

15 June 2007

File Ref: ~~63-06-038102~~
Your Ref: 190801-R-P-C005

Doc No: OW-81259

Luke Martin
Registered Surveyor/Town Planner
MTEC Consultants Ltd
PO Box 878
ROTORUA

copy to: P22200
copy to: P32735
to P32797
(P32760)

Dear Luke,

NON-NOTIFIED APPLICATION TO VARY AN APPROVED SUBDIVISION CONSENT NOTICE OF DECISION

I wish to advise that the following decision has been made under authority delegated to staff in respect of the above application:

(a) Decision regarding non notification of the application

That pursuant to Section 93(1)(b) of the Resource Management Act 1991, the Rotorua District Council resolves that the adverse effects of the change of conditions 13, 25 and 35 of consent will be minor and the application need not be notified. The Council is satisfied after taking into due consideration the requirements of Section 94, 94A(a) 94B & C and Section 127(4) that in the opinion of Council no persons are considered adversely affected by the change of conditions. Council is also satisfied that no special circumstances exist that require notification of the consent application in accordance with Section 94C(2) of the Resource Management Act 1991.

(b) Decision on the application

That pursuant to Sections 34A, 104, 108 and 127 of the Resource Management Act 1991, the Rotorua District Council resolves to grant consent to change the original subdivision consent granted on 6 March 2007 applied for by Pinnacle Hills Subdivisions Ltd to subdivide the property at 45A Blomfield Street legally described as Pt Sec 20 Blk IV Horohoro SD into 63 residential lots by variation of conditions 13, 25 and 35 to the consent.

For completeness, the original conditions of consent are reproduced below with changes to the original conditions and advice notes resulting from this decision shown in italics. The consent is now subject to the following conditions:

GENERAL CONDITIONS FOR STAGES 1-3:

1. That all engineering works required to be undertaken to satisfy the conditions of this consent shall be carried out in accordance with the Rotorua Civil Engineering Industry Standard (RCEIS) and the District Plan, to the satisfaction of the District Engineer.
2. The consent holder shall comply with the proposed works set out in Appendix A of the application submitted by MTEC Consultants Ltd (Reference: 190801-R-S-C009) dated 10

April 2006, and subsequent further information dated 15 June 2006 for the provision of roading and services, except where modified by the following consent conditions.

3. That all land to vest in Council, roads, street lighting, sewerage, stormwater, water supply, telecommunications, and electricity facilities shall be provided to the standards required by Council as a service operator or other service operators in which the infrastructure will be vested. Certification from Council and the other appropriate service operators that it is satisfied with the standard of the service provided, and that it will accept the particular service, shall be provided to Council as consent authority before it issues any Section 224 Certificates to enable a survey plan to be deposited. Those services certified for approval by Council as service operator shall vest in Council on deposit of the survey plan.
4. That engineering design plans and specifications for the proposed roading (including street lighting, any traffic calming devices, road reserve landscaping, any feature walls and footpath, and turning heads for each stage of the public road to vest), access ways, stormwater reticulation and secondary overland flow paths, sub-soil drainage, sewage, water supply, electricity, telephone and gas supply facilities, and appropriate physical and legal access for future maintenance of the drainage reserve by plant and machinery shall be submitted to the District Engineer for written approval before commencing construction work. Work undertaken without Council's written approval for those services to vest in Council, shall not be accepted.
5. That in carrying out the proposed works no run off, silt, sediment or other materials shall be permitted to discharge off-site that could damage or disturb neighbouring properties, public roads or drains by installing and maintaining appropriate erosion and sediment controls, prior to and during the works, and until the site is stabilised.
6. That all filling shall be certified by a Chartered Professional Engineer.
7. That the proposed street name for the proposed public road be forwarded to Council for consideration, that consultation be undertaken with emergency services, and that the street name receive approval by Council prior to requesting Section 223 certification.

STAGE ONE

8. (a) That the Land Transfer Plan be prepared in accordance with the preliminary plan of subdivision prepared by MTEC Consultants Ltd, numbered 190801-R-P-D004 Sheet 01 Issue A, insofar as it relates to Stage 1 - Lots 1-17, 47-49, 56, 57, 63, 67 & balance lot, and except where modified by any of the following conditions.
- (b) That on making application for Section 223, the Land Transfer Plan shall be amended to identify the secondary overland stormwater flow path for a 1% AEP storm event on part Lot 32 and the Areas 'Q' through to 'Z', with the Areas Q through to Z to be shown as a single lot to vest in Council as a Local Purpose Reserve (Drainage).
- (a) That on making application for Section 223, the Land Transfer Plan shall be amended to show the proposed subdivision entrance design that is shown on the

supplementary drawing prepared by MTEC Consultants Ltd numbered 190801-R-P-004 Sheet No. 100 Issue A and dated 12/5/2006.

- (d) That on making application for Section 223, the Land Transfer Plan shall be amended to show the proposed road to vest in Council as part of Stage 1 is Lot 72 and not Lot 63 as currently shown.
- 9. That Lot 63 [to be re-coded as Lot 72 on the amended Land Transfer Plan pursuant to Condition 8(d)] be vested in Council as Road.
- 10. That all necessary easements shall be granted or reserved.
- 11. That a building platform and Building Line Restriction shall be certified by a suitably experienced and qualified Chartered Professional Engineer on those lots (Lot 57) that are adjacent to the steep slopes of the gully that is to become Drainage Reserve to vest in Council.

Amalgamation Condition – Stage 1

- 12. That Lot 67 hereon (Legal Access) be held as to eight undivided one eighth shares by the owners of Lots 8-12 and 14-16 hereon as tenants in common in the said shares and that individual Certificates of Title be issued in accordance therewith.

Financial contribution – Stage 1

- 13. *That a financial contribution for reserves and heritage purposes be paid to Council. This amount will be assessed at 5% of the land value for Stage One Lots 1 to 17, 47-49, 56-57. Refer to Advice Note (i) for further information on this aspect.*

Consent Notices – Stage 1

The following shall be registered as consent notices on the relevant Certificates of Title:

- 14. That the owners and subsequent owners of Residential Lots 1-17, 47-49, 56-57 are advised that only one household unit and no subsidiary household units shall be constructed. That the owners and subsequent owners of Lots 1-17, 47-49, 56-57 shall be advised of this requirement by way of a Consent Notice registered on the Certificate of Title created for Lots 1-17, 47-49, 56-57.
- 15. That the owners and subsequent owners of Lots 7 and 17 are advised that the lots have no legal access to Access Lot 67. All access from Lots 7 and 17 shall be directly onto the public road (Lot 63) and not via the adjacent Access Lot. The owners and subsequent owners of Lots 7 and 17 shall be advised of this requirement by way of a Consent Notice registered on the Certificate of Title created for Lots 7 and 17.
- 16. That the owners and subsequent owners of Lots 49 and 56 are advised that the lots have no legal access to Access Lot 66. All access from Lots 49 and 56 shall be directly onto the public road (Lot 63) and not via the adjacent Access Lot. The owners and subsequent owners of Lots 49 and 56 shall be advised of this requirement by way of a Consent Notice registered on the Certificate of Title created for Lots 49 and 56.

17. The owners and subsequent owners of Lots 7, 17 & 47 are advised that Lots 7, 17 & 47 are within 15 metres of a corner and/or approved traffic calming measure, and that on-site turning areas shall be required to enable the exit of vehicles in a forward motion. The owners and future owners of Lots 7, 17 & 47 are to be advised of this requirement by way of a Consent Notice registered on the Certificate of Title created for Lots 7, 17 & 47.
18. That the owners and subsequent owners of Lot 57 are advised that a fencing covenant shall be registered on all titles of properties with a common boundary to the proposed drainage reserve, indemnifying the Rotorua District Council against all costs of erection and maintenance of fences on the common boundary. The owners and future owners of Lot 57 are to be advised of this requirement by way of a Consent Notice registered on the Certificate of Title created for Lot 57.

STAGE TWO

19. That the Land Transfer Plan be prepared in accordance with the preliminary plan of subdivision prepared by MTEC Consultants Ltd, numbered 190801-R-P-D004 Sheet 01 Issue A, insofar as it relates to Stage 2 - Lots 18-22, 43-46, 50-55, 58-62, 64, 66, 70 and the balance lot, and except where modified by any of the following conditions.
20. That Lot 64 be vested in Council as Road.
21. That all necessary easements shall be granted or reserved.
22. That a building platform and Building Line Restriction shall be certified by a suitably experienced and qualified Chartered Professional Engineer on those lots (Lots 59-62, 53-55) that are adjacent to the steep slopes of the gully that is to become Drainage Reserve to vest in Council.

Amalgamation Condition – Stage 2

23. That Lot 66 hereon (Legal Access) be held as to six undivided one sixth shares by the owners of Lots 50-55 hereon as tenants in common in the said shares and that individual Certificates of Title be issued in accordance therewith.
24. That Lot 70 hereon (Legal Access) be held as to 5 undivided one fifth shares by the owners of Lots 58-62 hereon as tenants in common in the said shares and that individual Certificates of Title be issued in accordance therewith.

Financial contribution – Stage 2

25. *That a financial contribution for reserves and heritage purposes be paid to Council. This amount will be assessed at 5% of the land value for Stage Two Residential Lots 18-22, 43-46, 50-55, 58-62. refer to Advice Note (i) for further information relating to this aspect.*

Consent Notices – Stage 2

The following shall be registered as consent notices on the relevant Certificates of Title:

26. That the owners and subsequent owners of Residential Lots 18-22, 43-46, 50-55, 58-62 are advised that only one household unit and no subsidiary household units shall be constructed. That the owners and subsequent owners of Lots 18-22, 43-46, 50-55, 58-62

shall be advised of this requirement by way of a Consent Notice registered on the Certificate of Title created for Lots 18-22, 43-46, 50-55, 58-62.

27. That the owners and subsequent owners of Lots 53-55 and 58-62 are advised that a fencing covenant shall be registered on all titles of properties with a common boundary to the proposed drainage reserve, indemnifying the Rotorua District Council against all costs of erection and maintenance of fences on the common boundary. The owners and future owners of Lots 53-55 and 58-62 are to be advised of this requirement by way of a Consent Notice registered on the Certificate of Title created for Lots 53-55 and 58-62.

STAGE THREE

28. That the Land Transfer Plan be prepared in accordance with the preliminary plan of subdivision prepared by MTEC Consultants Ltd, numbered 190801-R-P-D004 Sheet 01 Issue A, insofar as it relates to Stage 3 - Lots 23-42, 63, 65, 68, 69 and 71, and except where modified by any of the following conditions.
29. That Lot 65 be vested in Council as Road.
30. That all necessary easements shall be granted or reserved.
31. That a building platform and Building Line Restriction shall be certified by a suitably experienced and qualified Chartered Professional Engineer on those lots (Lots 32, 33, 38, 39 & 63) that are adjacent to the steep slopes of the gully that is to become Drainage Reserve to vest in Council.

Amalgamation Condition – Stage 3

32. That Lot 68 hereon (Legal Access) be held as to three undivided one third shares by the owners of Lots 26-28 hereon as tenants in common in the said shares and that individual Certificates of Title be issued in accordance therewith.
33. That Lot 69 hereon (Legal Access) be held as to three undivided one third shares by the owners of Lots 36, 37 & 63 hereon as tenants in common in the said shares and that individual Certificates of Title be issued in accordance therewith.
34. That Lot 71 hereon be transferred to the owner of Lot 15 DPS 58935 and that one Certificate of Title be issued to include both parcels.

Financial contribution – Stage 3

35. *That a financial contribution for reserves and heritage purposes be paid to Council. This amount will be assessed at 5% of the land value for Stage Three Residential Lots 23-39, 41-42, and 63. Refer to Advice Note (i) for further information relating to this aspect.*

Consent Notices – Stage 3

The following shall be registered as consent notices on the relevant Certificates of Title:

36. That the owners and subsequent owners of Residential Lots 23-42 & 63 are advised that only one household unit and no subsidiary household units shall be constructed. That the

owners and subsequent owners of Lots 23-42 & 63 shall be advised of this requirement by way of a Consent Notice registered on the Certificate of Title created for Lots 23-42 & 63.

37. That the owners and subsequent owners of Lots 25 and 29 are advised that the lots have no legal access to Access Lot 68. All access from Lots 25 and 29 shall be directly onto the public road (Lot 65) and not via the adjacent Access Lot. The owners and subsequent owners of Lots 25 and 29 shall be advised of this requirement by way of a Consent Notice registered on the Certificate of Title created for Lots 25 and 29.
38. That the owners and subsequent owners of Lots 38 and 35 are advised that the lots have no legal access to Access Lot 69. All access from Lots 38 and 35 shall be directly onto the public road (Lot 65) and not via the adjacent Access Lot. The owners and subsequent owners of Lots 38 and 35 shall be advised of this requirement by way of a Consent Notice registered on the Certificate of Title created for Lots 38 and 35.
39. The owners and subsequent owners of Lots 25, 29 and 35 are advised that Lots 25, 29 and 35 are within 15 metres of a corner, and that on-site turning areas shall be required to enable the exit of vehicles in a forward motion. The owners and future owners of Lots 25, 29 and 35 are to be advised of this requirement by way of a Consent Notice registered on the Certificate of Title created for Lots 25, 29 and 35.
40. That the owners and subsequent owners of Lots 32-33, 38-40 and 63 are advised that a fencing covenant shall be registered on all titles of properties with a common boundary to the proposed drainage reserve, indemnifying the Rotorua District Council against all costs of erection and maintenance of fences on the common boundary. The owners and future owners of Lots 32-33, 38-40 and 63 are to be advised of this requirement by way of a Consent Notice registered on the Certificate of Title created for Lots 32-33, 38-40 and 63.

The reasons for this decision are that:

1. The site is zoned Residential B in the District Plan where the proposed subdivision is a Controlled Activity. As a controlled activity it complies with the Rules for subdivision in 16.3 and 16.4 of the District Plan.
2. After considering the assessment criteria for Controlled activity subdivision Council is satisfied that any adverse effects of the proposal are minor, or can be remedied or mitigated by the conditions of consent. As the subdivision complies with the rules it is also considered to be consistent with the relevant objectives and policies of the District Plan and the purposes and principles of the Resource Management Act 1991.
3. Part of the subject site is located adjacent to a gully and secondary overland stormwater flow path. The proposal has therefore been assessed in terms of Section 106 of the Resource Management Act 1991. It is considered that the proposed conditions of consent satisfactorily mitigate this aspect.
4. Council's Maori Consultation Committee advised that consultation with iwi was not required as part of this consent.
5. No persons are considered adversely affected by the proposal. This conclusion has been based on Council's assessment and the supplementary information that was provided by MTEC Consultants dated 15 May 2006.

6. The proposed single access to the subdivision is in accordance with Council's policy on subdivisions of this nature, and is preferred to prevent excessive speeds and mixing of local and through traffic on the internal road network of the subdivision.
7. *A financial contribution is payable that takes account of existing credits and is required for the development of existing and purchase of additional land to enhance the amenity and heritage value of reserves.*

The applicants are advised that:

- (a) Prior to any works in the road reserve, a Road Opening Notice must be obtained from Council. This is available free of charge, by contacting Stephen McLeod on Ext 8238.
- (b) *That a sewer connection shall be provided for the existing household unit on Lot 9 DPS 42908 which adjoins the subdivision and is currently served by a private pumping station. The consent holder is not required to pay any cost toward this connection. The connection shall be provided before making application for section 224 certification.*
- (c) The Land Transfer Plan that was lodged with Council shows two lots that are coded Lot 63. One is a lot that is proposed to vest with Council as public road, and one is a proposed residential lot. It is proposed to re-code the lot that is proposed to vest in Council as Lot 72.
- (d) The Consent Notices relating to the fencing covenant have been imposed pursuant to sub-section w1.2.4 of Appendix W of the Operative Rotorua District Plan.
- (e) Obligations under the Historic Places Act 1993
Council has no records of an archaeological site on this property. This may be due to one of two factors. Either, there are no sites present or there has not been an archaeological survey undertaken. Please be advised that both known and unknown archaeological sites are protected under the Historic Places Act 1993. If during the exercising of this consent any archaeological site is uncovered work must stop and permission be obtained from the Historic Places Trust under the provisions of either Section 11 or 12 of the Historic Places Act 1993.
- (f) Right of objection to this decision
If you are dissatisfied with any aspect of the decision, you have a right of objection to Council under section 357 of the Resource Management Act 1991. Please advise Council in writing stating the reasons for the objection and the preferred outcome within 15 working days of receiving this decision. If no objection is received it will be assumed that the applicant accepts this decision.
- (g) Timeframe for giving effect to this consent
The above consent lapses on the expiry of 5 years after the date of receiving this letter, unless the consent is given effect to. A subdivision is given effect to when the survey plan in respect of the subdivision has been submitted to Council under Section 223. Certification that all conditions of the subdivision consent have been complied pursuant to Section 224 must be obtained by the applicant within a period of less than 3 years from the date the survey plan was approved.
- (h) Development Contribution
Please note that this subdivision will attract a Development Contribution in accordance with the 'Development Contributions Policy' adopted by Rotorua District Council on 26 June 2006, which was prepared in accordance with the Local Government Act 2002. Please find

attached the Development Contribution Assessment. The Development Contribution is due for payment prior to issuance of Section 224 certification for the subdivision.

Amounts will be adjusted from time to time in accordance with Clause 2.1 of the Development Contributions Policy. You are advised to request a reassessment of the Development Contribution payable prior to applying for Sect 224 certification if more than 12 months has passed since the date of the Development Contribution Assessment.

Please contact Council's Resource Engineering section if you wish to discuss the Development Contribution payable.

- (i) *Council notes the information provided in MTEC correspondence date 7 March 2007 regarding the calculation of financial contributions. The analysis provided in this correspondence is considered to be largely correct. The subdivision was part of the Carr & Mitchell blocks and was known as the Scott block for the purposes of the reserves contribution credit research that was undertaken previously and documented in File Note Reference 76271.*

Supporting the suggested amendment to the reserve contribution conditions would be consistent with the way Council has dealt with other large subdivisions in the locale in the mid to late 1990's. However, it was noted back in 1997 that Planning could not commit future elected Council's to honour the credits. At that time all decisions were made with an elected member of Council as a member of the Subdivision Subcommittee and all decisions were reported to Planning & Bylaws. The contribution required by the District Plan prior to 1993 was 130m² of land per lot was taken. Given the time that has elapsed and the changes in land value it was considered appropriate to get a 7714m² piece of land valued within the subject lot being the amount of land held in credit for this block. The value credited against the block was calculated using the 5% of the land value required by the current District Plan.

The Subsequent valuation valued the hypothetical lot of 0.7714 ha at \$420,000, and is taken as the value of the credit that Council is proposing to honour. The 62 new lots was valued at \$9641, 000; 5% of this value is \$482,050. The variance between the value of the new lots and the credit is \$62,050. Payment of \$62,050 will satisfy compliance with Conditions 13, 25 and 35. This is considered to be the financial contribution owing and should be paid as part of the current subdivision.

The reasons for the decision to vary the conditions of consent are:

1. The Council is satisfied that any adverse effects resulting from the modification of the original consent conditions are minor. Any potential adverse effects are avoided by the proposal or adequately remedied or mitigated by the conditions of consent.
2. The change of conditions is also considered to be consistent with the relevant objectives and policies of the District Plan and the purposes and principles of the Resource Management Act 1991.
3. In the opinion of Council no persons are considered adversely affected by the change of conditions.
4. The existing credit will be honoured by Council to the value of \$420,000. The difference between this and the current valuation of the 62 new lots is taken to be the financial contribution in this case.

5. The concerns relating to the calculation of the Development Contribution has been noted. As the Development Contribution is a Local Government Act, not a Resource Management Act consideration, the applicant is advised to pursue this matter through Council's Works Committee.

The applicants are advised that:

(a) Right of objection to this decision

If you are dissatisfied with any aspect of the decision, you have a right of objection to Council under section 357 of the Resource Management Act 1991. In the case of a decision regarding an application to change consent conditions of the original consent, such as this, any objection is limited in scope to objecting against the conditions that were changed or cancelled rather than revisiting original consent conditions. Please advise Council in writing stating the reasons for the objection and the preferred outcome within 15 working days of receiving this decision. If no objection is received it will be assumed that the applicant accepts this decision.

(b) Timeframe for giving effect to this consent

This subdivision consent lapses on the expiry of 5 years after the date of commencement of the consent unless the consent is 'given effect' to. The commencement date in the case of this non notified consent is the date of receiving the original decision letter NOT the date of receiving the decision letter for this variation. (Sect 116). A subdivision is deemed to be 'given effect to' when the survey plan in respect of the subdivision has been submitted to Council under Section 223. Certification that all conditions of the subdivision consent have been complied pursuant to Section 224 must be obtained by the applicant within a period of less than 3 years from the date the survey plan was approved.

If you have any questions regarding this consent, please contact Liam Dagg, Team Leader Policy on 350 0209 (Extn 8057).

Yours faithfully



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Nigel Wharton
Director, Environmental Services