

MINUTES

TITLE: Environment & Planning Committee
DATE: Monday, 5 March 2007
TIME: 9.30 am
VENUE: Council Chamber, 189 Queen Street, Richmond

PRESENT: Crs E M O'Regan (Chair), T E Norriss and E J Wilkins

IN ATTENDANCE: Manager Consents (J Hodson), Consent Planner (P Gibson),
Administration Officer (B D Moore)

1. S AND J HOLLAND, CORNER CEDERMAN DRIVE AND RIWAKA-KAITERITERI ROAD, KAITERITERI - APPLICATION RM060520

1.1 Proposal

The applicant sought consent to a land use application to construct a dwelling and undertake associated earthworks in the land disturbance area 2 and to remove trees and other vegetation from area "A" in consent notice 36017.48. The proposed dwelling does not meet the building construction permitted activity criteria for building height, building setback from road boundaries, vehicle crossing width and location of a vehicle crossing in relation to an intersection.

The subject site is located at the corner of Cederman Drive and Riwaka-Kaiteriteri Road, Kaiteriteri on Lot 45 DP 18158 – CT NL12A/1139.

The Committee proceeded to hear the application, presentation of submissions and staff reports as detailed in the following report and decision.

The Committee reserved its decision at 12.05 pm.

RESOLUTION TO EXCLUDE THE PUBLIC

Moved Crs O'Regan / Norriss
EP07/03/01

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

S and J Holland

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

Moved Crs Wilkins / Norriss
EP07/03/02

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

CARRIED

2. S AND J HOLLAND, CORNER CEDERMAN DRIVE AND RIWAKA-KAITERITERI ROAD, KAITERITERI - APPLICATION RM060520

Moved Crs O'Regan / Norriss
EP07/03/03

THAT pursuant to Section 104D of the Resource Management Act, the Committee GRANTS consent to S and J Holland as detailed in the following report and decision.

CARRIED

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

Meeting held in the Tasman Room, Richmond

on Monday, 5 March 2007, commencing at 9.30am

A Hearings Committee ("the Committee") of the Tasman District Council was convened to hear the application lodged by **S and J Holland** relating to the construction of a dwelling at Cederman Drive, Kaiteriteri. The application, made in accordance with the Resource Management Act 1991 ("the Act"), was lodged with the Tasman District Council and referenced as RM060520.

PRESENT: **Hearings Committee**
Cr O'Regan, Chairperson
Cr King
Cr Wilkins

APPLICANT: Mr S Holland
Mr G Thomas- Resource Management Consultant

CONSENT AUTHORITY: **Tasman District Council**
Mr P Gibson- Consent Planner

SUBMITTERS: No appearance

IN ATTENDANCE:

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

1. DESCRIPTION OF THE PROPOSED ACTIVITY

The land use consent application is to construct a dwelling which does not meet the permitted activity criteria for height, setback from road boundaries, vehicle crossing width, and location of a vehicle crossing in relation to an intersection and to undertake associated land disturbance on the subject property.

The proposed land disturbance is a controlled activity due to the excavation depth proposed.

The subject site is located between Riwaka-Kaiteriteri Road, Cederman Drive, and an access way used as a reserve.

Consent to remove trees or other vegetation from Area "A" (Note this is not part of the resource consent application RM 060520.)

Consent Notice 36017.48 was imposed on the subject allotment as a condition of the subdivision consent that created the allotment. Among other matters, it specifies that *"the land owner is not permitted to remove trees or other vegetation from the area marked "A" on the land without first obtaining Tasman District Council Consent."* Area "A" comprises the eastern portion of the property.

The applicant seeks Council consent to remove some of this vegetation, and plant additional vegetation on the property in accordance with the Planting Plan entitled "Plants, Preparation and Maintenance for Required Landscaping Property of S and J Holland" prepared by A P Mead of Landscape Management Services.

2. PROPOSED TASMAN RESOURCE MANAGEMENT PLAN ("PTRMP") ZONING, AREAS AND RULE(S) AFFECTED

According to the PTRMP the following apply to the subject property:

Zoning: Residential.

Area(s): Land Disturbance Area 2

The proposed activity does not comply with Permitted Activity Rule 17.1.4(q); 17.1.4(r); 16.2.2(f); and 16.2.2(ha) of the PTRMP and the application is deemed to be a restricted discretionary activity in accordance with Rule 17.1.5 and 16.2.6 of the Proposed Plan.

3. NOTIFICATION AND SUBMISSIONS RECEIVED

The application was notified (limited) on 2 October 2006 pursuant to Section 94(1) of the Act. One submission was received. The following is a summary of the main issues raised:

Mr Alister Ross Smith

Opposed to the proposal for the following reasons:

Setbacks and location of dwelling

- The building far exceeds the guidelines for the distance of buildings to boundaries. It is as close as 800 millimeters to Cederman Drive and 300 millimeters to Riwaka-Kaiteriteri Road.
- The natural site to build on this section is where the garage/bedrooms/library is located.
- The owners are trying to gain sea views by siting the living areas where they have.

Height

- The house will be too close and the living areas will look straight down onto our front courtyard and through all our living room windows.
- The building exceeds the height guidelines where the master bedroom is sited.

4. PROCEDURAL MATTERS

Mr Thomas noted that only Mr Ross had signed the submission and that in fact the property is in joint ownership and that in his view this could cause an issue with the validity of the submission.

Mr Thomas also noted that the submission was not served on the applicant by the submitter as required by the Act.

Mr Thomas requested that a longer consent period be granted.

The Committee was satisfied that there is no legal requirement for all the registered property owners to sign a submission or that one person has an obligation to sign on behalf of other owners or that this situation raises issues of validity.

The Committee was unable to ascertain whether or not the submission had been served but somehow lost in the mail, but in any case it had been supplied by Council and therefore it was considered that the requirement of Section 96(4) had been fulfilled.

The Committee noted that the application did not include a request for a longer consent period and therefore this matter could not be considered.

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 S D Holland appeared at the hearing representing the applicant and was accompanied by Resource Management Consultant, Mr G Thomas. Mr Thomas introduced the application and in addition tabled copies of his submission, a further explanatory submission from Mr Holland and also A3 size copies of elevations and site plans and A4 size engineering earthwork plans.

Mr Thomas introduced the application and described the consents being sought. He said the removal of trees and other vegetation from the area marked "A" on the land, only requires Council permission as a means of compliance with a consent notice. He said it is not a resource consent issue which could be included in any appeal to the Environment Court. The removal of trees would not become part of the resource consent.

Mr Thomas said that the Smith submission states reduced set backs and exceeding the height guidelines leading to privacy issues as the areas of concern.

Mr S D Holland then read a statement of evidence. Mr Holland referred to the wording of the submission made in opposition from Mr Smith. Mr Holland explained that the subject site is elevated on the opposite side of the road above the Smith property so has views of the Smith property. He described this as similar to other homes elsewhere in the subdivision which are overlooked by surrounding properties. He said that foot and vehicle traffic on Cederman Drive and the Kaiteriteri Road overlook the Smith property.

Mr Holland referred to the extent of the dispensations requested related to setbacks and height of the proposed dwelling. He said that these had no adverse effects on the Smith property. Mr Holland noted that the Smiths own dwelling has required both reduction in setback and a height dispensation.

Mr Holland advised the Committee that the access crossing to the subject site received Council consent on 20 September 2005. The applicant explained that he was unable to obtain consent to the proposal from Mr Smith but that Mr Smith had offered to consider it if the second story on the eastern end was removed.

The submission provided by Mr Holland contained photographs from the Smith submission and a similar photograph taken to support the Holland application and comparisons were made of these and the potential lines of vision from the proposed dwelling.

Mr Holland concluded that the observation ranged from a dwelling as of right, unequivocally illustrates that the dispensations requested in this application for resource consent, do not create any detrimental effect to any other property. He said that nothing in this application exceeds the acceptable privacy rights consistent with urban living, in an undulating subdivision of this nature.

Mr Thomas resumed reading his tabled evidence on behalf of the applicant and discussed the proposed earthworks and that if Council requires a resource consent as a controlled activity, the applicant accepts the proposed conditions.

Mr Thomas referred to the proposed setbacks for the proposed dwelling noting that the subject site is surrounded on three sides by road and that there is a road between the Smith and Holland property. He referred to the proposed dispensations as exactly the same dispensations granted to Mr Smith's dwelling.

Mr Thomas referred to the height dispensation sought by the applicant and noted that the submitter, Mr Smith, has concerns that the increased height compounds the privacy issue. Mr Thomas reminded the hearing panel that there is a larger separation distance (over 20 metres) between the subject properties than is typical between residential properties. Mr Thomas said this obviously mitigates the effect on privacy. The frontage of the subject site has a steep batter created by road construction and as the frontage of the site is cut away this results in a small section across the frontage/roof line of the two storey section being over height.

Mr Thomas said that the effects of the increased height are no more than minor and cannot be said to be having an adverse effect on the environment. Mr Thomas referred to the proposed conditions of consent outlined in the Council Planner's report especially proposed condition 9 for roof colour and conditions 10-17 for earthworks. He advised the applicant was generally happy with the proposed conditions of consent and agreed with the Council Consent Planner's determination that the adverse effects of the proposal are no more than minor.

In the right of reply Mr G Thomas responded for the applicant and drew the Committee's attention to how it can have a greater amount of control on the subject proposal, by granting consent to this application subject to the extensive conditions proposed within the staff report.

Mr Thomas sought that the Committee grant a term of consent greater than the usual five year period or alternatively provide a comment in the consent regarding a future extension of time for the consent. He acknowledged that this was not part of the applicant's original resource consent application.

5.2 Submitters Evidence

Manager Consents, Ms J Hodson, tabled and read an email letter received by Council on 28 February 2007 indorsed with a hand signed note that the submitter, Mr A R Smith, would not be attending today's hearing. This email letter was accompanied by a statement from Mr Smith which was read at the hearing by Ms J Hodson.

The letter restated stated the concerns expressed in the original submission.

5.3 Council's Reporting Officer's Report and Evidence

Consent Planner, Mr P Gibson, spoke to his Report EP07/03/01 of 20 February 2007, contained within the agenda. Mr Gibson referred to the submission received from Mr A R Smith and in his report listed the issues referred to in that submission regarding the setback and location of the proposed dwelling and its height.

Mr Gibson explained within his report the proposed plan matters for Council's discretion relating to building setback and building height. Mr Gibson also spoke about the visual effect of the proposal following the removal of some vegetation and the implementation of a landscaping plan.

Mr Gibson referred to the proposed landscaping plan provided by the applicant and the requirement for this to be implemented as a condition of consent with ongoing maintenance. Mr Gibson acknowledged that the over height portion of roof intrusion is only a small area and referred to the information tabled by the applicant.

Mr Gibson referred to the proposed earthworks consent and suggested that should the Committee grant consent to the applications that one single consent should be issued.

6. PRINCIPAL ISSUES

The principal issues that were in contention were:

- a) Would the construction of the proposed dwelling considering the reduced road boundary setbacks and height encroachment, cause a significant adverse effect on the environment, particularly in relation to the amenity and privacy of the existing dwelling across the road owned by the Smiths and also on the overall amenity of the neighbourhood?
- b) Would the construction of the vehicle crossing as proposed cause any significant adverse effects in terms of traffic safety?
- c) Will the proposed earthworks cause a significant adverse effect on the environment?

7. MAIN FINDINGS OF FACT

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

- a) The Committee considered that the effects related to the reduced road boundary setbacks and height encroachment of part of the proposed dwelling would be no more than minor.
- b) The Committee considered that the effects related to the proposed vehicle crossing would be no more than minor.
- c) The Committee considered that the effects related to the proposed earthworks would be no more than minor.

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:

- (i) Tasman Regional Policy Statement (TRPS);
- (ii) the proposed Tasman Resource Management Plan (TRMP);

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 104C of the Act, the Committee **GRANTS** consent subject to conditions.

10. REASONS FOR THE DECISION

The land is zoned Residential and is within the Land Disturbance Area 2. At the time the site was created there was no prohibition relating to building on the narrow part of the section known as Area A. The site is highly unusual in that it is surrounded by legal road although the area to the east is used as reserve and contains a walkway. Only a very restricted part of Area A could be built on without some dispensation from the 4.5 metre road boundary setback requirement. The Committee noted another unusual feature is that the frontage of the site along Cederman Drive has been excavated as part of the road construction leaving a steep batter. It is the proximity of the proposed house to this steep batter which creates the situation where the house exceeds the 7.5 metre height restriction and this therefore affects the front "slice" of the upper floor area of the proposed dwelling.

The main concern of the submitter who owns a property across the road is that there will be a loss of privacy and amenity caused by an increase in the level of overlooking of the property. The Committee noted that there would be a degree of overlooking related to a new dwelling located anywhere on the site.

The separation distance between the proposed house and the submitters house is dictated by the existence of Cederman Road, and this separation distance is greater than in many other locations within a residential subdivision. The aspect of "overlooking" and protection of amenity in that sense is controlled in the Plan by the boundary setbacks and the building height/day light angle controls. The Committee considered that the overlooking issue is inherent in areas where there are sloping sites, and this issue was not made significantly worse because of the height encroachment or the reduction in road boundary setback.

The Committee noted the position of the carriageway within the wide road reserve adjacent to the site and they were satisfied that the reduction of setback would not create any difficulties for any possible future road widening of the Riwaka-Kaiteriteri Road. They agreed with the staff advice that the generous road reserve mitigates the reduced setbacks.

The Committee was satisfied that the proposed landscaping would mitigate the appearance of the proposed building.

The Committee is clear that the rules in the Plan do not have to be rigidly adhered to in all cases as suggested by the submitter. Rather, they create a baseline which can be exceeded with the approval of a resource consent assessed on a case by case basis. The Committee was advised that a resource consent had been granted in relation to the submitter's dwelling in 2001 for a height and setback encroachment.

The Committee was satisfied that the proposed vehicle crossing would not create adverse traffic safety effects.

The Committee was satisfied that the effects of the proposed earthworks could be managed by way of conditions of consent and they noted the on-going requirements of the Consent Notice 368017.47 which applies to this title.

11. COMMENTARY ON CONDITIONS OF CONSENT

The Committee considered that it should be definite requirement of the consent for the consent holder to supply to Council a statement from a Chartered Professional Engineer stating that all earthworks had been completed in accordance with good engineering practice and in accordance with the conditions of consent. It is clearly a difficult site and this kind of supervision and quality control is appropriate.

12. COUNCIL CONSENT FOR REMOVAL OF VEGETATION WITHIN AREA A (THIS IS NOT PART OF THE RESOURCE CONSENT)

The Committee grants consent to remove some vegetation in Area "A" shown on Consent Notice 368017.48 in accordance with the Planting Plan entitled "Plants, Preparation and Maintenance for Required Landscaping Property of S and J Holland," prepared by A P Mead of Landscape Management Services and attached to this document as **Report A**.

Issued this 9th day of March 2007

Councillor O'Regan
Chair of Hearings Committee

RESOURCE CONSENT NUMBER: RM060520

Pursuant to Section 104C of the Resource Management Act 1991 ("the Act"), the Tasman District Council ("the Council") hereby grants resource consent to:

S and J Holland
(hereinafter referred to as "the Consent Holder")

**ACTIVITY AUTHORISED BY THIS
CONSENT:**

Construction of a dwelling and associated earthworks at Cederman Drive, Kaiteriteri.

LOCATION DETAILS:

Address of property: Cederman Drive, Kaiteriteri
Legal description: Lot 45, DP 18158
Certificate of title: NL 12A/1139
Valuation number: 1931060036

Pursuant to Section 108 of the Act, this consent is issued subject to the following conditions:

CONDITIONS

Development

1. The development shall be undertaken in general accordance with the documentation submitted with the application and with **Plan A** dated 1 July 2006, and **Plan B** dated 1 September 2005, attached to this consent. Notwithstanding the above, if there is any apparent conflict between the information submitted with the application and any conditions of this consent, the conditions shall prevail.

Building Setbacks

2. The building shall be set back from the road boundaries as shown on **Plan A** dated 1 July 2006, attached to this consent.

Height

3. The maximum building height shall not exceed the height shown on **Plan B** dated 1 September 2005, attached to this consent.

Vehicle Crossing

4. The vehicle crossing shall be a maximum width of 15.0 metres at the property boundary with Cederman Drive and shall be 5.0 metres in width where the vehicle crossing meets the Cederman Drive kerb and channel.
5. The vehicle crossing shall be located in relation to the Riwaka-Kaiteriteri Road/Cederman Drive intersection as shown on **Plan A** dated 1 July 2006, attached to this consent and constructed in accordance with the MWH letter dated 20 September 2005 (attached to this consent).

Planting and Construction Management

6. The planting as detailed on the Planting Plan entitled "Plants, Preparation and Maintenance for Required Landscaping Property of S and J Holland" prepared by A P Mead of Landscape Management Services and attached as **Report A**, shall be implemented within the first planting season following the completion of the works on the site. The landscaping shall be maintained and irrigated thereafter in general accordance with the maintenance programme submitted with the approved Planting Plan.

7. A Construction Management Plan relating to Area “A” (noted on the Consent Notice 368017.48) shall be provided to the Senior Planner – Land Use prior to the issue of a Building Consent for the proposed dwelling. The Plan shall:
- (a) specify the start and planned completion date of construction works; and
 - (b) show on a scaled plan the location of the site access point(s) during construction; and
 - (c) show all areas of vegetation that will not be disturbed.

Building Colour

8. The exterior walls and window frames of the dwelling shall be finished in the following colours:

Part of Building	Colour
Walls	Schist, grey stucco, and cedar
Window Frames	Silver

The consent holder may use alternative colours provided the prior written approval of the Council has been obtained. The Council will give its approval to alternative colours provided they are recessive colours which blend in with the immediate environment. In the event that alternative colours are to be used, the consent holder shall submit to the Council for approval the following details of the colours proposed to be used on the walls and roof of the building:

- (a) the material to be used (e.g. paint, colour steel);
 - (b) the name and manufacturer of the product or paint;
 - (c) the reflectance value of the colour;
 - (d) the proposed finish (e.g. matt, low-gloss, gloss); and
 - (e) Either the BS5252:1976 (British Standard Framework for Colour Co-ordination for Building Purposes) descriptor code, or if this is not available, a sample colour chip.
9. The roof of the building shall be finished in colours that are recessive and which blend in with the immediate environment. The consent holder shall submit to the Council for approval prior to applying for building consent the following details of the colours proposed to be used on the walls and roof of the building:
- (a) the material to be used (e.g. paint, colour steel);
 - (b) the name and manufacturer of the product or paint;
 - (c) the reflectance value of the colour;
 - (d) the proposed finish (e.g. matt, low-gloss, gloss); and
 - (e) Either the BS5252:1976 (British Standard Framework for Colour Co-ordination for Building Purposes) descriptor code, or if this is not available, a sample colour chip.

The building shall be finished in colours that have been approved by the Council. This condition is required as the application does not specify the proposed colour of the roof.

Advice Note:

The consent holder should engage the services of a professional to ensure the exterior cladding and colour selection are compatible with the long term durability of the building material in the subject environment and in accordance with the requirements under the Building Act 2004.

Notification of Monitoring

10. The resource consent holder shall, in order to allow for the monitoring of consent conditions, provide a minimum of three working days written notice to Council's Manager, Environmental Information or his agent before the commencement of any activity authorised by this consent, including earthworks.

Placement of Spoil

11. No spoil shall be placed in any natural or formed watercourse, or placed where it may move or wash into any watercourse or onto any adjoining property.
12. No spoil shall be stockpiled on-site or spread over areas of the property unless:
 - (a) identified in plans approved by Council and appended to this consent; or
 - (b) is permitted as of right by the permitted activity criteria in the Tasman Resource Management Plan.

Engineering Approval and Supervision

13. The consent holder shall employ a Chartered Professional Engineer with experience dealing with Separation Point granites to monitor and supervise all foundation and earthworks carried out pursuant to this consent.
14. On completion of earthworks the consent holder shall provide a signed statement from the Chartered Professional Engineer to Council stating that all earthworks and foundations have been carried out in accordance with good engineering practice and comply with all relevant resource consent conditions.

Sediment Discharges

15. All construction areas shall be serviced with sedimentation mitigation and/or control measures capable of ensuring that no stormwater discharges off the site have a suspended sediment level exceeding 100 grams per cubic metre of water.
16. All sedimentation mitigation or control measures shall be maintained by the consent holder for as long as there is potential for sediment movement (resulting from earthworks) to affect any other property or natural water.

Control of Dust

17. All construction works approved pursuant to this consent shall be maintained so that dust will not adversely affect any public area or adjoining property.

ADVICE NOTES

Tasman Resource Management Plan

1. This resource consent only authorises the activity described above. Any matters or activities not referred to in this consent or covered by the conditions must either: 1) comply with all the criteria of a relevant permitted activity rule in the Tasman Resource Management Plan (TRMP); 2) be allowed by the Resource Management Act; or 3) be authorised by a separate resource consent.

Other Council Requirements

2. The consent holder shall meet the requirements of Council with regard to all Building and Health Bylaws, Regulations and Acts.

Consent Holder

3. This consent is granted to the abovementioned consent holder but Section 134 of the Act states that such land use consents "attach to the land" and accordingly may be enjoyed by any subsequent owners and occupiers of the land. Therefore, any reference to "consent holder" in the conditions shall mean the current owners and occupiers of the subject land. Any new owners or occupiers should therefore familiarise themselves with the conditions of this consent as there may be conditions which are required to be complied with on an ongoing basis.

Archaeological Matters

4. Council draws attention to the provisions of the Historic Places Act 1993 that require that in the event of discovering an archaeological find (eg shell, midden, hangi or ovens, garden soils, pit depressions, occupation evidence, burials, taonga) to cease works immediately, and tangata whenua, the Tasman District Council and the New Zealand Historic Places Trust shall be notified within 24 hours. Works may recommence with the written approval of the Council's Environment and Planning Manager, and the New Zealand Historic Places Trust.

Access Crossing Permit

5. An Access Crossing Permit has already been obtained from the Council's Engineering Department to authorize the new crossing within the road reserve. (See attached letter dated 20 September 2005.)

Siting of Building

- 6. A Surveyor's Pegging Certificate for set out of the building will be required as a condition of the building consent.

Issued this 9th day of March 2007

Councillor O'Regan
Chair of Hearings Committee

Date Confirmed:

Chair: