



STAFF REPORT

TO: Environment & Planning Subcommittee

FROM: Ross Shirley, Subdivision Officer

REFERENCE: RM050184

SUBJECT: **G AND P RAMSAY– REPORT EP05/09/20** – Report prepared for 5 September 2005 hearing.

1. INTRODUCTION

- 1.1 I recently approved a delegated authority subdivision consent. The consent included a certain condition that has been objected to by the applicant.
- 1.2 The Resource Management Act requires the Committee to consider the objection and may dismiss or uphold the objection wholly or partly.

2. BACKGROUND

- 2.1 The land consists of two adjoining rural titles with frontage and access to Clover Road East and Haycock Road. The land is fully planted in apples with each title containing an existing dwelling. Refer Appendix "A".
- 2.2 The legal description of the land is:
 - a) Lot 2 DP 15876 (CT 10B/617) containing 9.07 hectares. The registered proprietor of the land is P J and G W Ramsay and Knapps Lawyers.
 - b) Lot 1 DP 20220, Lot 2 DP 312538 and Lot 2 DP 331150 (CT 128231) containing 20.81 hectares. The registered proprietor of the land is G W, M J and B Ramsay.
- 2.3 The land is zoned rural 1 under the Tasman Resource Management Plan.

3. SUBDIVISION PROPOSAL

- 3.1 The proposal is to undertake an adjustment of the common boundary between the two titles whereby an area of 3.23 hectares is to be transferred from one title to the other.
- 3.2 The proposed new title areas are:
 - a) Lot 1 hereon of 5.84 hectares.
 - b) Lot 2 hereon/Lot 1 DP 20220, Lot 2 DP 312538 and Lot 2 DP 331150 of 24.04 hectares.

4. ISSUES

- 4.1 The proposed larger title could in the future be further subdivided as a controlled activity into two 12 hectares allotments. Controlled activity subdivisions must be approved.
- 4.2 That is, the boundary adjustment as applied for provides an opportunity for the creation of an additional title as a controlled activity. Without the boundary adjustment that opportunity does not exist.
- 4.3 The opportunity for an additional title is a potential adverse effect relating to the fragmentation of productive rural land that the District Plan seeks to avoid.

5. SOLUTION

- 5.1 The first approach considered by staff was to impose a covenant registered on the title preventing future subdivision of the 24 hectare title.
- 5.2 However a legal opinion sought by Council advised that there were conflicting decisions of the Environment Court concerning the power of Councils to impose a condition preventing further subdivision. There is some acceptance of such a condition where it has been volunteered by the applicant but in the current proposal the applicant specifically declined to volunteer such a condition.
- 5.3 The legal opinion also advised that it is doubtful whether Council can refuse to process an application (by current or subsequent owners) even if such a condition was registered on the titles volunteered or otherwise.
- 5.4 The covenant solution was therefore rejected.
- 5.5 The second approach considered was to impose a condition requiring the survey plan to be amended so that the larger amalgamated title would have an area no larger than 23.5 hectares.
- 5.6 This would mean that any future subdivision would be a discretionary activity and thus be able to be declined.
- 5.7 The imposition of such a condition was a requirement of the Consent Coordinator to allow the proposal to be processed on a non-notified basis.
- 5.8 The application was then duly approved under delegated authority including the following condition and explanation.

Condition 2, Survey Plan Amendment

That the survey plan be amended to show Lot 2 to have a maximum area of 2.7 hectares.

Explanation

“The proposal as lodged shows the Lot 2 area of 3.23 hectares, with Lot 2 to be amalgamated with land in CT 128231 to produce a new title area of 24 hectares. The new amalgamated title could then in the future be further subdivided as a controlled activity into two 12 hectares allotments. As you are aware controlled activity subdivisions must be approved and such an approval would neutralise any resource management reasons for approving the boundary adjustment in the first place.

Any boundary adjustment that provides for a future controlled activity subdivision must consider the potential adverse effects of land fragmentation. The effects of land fragmentation are spelt out quite clearly and strongly in the Tasman Resource Management Plan particularly in Chapter 7.

The above condition reduces the area of the amalgamated title to something less than 24 hectares. Thus any future subdivision application would fall to be a discretionary activity which can be declined. The condition is therefore imposed to mitigate or avoid the potential adverse effects of land fragmentation which as stated is an important objective of the Tasman Resource Management Plan.

It is noted that the Lot 1/Lot 2 boundary is shown as an arbitrary straight line bisecting an existing orchard. Shifting of that line some 15 or 20 m to the south-east would seem to make no difference to the effective or efficient management of the land.”

6. OBJECTION

- 6.1 Section 357 Resource Management Act 1991 provides for the applicants right of objection to Council’s decisions on non-notified applications made under Section 88 of the Act for a Resource Consent.
- 6.2 The current proposal is such an application and an objection has been lodged seeking the deletion of condition 2. Refer Appendix B.
- 6.3 The Environment and Planning Manager has the delegated authority to issue decisions on Section 357 objections. In this instance the Manager has directed the objection to the Committee as he considers it important that staff get a lead from the Committee because of the potential number of like applications.

7. ASSESSMENT

- 7.1 The Transitional District Plan, Waimea Section contains specific rules relating to boundary adjustments. In particular ordinance 1925 provided for boundary relocations in rural zones to be non-notified discretionary activities subject to *“the proposed subdivision will not if approved, create a situation where any allotment or allotments resulting from the subdivision will, as a result of the boundary relocation, be capable of further subdivision as a controlled activity than would have been the case had the boundary relocation not taken place.”*
- 7.2 Thus under the Transitional District Plan the current proposal would fall to be a non-complying activity.

- 7.3 The proposed Tasman Resource Management Plan contains no specific boundary adjustments rules although the following policies are relevant.
- 7.1.4 To facilitate the amalgamation of land parcels and relocations of the boundaries of land parcels in rural areas where this would enable the greater range of soil base production activities.*
- 7.1.4A To enable minor adjustments in the location of boundaries of land parcels in rural areas where this will increase the life supporting capacity of the soil or the potential of the land for soil base purposes.*
- 7.4 Otherwise under the TRMP boundary adjustments are typically discretionary activities and therefore are to be considered having regard to the criteria set out in Schedule 16.3A as well as other provisions of the plan and the Act.
- 7.5 The substantive assessment has already been made in that a decision to approve the application has been issued.
- 7.6 What has been contested is the validity and relevance of the condition requiring the survey plan to be amended.
- 7.7 For a condition to be valid it must:
- a) Be for a resource management purpose not for an ulterior one.
 - b) Fairly and reasonably relate to the development authorised by the consent to which the condition is attached.
 - c) Not be so unreasonable that no reasonable planning authority duly appreciating its statutory duties could have approved it.
 - d) Not be ultra vires the powers of the Council.
- 7.8 The purpose of the condition is an attempt to avoid the adverse effects of subdivision of rural land particularly land of high productive value. Avoiding the adverse effects of subdivision is clearly a resource management matter and there are very strong policies in the District Plan supporting that objective.
- 7.9 In addition, the condition fairly and reasonably relates to the activity authorised by the consent as without the current application there is no opportunity for a controlled activity subdivision.
- 7.10 Section 108 provides for a resource consent to be granted subject to any condition the Council considers appropriate.
- 7.11 In view of the explanation following the condition and the matters raised above I believe a condition is a valid one.
- 7.12 Accepting that the condition is a valid one the question then needs to be asked if it is relevant. That is, will it achieve the purpose it sets out to do which is to avoid the adverse effects of land fragmentation.

- 7.13 The effect of the condition is to reduce the area of the larger amalgamated title from 24 hectares to 23.5 hectares which in turn will change the status of any future subdivision from controlled to discretionary.
- 7.14 Controlled activity subdivisions must be approved whereas discretionary applications may be approved or declined.
- 7.15 The amalgamated title be it 23.5 hectares or 24 hectares has frontage and access to Clover Road East and Haycock Road. Thus any future subdivision could be achieved as two front sites without the need for leg-in strips or rights of way.
- 7.16 In addition a future subdivision of the land be it 23.5 hectares or 24 hectares could achieve two regular shaped allotments which is an important matter when assessing land's productivity and versatility.
- 7.17 If the area of the amalgamated title was reduced to 23.5 hectares a future subdivision could create two lots of 11.75 hectares of productive land. An area of 11.75 hectares is so close to the "as of right" 12 hectares minimum that in a practical sense the difference has no meaning.

8. CONCLUSION

- 8.1 The amalgamated title has the same potential for subdivision be it 24 hectares or 23.5 hectares notwithstanding that the status may change from controlled to discretionary.
- 8.2 The condition is therefore meaningless.

9. RECOMMENDATION

- 9.1 That the Committee as provided for by Section 357(7)(a) Resource Management Act uphold the objection.
- 9.2 For the avoidance of doubt a decision by the Committee to uphold the condition means that Condition 2 of the earlier decision is deleted but the balance of the decision remains.

R D Shirley
Subdivision Officer