

MINUTES

TITLE: Environment and Planning Subcommittee
DATE: Friday, 16 December 2005
TIME: 9.30 am
VENUE: Council Chambers, 189 Queen Street, Richmond
PRESENT: Crs E M O'Regan (Chair), M J Higgins, R G Currie

IN ATTENDANCE: Environment and Planning Manager (D C Bush-King), Reporting Consultants (A Tester and R Palmer of MWH), Corporate / Engineering Administrator (V M Gribble)

1. **B FARLEY AND P RUTHERFORD, (CHANDRAKIRTI MEDITATION CENTRE), SUNRISE VALLEY ROAD, UPPER MOUTERE - APPLICATION RM040996**

The applicants sought land use consent to construct a second dwelling on a Rural 2 zoned property in Upper Moutere. The second dwelling at the Buddhist Meditation Centre is proposed to be used as a retreat for visiting teachers and spiritual practitioners. A maximum of three people will be accommodated in the dwelling at any one time (teacher, translator and attendant), and the dwelling will not be for general or commercial use.

The dwelling is set back from Sunrise Valley Road, close to the eastern boundary of the property, with no standard vehicle access. Access to the dwelling will be via a track of suitable quality for a four-wheeled farm vehicle.

The dwelling will have Macrocarpa weatherboard cladding and colour steel roofing.

The application site is located at 289 Sunrise Valley Road, Upper Moutere, being legally described as All DP 421, Block IV Wai-iti Survey District.

Cr Higgins questioned how the decision was made for the application to be made by limited notification.

The decision was made by A Tester MWH NZ Ltd and it was reviewed by Mr Leiffering,

1.1 **Presentation of Application**

Mr Farley and Ms Rutherford presented the application.

Ms Rutherford said there will be no noise, no emissions, no hazard to the environment and very few cars. They want to be harmonious with their neighbours and they have tried hard to do everything their neighbours want.

Mr Farley reiterated they are not alone in the valley as far as operating a non-farming environment goes. They have tried for over 18 months to address the issues of the neighbours and have spent a lot of money to get to this point.

Cr O'Regan commented on the location of the proposed building on the plan site and noted that appeared to be only about 10 metres from boundary at the back of the title. He asked if there was any specific reason for that siting.

Ms Rutherford said it is a very steep hill and they have carved an area out to put the house on. She said it is traditional for Buddhist Lamas to be on high places.

Mr Farley said there is flat land around their house but they want to keep their house separate from the accommodation unit.

Cr O'Regan advised Mr Farley and Ms Rutherford that an instrument can be registered on their title waiving rights to any complaint they might make about their neighbours farming operations. He asked if the applicant had considered offering such a rural emanations easement to the Hyatts.

Mr Farley said they had discussed the issue with the Hyatts as their lawyers had discussed a covenant over the property.

Ms Rutherford said the neighbour's main concern is of the future and she said they can not give any assurance about the future just as they have not got assurance from the Hyatts that they are not going to expand.

Mr Farley said they already get spray drift but have never complained. If we sign this easement and they are reckless, who decides? If that went some way to ease the Hyatts mind we would consider it.

Mr Bush-King further explained rural emanations easements saying if they had a silage pit on their property or carried out their spray activities you could not complain provided they were within permitted activity standards. However, any discharge from a property, e.g. spray drift, aerial fertilising, should fall only on that property.

Cr O'Regan said the applicants could have a granny flat situation as long as it is associated with the existing dwelling as a permitted activity.

Mr Farley said we are being up front and honest, but we could have said it is a granny flat.

Cr Higgins asked about references to funding in the application, sponsors including lotteries, etc and local investors.

In reply Ms Rutherford said the Chandrakirti Trust is a charitable trust. Investing in this sort of thing are people who donate to the centre, who are setting themselves up for a good life. The Trust leases the land and that was because we get donations from the community and if we are seen to be building private facilities, people need to have faith that we have got integrity. Council also has grants that we can apply for.

Mr Farley said the lease agreement is a legal document.

Cr Currie asked for clarification of a stupa and tipi. He commented about the access to the dwelling being via a track of suitable quality for a four-wheeled farm vehicle and was concerned about access to the site by emergency services.

Ms Rutherford said there is a pond next door to the dwelling for fire fighting.

Mr Farley said they are upgrading the meditation hall for fire services and a pump has been installed with a proper fire reel and they would probably install one in the new house. To clean the septic tank the operator could get within 20 metres of it.

Cr Higgins said we do not know the future, and the Resource Management Plan tries to protect resources for around 50 to 100 years. He asked how they plan to accommodate future growth and the implications on their property.

Ms Rutherford said we want to have a teacher who will stay several months rather than a couple of weeks. We want to grow and in another ten years it might mean more people. We do have five acres and could look at building other dormitory-style accommodation and space for car parking.

Mr Farley said they have just bought two properties in Sunrise Valley Road and are looking to the future.

Cr Higgins noted that parking has been a problem and particularly backing across the road and turning.

Ms Rutherford said there are 20 car parks along the front but if we want more accommodation in ten years we would have more car parks up the drive way.

Mr Farley said with the type of operation we have got there are 20 people there at the moment and there are only two extra vehicles. He said the car park down the bottom is excluded from this application. All we had to do for this application was prove we had car parking for two additional vehicles. With the original resource consent we clearly showed where the car park was going to be and we worked closely with Council and put it a metre further back and built the car park to a better standard than was required.

1.2 Presentation of Submissions: Hyatt & Sons Ltd

Mr Philip Hyatt introduced his wife Raewyn and his brother John. He outlined their business activities. He believes the Hyatts are very good neighbours. It is becoming difficult to retain profitability and one thing impinging on us is local and central government increasing compliance costs and also industry compliance costs. We do not know what will happen in the future. There are two distinct activities, Buddhist teachings and Phillipa's teachings. The Hyatts believe that other Valley residents should have had the opportunity to have a say. Back in 2001 when they signed the previous consent to build the meditation hall, other locals were upset that they could not have their say, hence this is a reason we wanted the application to go to a hearing.

Mr John Hyatt said the possibility of a dwelling five metres from their boundary causes great concern. They endeavour to be good neighbours. It will only create complaints in the future as they have machinery operating up to 14 hours a day during harvest, and they see the activity in the yards increasing. Noise from here will clearly be heard from the new dwelling. They all believe it could compromise the blackcurrent operations in the future. Fertiliser is applied by air and weed spraying is undertaken. The existing dwelling is 50 metres from the fence line, but the proposal is for the new house to be five metres away. He said the applicants have declined to attach a covenant to their title. He commented about the geo-technical matters.

Mr Bush-King left the meeting at 11.00 am.

A slip occurred which is not major, but it has still happened. The applicants have put rock up to prevent slipping in the future. It is to be a large house on a very prominent spot. He said half the car park is on the road reserve. He said the meditation hall was completed in 2002 and the car park is still not completed. In May 2005 the car park was extended and it was cut back to get cars off the road edge.

Mr P Hyatt said the consultant's report said everything had been complied with for the meditation hall in 2001, but the car park only became operative in 2005. The Council has not acted properly or monitored it and we have still got a car park that does not comply with the Council's regulations. We moved our entranceway south because we could not get our trucks in and out when cars were parked and were asked by Council to comply with regulations which we said we would when the neighbours did.

Mr J Hyatt said they have discussed the car park with Mr Farley and Ms Rutherford. 4.3 metres of the car park is on the road reserve and 3.7 metres of car park is on their land. 15 metres of length of the car park is on Hyatt & Sons land. The road will have to be widened at some stage. We have a single lane under-width road. When it is widened there will be major conflict with the car park.

Mr P Hyatt said the applicants used their yards for car parking which was agreed on a yearly basis. We put tape up to prevent vehicles getting close to the sheds and the tapes were removed. We have got OSH issues, a spray shed, machinery and security issues. We are compromising ourselves under OSH and insurance and we have to say that we are not comfortable with this for the future.

Mr J Hyatt said no permission has been given for future occasions to use their yards for parking. The traffic consultant report states the current car parking location is unsafe. There will be more activities happening on the site and there will be more vehicle movements as it grows. We believe it will put more pressure on people who regularly use the road. They are proposing five courses per week and hoping to get 20 people. On top of this there are other courses and there will be considerable growth. All these people will be using the car park and driveway. We have had several meetings with the applicants regarding the meditation hall and proposed dwelling. When we signed for the hall we were assured there would be no accommodation. We signed the consent in good faith and were misled. Within 12 months of completing the hall the house site is dug out. We were told it was a picnic area, again we were misled. Mr Farley has stated he will never make any complaint about our farming operations. Mr Farley has said the other neighbours are 100% supportive of what they are doing. The Hendersons and Barnetts are not supportive of the additional accommodation and car parking issues and have not been spoken to about them.

Mr Hyatt tabled and read letters from Keith and Sue Henderson and Peter and Anna Barnett objecting to the proposed accommodation.

Mr Hyatt said all residents will be affected by the increased traffic. The road services the Sun Club, vineyards, farming etc. We have been supportive of the centre to date, but cannot guarantee that for the future. We believe a larger number of people living on site will raise conflict with our farming practices. He asked Council to decline the application.

Mr P Hyatt said the Buddhist activity is not an activity that should be allowed in the midst of farming activities. We were given clear assurance there would be no accommodation built on site. If we had not had that assurance in 2001 we would not have signed the consent form. He tabled an agreement that the Hyatts had with Mr Farley and Ms Rutherford that was signed in 2001 when they were asked to sign the consent form to build the meditation hall and it reflects on what was agreed to. He said potentially it could have a massive impact on their farming operation.

1.3 Staff Report – A Tester and R Palmer

Mr A Tester, MWH NZ Ltd, spoke to his report which was included in the agenda. He said the application is for a second dwelling. The current car parking was authorised through the resource consent issued in 2001. The car parks needed for the second dwelling will be up the driveway. A site visit was carried out and the affected parties decided by properties and buildings that could be seen from the proposed building site.

Mr R Palmer, MWH NZ Ltd, said the existing access meets the roadway at an acute angle and is not good engineering practice as you tend not to give way as readily as you should. He would prefer an access at right angles. The access has poor sight lines due to a high bank and vegetation, but it would not be a major undertaking to get it right. He expressed concern that there are five companies run from that one access plus a dwelling, plus another proposed dwelling. The report noted we need some traffic data to fully assess the volumes using the accessway. He commented on the existing car park and how it is undesirable, but it has been approved by another consent and is not up for discussion today.

In reply to a question from Cr Higgins, Mr Palmer said he was concerned about the activities being carried out and traffic movements.

Cr Higgins asked Mr Tester if he had observed the activities that take place on the property.

Mr Tester said he had not observed the activities as there was little going on when he visited.

Cr Higgins said as a Council we have been approached by a number of applicants to build additional dwellings for housing employees, retiring family members and recommendations invariably come through to decline. He said if the Hyatts apply to Council to build another house to accommodate another working member of their family they are likely to be declined but you are recommending us to put an additional house adjacent to them. He asked for justification on this matter.

Mr Tester said for Rural 2 zone 50 hectares and above it is a controlled activity for an additional dwelling. His reasoning was that it is quite a different section, a lot smaller, steep, covered in vegetation and given the activity being carried out it is appropriate and vegetation will obscure the site of the proposed dwelling.

Cr Higgins noted a comment from Hyatts that the bench that has been cut is not wide enough and will need to be poled out the front. Is that correct?

Mr Tester did not measure the width of the platform so could not comment but said the site is steep. He said any dwelling built out on poles will still be obscured.

Cr O'Regan noted there is no condition in relation to household water and said that being unreticulated rural area we usually recommend 23,000 litre minimum storage.

Mr Tester said it is usually covered in advice notes.

Cr O'Regan said there is no application for discharge, but considerable reporting has been done on the ability of the proposed system to meet the plan standards.

Mr Tester said provided advice notice number 3 is met then a discharge permit will not be required.

Cr Higgins asked what consideration had been given to an application for subdivision.

Mr Tester said the applicants have advised they will not be subdividing the property and he had accepted that in good faith.

Cr O'Regan asked Mr Tester if in assessing the application the question of rural emanation easements had been raised between yourself and applicant.

Mr Tester was not aware that they existed.

In reply to a question from Cr O'Regan, Mr Palmer advised there is sufficient room for the two additional parking spaces adjacent to the proposed building.

1.4 Applicants' Right of Reply

Ms Rutherford appreciated the activity is new and different and there is nothing to compare with as a Buddhist meditation centre is unique.

She acknowledged the Hyatts concern that it may jeopardise their farming operation. Hyatts were happy to sign resource consent for the meditation hall and were well aware of the circumstances of the meditation centre. The boundary issue is not part of this consent, but upon getting the geotechnical report for the second dwelling it was discovered the boundary is out and has been out for 100 years. It was not of our creating, but reassured Council that the new dwelling is significantly on their side, no matter what the result of the boundary issue. The location of the house is 7.5 metres from their existing fence line which is the existing boundary at the moment. Behind the house is Hyatt land, which is not intensively farmed. The site is solid ground as per the geo-technical report and the whole house is on solid ground. Hyatts are worried about the noise in their yard but she reassured them the sheds and yard cannot be seen from the site, all you can see is trees. The view is the edge of the paddock and down the road.

Mr Farley said they are not bothered by the farming noises and did not say he was annoyed, he just acknowledged that they have lived with the noise.

Ms Rutherford said other neighbours make just as much noise and it is part of rural life. The spray issue is nothing new, we have had the meditation hall for four or five years and we have not complained and the new building will be further away from the sprays.

Ms Rutherford said when you are big landowners, of course you will feel pressure from small holdings, not just us, but many of the neighbours. The car parking situation, we acknowledge is difficult. We agree that we need to constantly work at the issue. From our side, we are in compliance with our resource consent, as we have ten more parking lots. Car parking is more than adequate for this new dwelling and if in the future changes are to be made we are happy to do that. If we have to change the angle of the driveway we are more than happy to do so if it is a condition of the consent. There will not be a big increase in traffic.

Mr Farley said we are not changing the use of the original consent. We will continue our existing work whether there is a new house or not.

Ms Rutherford said the activity is already there, we are upgrading the facility to give the teachers somewhere nice to live. Having the house on site will actually reduce the traffic because people are coming and going to bring teachers in. In regard to the neighbours' letter, the Hyatts have obviously gone to them and stated their case. We have never gone to the neighbours and we did not say we had.

Cr O'Regan said both applicants and submitters are entitled to provide witnesses and there is nothing untoward about the tabling of the letters from the neighbours.

Ms Rutherford said they intend to tarseal the driveway and are happy to have it as part of the consent. Our activities are sporadic. They have offered a covenant on the property so it cannot be subdivided and have put that in writing to the Council.

Mr Farley said they have satisfied all Council requirements and have the building permit. He said the five businesses on site involve three people. He stated they were not familiar with the proposal for a covenant over their property to do with complaints, and if Hyatts were more comfortable with a covenant they would consider it.

Mr Bush-King returned to the meeting at 12.20 pm.

Mr Farley said they want to get on with the Hyatts and said they want to do everything to make their business successful and want to be supportive neighbours.

Mr Tester advised the ground floor footprint is approximately 120 square metres.

Cr O'Regan thanked the applicants and submitters for the way they conducted themselves during the hearing.

The meeting concluded at 12.28 pm.

**Moved Crs Currie / Higgins
EP05/12/01**

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

B Farley and P Rutherford

The general subject of the matter to be considered while the public is excluded, the reason for passing this resolution in relation to the matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

Subject	Reasons	Grounds
B Farley and P Rutherford	Consideration of a planning application.	A right of appeal lies to the Environment Court against the final decision of Council.

CARRIED

**Moved Crs O'Regan / Currie
EP05/12/02**

THAT for the purposes of discussing the application of B Farley and P Rutherford as an "In Committee" item, the Environment & Planning Manager be authorised to be in attendance as advisor.

CARRIED

**Moved Crs Currie / O'Regan
EP05/2/03**

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

CARRIED

- 2. B FARLEY AND P RUTHERFORD, (CHANDRAKIRTI MEDITATION CENTRE), SUNRISE VALLEY ROAD, UPPER MOUTERE - APPLICATION RM040996**

**Moved Crs Higgins / O'Regan
EP05/12/04**

THAT pursuant to Sections 104B of the Resource Management Act 1991, Council DECLINES consent to B Farley and P Rutherford.

REASONS FOR THE DECISION:

- 1. The land is zoned Rural 2 in the Proposed Tasman Resource Management Plan. The site currently has on it the non-residential Chandrakirti Mediation Centre which is subject to its own consent. Mr Farley and Ms Rutherford live on the property and also run a number of home businesses from their dwelling.**

2. The land is moderate to steep sloping and is heavily landscaped with mature plantings which provide an ambiance in keeping with the secondary use of the site. The proposed house site is located at the highest part of the property close to the adjoining boundary, accessible only by a walking track. It was noted on the site visit that there were already a number of caravans and tents which are used by patrons who attend some of the teaching sessions on site. Other properties in the vicinity are also made available to overnight patrons. This level of activity the Committee was told is seasonal not constant throughout any one year and no course exceeds 10 days.
3. Under staff delegation the application was limited notified and the Hyatts as the adjoining owners took the opportunity to submit against the application. Their concerns focussed on the proximity of the proposed dwelling to the common boundary and the existing traffic issues with the current use of the site. The Committee was made aware that had other local residents been given the opportunity to submit they too would have participated in the process.
4. In considering the issues and points raised in submission, the Committee found itself in a difficult position. While the house site may be appropriate for the meditative uses associated with housing a Buddhist teacher, it was to be located very close to a working farm boundary. While Mr Farley offered in his right of reply a rural non-emanations covenant, the Committee is not satisfied that the location is appropriate bearing in mind that once established as a second dwelling it becomes available for use generally and not just for the purposes intended by the current applicants. Cross boundary effects are relevant and would be more than minor.
5. The Committee carefully considered the concerns about traffic and notes that any congestion associated with current activities on site is a separate issue. The proposed dwelling would be serviced by the required two parking spaces albeit on a part of the property close to the existing dwelling and not close to the proposed house because of physical constraints. In a cumulative sense however, the addition the extra dwelling gives tangible expression to the concerns of the residents that there may be more emphasis on residential courses at the Meditation Centre. This is not provided for under the existing consent and has not been authorised by due process. Mr Farley noted that there is already a lot of activity up Sunrise Valley and that there are many sites with second dwellings. While that may be so, we are of the view that in the context of this site the second dwelling will have more than minor effect.
6. While some of the concerns the Committee had about the on-site domestic waste water system could have been addressed by conditions in the event of granting consent, for the above reasons the Committee overall was not satisfied that consent should be granted.

CARRIED

Date Confirmed:

Chair: