive land uses. All the smaller sites bordering the application site are around 20 hectare. Eight subdivisions have been approved within a 1500 metre radius of the application site. Ms Hewitt said that in her opinion the proposed subdivision will have an adverse fragmentation effect on productive land values, rural character and amenity values particularly with an introduction of a further dwelling on the subject site. Ms Hewitt said that the proposed subdivision creates potential for cumulative effects.

Council's Development Engineer, Mr D Ley, spoke to his report contained within the agenda and the list of proposed roading engineering matters which he sought to be incorporated into the proposed conditions of consent. Mr Ley asked that the requirement to form a 10 metre diameter turning circle be deleted. He said that the requirement to provide a 10 metre sealed carriageway along the frontage of the existing house block is justified based on the traffic usage proposed.

1.4 Right of Reply

Ms Owen responded for the applicant and reminded the committee that the applicant is wishing to only add one extra house. She said that conditions of consent should be reasonable, enforceable and for resource management reasons. She said that the applicant saw that the proposed conditions to seal the road as unreasonable. The applicant saw that the requirement to pay both development impact levies and a roading contribution as onerous. She said that the Council can seek further information on potential visual effects and that the proposed house site could be located closer to the road with a shorter internal road and with amenity planting for screening purposes. She reminded the committee that the Resource Management Act is effects based and the actual effects of the proposed subdivision are minimal and those that do occur can be mitigated. She said that precedent is not an effect on the environment. She asked the committee to consider that the rights and needs of individuals should prevail in this case because there were no adverse effects on the community.

Ms Owen suggested that the proposed road sealing condition should be deleted and that reference be made within the conditions to wording such as "except as covered elsewhere in conditions of this consent".

This part of the hearing concluded at 2.40 pm and the Committee undertook a site visit.

**Moved Crs O'Regan / King
EP06/09/01**

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

T and L Edwards

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 passing this resolution are as follows:

| General subject of the matter to be considered | Reason for passing this resolution in relation to each matter | Ground(s) under Section 48(1) for the passing of this resolution |
|---|--|---|
| T and L Edwards | Good reason to withhold exists under section 7 | Section 48(1)(a) |

This resolution is made in reliance on Section 48(1)(a) of the Local Government Official Information and Meetings Act 1987, and the particular interests protected by Section 6 or 7 of the Act which would be prejudiced by the holding of the whole or relevant part of the proceedings of the meeting in public are as follows:

| Reason to hold information under Section 7 | |
|---|--------------------|
| Consideration of resource consent application | Section 7(2)(f)(i) |

CARRIED

**Moved Crs King / Wilkins
EP06/09/02**

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

CARRIED

**2. T AND L EDWARDS, OLD HOUSE ROAD, UPPER MOUTERE - APPLICATIONS
RM050770 AND RM060384**

**Moved Crs O'Regan / King
EP06/09/03**

THAT pursuant to Sections 104 and 104B of the Resource Management Act 1991, Council DECLINES consent for T and L Edwards to subdivide Certificate of Title NL11A/1042 into two allotments and also DECLINES the application to build a dwelling on Section 150.

The reasons are stated below.

REASONS FOR THE DECISION – SUBDIVISION AND LAND USE:

The land described as Lot 1 DP 17020 is zoned Rural 2 and the balance of the land is zoned Rural 1 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 proposed lot 1 is 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.

As stated above, the land has a split zoning and the two lots are currently held together in one title pursuant to a volunteered amalgamation condition imposed through a resource consent granted in 1993. Effectively this application would “undo” this amalgamation condition and thus create a rural residential sized allotment of 1.49 hectares on the land zoned Rural 2 while leaving the balance of the land zoned Rural 1 which is on the other side of Old House Road. A dwelling is proposed on this Rural 1 land.

The applicants explained that the subdivision was able to be granted as it has the following “special characteristics”:

- The application formalises in law the fragmentation already caused by Old House Road in fact
- The proposed subdivision reflects the respective and differing productivities of the land
- The application enhances the future productivity of the larger northern property such that it can be utilised and managed as one unit
- The applicants are willing to offer a condition that requires the rerouting of Old House Road so as to avoid a blind corner

In addition the applicants volunteered a “no further subdivision covenant” on the larger allotment and a rural emanations easement in favour of the large lot and also in favour of the adjoining vineyard property being Lot 2 DP 326878. Other conditions were volunteered including one relating to the siting of the new dwelling and a shelter belt and the closing of the northern accessway to Lot 1 DP 17020, which would now be served with the new crossing place to the house and garage.

The Committee noted that four submissions were received and consents had been received from six adjoining land owners (two of whom subsequently made submissions).

The proposed subdivision is in an area of mixed land uses including grazing, forestry, and a vineyard. The character of this area is considered to be rural in nature and not rural residential. The property is currently used for grazing of sheep.

The Committee acknowledged the points explained by the applicant’s legal advisor relating to the discretionary status of the application and that as such it was not necessary to prove there are “special circumstances” associated with the application in order to approve it.

However, the application has been promoted in association with its own “special circumstances” which are commented on as follows.

Existing fragmentation:

The Committee does not accept that the presence of Old House Road represents “fragmentation” of the land in the way it is defined within the Plan. Much of the rural land within the District is bisected by physical features such as streams, rivers or roads and is successfully managed despite these features. In many respects the separation of the house from the productive land by a road can be seen as desirable as any adverse effects associated with a productive rural activity are mitigated by the separation created by the road.

Differing productivity of the land:

The Committee acknowledges that the land is partly zoned Rural 1 and partly Rural 2 and that the subdivision would create lots which are aligned to the zoning. However, there are likely to be many rural holdings throughout the District which contain land of varying productive value. This circumstance is not considered to carry any significant weight in terms of the merits of the application.

Subdivision will enhance future productivity of larger lot:

The Committee did not consider that there was any evidence presented at the hearing to support this. As stated above, many rural holdings comprising separated blocks are managed successfully as a whole.

Volunteered conditions:

The Committee acknowledged that improvements to the road alignment would be beneficial to a small number of users, but this did not provide sufficient weight to justify granting the consent. The road was substandard in many places and while the easing of this corner would be of minor benefit, it would still leave the majority of the road below the current roading standard required.

Turning to the consideration of the proposal in terms of the effects on the environment, the Committee considered that the key issues were fragmentation of rural land and the associated loss of productive land values, associated loss of rural amenity values and the increased traffic demands on substandard rural roads.

The Committee considered that this application creating a small rural residential allotment represented land fragmentation which was a matter of concern to the Council. There was no means of mitigating this effect. It was clear that the creation of the small lot would not be able to achieve the objective as stated in the Plan which calls for lots to be created which are of a size and shape so as to retain the land's productive potential.

The Committee was also concerned that the character of this area was not rural residential and although only one additional dwelling would result if the application was approved, the creation of the small lot would be out of character with the surrounding pattern of titles and sizes.

The Committee noted that Old House Road was substandard in terms of the current standards, and that there was no plan to upgrade it which would be significant. It would be unreasonable for the costs of the upgrade to be passed onto the applicant. The Committee considered that approving additional dwellings on substandard roads contained a risk in terms of traffic safety associated with the cumulative effect of additional vehicle movements in this location.

The Committee noted the offer of the various conditions relating to rural emanations and no further subdivision. While the Committee acknowledges that these kinds of conditions have been accepted and applied in other situations, they are not considered to be a means of mitigated against potential cross boundary effects, they merely act as a warning flag, and the no further subdivision covenant would carry no greater weight than the amalgamation condition; to remove either of them would require a resource consent, the same as whether the covenant was present or not. Therefore the Committee did not agree that the presence of such a covenant represented a greater degree of protection from subdivision for the larger lot than the current rules in the Plan.

The Committee also has a concern about consistent administration of the Plan and while it is acknowledged that "special circumstances" do not have to be present in order to approve an application for a discretionary activity in terms of the Resource Management Act 1991, the administration of the Plan should be undertaken in a fair and consistent manner. The Committee acknowledges that some subdivisions have been granted for small lots within the Rural 2 zone, but that equally many have been declined. It is vital to ensure that the particular circumstances of the application are understood before comparisons can be legitimately made.

The land use application for a dwelling on the new allotment is also declined as the subdivision application is not granted.

In summary, the Committee considered that this application was inconsistent with the purpose and principles of Part 2 of the Act and some of the policies and objectives in relation to the need to avoid fragmentation of rural land contained within the Plan. It was considered that the creation of a small lot in the location would represent fragmentation and would be out of character with the surrounding pattern of titles in the area.

The hearing concluded at 4.50 pm.

Date Confirmed:

Chair: