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File Ref: ~~63-05-02605~~
Your Ref: 175781-R-P-C020

Doc No: OW-86158
Enquiries to: Joanne Watts

MTEC Consultants Ltd
PO Box 878
ROTORUA

Attention: Richard Lawton

Copy to: P32160 - P32245
FILE P32223

Dear Richard,

**NOTICE OF DECISION REGARDING VARIATION TO APPROVED
SUBDIVISION CONSENT**

Consent No.: 63 05 026
Applicant: Pioneer Property Trust Ltd
Location of proposal: Western Road
Legal Description: Lot 17 DP 336769 and easement over Lot 16 DP 336769
Proposal: Proposed minor amendment to exclude Lot 88 which is Recreation Reserve from Stage Two of the subdivision and included it within Stage Three.

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 of consent to allow Lot 88 to be removed from Stage 2 and completed as part of Stage 3 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 13 February 2006 applied for by Pioneer Property Trust Ltd to subdivide the property at Western Road legally described as Lot 17 DP 336769 into 86 residential lots, 2 local purpose reserves, 2 new roads to vest in RDC, two access lots and a balance lot to allow Lot 88 (Local Purpose Reserve) to be removed from Stage 2 and completed as part of Stage 3 to the consent.

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

Stage 1 comprises Lots 1-14, 17-23 and the balance lot.

Stage 2 comprises Lots 15, 16, 64-87, 91 & 93 and the balance lot.

Stage 3 comprises Lots 24 – 63, 88, 90, 92 & 94

GENERAL CONDITIONS THAT APPLY TO ALL STAGES

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. That all land to vest in Council, roads, street lighting, sewerage, stormwater, water supply, telecommunications, 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 or other appropriate service operator 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.
3. That engineering design plans shall be submitted to all relevant services operators 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.
4. 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.
5. That all filling shall be certified by a Chartered Professional Engineer.

STAGE 1

6. That the Land Transfer Plan be prepared in accordance with the preliminary plan of subdivision prepared by MTEC Consultants Ltd, numbered 175781-R-P-D002, Sheet number 01 Issue E and dated 22/11/05 in so far as it relates to Stage 1 - Lots 1-14, 17-23 and the balance lot.

Financial Contribution

7. That a financial contribution of \$ 47 400 (GST inclusive) for reserves and heritage purposes be paid to Council. This amount has been assessed at 5% of the land value of proposed Lots 1 -14 and Lots 17 – 23. Where lots have an area over 900m² the value of an 850m² house site on each of the lots has been assessed.
8. That a footpath and kerb and channel shall be constructed in accordance with RCEIS, along the Western Road frontage. Rotorua District Council will contribute the agreed sum of \$18,341.00 (excl. GST) on completion.

9. That overland flow paths shall be identified and shown as easements in favour of Council.
10. That for Lots 1 – 14 and 17 - 23 there shall be, 1 (one) only vehicle crossing per Lot, on-site parking and turning for each household unit shall be provided, and all egress from these Lots shall be in a forward movement. That the owners and future owners of Lots 1 – 12 are advised that the areas inside the overland flow easement are low lying with the potential to act as secondary flow paths for short durations during extreme storm events. Earthworks, access formation and landscaping within the Lots shall not restrict the overland flows or divert water on to adjacent Lots.
11. The owners and future owners of the relevant Lots are advised of conditions 10 - 11 way of a Consent Notice registered on the relevant Certificates of Title.
12. Any proposed landscaping of the proposed reserve shall be undertaken in accordance with an approved landscaping plan. Approval must be obtained to the satisfaction of the Director, Community Services prior to any landscaping works commencing.

STAGE 2

13. That the Land Transfer Plan be prepared in accordance with the preliminary plan of subdivision prepared by MTEC Consultants Ltd, numbered 175781-R-P-D002, Sheet number 01 Issue *F* and dated 05/06/07 in so far as it relates to Stage 2 - Lots 15, 16, 64-87, 91 & 93 and the balance lot.

Financial Contribution

14. That a financial contribution of \$ 56,900 (GST inclusive) for reserves and heritage purposes be paid to Council. This amount has been assessed at 5% of the land value of proposed Lots 15, 16 64-86. Where lots have an area over 900m² the value of an 850m² house site on each of the lots has been used.
15. *Deleted*

Amalgamation condition

16. That Lot 91 hereon (Legal Access) be held as to two undivided one half shares by the owners of Lots 15 & 16 hereon as tenants in common in the said shares and that individual Certificates of Title be issued in accordance therewith.

Street naming

17. That proposed street names for both proposed roads 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.
18. That Lots 84, 85 and 86 shall have building platforms at or above the Environment Bay of Plenty 1% AEP flood level of 285.30 metres Moturiki Datum.
19. That the overland flow paths are identified and shown as easements in favour of Council.
20. That the owners and future owners of Lots 84, 85 and 86 are advised that the areas outside of the building platforms are low lying with the potential to act as secondary flowpaths for short durations during extreme storm events. Earthworks, access formation and landscaping within the lots should not restrict the natural overland flows or divert water onto adjacent lots.

21. That the owners and future owners of Lots 15, 16, 65 - 69 are advised that the areas inside the overland flow easement are low lying with the potential to act as secondary flow paths for short durations during extreme storm events. Earthworks, access formation and landscaping within the Lots shall not restrict the overland flows or divert water on to adjacent Lots.
22. That any proposed building on Lots requiring a Building Consent outside of the certified building platforms will require the construction of a building platform at or above the Environment BOP 1% AEP flood level. The building platform shall be certified as suitable for the building by a suitably experienced and qualified Chartered Professional (Soils) Engineer.
23. The owners and future owners of the relevant Lots are advised of conditions 21 - 23 way of a Consent Notice registered on the relevant Certificates of Title.
24. That Lots 87 and 93 be vested in Council. That the type of reserve shown on the LT plan be to the satisfaction of the Director of Community Services.
25. That Lot 93 shall vest in Council as road.

STAGE 3

26. That the Land Transfer Plan be prepared in accordance with the preliminary plan of subdivision prepared by MTEC Consultants Ltd, numbered 175781-R-P-D002, Sheet number 01 Issue F and dated 05/06/07 in so far as it relates to Stage 3 - Lots 24 - 63, 88, 90, 92 & 94.

Financial Contribution

27. That a financial contribution of \$ 59 350 (GST inclusive) for reserves and heritage purposes be paid to Council. This amount has been assessed at 5% of the land value of proposed Lots 24 -35 and Lots 51 - 63. Where lots have an area over 900m² the value of an 850m² house site on each of the lots has been used.
28. In addition to the above financial contribution, a further financial contribution for reserve and heritage purposes shall be calculated at 5% of the land value of proposed Lots 36 - 50 (being those lots added or changed in area from the original scheme plan) and that this sum be paid to Council. Where lots have an area over 900m² the value of an 850m² house site on each of the lots will be used.
29. The contributions payable may be satisfied by *transferring the title of Lot 88 to Council*, provision of all agreed works (refer advice note), and the payment of any cash difference between the value of *these two items* and the calculated contribution.

Amalgamation condition

30. That Lot 90 hereon (Legal Access) be held as to six undivided one sixth shares by the owners of Lots 56, 57, 58, 58, 59 60 & 61 hereon as tenants in common in the said shares and that individual Certificates of Title be issued in accordance therewith.
31. All steep slopes unsuitable for building shall be shown on Land Transfer Plan as areas restricted from building prior to application for Section 223. A consent notice clause shall set out restricting applicable within the area to the satisfaction of the District Engineer.
32. That stormwater over land flow paths for Lots on the northern slope shall be identified and protected by easements on the Land Transfer Plan prior to application for Section 223.
33. That the owners and future owners of Lots 30, 38, 39, 58 and the affected Lots on the northern slope shall be advised that the areas inside the overland flow easement are low

lying with the potential to act as secondary flow paths for short durations during extreme storm events. Earthworks, access formation and landscaping within the Lots shall not restrict the overland flows or divert water on to adjacent Lots.

34. That Lot 30 shall have a certified building platform at or above the Environment Bay of Plenty 1% AEP flood level.
35. That a 100 mm ø watermain shall be installed between the proposed Road (Lot 92) and Kingsley Drive. The watermain be protected by either a Utility Reserve or easement whichever is agreed to by Council's water asset manager.
36. That Lot 89 & 92 be vested in Council as Road.
37. That the owners and future owners of the affected Lots are advised that the areas outside of the building platforms are low lying with the potential to act as secondary flowpaths for short durations during extreme storm events. Earthworks, access formation and landscaping within the lots should not restrict the natural overland flows or divert water onto adjacent lots.
38. That any proposed building on Lot 30 requiring a Building Consent outside of the certified building platforms will require the construction of a building platform at or above the Environment BOP 1% AEP flood level. The building platform shall be certified as suitable for the building by a suitably experience and qualified Chartered Professional (Soils) Engineer.
39. That the Lots 56 - 61 shall be restricted to one household unit and no subsidiary household unit.
39a. The owners and future owners of the relevant Lots are advised of conditions – 37 – 39 by way of a Consent Notice registered on the relevant Certificates of Titles.
40. That the overland flow paths are identified and shown as easements in favour of Council.
41. That Lot 31 shall be held in ownership of the Consent Holder as a primary overland flow path for a 1% AEP storm event without construction of any building, earthworks or other obstruction, until such time that;
 - Mitigation of the overflow of the Ngongotaha Stream during a 1% AEP storm event is achieved to the satisfaction of the District Engineer, and a certified building platform is constructed on Lot 31 at or above the 2% AEP storm event to the satisfaction of the District Engineer; or
 - The Lot shall vest in Council as Drainage Reserve.

An Encumbrance or other suitable legal mechanism shall be registered against the Certificate of Title preventing change in ownership until the above is met to Councils' satisfaction.

42. *That drainage works set out in the MTEC Consultants letter of 24 May 2005 be undertaken to improve the drainage of the proposed reserve at the applicant cost. In addition that a building platform on or above EBOP's 1% AEP flood level of no less than 400m² be provided in an agreed location suitable for the purpose of construction of playground equipment.*
43. *That condition 2 be met in so far as it relates to Lot 88 & that Lot 88 be vested in Council within 12 months of the granting of this variation (3 July 2007). That the type of reserve shown on the LT plan be to the satisfaction of the Director of Community Services.*

The reasons for the decision are:

1. The Council is satisfied that any effects resulting from the modification of the original consent to allow Lot 88 (Local Purpose Reserve) to vest as part of Stage 3 instead of the original intention to vest it as part of Stage 2 are on balance positive subject to the recommended conditions of consent which include the requirement to vest the reserve within 12 months of receiving this consent. Any potential adverse effects are limited to the delay in providing a reserve in the area. While the change will allow Stage 2 to continue and titles be issued and sale and purchase agreement fulfilled while allowing time for drainage works undertaken within the proposed reserve to be observed to ensure drainage issues have been adequately addressed over the winter.
2. The change of conditions is also considered to be consistent with the relevant objectives & policies of the District Plan and the purposes and principles of the Resource Management Act 1991.
3. The Council has considered all parties that provided written consent to the original application and has deemed that they are not affected by the change. Council has also considered whether there are any other parties considered affected essentially by the delay in vesting of the reserve in Council. Council is aware that many of the lots within Stage 2 have been presold well ahead of titles being issued. These parties have signed up to purchase the lots on the basis of the original consent so have the expectation that the reserve was to be vested within Stage 2. The effect of granting the proposed change or not can be looked at in two lights. If the change were granted there may well be a delay in the vesting of the reserve. If the change weren't granted then the delay will be in finishing Stage 2 which ultimately equates to a delay in certificates of title being able to issue for Stage 2 which in effect delays the completion of the sales of the lots. It is considered that no persons are considered affected subject to the reserve being vested in Council within 12 months of the granting of the consent. This provides the time required by the applicant to ensure drainage works are fit for their purpose while providing those who have pre-purchased lots within Stage 2 certainty that the reserve will be vested in a relatively short timeframe.

The applicants are advised of the following in relation to the variation:

(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.

For completeness the reasons & advice notes for the original decision (where relevant) were that:

1. The site is zoned Residential B in the District Plan where the proposed subdivision is a Controlled Activity. As a controlled activity as it fully 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 proposed works and conditions of consent. The subdivision is also considered to be consistent with the relevant objectives & policies of the District Plan and the purposes and principles of the Resource Management Act 1991.
3. It is noted that significant engineering works have been proposed as part of this subdivision to ensure that site limitations in terms of both overland flow and inundation from the Ngongotaha Stream in extreme storm events issues and also in terms of soil suitability for building have been adequately addressed. Sufficient provision has been made to ensure potential inundation of the house sites from the Ngongotaha Stream can be avoided. Large scale earthwork are proposed and required to ensure all proposed building platforms are above the 1% AEP storm event. Certification of buildings sites will be required to ensure each building site is suitable for building.
4. No persons are considered adversely affected by this subdivision proposal. It is noted that the adjoining landowners downstream of the property to the East were considered affected parties by EBOP in terms of the stormwater discharge consent as there is a ponding effect on the property to the east of proposed Lot 87 in storm events.
5. A financial contribution is payable in accordance with Appendix U of the District Plan towards the development of existing, and purchase of additional land to enhance the amenity and heritage value of reserves. In this case Council have accepted the vesting of Lot 88 as part payment of the reserve contribution. A neighbourhood park is not essential in this area but is desirable to provide play opportunities for children close to home. The land being offered is compromised by poor drainage and soil structure, but will have some recreation and amenity value if properly developed.

The applicants are advised that:

(a) 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.

(b) Financial contribution

With regard to payment of the financial contribution for reserves and heritage purposes, the applicant has requested Council consider some credit for the recreation value of Lot 88 (proposed Local Purpose Reserve (Drainage / Recreation)). Lot 88 has been valued at \$15,000 including GST excluding all site improvement works. A neighbourhood park is needed in the area.

Works credited against the reserves contribution payable can include the landscaping of the reserve such as the cost of trees, footpath etc & the creation of the building platform required by condition 17 but should exclude the value of works needed to dispose of topsoil from the subdivision and drainage required for stormwater disposal from the subdivision.

Any proposed works will need to be agreed to by Council's Parks & Recreation Dept prior to being undertaken.

(c) Engineering advice

The earthworks required for construction of the development must comply with the permitted activity conditions of Environment Bay of Plenty's Land & Water Plan or a Resource Consent will be required.

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 Tiki Galvin on Ext 8238.

The Building platforms are to be construction for 1%AEP storm event as the site will be affected by the Ngongotaha Stream. If the Ngongotaha Stream is stop banked with EBOP consent then a variation to construct building platforms for 2% AEP event may be permitted.

If you have any questions regarding this consent, please contact Joanne Watts, Senior Resource Management Advisor or the Duty Planner.

Yours faithfully



Nigel Wharton
Director, Environmental Services

