

MINUTES

TITLE: Environment & Planning Subcommittee
DATE: Monday, 30 October 2006
TIME: 9.30 am
VENUE: Council Chamber, 189 Queen Street, Richmond

PRESENT: Councillors E M O'Regan (Chair), S G Bryant and R G Currie

IN ATTENDANCE: Manager Consents (J Hodson), Consent Planner Subdivision (D A Hewitt), Resource Scientist (A Burton), Administration Officer (B D Moore)

1. K AND D EDWARDS, 82 WHITE ROAD, HOPE - APPLICATIONS RM060168 AND RM060195

1.1 Proposal

Subdivision Consent RM060186

The applicant sought consent to subdivide an existing title comprising 2.1575 hectares into two titles, being Lot 1 comprising 4,100 m² and Lot 2 comprising 1.74 hectares containing an existing dwelling and accessory building. In addition Lot 3 of 150 m² is to vest as road with Tasman District Council.

Land Use Consent RM060195

Consent was sought to construct a dwelling on proposed Lot 1 of this subdivision. The application site is at 82 White Road, Hope and located about 525 metres from Main Road, Hope intersection. The site is Part Section 16, Waimea East District, CT NL2C/677.

The Committee reserved its decision at 11.25 am.

RESOLUTION TO EXCLUDE THE PUBLIC

Moved Crs O'Regan / Bryant
EP06/10/26

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

K and D 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 each 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
K and D Edwards	Consideration of a planning application	A right of appeal lies to the Environment Court against the final decision of Council.

**Moved Crs Bryant / Currie
EP06/10/27**

THAT the open meeting be resumed and the business transacted during the time the public was excluded be adopted.

CARRIED

2. K AND D EDWARDS, 82 WHITE ROAD, HOPE - APPLICATIONS RM060168 AND RM060195

**Moved Crs O'Regan / Bryant
EP06/10/28**

THAT pursuant to Section 104D of the Resource Management Act, the Committee Declines consent to K and D Edwards as detailed in the following report and decision.

Report and Decision of the Tasman District Council through its Hearings Committee

Meeting held in the Tasman Room, Richmond

on 30 October 2006, commencing at 9.30am

A Hearings Committee ("the Committee") of the Tasman District Council was convened to hear the applications lodged by K and D Edwards relating to an application to subdivide land in Whites Road, Hope, into 2 lots and construct a dwelling on proposed Lot 1.

The applications, made in accordance with the Resource Management Act 1991 ("the Act"), were lodged with the Tasman District Council and referenced as RM060186 (subdivision) and RM060195 (land use).

PRESENT:

Hearings Committee
Cr O'Regan, Chairperson
Cr Bryant
Cr Currie

APPLICANT:

K and D Edwards
Mr F Bacon- Planning Consultant

CONSENT AUTHORITY: **Tasman District Council**
Ms D Hewitt- Consent Planner-Subdivision
Mr A Burton- Resource Scientist –Land
Mr D Ley- Development Engineer

SUBMITTERS: Dr R E Kiddle

IN ATTENDANCE: Ms J Hodson , Manager Consents- Assisting the Committee
Mr B Moore- Committee Secretary

1. DESCRIPTION OF THE PROPOSED ACTIVITY

The application lodged by K and D Edwards seeks consent to subdivide a 2.1575 hectare title into two lots, being Lot 1 of 4,100 square metres (vacant) and Lot 2 of 1.74 hectares (containing an existing dwelling, accessory buildings, and olive trees). In addition, Lot 3 of 150 square metres is to vest as road with Council.

In addition, an application has been sought to construct a dwelling on proposed Lot 1

The application site is located at White Road, Hope, approximately 525 metres from the Main Road Hope and White Road intersection.

The legal description of the land is Part Section16, Waimea East District; Certificate of Title NL2C/677. The Title is limited as to Parcels.

2. PLAN RULE(S) AFFECTED

The proposed activity does not comply with Controlled Activity Rule 16.3.7(b) of the proposed Tasman Resource Management Plan and is deemed to be a discretionary activity in accordance with Rule 16.3.7 (ba) of the Plan.

However, as there is one outstanding reference in relation to subdivision of Rural 1 land, the application falls to be considered as a non-complying activity under the provisions of the Transitional Plan (Waimea Section.)

3. NOTIFICATION AND SUBMISSIONS RECEIVED

The application(s) was notified on 22 May 2006 pursuant to Section 93 of the Act. One submission was received which raised the following issues:

- that allowing such a subdivision would lead to the decrease in a scarce resource (Rural 1 land), and also create the risk of further similar subdivision by way of establishing a precedent.

4. PROCEDURAL MATTERS

No procedural matters were raised as part of this hearing.

5. EVIDENCE HEARD

The Committee heard evidence from the applicant, expert witnesses, submitters, and the Council's reporting officer. The following is a summary of the evidence heard at the hearing.

5.1 Applicant's Evidence

Mr F C Bacon, Planning Consultant, appeared at the hearing together with the applicants Mr and Mrs K and D Edwards and Mr Bacon tabled and read a statement of evidence. Mr Bacon provided a description of the current uses of the site. He said the rear area of about 1.5 hectare is planted in olives, now approximately 10 years old. The middle area is occupied by a series of buildings and the applicants' dwelling. The front area is a grassed paddock of about 4,100 m².

Mr Bacon described the front area of land as being wetter with heavier soils. It is only grazed by about six sheep for part of the year when it is neither too wet nor too dry. The applicants intend to build a retirement dwelling on the front portion being proposed Lot 1 and the remainder and existing orchard would be sold. The submission described the neighbourhood at White Road as of rural residential character with urban development along the road between Main Road, Hope and Paton Road. Properties range in size from under 1,000 m² to over 4 hectares. The locality has sewer services available and the application site is serviced.

Neighbours consents had been obtained to the proposal but one submission was received from a submitter remote from the subject site. The submission discussed the subjects of land fragmentation and cross boundary effects and the potential for precedent and cumulative effects, services effects and amenity effects. The evidence demonstrated that proposed Lot 1 of 4,100 m² is a small isolated pocket of land with negligible productive potential. Cross boundary effects are unlikely to arise, owing to the predominately residential character of the activity on neighbouring land.

The applicants proposed to vest land for road widening. The evidence said that the proposal is not contrary to the relevant objectives and policies of the PTRMP. It follows from this that there is no cumulative impact on the availability of land with productive potential. It was noted that the officer's report identifies the subject land as being Class C and past use has demonstrated that it is not a useful site for orcharding. The applicant accepted the proposed conditions of consent with the exception of the extension of the 100 mm water main because it is not necessary as the applicant can comply with the usual method of providing fire fighting and potable water supply in rural areas.

Mr Bacon said that the circumstances of the application are distinctive enough to support consent to the application.

5.2 Submitters Evidence

Dr R E Kiddle tabled and read a submission opposing the application. The submission discussed his concerns regarding the loss of rural land and its productive capacity and the adverse effects on the rural character of the region. He claimed that a grant of consent would lead to the possibility of a precedent being set and further subdivision of neighbouring properties occurring over time.

5.3 Council's Reporting Officer's Report and Evidence

Consent Planner Subdivision, D A Hewitt, spoke to her report contained within the agenda. She referred to the potential productivity of the site and its soil classification noting that proposed Lot 1 is identified as high versatility Class B soil. Her report acknowledged that the productive values of Lot 1, would be limited due to the size of the allotment, the proposed dwelling and curtilage and accessory building. In her report, Ms Hewitt discussed how in her opinion, the proposed subdivision will have an adverse fragmentation effect on productive land values, rural character and amenity values. The report discussed the levels of rural character and amenity values which currently exist and the potential for change should the subdivision be approved.

Ms Hewitt briefly referred to the reports submitted by other Council officers regarding both the soil and land productivity and the potential flood hazards for the site and surrounding area. Ms Hewitt said in her report that it does not appear that the creation of one more allotment in this locality, could be said to lead to a significant adverse effect on services or roading infrastructure.

Ms Hewitt continued to express concern about potential cumulative effects or precedent arising from further subdivisions of a similar nature in this locality. The report acknowledged that the subdivision proposal is a discretionary under the proposed Tasman Resource Management Plan. Ms Hewitt recommended that the subdivision be declined.

Resource Scientist Land, Mr A Burton, spoke to his report contained within the agenda. He said that the subject site has a fertility that is low to moderate. He explained that wetness is a limitation to productivity and versatility of soils in this location. Mr Burton acknowledged that reducing the block size by 4,000 m² to create Lot 1, will not affect the productivity significantly.

Development Engineer, D Ley, spoke about the required services for the subdivision as outlined in his report contained within the agenda and proposed engineering conditions recommended if consent was granted to the application to subdivide and construct a dwelling.

Mr Ley said in his report that there is an adverse effect for each service required for the subject site and that they could be mitigated but at great cost to the applicant. Mr Ley outlined proposed conditions of consent within his report.

Ms Hewitt said she believed it would be unreasonable to require the applicant to upgrade services at the total cost of the applicant.

5.4 Right of Reply

Mr Bacon responded for the applicant saying that one of the main issues was a difference of opinion regarding the utility of this land, due to its productive purpose. Mr Bacon said that the subject site is a very small pocket of land of higher productivity. He said that the objectives and policies of the PTRMP are qualified by potential uses and limitations.

Mr Bacon reminded the Committee that the subject land has some problems regarding its drainage capacity and size. Mr Bacon said that the landowner may question if it is worthwhile doing anything with the land and it raised other questions

such as will drainage materials limit machinery use. He said that nothing much has happened on this small front part of the land since the 1970s except to graze a few sheep. Mr Bacon questioned what amenity values could there be retained on the subject site after development in things such as crops or greenhouses. He reminded the hearing panel that the application has some unique features. He said that the Zwart case which went to the High Court was land bordered by productive land and is not a fair or reasonable comparison to this application.

Mr Bacon said that this is a small isolated pocket of land and the subdivision is a realistic alternative use. He said that the proposal is compatible with neighbouring uses and the land at the rear can be used as currently or sold to a neighbour. Mr Bacon asked the Committee to compare the engineer's proposed water main extension draft condition, with the normal on site water storage tank and fire fighting coupling normally required in a rural zone. He said that the wastewater servicing situation is adequate and one extra house is not likely to cause a problem. He said that the applicants' proposal is not likely to cause an adverse effect and that future applications must be separately assessed. He asked the hearing panel to consider how likely the subject land is to be put to a productive use. He reminded the hearing panel that the current environment is not entirely rural and that this is an area of infill. He encouraged the hearing panel to ensure that conditions of consent are fair and reasonable.

6. PRINCIPAL ISSUES

The principal issues that were in contention were:

- a) Would the creation of a rural residential lot and the construction of an additional dwelling result in unacceptable effects on the environment in terms of fragmentation and the loss of land of productive value?
- b) Would the creation of a rural residential lot and the construction of an additional dwelling result in unacceptable effects in terms of rural character and amenity?
- c) Would the construction of an additional lot result in unacceptable effects on services and infrastructure?

7. MAIN FINDINGS OF FACT

The Committee considers that the following are the main facts relating to this application:

- a) **Issue 1- Effects on fragmentation and loss of land of productive value.** The Committee considered that the subject land was land of high productive value. They considered the evidence presented in relation to the soil maps and their own inspection of the land and surrounding area. It was accepted that there may be something of a wetness limitation, but it was concluded that the existing lot was characterised by land of high productive value. They considered the definition of fragmentation contained within Chapter 7 of the Plan and concluded that this application could be seen as part of the fragmentation process and would lead to the loss of land of high productive value, albeit not a large amount of land. The land was within the Waimea East Irrigation Scheme area and thus has the opportunity to be used for productive purposes and creating a rural residential lot would not enhance this opportunity.

- b) **Issue 2- Effects on rural character and amenity.** The Committee heard that the average size of lots within the block was 2.5 ha and the block across the road the average size of lots was 4 ha. The creation of a rural residential lot of 4,100m² was considered to be out of character with the predominant range of lot sizes in the area. Apart from the row of houses further up Whites Road, the area had a predominantly rural character. The Committee noted that there were many lots under the 12 ha threshold size for a controlled activity subdivision in the area but that creating a lot of the size proposed would create an unacceptable effect in terms of rural character and amenity in this area.
- c) **Issue 3- Effects on services and infrastructure.** The Committee considered the matter of servicing and noted that there was a wastewater and water connection available to the site. The Committee heard that there were concerns about the capacity of the water supply in terms of fire fighting capability and also the effect which would occur if more connections to the system were made in the future. There was similar concerns about the capacity and gradient of the sewer line within Whites Road. In addition they heard that the road itself was getting close to the time when significant funds would have to be spent on it to bring it up to standard and if more houses were built then this time would come faster. The Committee recognised these concerns but considered that they were not sufficient to justify refusing consent for one more lot. They acknowledged the concern about the potential cumulative effect.

8. RELEVANT STATUTORY PROVISIONS

8.1 Policy Statements and Plan Provisions

In considering this application, the Committee has had regard to the matters outlined in Section 104 of the Act. In particular, the Committee has had regard to the relevant provisions of the following planning documents:

- a) the Tasman Regional Policy Statement (RPS);
- b) the Transitional Regional Plan (TRP);
- c) the proposed Tasman Resource Management Plan

8.2 Part II Matters

In considering this application, the Committee has taken into account the relevant principles outlined in Sections 6, 7 and 8 of the Act as well as the overall the purpose of the Act as presented in Section 5.

9. DECISION

Pursuant to Section 104B of the Act, the Committee **Declines** consent for the subdivision of the land and the construction of a new dwelling.

10. REASONS FOR THE DECISION (subdivision and land use)

Pursuant to Section 113 of the Resource Management Act 1991, the reasons for this decision are as follows:

- 10.1 The proposed subdivision will have more than a minor effect in terms of process of fragmentation and loss of land for soil based production. The subject land is considered to be land of high productive value despite the presence of a wetness limitation. Although the lot area being proposed to be subdivided is not large (being only 4,100m²) the loss of that area will not lead to the protection of the productive values of the existing block. The subdivision will remove the potential of the land ever being able to be used for a productive use in the future.
- 10.2 The proposed subdivision and associated additional dwelling is considered to be out of character with the general pattern of subdivision in the area. The lots in the area are on average 2-4 hectares and it is considered that the creation of a small rural residential block would be out of character and would thus have a more than minor adverse effect in terms of rural character and amenity. The Committee noted the fact that the applicant had obtained the consents of the surrounding property owners but considered that the issues which were at the heart of this decision were issues concerning the wider community interest of the District and were not limited to the potential effects on the surrounding properties.
- 10.3 The relevant policies and objective in the Plan focus on the need to avoid the loss of land of productive value to meet the needs of future generations, to avoid, remedy or mitigate adverse actual, potential and cumulative effects on the rural land resource and to ensure that upon subdivision, land parcels are to be of a size and shape that retains the land's productive potential. The Plan states that subdivisions below the threshold size set for controlled activities will be limited to those that support the objective of protecting the land's productive potential. It is considered by the Committee that granting this consent would not be consistent with these relevant policies and objectives.
- 10.4 The Committee is concerned not to send a message to landowners in the rural zones that rural residential development is an appropriate use of land of productive value. In this sense, the Committee recognises that decision making can send a signal that can lead to other similar applications being made and the expectation that they would receive a similar decision. This process is seen as contributing to the cumulative effect of the loss of the District's land resource through fragmentation and unplanned residential development. The Committee felt that there were no unique or distinguishing features or unusual circumstances associated with this application which meant that consent should be granted.
- 10.5 The Committee therefore considered that the application did not pass either of the threshold tests of Section 104D in that the effects on the environment would be more than minor and the proposal is contrary to the policies and objectives of the Plan. The proposal is not considered to be consistent with the purpose and principle of the Resource Management Act 1991 in terms of sustainable management of the natural and physical resources of the District.

CARRIED

Date Confirmed:

Chair: