MINUTES

TITLE: **Environment & Planning Subcommittee**
COMMISSIONER HEARING
DATE: **Monday, 7 April 2008**
TIME: **9.30 am**
VENUE: **Council Chambers, 189 Queen Street, Richmond**
PRESENT: E M O'Regan (Chair), Dr M Johnston, Cr S J Borlase

IN ATTENDANCE: Principal Resource Consents Advisor (B Askew), Environmental Education Officer (J Butler), Consent Planner – Water (N Tyson), Resource Scientist (G Stevens), Executive Assistant (V Gribble)

A N AND N D BAIGENT, RIVER TERRACE ROAD, BRIGHTWATER - APPLICATION NO. RM060861, RM071024, RM071025, RM071026, RM071141

RM060861	To undertake the following activities: • Land disturbance, quarrying and land use relating to the excavation of up to 70,000 cubic metres (solid) of earth and gravel. • Retrospective land use consent (bore permit) to construct, by deepening, a new lower intake to accommodate a new pond depth.
RM071141	To undertake excavation works within a watercourse, and also the use of the bed of a watercourse by the presence of dam structures.
RM071024	To dam up to 136,283 cubic metres of water behind two existing dam structures (Dam ID numbers 260 and 233) in the Reservoir Zone, Waimea Plains. If granted, this water permit would replace existing water permit NN000212.
RM071025	To take in the order of 100 litres per second of water from an unnamed tributary of the Wairoa River (locally referred to as "Catchment A Stream") during high flow conditions when the neighbouring downstream dam (Dam ID 232) is "overflowing". The water that is taken under these conditions will be directed to the enlarged dams (Dam ID 260 and 233) described above (Application RM071024). If granted, this water permit would replace existing water permit NN000391.
RM071026	To take water stored behind two dam structures (Dam ID numbers 260 and 233) and to use the water for irrigation of up to 38 hectares of land. If granted, this water permit would replace existing water permit NN000211.
	The application site is located at River Terrace Road, Brightwater, being legally described as Lot 3 DP 342068 (Excavation, dam structures, taking of water, and damming of water), Lots 1, 2, and 3 DP 340268 and Lots 1 and 2 DP 301998 (Irrigation).

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

Report and Decision of the Tasman District Council through its Hearings Committee Meeting held in the Tasman Room, Richmond on 7 and 8 March 2008, commencing at 9.30am

A Hearings Committee ("the Committee") of the Tasman District Council ("the Council") was convened to hear the application lodged by **Anthony Neil and Maureen Denise Baigent** ("the Applicant"), to enlarge groundwater take and storage ponds and to take water for irrigation. The application, made in accordance with the Resource Management Act 1991 ("the Act"), was lodged with the Council and referenced as RM060861, RM071141, RM071024, RM071025 and RM071026.

PRESENT:	**Hearings Committee** Mr Edward (Ted) O'Regan - Chairperson Dr Mike Johnston Cr Stuart Borlase
APPLICANT:	Mr Graeme Malone - Legal Counsel Mr Aaron M Baigent - Representing the applicants Mr Ian N Parkes - Agricultural Witness Mr Tony Hewitt - Hydrological Consultant Mr Peter Callander - Hydrogeological Consultant
CONSENT AUTHORITY:	**Tasman District Council** Mr Neil Tyson - Consent Planner, Water Mr Glenn Stevens - Resource Scientist, Water and Land
SUBMITTERS:	Mr Ian N Parkes – Waimea Saleyard Company Mr Lawson Davy – Fish and Game Mr John M Fitchett representing Mr Hermann Seifried Mr Graham Allan and Mr Robert Appleton representing Mount Heslington Downs
IN ATTENDANCE:	Mr Robert Askew, Principal Resource Consents Adviser - Assisting the Committee Mr Jeremy Butler, Principal Resource Consents Adviser - In training Mrs Valerie Gribble, Committee Secretary

1. DESCRIPTION OF THE PROPOSED ACTIVITY

The applicants (A N and M D Baigent), hereafter referred to as "the Baigents" or "the applicants", produce balage and fatten store lambs on their land at Mount Heslington Road. They have two large water "storage" ponds (Dam ID numbers 233 and 260) referred to as "233" and "260" as shown on Plan J dated 17 April 2008 (attached). Throughout the year the Baigent's ponds are filled through seepage from surface springs immediately beside the ponds, and groundwater seepages that have been intercepted during the construction of the ponds. The ponds are also intermittently filled by freshes or floods in either "Catchment A" or "Catchment B" (as identified on Plan J).

The Baigents are seeking to increase the size of the ponds by increasing their widths and by levelling the base of the ponds (this involves deepening the base of the ponds upgradient of the current maximum depth but the existing maximum depth will not be increased) so as to increase the storage capacity of the ponds. They are also seeking to increase the rate and volume of their water take to reflect their greater water harvesting capabilities.

The application site is located at River Terrace Road, Brightwater, being legally described as Lot 3 DP 342068 (excavation, dam structures, taking of water, and damming of water), Lots 1, 2, and 3 DP 340268 and Lots 1 and 2 DP 301998 (irrigation).

The activities requireing resource consent are as follows:

RM060861 Land Use Consent

To undertake the following activities:

- Land disturbance, quarrying and land use relating to the excavation of up to 70,000 cubic metres (solid) of earth and gravel.

- Retrospective land use consent (bore permit) to construct, by deepening, a lower intake to accommodate a pond depth of RL22.34.

RM071141 Land Use Consent

To undertake excavation works within a watercourse, and also the use of the bed of a river by the presence of dam structures.

The original application requested a term of 35 years for the above two consents. Evidence presented in the hearing by Mr Malone, however, stated that a term of five years could be acceptable to the Baigents but perhaps could be difficult to complete in time.

RM071024 Water Permit

To dam up to 136,283 cubic metres of water behind two existing dam structures (Dam ID numbers 260 and 233) in the Reservoir Zone, Waimea Plains. If granted, this water permit would replace existing water permit NN000212.

RM071025 Water Permit

To take in the order of 100 litres per second of water from an unnamed tributary of the Wairoa River (locally referred to as “Catchment A Stream”) during high flow conditions when the neighbouring downstream pond (Dam ID 232) is “overflowing”. The water that is taken under these conditions will be directed to the enlarged ponds (Dam ID 260 and 233) described above (Application RM071024). If granted, this water permit would replace existing water permit NN000391.

RM071026 Water Permit

To take water stored behind two dam structures (Dam ID numbers 260 and 233) and to use the water for irrigation of up to 38 hectares of pasture. If granted, this water permit would replace existing water permit NN000211.

The existing consented rates of take are 68 m^3 per hour, 750 m^3 per day and 5,250 m^3 per week. Evidence presented at the hearing reduced the hourly, daily and weekly rates of take sought from those originally applied for (100 m^3, 2,400 m^3, 16,800 m^3) to 100 m^3, 1,900 m^3 and 13,300 m^3 respectively.

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: Rural 1
Area(s): Land Disturbance Area 1

The proposed land use consent (application RM060861) does not comply with Permitted Activity Rule 18.6.2 of the PTRMP and is deemed to be a restricted discretionary activity in accordance with Rule 18.6.6 of the PTRMP.

The retrospective land use consent (bore permit) does not comply with permitted activity Rule 16.12.2 of the PTRMP and is deemed to be a restricted discretionary activity in accordance with Rule 16.12.4 of the PTRMP.

The proposed water permit (application RM071024) does not comply with any permitted activity Rules of the PTRMP and is deemed to be a restricted discretionary activity in accordance with Rule 31.2.3 of the PTRMP.

The proposed water permits, RM071025 and RM071026, do not comply with discretionary activity Rule 31.1.6 of the PTRMP and both are deemed to be non-complying activities in accordance with Rule 31.1.6A of the PTRMP.

It was noted that the council has, for over 20 years, administered this Mt. Heslington area south west of River Terrace Road, and including the Baigent's land, as a discrete area within the Wai-iti Zone and therefore generally isolated from the Reservoir Zone as defined in the PTRMP.

3. NOTIFICATION AND SUBMISSIONS RECEIVED

The application was notified on 8 December 2007 pursuant to Section 93 of the Act. A total of 131 submissions were received. The following is a summary of the written submissions received and the main issues raised:

Two submissions were in opposition, three neutral or in conditional support, and the remaining 126 were in support.

Two submissions (submissions #130 and 131) were received one day late, from Stuart M Walters and Antoinette M Walters. Neither submitter wished to be heard and both were in support of the application being granted. Neither submitter raised reasons for their support that were not covered in other supporting submissions. As stated in Section 4 below, the Committee agreed to extend the submission time limit under Section 37 and consequently accepted the late submissions.

In Support

The bulk of the submissions were in support. Many of these have similar reasons for their support, which are summarised below:

- Support for any form of water storage by storing water that would otherwise run to the sea and to utilise that water for summer irrigation;
- Harvesting water during winter and high flow will have very little effect on the environment;
- The proposal will help with mitigating localised flooding including around Brightwater, the saleyards and the school;
- Reduced flooding will reduce the health risks associated with contaminated flood water;
- The Baigents, in developing their land and making it more productive, will benefit both the local and national economy;
- Improved water availability for fire-fighting;
- The Council needs to be supportive of the farming community;
- The benefits far outweigh any downsides, and the proposal is sustainable;
- Because it (the application) makes sense;
- Gravel extraction (as proposed) negates the need for extraction from local rivers;
- Waimea East Company Co chair Kit Maling considered the application similar to that proposed by the Council for the Lee Valley; and
- The right of the landowner to choose for themselves the best productive use of their land;

Submitter Tim Scott of Nelson is supportive and states "…water is a valuable resource and needs to be stored in properly designed areas ..." and, "…..as I see it this is a properly designed programme for the retention of water…".

A number of submitters state they purchase balage that the Baigents produce, and they support this application as it will assist increased production.

Fish and Game Nelson-Marlborough advised it is satisfied the proposed enlarged ponds are unlikely to have any adverse effects on the summer low flow of the Wairoa/Waimea River or on groundwater and that it supports the application.

Neutral or Conditional Support

The following submissions were neutral or stated conditional support:

- Waimea Water User Committee chair Murray King stated he supports water storage provided there is no adverse effect on summer groundwater levels of the Reservoir Zone; and

- Peter John Broadhead supports granting of consent subject to conditions to ensure no adverse effects upon the existing water supply to other landowners; and

- Maldon Trust is neutral as it believes the application will have no effect on the Upper Confined aquifer and their use of water.

In Opposition

(i) **Mt. Heslington Downs Ltd** gave the following reasons for their opposition:

1. Does not think these applications should be heard ahead of an Environment Court decision on the Review of Conditions undertaken by the Council regarding the various consents held by the Baigents, Appletons and Seifrieds relating to the Mt. Heslington water resource.

2. This application should be dealt with in conjunction with a water sharing agreement between the three parties.

3. The submitter wishes to preserve its position and protect the water available to it.

(ii) **Weingut Seifried Ltd** gave the following reasons for their opposition:

1. Neither pond 260 nor 233 is effectively sealed and neither are they proposed to be effectively sealed. Sustainable harvesting and storage of water requires that the ponds be effectively sealed.

2. Water take is from Reservoir Zone (not from a dam) and therefore is a non-complying activity under TRMP Rule 31.1.6A.

   It is evident that a substantial portion of the water in the current ponds (and the proposed deepened ponds) will be derived from groundwater and this is from the Reservoir Zone.

3. The proposed deepening will probably have a detrimental effect on the storage capacity of Seifrieds pond 232.

4. Baigents ponds 233 and 260 would benefit unduly from freshes in Catchment B and at the expense of Seifrieds pond 262 and 232.

   If the present application is consented to, a fresh will theoretically have to exceed 136,000 cubic metres before water overtops pond 233 and starts filling Seifried's pond 232.

5. Precedent:

   If consent is granted to the present application, the likely consequence is that others in not dissimilar physical situations will apply to dig holes so as to intercept groundwater but evading (or avoiding) the rules relating to bores; and to the detriment of recharging of the relevant aquifers.

6. Dust, Noise, and Disturbance from Gravel Extraction**:**

   The removal of approximately 70,000 cubic metres is likely to be prolonged and (assuming 10 cubic metres per truck) will require 7,000 truck movements to and along River Terrace Road, and thence elsewhere over the local roading system to an unstipulated unloading site. The effect (of dust, noise and disturbance) on the Seifrieds, residents of River Terrace Road, and residents adjacent to the unloading site, will be substantial and negative.

   If consent is granted, the Seifrieds wish the Council to impose the following conditions:

7. Replace Proposed Condition 5 as follows:

"*5. If during the course of excavation and works authorised by this consent the consent holder becomes aware that the works were causing a lowering of water storage level in the downstream Dam 232, or if the owner on the land on which Dam 232 is situated considers that the works have caused (or is causing) a reduction of water storage in Dam 232 and shall have advised Tasman District Council of the same, then the consent holder shall cease works immediately and inform the Council's Consent Planner - Water.*"

For the remainder of this decision, Mt. Heslington Downs Ltd is referred to as "Appletons" and Weingut Seifried Ltd as "Seifrieds".

4. PROCEDURAL MATTERS

Late Submissions
As stated above, two submissions were received by the Council one day late. The Committee accepted the two late submissions pursuant to Section 37(1)(a). This acceptance was granted as the Committee considered that the requirements of Section 37A had been met.

Request by submitter to be heard
Mr Lawson Davy of Fish and Game Nelson-Marlborough was present at the hearing and requested to be heard to clarify its submission. The Fish and Game submission had previously stated that it did not wish to be heard. This request was accepted by the Committee.

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

5.1.1 Mr G Malone (opening)

Mr Malone introduced the application on behalf of the Baigents.

Mr Malone confirmed that the Baigent's offer to relinquish their rights to the Mt. Heslington Stream (Catchment A) water, only upon the condition that the other consents, as applied for, are granted.

Mr Malone made it clear that, in the matter of the status of the channel in which the ponds are constructed, he believes the channel to be land under the Act and that, as a consequence, no Land Use consent is required. He stated that they have applied for RM071141 out of caution and as it was requested by Mr Tyson (the Council's Consent Planner, Water) based on the latter's differing interpretation. Therefore he stated that he offers that application without prejudice to that stated legal position.

Mr Malone then proposed that "prior to giving his detailed submissions, and so they are better understood within the factual matrix, … he first call evidence from the [Baigents] witnesses". The chairperson agreed to this and gave Mr Malone leave to call witnesses before concluding is own evidence.

5.1.2 Mr Aaron Baigent

Mr Baigent introduced himself as a director and shareholder of Riverston Balage Limited, a company which manages the land owned by his parents at 62 River Terrace Road. He confirmed that he holds responsibility for the matters concerning the associated consents and water management at that location.

Mr Baigent outlined the significance of the investment made at the location, the importance of the operation to the wider local Tasman economy, and the importance of irrigation water in maintaining this operation.

Mr Baigent also reconfirmed the twofold nature of the applications before the Committee: 1. to increase the storage capacity; and 2. to increase the rates of take from the ponds for pasture irrigation purposes. He also confirmed his intention to give up his rights to Catchment A water in the event that the consents are granted as applied for, except at times of high flow when Seifried's pond 232 is overflowing. This will provide more water for both Seifrieds and Appletons as they will be able to share the Catchment A water between them.

Mr Baigent stated his belief that the applications allow for fair distribution of available water in the two relevant Mt. Heslington catchments.

Mr Baigent outlined the significant financial investment that the Baigents have put into water management on their properties, principally in the excavation and compaction of the northern dam wall. Mr Baigent volunteered an amendment to proposed condition 16 as follows:

"To assist in sealing, upon completion of excavations, and as required during the same, the Consent holder will ensure that compaction is carried out in line with the plans and that a bentonite layer be provided over the full length and height of the Western and Northern Walls of Dam 233 and Northern Wall of Dam 260."

Mr Baigent outlined the steps that have been taken to reduce pond leakage and suggests that the ponds are "now reasonably sealed".

Mr Baigent stated his belief that there will be no adverse effects on the Seifrieds by the proposed works and increased storage capacity. He referred to expert witnesses who would provide evidence in this regard.

Mr Baigent stated that greater storage capacity in his ponds will mitigate the impacts of flooding on Brightwater by storing flood waters. He stated that, where weather forecasts can reliably predict a flooding event, they are able to release water so as to provide floodwater attenuation capacity in their ponds.

Mr Baigent sought that in the event that the consents are granted, that the new consents should allow the water to be used for stock drinking as well as irrigation. Mr Baigent was subsequently advised by Mr Askew that unlimited stock drinking water is provided for in the Act and that the consent therefore does not need to refer to stock drinking water. Mr Baigent accepted this.

Mr Baigent then responded to the Officers' reports. He acknowledged that summer recharge is a contribution to the ponds. When later asked by Dr Johnston if this amounts to a summer water take, Mr Baigent agreed that yes it does. He went on to emphasise the storage component. He also made it clear that there is a historical element to this issue in that they (and Seifrieds) have previously been given consent to, in effect, take water from summer groundwater recharge and to increase pond sizes.

With regard to setting an undesirable precedent, Mr Baigent refuted this as the water has always been regarded as available to these three users, consents are in place, and there will be no adverse effect on the wider Reservoir Zone and the greater storage will mean more winter recharge will be used.

5.1.3 Mr I Parkes (as witness)

Mr Parkes introduced himself and outlined the importance of the Baigent's operation to the local agricultural economy. He stated that widespread fragmentation of rural land has reduced the availability of land for "finishing" store lambs and producing balage.

Mr Parkes spoke of the risk that would be posed to businesses such as his if operations such as the Baigents becomes uneconomic.

5.1.4 Mr I Parkes (as submitter)

Mr Parkes was granted leave to present the submission of the Waimea Saleyards Company at this point.

Mr Parkes expressed his doubt that the taking of summer water will have any impact on the downstream groundwater resources. The saleyards company is on the waiting list for water in the Reservoir Zone.

5.1.5 Mr T Hewitt

Mr Hewitt introduced himself and his qualifications. He stated that he was engaged by the Baigents to undertake a hydrological investigation of the irrigation ponds and surrounding aquifer system, and to investigate the effects and implications of the proposed works.

He outlined his investigation methodology and drew the following conclusions:

- Seifried's pond (232) is not hydraulically connected with Baigent's pond;
- Baigent's pond (233) is at least partially connected to local adjacent groundwater at Bore B and that recharge occurs from groundwater seepage, estimated to be in the order of 1 litre per second during the March/April period and 2.2 litres per second between 1 August 2007 and 27 March 2008;
- Following the levelling of the base of the ponds he expects the rate of seepage to approximately double to around 4 litres per second due to exposure of more seep surface area and, at times, a greater hydraulic gradient into the ponds;
- Baigent's ponds are not hydraulically connected with Bore C, or at least show no signal in Bore C; and
- Baigent's ponds are filled by surface flows and seepages from terrace gravels.

Mr Hewitt also presented evidence to show that Catchment A is the main source of surface water (over Catchment B). He expects Catchment A to run more often and at greater flow volumes than Catchment B.

Overall, Mr Hewitt stated that there is no evidence of a connection between Baigent's and Seifried's ponds and that this should not change post pond enlargements. He also considered that the effect of the enlarged ponds on recharge would be no more than minor when compared with the overall recharge rates assessed for the Reservoir Zone.

There was some discussion about the practicalities of using the enlarged ponds as flood mitigation facilities. It was stated that they will be useful but without management by the Council staff it will not be able to be relied upon.

5.1.6 Mr P Callander

Mr Callander introduced himself and his qualifications. His evidence covered the hydrogeological setting, a description of the expected effects on the groundwater resource, and comment on the Council officers' reports.

Mr Callander described the gravels into which the Baigent's ponds have been dug, and their likely origins and structure. He presented the measured hydraulic conductivities and comments that they are very slow when compared with "normal" aquifer hydraulic conductivities. He stated that his impression is that the patterns are indicative of a very low permeability strata with discrete zones of relatively more permeable seepage that occur at different elevations and water pressures.

Mr Callander stated that the older gravels '[do] not have a good hydraulic connection to the "Recent Wairoa River Gravels"' and that bore levels 'indicate a downward hydraulic gradient between shallow and deep strata'. Mr Callander said 'the aquifer recharge contribution coming off Mt. Heslington is of a very minor nature compared to the seepage losses from the Wairoa River' and that 'the even smaller volumes captured by the Baigent and Seifried ponds are not expected to adversely impact on recharge to the aquifers further down the plains in a more than minor way'.

Mr Callander stated that while evaporation may increase losses, the storage of rainfall and surface runoff above the natural groundwater pressures would lead to outward seepage losses that would provide additional recharge to the surrounding groundwater.

In responding to the officers' reports, Mr Callander reaffirmed his position that the effects from the ponds will occur within a very low permeability strata with discrete and isolated seepage zones that do not have a good hydraulic connection with each other or with the major aquifer zones further to the north.

The Chairperson asked Mr Callander if he has had any experience with bentonite. Mr Callander replied that he had, and in his experience it is "exceptional" and "very effective" at sealing. There was further discussion on practicalities of sealing the ponds and Mr Callander stated that it would be very difficult to completely seal any ponds of this nature due to the inward pressure.

There was some discussion about the rate of inflow to the ponds should the deepening be consented to. Mr Callander stated that the deeper the Baigents go, the more seeps are likely to be intercepted. He broadly agreed with Mr Hewitt's estimation of around 4 litres per second into the enlarged ponds.

Mr Callander was then asked about the contribution of water to the Reservoir Zone and where the water would go if the ponds were not there. Mr Callander stated that the water would continue to the north through the terraces. He stated that this area is of low consequence and a small contributor to the Reservoir Zone.

5.1.7 Mr G Malone (summary)

Mr Malone reaffirmed the opinions of the expert witnesses and stated that 'whether or not increased take is allowed, the excavation is still sought by Baigents.

Mr Malone also emphasised that there is a historical element to this case in that the Mt. Heslington area has been treated separately from the remainder of the Reservoir Zone and that consents have previously been granted to the parties involved.

5.2 Submitters' Evidence

5.2.1 Mr Lawson Davy

Fish and Game Nelson Marlborough supported the harvesting and storage of high flows. However, it is concerned if additional takes lower water tables.

Mr Davy stated that he has no problem with pumping water from near the Waimea River during high flows and would support that alternative approach.

Overall, Fish and Game is neutral on the application but would be in opposition if it is found that there is an adverse effect on flows in nearby streams.

Mr Davy was asked if he sees the effect on the river as being low and if planting around the ponds would be sought. Mr Davy agreed that the effects are likely to be minor and that planting would be beneficial for game birds.

5.2.2 Mr Hermann Seifried

Mr Fitchett began on behalf of Mr Seifried by stating that he was shocked by this application. Mr Seifried reported that he had been told that he would never be allowed to build this type of dam. As a result he applied for and constructed his gully dam 239 sited in the hills to the southwest of his vineyard.

Mr Seifried explained the value of his investment amounted to $1 million for the gully dam and $3 million for the vineyard.

Mr Fitchett then asked the Committee to read Mr Seifried's evidence and ask questions accordingly.

Mr Fitchett's evidence confirmed the specific grounds for the Seifried's opposition. Of principal importance is that neither pond 260 nor 233 is effectively sealed. The water take is from the Reservoir Zone and is therefore non-complying, and the proposed deepening will have a detrimental effect on the storage capacity of Seifried's pond 232. The Baigent's ponds will benefit unduly from Catchment B freshes.

Finally, Mr Fitchett stated that if the application to "effectively … dig a deep hole, let it fill from underground recharge, and use it effectively as a bore" is approved, Seifrieds will apply '"the following day"' with a not dissimilar application to enlarge and deepen pond 232.

Mr Fitchett and Mr Seifried were asked by Dr Johnston if the evidence from the hydrogeologist had changed their opinion. Mr Seifried responded by explaining that regardless of the expert scientific opinion water is very short. Mr Seifried then stated that Catchment A only provides small volumes of water and that the Baigent's ponds should be sealed and the water shared as per the Water Sharing Agreement.

5.2.1 Mt. Heslington Downs Ltd

Mr Graham Allan began by describing the nature of the Mt. Heslington Downs operation.

Mr Appleton, a director of Mt Heslington Downs Ltd, explained that he is in a difficult position as he would benefit from the Baigents giving up Catchment A water, but does not want pressure on Mr Seifried's water supply as this could put pressure on the Mt. Heslington Downs water supply.

Under questioning, Mr Appleton stated that one third of the Catchment A water is not enough water for operating his nursary. He also stated that he has obtained water from seepage and that he would not have enough without this additional seepage supply.

5.3 Council's Reporting Officer's Report and Evidence

5.3.1 Glenn Stevens (Resource Scientist, Water and Land)

Mr Stevens stated that the fate of the water downstream is largely unknown but likely contributes to a surface or groundwater resource. He stated that the volumes are small but significant and that others would like to use that water.

The Chairperson asked about the significance of the fact that no submissions in opposition were received from downstream water users or people on the waiting list. Mr Stevens reaffirmed his position that the fate of the water is unknown but it must enter the hydrological system downstream.

5.3.2 Neil Tyson (Consent Planner, Water)

Mr Tyson stated that he believes users downstream have not submitted in opposition as they have not understood that there is a water take component to the application.

Mr Tyson explained that the summer taking of water is the major issue in contention and that as a non-complying activity the effects must be minor for the Committee to grant the application. He stated his opinion that to be minor the take must not exceed the take permitted by the PTRMP (i.e. 5 cubic metres per day). Therefore he stated that he still recommends that consent be declined.

Mr Tyson confirmed that he still believes that a Section 13 land use consent is needed as he considers that the ponds are still part of a river as defined in the Act.

Mr Tyson was asked to comment on the differences between his conclusions and those of Mr Hewitt and Mr Callander. Mr Tyson stated that policy is not to grant summer water takes in fully allocated aquifers.

He was asked if storage of flood water is a possibility to relieve downstream flooding. Mr Stevens answered and stated that to be effective it would need to be in the Council's control. He said the contribution is small but it would help in localised areas.

Mr Tyson was asked about other storage methods and he said that storage ponds should be constructed above water table level and water should be pumped into ponds. When asked if he has inferred that ponds below the water table cannot be effectively sealed, Mr Tyson confirmed that that is correct.

5.4 Applicant's Right of Reply

Mr Malone responded and illuminated upon the Seifried's use of seepage water in their ponds. He said that the expert evidence presented indicated there would be no effect on pond 232 from the proposed work in pond 233.

With reference to Mr Seifried's concerns, Mr Malone confirmed that there will be no change for 153 metres between ponds 232 and 233 and the low permeability and sealing of the ponds ensures that there will be no interference.

Mr Malone reaffirmed that Mr Seifried and Mr Appleton would benefit from being able to share all of Catchment A water between them.

He also reminded the Committee that the Mt. Heslington area has always been considered as a separate area that has been divided between the three landowners. He said that this position is reinforced by the expert evidence of Mr Callander. He stated that consents are already in place giving some rights and that the existing consent allows summer take in excess of what comes in by groundwater.

He agreed that ponds cannot be effectively sealed and that sealing would defeat their purpose.

6. PRINCIPAL ISSUES

The principal issues that were in contention were:

General issues

a) The status of the applications; restricted discretionary or non-complying?

b) The status of the land on which ponds 233 and 260 are situated. Is it "land", and therefore subject to Section 9 of the Act, or a "river", and therefore subject to Section 13?

c) The status of the ponds; whether they are solely for the harvesting and storage of spring and surface flow, OR ponds which (in addition to storing surface and spring flow) intercept and store groundwater in much the same manner as a well or bore.

d) Whether the Council's longstanding practice of administering the Mt. Heslington area (which is largely in the Wai-iti Zone but extends north into the Reservoir Zone) as a discrete location with no more than minor effect on these zones is still appropriate?

e) The level of adverse effect, including cumulative effect, resulting from the taking of additional groundwater in this location on:

   (i) groundwater availability in the Mt. Heslington catchment area; and/or
   (ii) groundwater levels in the wider Reservoir Zone.

f) Would the granting of this application set a precedent for other such applications in:

   (i) the Hope Gravels of the Mt. Heslington area;
   (ii) the rest of the Reservoir Zone; and/or
   (iii) the groundwater resources in the Tasman District that are managed by the Tasman District Council?

g) Would levelling and widening the base of the ponds limit the availability of water to Seifried's pond 232, and would a hydraulic backflow effect be created?

h) The extent to which the proposed increased capacity of ponds 233 and 260 would limit the spill over of Catchment B freshes to Seifried's pond 232.

i) Does the operation of the pond 233 have the effect of limiting flooding downstream in Brightwater?

j) The general effects of the proposed excavation to level and widen the base of ponds 233 and 260 and to further compact their northern and western sides – noise, dust and traffic.

7. MAIN FINDINGS OF FACT

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

a) The Committee considers that the water permits to take water (applications RM071025 and RM071026) are non-complying activities. The other applications are restricted discretionary under the PTRMP as they are not critically dependent on, and can be exercised independently of, the water take consent.

b) The Committee considered that the position where the ponds are located can be interpreted as an intermittently flowing channel. The Committee notes that such flows are rare and occur less than annually. But, out of caution, it agreed to treat the location as the bed of a river (as defined in the Act) and thereby consider it under Section 13 of the Act.

c) After hearing the evidence, the Committee agreed that ponds 233 and 260 are in fact ponds which, in addition to storing surface and spring flow, intercept and store groundwater in much the same manner as a well or bore.

d) The Committee accepted Mr Callander's evidence that there is a minimal hydraulic connection between the discreet seeps and conduits in the Hope Gravel and the Appleby Gravel that make up the rest of the Reservoir Zone. The Committee notes that this evidence reinforces the position the Council has taken in administering the Mt. Heslington Area in the past.

e) (i) Mr Callander's evidence describing discrete groundwater conduits and a lack of an overall relationship between groundwater flows indicates that there will be little effect on groundwater resources in the Mt. Heslington area.

(ii) The Committee accepted Mr Callander's evidence that there is a low level of connection between the Mt. Heslington area and the Appleby Gravel, which is an unconfined aquifer adjacent to the major rivers. The Committee is of the opinion that the water flowing in the discrete and slow flowing conduits plays little or no part in the recharge of the down-gradient fully-allocated aquifers.

f) (i) These consents, if granted, could, to some degree, set a precedent for other similar takes. However, the Committee notes that the granting of a consent under the Act does not in itself set a precedent. Nevertheless, it is mindful that in granting this application other applications with respect to the Mt. Heslington area could be made to the Council but any such applications would be assessed solely under the requirements of the Act.

(ii) This application would not set any precedent for similar applications in the Appleby Gravels of the Reservoir Zone where the hydrogeological conditions are quite different.

(iii) There are other examples in the Tasman District of in-ground storage which have been consented on their own merits. This application will only have a bearing in locations with identical hydrogeological characteristics.

g) The Committee accepts the expert evidence presented that there is no noticeable connection between pond 233 and pond 232. While there will be an increase in the area of the base of pond 233, its level for at least 150 metres from pond 232 is to remain unaltered.

h) The Committee notes that there has been no spill over from Catchment B over the last two to three years. While increasing the size of ponds 233 and 260 will intercept a greater proportion of Catchment B freshes, particularly when the ponds are at a low level. The Committee considered that the applicants relinquishing of rights to Catchment A water, except at times of high flow, would more than compensate for any loss of Catchment B flows.

i) The adverse effects of the proposed excavation will be limited by PTRMP rules and the conditions of consent, particularly for dust issues. Previous operations on-site have been conducted without any reported incident. As the proposal is to stage the operation, truck vehicle movements will be spread over a period of years rather than concentrated over a few months.

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:

a) Tasman Regional Policy Statement (TRPS);
b) the Transitional Regional Plan (TRP);
c) the Proposed Tasman Resource Management Plan (PTRMP).

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 purpose of the Act as presented in Section 5.

9. DECISION

Pursuant to Section 104C of the Act, the Committee **GRANTS** resource consents RM060861, RM071141 and RM071024 subject to conditions.

Pursuant to Section 104D of the Act, the Committee **GRANTS** resource consents RM071025 and RM071026 subject to conditions.

10. REASONS FOR THE DECISION

1. Section 104D sets out the two "gateway" tests, one of which must be met in order for non-complying applications to be granted. The activities must either be consistent with the objectives and policies of the PTRMP or any adverse effects must be minor. While the irrigation water take application (RM071026) is consistent with Policies 30.1.7; 30.1.28; 30.1.29 and 30.2.15, it is quite clearly not consistent with Policy 30.1.30. That policy limits new takes in the Reservoir Zone except where "water is taken at times of high flow". In this case water will be taken and stored at times of high flow but it will also be taken at times of summer low flow which may impinge upon the groundwater flows. It is difficult to differentiate between that summer take and high flow take because those high flow intakes may occur at any time of the year.

   In this respect the Committee has closely studied the evidence presented and accepts that there is a poor hydrological connection between the Hope Gravel of the Mt. Heslington area and the Appleby Gravel in the rest of the Reservoir Zone and that any contribution to the rest of the Zone is considered very minor.

   The works proposed may cause more groundwater to be intercepted; over and above that which is already intercepted by the ponds as they currently exist. However, conditions placed on the consents limit the rate of that inflow (see Section 11). The Committee considers that a rate of inflow of up to 4 litres per second will have a negligible adverse effect on downstream aquifers and water users.

2. The Committee notes that sealing the ponds, which extend below the water table, is problematic and is largely unachievable. It also notes that these ponds should be considered as analogous to oversized bores rather than just storage ponds. For these reasons the Committee has imposed a series of conditions to remedy or mitigate any unforeseen adverse effects which could possibly arise from the exercise of these consents. In doing so, the Committee notes that some of the conditions were volunteered by the Baigents and others were recommended in the expert evidence. The conditions and their rationales are discussed in Section 11.

3. From the evidence presented the Committee is satisfied that it is extremely unlikely there will be any adverse effect on Mr Seifried's ponds either from the excavations or the increased water take. The Committee has imposed a number of conditions to mitigate any possible adverse effects in the unlikely event that any such effects occur. These conditions are further discussed in Section 11. The Committee also considers that the volunteered condition which restricts the applicant's current right to take water from Catchment A only in periods when the downstream pond 232 is full and overflowing, will considerably enhance the opportunities available to the other two water users within the system.

4. While it is not within the competence of this Committee to adjudicate on the future spilt of Catchment A water, the Committee hopes that an amicable agreement can be reached between Messrs. Seifried and Appleton for a future variation of the water take consents to reflect this change in circumstances.

5. The Committee is satisfied that no widespread precedent is set by this decision. This point is adequately covered by point f) in Section 7 above.

6. The Committee is also mindful that the Council has a longstanding practice of administering this Mt. Heslington area as a discrete location. This is also evident by the fact that the Council has previously granted damming and water take consents in the locality. The Committee endorses that approach which is now backed by the evidence that was presented by Mr Hewitt and Mr Callander.

7. It was also noted by the Committee that, with the exception of the Seifrieds, there were no other downstream water users who submitted in opposition to this proposal and this could be interpreted as suggesting that water users in the Reservoir Zone also see the Mt. Heslington area as a separate hydrological area, which has little or no effect on water availability in the rest of the Reservoir Zone.

8. Finally, there are some positive effects that can be considered. Firstly, while no detailed evidence was presented, the increased volume of fresh or flood water that can be stored may filter into the discrete poorly water bearing zones in the Hope Gravel identified by Mr Callander. The low hydraulic conductivity of the gravels means that the loss to the zones will be gradual and may help offset summer watertable declines.

   The greater size of the ponds may also help reduce flooding in Brightwater, although this was not quantified. The Committee notes that there is a considerable buffer capacity between the lower and upper discharge points of the Baigent's ponds. The Baigents have also suggested that when intensive rainfall is forecasted they can, if the pools are full, leak water downstream thereby increasing their capacity to capture flood waters. However, the Committee notes that this cannot be relied upon as a management tool. More effective flooding mitigation would require automated management of the pond water level.

9. While the Committee considers that the areas occupied by the ponds to be "land" and subject to Section 9 of the Act, it is aware that the distinction between land and river bed, waterbody or stream is a fraught and nebulous area. The Committee notes that there are no naturally occurring features at the site which would indicate the presence of a "river". It also notes that the occasional overland flows are much less frequent than annual. However, the Committee has taken a cautionary approach, and because water certainly flowed in this location in the past, the Committee has granted Consent RM071141 and subjected it to the same conditions and term as those applying to land use consent RM060861.

10. The Committee has weighed up the positive effects, the possible adverse effects and the mitigating effects of the conditions imposed, together with the background circumstances of this case, and is confident that any adverse effects are no more than minor and that the "gateway" test if Section 104D of the Act has been passed. In addition, the purpose and principles contained in Section 5 of the Act are satisfied by the granting of these consents.

11. COMMENTARY ON CONDITIONS OF CONSENT

The conditions that have been placed on these resource consents have been imposed in order to avoid, remedy, or mitigate adverse effects that may result from the exercise of these consents. An explanation of the more important and unique conditions that have been imposed follows.

RM060861 (Land Use)

The Baigents voluntarily reduced the term sought for this consent from 35 years to five years. Although they stated that five years could be difficult. The consent has therefore been granted for a six year period to ensure that the work can be completed without too much interference with Mr Baigent's irrigation regime. The lapsing period of the consent is unchanged at five years as is the default under the Act.

Condition 11 includes the requirement to control any dust generated not only from the site but also from the access road. The road was included because the Committee is aware of adjacent horticultural crops which may be affected by dust.

Conditions 19 and 20 have been imposed to provide some comfort to the owner of pond 232 and to remedy any possible adverse effect that the excavation of the Baigent's ponds may have on that pond. As stated above, the Committee is satisfied that it is very unlikely that there will be any adverse effect, but these conditions will ensure that the situation is monitored throughout the work and any adverse effects remedied if they eventuate.

Condition 15 has been imposed so as to maintain some leakage of the ponds back into the gravels on the north side without compromising the ability of the ponds to hold high flow storage. The Committee considers that completely sealing the base of these ponds is not desirable and views Condition 15 in conjunction with Condition 7 of RM071026 which requires a minimum of 500 millimetres of water at the lower parts of the ponds for eel and other wildlife habitat. This will also ensure that the seeps and minor springs encountered will maintain some leakage to their natural downstream flowpaths. This condition does, however, allow for sealing to be undertaken at the western end of pond 233 should that become necessary under the provisions of Condition 20.

RM071024 (Water Permit)

Conditions 6 to 10 have been imposed to limit the amount of groundwater that may be intercepted by the ponds to 4 litres per second. These conditions are a crucial vehicle for mitigating the effects of these consents and are in accord with the expert evidence and opinion presented at the hearing.

RM071025 (Water Permit)

Condition 4 is a crucial condition as it removes all of Baigent's rights to Catchment A water except at times when Seifried's pond 232 is full and overflowing as volunteered by the Baigents.

RM071026 (Water Permit)

Condition 2 authorises much higher rates of take than have previously been permitted. This recognises that, when the ponds are high or full (due to the collection of very large volumes of water from freshes or floods), the Baigents should be permitted to use the stored water to irrigate as they see fit. It is not at all anticipated that the Baigents will be able to take water at the stated rates all of the time. Indeed, most of the time the rate of take will be much lower. For example, in the absence of surface water inflows, groundwater flows will provide approximately 126,144 cubic metres of water per year. This is well below the 13,300 cubic metre weekly allocation. The Consent Holder must manage available water within the consented maximum inflows to the best of their own ability.

12. LAPSING OF CONSENT(S)

Pursuant to Section 125(1) of the Act, resource consents, by default, lapse in five years unless they are given effect to it before then.

Issued this 28th day of April 2008

Mr Edward (Ted) M O'Regan
Chair of Hearings Committee

RESOURCE CONSENT NUMBERS: RM060861 and RM071141

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

Anthony Neil and Maureen Denise Baigent
(hereinafter referred to as "the Consent Holder")

ACTIVITIES AUTHORISED BY CONSENT RM060861:

- Land disturbance, earthworks and quarrying to excavate earth and gravel from irrigation ponds.

- Retrospective land use consent (bore permit) to construct, by deepening, a lower intake to accommodate a pond depth of RL22.34.

ACTIVITY AUTHORISED BY CONSENT RM071141: To disturb the bed of a waterbody for the purposes of excavation and quarrying.

LOCATION DETAILS:

Address of property:	62 River Terrace Road
Legal description:	Lot 3 DP 342068
Certificate of title:	173074
Valuation number:	1939030502
Easting and Northing:	2519546 5979853

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

CONDITIONS APPLYING TO BOTH CONSENTS

1. This consent expires on 31 May 2014.

2. The Consent Holder shall ensure that all works are carried out in accordance with the application and Taylor Contracting plans submitted with the application and attached as Plans A to J (variously dated 15 March 2006, 8 October 2007, 10 October 2007 and 17 April 2008), unless inconsistent with the conditions of this consent, in which case these conditions shall prevail.

3. The maximum volume of gravel removed shall not exceed 70,000 cubic metres (solid measure). The total storage volume of the two ponds (233 and 260) shall not exceed 136,300 cubic metres below the pond-full level of RL33.84, being the level of the invert of the concrete spillway of pond 232.

4. During periods of excavation work the Consent Holder shall keep a daily record of the "solid measure" of gravel extracted from the ponds and shall forward to the Council's Co-ordinator Compliance Monitoring a copy of these records on an annual basis commencing one year from the granting of this consent, and upon completion of the extraction works or within 30 days of the expiry of this consent.

Returns are to be submitted in "solid measure". A multiplier of 0.80 shall be used to convert "truck measure" to "solid measure.

5. The Consent Holder shall advise the following parties at least three working days prior to commencing works of its intention to start work:

   a) the Council's Co-ordinator Compliance Monitoring for monitoring purposes; and
   b) all adjoining property owners, either in person or in writing.

6. The Consent Holder shall take all practicable measures to limit the discharge of sediment where it may enter water outside of the two ponds.

7. No contaminants, including but not limited to hydrocarbon fuels, lubricants, or hydraulic fluids shall be stored either within 20 metres of the edge of the ponds or in any position where contaminants, if spilt, could flow into any ponds; unless provided with secondary containment. Refuelling or minor maintenance of machinery shall be undertaken in such a manner that should contaminant spillage occur, it is able to be contained and prevented from entering surface water or groundwater. All spills shall be immediately contained and controlled by an approved product and shall be removed from the site for appropriate disposal. Any spills where contaminants enter or may enter the ponds or groundwater shall be immediately reported to the Council's Co-ordinator Compliance Monitoring. Any spills greater than 20 litres in volume shall be reported to Council's Co-ordinator Compliance Monitoring.

8. The Consent Holder shall provide a copy of this resource consent and associated plans to all persons involved in the activities authorised by this consent.

9. The work shall be carried out during normal work hours of 7.00 am to 5.30 pm weekdays and excluding public holidays.

10. The Consent Holder shall take all practicable measures to minimise soil loss and erosion from exposed surfaces. All areas of bare ground outside the ponds created by the land disturbance shall be protected from soil erosion by revegetation as soon as is practicable and in no case later than 12 months from the date of disturbance. All access roads created by the excavation shall be revegetated at the completion of the works.

11. The Consent Holder shall undertake the works, and take measures as necessary, to reduce the discharge of dust from the site and from the access road during and immediately after periods of excavation and transport including, but not limited to, the application of water.

    Advice Note:
    Condition (e) of Rule 36.3.2 of the PTRMP sets the standard for discharges of dust across property boundaries. Control of dust will be particularly important in dry and windy conditions.

12. The Consent Holder shall engage a Chartered Professional Engineer with appropriate qualifications and experience to confirm that the excavation and construction of the ponds and the compaction of the pond walls has been done in accordance with engineering best practice. The work shall be conducted to the satisfaction of that engineer and a producer statement shall be provided to the Council's Coordinator Compliance Monitoring confirming the work standard.

13. To avoid and/or mitigate against any silt or other contaminants entering the stream below the ponds, excavation will initially be taken from the block embossed zone shown on Plan B dated 8 October 2007 (attached), with the material then being replaced by material excavated from the ponds during periods when no overflow from the ponds is likely.

14. Upon completion of excavations, and as required during the same, the Consent Holder shall ensure that compaction is carried out in line with the application and that a bentonite layer be provided over the full length and height of the western and northern walls of pond 233 and the northern wall of pond 260.

    If required to achieve compliance with Condition 11 of RM071024, the sealing of the north side of the ponds may be modified.

15. No compaction shall be undertaken, or bentonite layer placed on the base of pond 260 or pond 233 east of the irrigation intake chamber.

    Advice Note
    Compaction or a bentonite layer is permitted to the west of the irrigation intake chamber to further reduce the possibility of a hydraulic effect arising between pond 233 and pond 232.

16. "As built" plans shall be provided to the Council's Co-ordinator Compliance Monitoring upon completion of the ponds.

17. The Consent Holder shall engage an experienced hydrogeologist or a geologist experienced in groundwater investigations to prepared a report, including plans and/or cross sections, that detail the materials encountered during the enlargement of the ponds and delineate any aquifers or weakly permeable zones that would allow water to enter or exit the ponds. The rate of groundwater entering or exiting through these aquifers or zones shall be documented and measured as far as is practicable.

    The report shall be supplied to the Council's Consent Planner – Water within three months of the completion of the ponds or if the excavation of the ponds is done in stages then, unless assessed as not necessary by the Council's Consent Planner – Water, a report shall be provided at the completion of each stage.

    Advice note
    The work required by this condition can be carried out in conjunction with the work required to be done by Conditions 9 and 10 of Resource Consent RM071024.

18. The Consent Holder or their agent shall supply to the Council's Consent Planner – Water photographic images of their excavations at the completion of the work.

Advice Note:
Digital images are preferable and can be emailed to the Council.

19. Continuous water level monitoring shall be undertaken on ponds 233 and 232 (Located on CT 173074 and currently owned by Weingut Seifried Ltd), and Bore A (WWD 1452.1) at times when the excavation works are undertaken. These water level measurements shall be reported to the Council's Coordinator Compliance Monitoring on a fortnightly basis. The monitoring shall be done at no cost to the owner of pond 232.

20. In the event that, in the opinion of the Council's Coordinator Compliance Monitoring, the excavation of pond 233 has resulted in a loss of water from pond 232, then the Consent Holder shall supply the owner of 232 with an irrigation supply from any water that is available from Pond 233 up to any measured shortfall. The Consent Holder shall also engage a suitably qualified and experienced engineer to advise on any remedial work that is required to hydraulically isolate pond 233 from pond 232. The Consent Holder shall either carry out this remedial work to the satisfaction of the Council's Coordinator Compliance Monitoring, or continue to supply the shortfall to pond 232.

Advice Notes

1. This condition does not limit the timeframe of hydraulic interference with pond 232 to just the excavation period. As it is possible that interference may occur at a time after completion of the pond excavation this condition remains in force for the duration of the consent.

2. Conditions 19 and 20 require access to pond 232 which is owned by a third party (currently Mr Seifried). In the event that access to pond 232 is declined for the purpose of water level monitoring, Conditions 19 and 20 shall not apply to the extent of monitoring pond 232. In all other respects the two conditions shall stand.

21. The Council may, at any time in the period from 1 June to 31 August each year, review the conditions of these consents pursuant to Section 128 of the Resource Management Act 1991 to:

a) deal with any adverse effect on any person or the environment that may arise from the exercise of these consents and which it is appropriate to deal with at a later stage;

b) to require compliance with operative rules in the Proposed Tasman Resource Management Plan or its successor;

c) when relevant national environmental standards have been made under Section 43 of the Resource Management Act 1991; and/or

d) to deal with any unexpected adverse effect on other water users in the same catchment.

ADVICE NOTE(S)

1. The Consent Holder shall meet the requirements of the Council with respect to all Building Bylaws, Regulations and Acts.

2. 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 Proposed Tasman Resource Management Plan (PTRMP);
2. be allowed by the Resource Management Act; or
3. be authorised by a separate resource consent.

3. Access by the Council officers or agents to the property is reserved pursuant to Section 332 of the Resource Management Act 1991.

4. Monitoring of this resource consent may be required under Section 35 and 36 of the Resource Management Act 1991, and a deposit fee is payable at this time. Should monitoring costs exceed this initial fee, the Council will recover the additional amount from the Consent Holder. Monitoring costs are able to be minimised by consistently complying with the resource consent conditions.

5. Pursuant to Section 127 of the Resource Management Act 1991, the Consent Holder may apply to the Consent Authority for the change or cancellation of any condition of this consent, with the exception of the expiry date.

6. The Council draws your attention to the provisions of the Historic Places Act 1993. In the event of discovering an archaeological find during the earthworks (e.g., shell, midden, hangi or ovens, garden soils, pit depressions, occupation evidence, burials, taonga, etc) you are required under the Historic Places Act 1993 to cease the works immediately until, or unless, authority is obtained from the New Zealand Historic Places Trust under Section 14 of the Historic Places Act 1993.

Issued this 28th day of April 2008

Mr Edward (Ted) M O'Regan
Chair of Hearings Committee

RESOURCE CONSENT NUMBER: RM071024

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

Anthony Neil and Maureen Denise Baigent
(hereinafter referred to as "the Consent Holder")

ACTIVITY AUTHORISED BY THIS CONSENT:

Damming of up to 136,300 cubic metres of water behind two existing dam structures: Dam ID number 233 ("233") and Dam ID number 260 ("260").

LOCATION DETAILS:

Address of property:	62 River Terrace Road
Legal description:	Lot 3 DP 342068
Certificate of title:	173074
Valuation number:	1939030502

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

CONDITIONS

1. This consent expires on 31 May 2015.

2. **Site and Damming Details:**

River or Stream being dammed:	*Unnamed stream*
Zone:	*Reservoir*
Catchment:	*Waimea*
Maximum Dam Heights (m):	*1.50*
Crest Length (m)	*100*
Combined Storage (m^3):	*136,300*
Max rate of groundwater interception	4 litres per second
Dam Locations: Dam ID 233	*2519408E 5979886N*
Dam ID 260	*2519580E 5979843N (NZ Map Grid)*

3. For the avoidance of doubt this consent replaces NN000212.

4. The Council may, at any time between 1 June to 31 August each year, review any or all of the conditions of the consent pursuant to Section 128 of the Resource Management Act 1991 for all or any of the following purposes:

   a) to deal with any unexpected adverse effect on the environment which may arise from the exercise of the consent;

   b) to require the adoption of the best practical option to remedy or reduce any adverse effects on the environment;

c) to comply with requirements of any operative regional plan, including any allocation limit, minimum flow regime, rate of use limit, rationing, or rostering restriction;

d) to comply with relevant national environmental standards made under Section 43 of the Resource Management Act 1991;

e) to deal with any unexpected adverse effect on other water users in the same catchment.

5. The Consent Holder shall install and maintain a metric staff gauge within each of pond 233 and 260 as shown on Plan J dated 17 April 2008 (attached) and these gauges shall be levelled to a mean sea level datum and shall record the full water level fluctuation within each pond. Each pond shall be contour surveyed relative to the staff gauge installed in each pond such that the available storage is known at all water levels. This depth-volume relationship will need to be periodically verified, particularly following any works or events in the ponds that may alter one or both of the ponds' dimensions.

6. The net rate at which groundwater may be intercepted and stored from all combined groundwater seepages shall not exceed 4 litres per second between 1 November and 30 April.

   The rate of groundwater interception shall be measured in accordance with the directions of the hydrogeologist as specified in Condition 7.

7. The Consent Holder shall engage a suitably qualified and experienced hydrogeologist or a geologist experienced in groundwater investigations to provide to the Council's Coordinator Compliance Monitoring for approval a report which recommends how the rate of groundwater inflow is best measured. The report shall be provided on or before 1 September 2008. The report shall also advise on a location to the north of the ponds where a groundwater redistribution system should be installed (should it be required subject to Condition 9) without risk of hydraulic flow back into the ponds. Approval of the report will be given if the method provides a reasonable level of accuracy to enable the determination of compliance or otherwise with Condition 6.

   Advice Notes

   1. It is suggested that continuous monitoring of all pumping from the ponds, continuous pond level monitoring and estimated evaporation data during a period when there are no surface inflows could be used, in conjunction with an annual survey of pond dimensions, to calculate a water balance with suitable accuracy to determine whether the 4 litres per second limit is being exceeded.

   2. If possible the method should provide an indication over time of any variations in groundwater interception with varying pond height and varying watertable height.

8. The Consent Holder shall measure the rate of groundwater seepage inflow to the ponds annually between 1 November and 31 December and in accordance with the approved method described in the report required by Condition 7 for the duration of this consent. Results of this monitoring shall be provided to the Council's Coordinator Compliance Monitoring by 31 January each year. The results of any subsequent measurements of groundwater seepage into the ponds at any other time of the year shall be provided to

the Council's Coordinator Compliance Monitoring within 30 days of the results being obtained by the Consent Holder.

Advice Note
The Consent Holder must undertake one annual groundwater seepage measurement. However, the Consent Holder may also undertake other measurements of the groundwater seepage later in the summer if it is believed that the rate of seepage inflow has declined.

9. In the event that the groundwater seepage measurement required by Condition 8 shows that the groundwater interception rate allowed by Condition 6 is being exceeded, the Consent Holder shall immediately engage an appropriately qualified and experienced hydrogeologist or drainage engineer to design and install a redistribution system on the northern side of the ponds at the location specified by the report required by Condition 7. The redistribution system shall be appropriately sized so that the maximum expected volume of water that is to be redistributed to the groundwater aquifers (i.e. all inflow to the ponds greater than 4 litres per second) is discharged at a depth of not less than 1 metre below the ground surface (i.e. below the root zone) and in a manner where there will be no overland flow or surface breakout.

   Any groundwater that is intercepted by the ponds over the allowed 4 litres per second between 1 November and 30 April shall be redistributed back into the aquifers on the northern side of the dam. The Consent Holder shall continue to discharge water at the necessary rate until, either another measurement of groundwater seepage is undertaken (see Condition 8), or until 30 April each year. The Consent Holder shall restart redistribution of water to the aquifer at 1 November each year at the same rate as at the preceding 30 April and continue until the results of the next measurement are available.

   On each occasion when a new measurement of groundwater seepage inflow is taken the Consent Holder shall, along with the results of the new measurement required to be supplied by Condition 8, notify the Council's Coordinator Compliance Monitoring of the necessary redistribution rate adjustment. The Consent Holder shall immediately thereafter adjust the rate of redistribution to the aquifer such that the rate of groundwater seepage capture of the ponds does not exceed 4 litres per second.

10. Once redistribution of water to the aquifer has begun, pursuant to Condition 9, the Consent Holder shall measure the volume of water redistributed to the aquifer and shall supply the figures to the Council's Coordinator Compliance Monitoring on a weekly basis between 1 November and 30 April.

11. The Consent Holder or their agent shall maintain their dams, spillways and valves and any associated structure in a good state of repair. In particular this applies to the two tiered outlet system which provides some downstream flood mitigation.

ADVICE NOTES

1. The Consent Holder shall meet the requirements of the Council with respect to all Building Bylaws, Regulations and Acts.

2. 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 Proposed Tasman Resource Management Plan (PTRMP);
2. be allowed by the Resource Management Act; or
3. be authorised by a separate resource consent.

4. Access by the Council officers or agents to the property is reserved pursuant to Section 332 of the Resource Management Act 1991.

5. Monitoring of this resource consent may be required under Section 35 and 36 of the Resource Management Act 1991, and a deposit fee is payable at this time. Should monitoring costs exceed this initial fee, the Council will recover the additional amount from the Consent Holder. Monitoring costs are able to be minimised by consistently complying with the resource consent conditions.

6. Pursuant to Section 127 of the Resource Management Act 1991, the Consent Holder may apply to the Consent Authority for the change or cancellation of any condition of this consent, with the exception of the expiry date.

Issued this 28th day of April 2008

Mr Edward (Ted) M O'Regan
Chair of Hearings Committee

RESOURCE CONSENT NUMBER: RM071025

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

Anthony Neil and Maureen Denise Baigent
(hereinafter referred to as "the Consent Holder")

ACTIVITY AUTHORISED BY THIS CONSENT:

To take water from an unnamed tributary of the Wairoa River ("Catchment A" Mt. Heslington Stream) for storage behind Dam ID number 233 ("233") and Dam ID number 260 ("260").

LOCATION DETAILS:

Address of property:	62 River Terrace Road
Legal description:	Lot 3 DP 342068
Certificate of title:	173074
Valuation number:	1939030502

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

CONDITIONS

1. This consent expires on 31 May 2015.

2. **Site, Taking and Use Details:**

Location:	*62 River Terrace Road*
Legal Description:	*Lot 3 DP 342068*
Category of Water Source:	*Surface*
Zone and Catchment:	*Wai-iti, Waimea Catchment*
Name of Stream:	*Mount Heslington Stream (See "Catchment A" in Plan J attached and dated 17 April 2008)*
Maximum rates of take authorised:	*Unlimited but subject to Condition 4*
Map reference at or about point of take:	*2519376E 5979905N (New Zealand Map Grid)*
Water Meter Required:	*No*

3. For the avoidance of doubt this consent replaces NN000391.

4. This consent shall only be given effect to when Dam 232 (Located on CT 173074 and currently owned by Weingut Seifried Ltd) is full and overflowing.

5. The Council may, at any time in the period from 1 June to 31 August each year, review any or all of the conditions of the consent pursuant to Section 128 of the Resource Management Act 1991 for all or any of the following purposes:

a) to deal with any unexpected adverse effect on the environment which may arise from the exercise of the consent;

b) to require the adoption of the best practical option to remedy or reduce any adverse effects on the environment;

c) to comply with requirements of any operative regional plan, including any allocation limit, minimum flow regime, rate of use limit, rationing, or rostering restriction;

d) to comply with relevant national environmental standards made under Section 43 of the Resource Management Act 1991;

e) to reduce the quantities of water authorised to be taken if the consent is not fully exercised or the FIMP that may be required under Condition 6 of Resource Consent RM071026 shows that less water is actually needed; and/or

f) to deal with any unexpected adverse effect on, or any water-sharing dispute between other water users in the Mount Heslington catchment.

6. The Consent Holder and/or the dam owner is required to maintain their take structure and all associated structures in a good state of repair.

ADVICE NOTE(S)

1. The Consent Holder shall meet the requirements of the Council with respect to all Building Bylaws, Regulations and Acts.

2. 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 Proposed Tasman Resource Management Plan (PTRMP);
    2. be allowed by the Resource Management Act; or
    3. be authorised by a separate resource consent.

4. Access by the Council officers or agents to the property is reserved pursuant to Section 332 of the Resource Management Act 1991.

5. Monitoring of this resource consent may be required under Section 35 and 36 of the Resource Management Act 1991, and a deposit fee is payable at this time. Should monitoring costs exceed this initial fee, the Council will recover the additional amount from the Consent Holder. Monitoring costs are able to be minimised by consistently complying with the resource consent conditions.

6. Pursuant to Section 127 of the Resource Management Act 1991, the Consent Holder may apply to the Consent Authority for the change or cancellation of any condition of this consent, with the exception of the expiry date.

7. Screening of intakes has the dual function of protecting a water meter.

Issued this 28th day of April 2008

Mr Edward (Ted) M O'Regan
Chair of Hearings Committee

RESOURCE CONSENT NUMBER: RM071026

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

Anthony Neil and Maureen Denise Baigent
(hereinafter referred to as "the Consent Holder")

ACTIVITY AUTHORISED BY THIS CONSENT:

To take water from the water reservoirs ("ponds") behind Dam ID number 233 ("233") and Dam ID number 260 ("260") and to use the water for irrigation of up to 38 hectares of pasture.

LOCATION DETAILS:

Address of property:	62 River Terrace Road
Legal description:	Lots 1, 2 & 3 DP 342068 & Lot 1 & 2 DP 301998 Waimea SD
Certificate of title:	173074
Valuation number:	1939030502

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

CONDITIONS

1. This consent expires on 31 May 2015.

2. **Site and Taking Details:**

Legal Description of Irrigated Land:	*Lots 1, 2 and 3 DP 342068 & Lot 1 and 2 DP 301998 Waimea SD*
Water Source:	*Mt. Heslington Terrace Gravels & Storage Reservoir*
Zone:	
Irrigated Area (ha):	*38*
Maximum Rates of Take Authorised:	*100 cubic metres per hour* *1,900 cubic metres per day* *13,300 cubic metres per week*
Take Location:	*2519491E 5979842N (New Zealand Map Grid)*
Dam IDs:	*233 and 260*
Meter Required:	*Yes*

3. For the avoidance of doubt this consent replaces NN000211.

4. Within six months of the date of issue of this consent, the Consent Holder or their agent shall, at their own expense, install and thereafter maintain, a water meter(s) to record all water taken pursuant to this consent and the installed water meter shall comply with the Council's *Water Meter Specifications* as stated in the Proposed Tasman Resource Management Plan.

5. The Consent Holder shall maintain a record of weekly meter (cubic metre) readings and reading dates whenever exercising this consent and shall provide a complete record of these meter readings and dates to the Council's Co-ordinator Compliance Monitoring if and when requested and annually no later than 1 June each year.

6. The Council reserves the right to require from the Consent Holder a Farm Irrigation Management Plan (FIMP) identifying the soil type(s) irrigated under this consent, their soil moisture-holding capacities and the irrigation method, equipment, irrigation rotation and the irrigation application rate for the soil(s) that avoids both subsurface drainage below the crop rooting zone and any surface run-off.

7. This consent shall not be exercised to the extent that there is any significant adverse effect on resident eels within the Consent Holder's ponds and a minimum water level of RL 23.0 in pond 233 and RL 23.4 in pond 260 shall be maintained at all times for their survival.

   Advice Note:
   The intent of this condition is to ensure that a minimum of 500 millimetres is available at the deepest part of all ponds for wildlife survival at all times.

8. All irrigation pump intakes shall be screened so as to avoid the entrainment of fish and eels. The screen(s) shall have a mesh size not greater than 5 millimetres and shall be constructed such that the intake velocity at the outer surface of the screen is less than 0.3 metres per second. Furthermore, the screen shall be maintained in good working order and shall comply with these standards at all times.

9. This consent shall not be exercised to the extent that, in the opinion of the Council's Coordinator Compliance Monitoring, the pumping of water from pond 233 directly causes a loss of water from pond 232 (Located on CT 173074 and currently owned by Weingut Seifried Ltd). The Coordinator may, at any time for the purposes of determining the extent of any hydraulic interference, require that continuous water level monitoring be undertaken on ponds 233 and 232, and Bore A (WWD 1452.1). These water level measurements shall be reported to the Coordinator on a fortnightly basis. The monitoring shall be done at no cost to the owner of pond 232.

10. In the event that, in the opinion of the Council's Coordinator Compliance Monitoring, the excavation of pond 233 has resulted in a loss of water from pond 232, then the Consent Holder shall supply the owner of 232 with an irrigation supply from any water that is available from Pond 233 up to any measured shortfall. The Consent Holder shall also engage a suitably qualified and experienced engineer to advise on any remedial work that is required to hydraulically isolate pond 233 from pond 232.

    The Consent Holder shall either carry out this remedial work to the satisfaction of the Council's Coordinator Compliance Monitoring, or continue to supply the shortfall to pond 232.

    Advice Note
    Conditions 9 and 10 require access to pond 232 which is owned by a third party (currently Mr Seifried). In the event that access to pond 232 is declined for the purpose of water level monitoring, Conditions 9 and 10 shall not apply to the extent of monitoring pond 232. In all other respects the two conditions shall stand.

11. The Council may, at any time between 1 June and 31 August each year, review any or all of the conditions of the consent pursuant to Section 128 of the Resource Management Act 1991 for all or any of the following purposes:

    a) to deal with any unexpected adverse effect on the environment which may arise from the exercise of the consent; and/or

    b) to require the adoption of the best practical option to remedy or reduce any adverse effects on the environment; and/or

    c) to comply with requirements of any operative regional plan, including any allocation limit, minimum flow regime, rate of use limit, rationing, or rostering restriction; and/or

    d) to comply with relevant national environmental standards made under Section 43 of the Resource Management Act 1991; and/or

    e) to reduce the quantities of water authorised to be taken if the consent is not fully exercised or the FIMP that may be required under Condition 6 shows that less water is actually needed; and/or

    f) to deal with any unexpected adverse effect on (or any water-sharing dispute between) other water users in the Mount Heslington catchment.

ADVICE NOTES

1. The Consent Holder shall meet the requirements of the Council with respect to all Building Bylaws, Regulations and Acts.

2. 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 Proposed Tasman Resource Management Plan (PTRMP);
    2. be allowed by the Resource Management Act; or
    3. be authorised by a separate resource consent.

4. Access by the Council officers or agents to the property is reserved pursuant to Section 332 of the Resource Management Act 1991.

5. Monitoring of this resource consent may be required under Section 35 and 36 of the Resource Management Act 1991, and a deposit fee is payable at this time. Should monitoring costs exceed this initial fee, the Council will recover the additional amount from the Consent Holder. Monitoring costs are able to be minimised by consistently complying with the resource consent conditions.

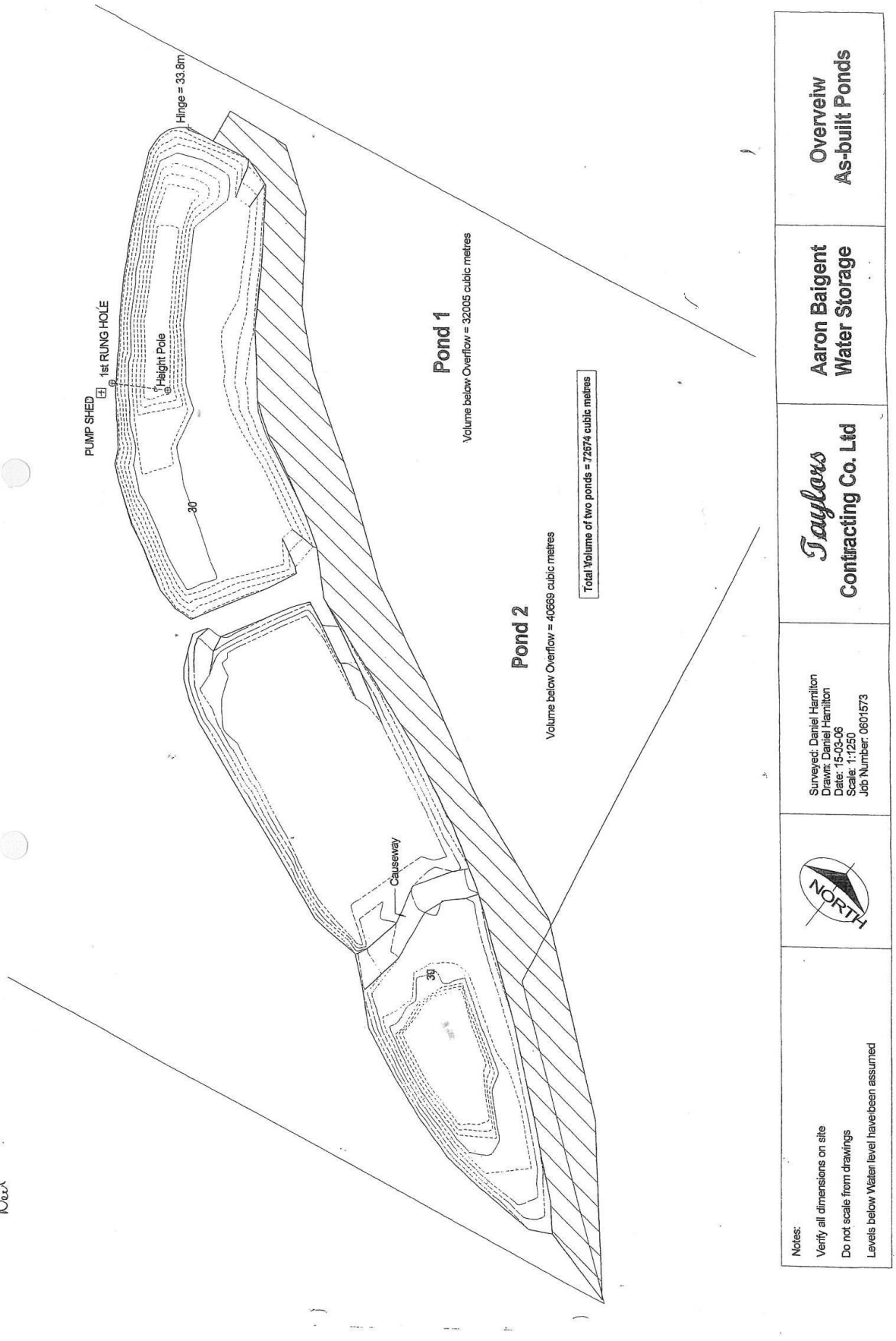
6. Pursuant to Section 127 of the Resource Management Act 1991, the Consent Holder may apply to the Consent Authority for the change or cancellation of any condition of this consent, with the exception of the expiry date.

7. Screening of intakes has the dual function of protecting a water meter.

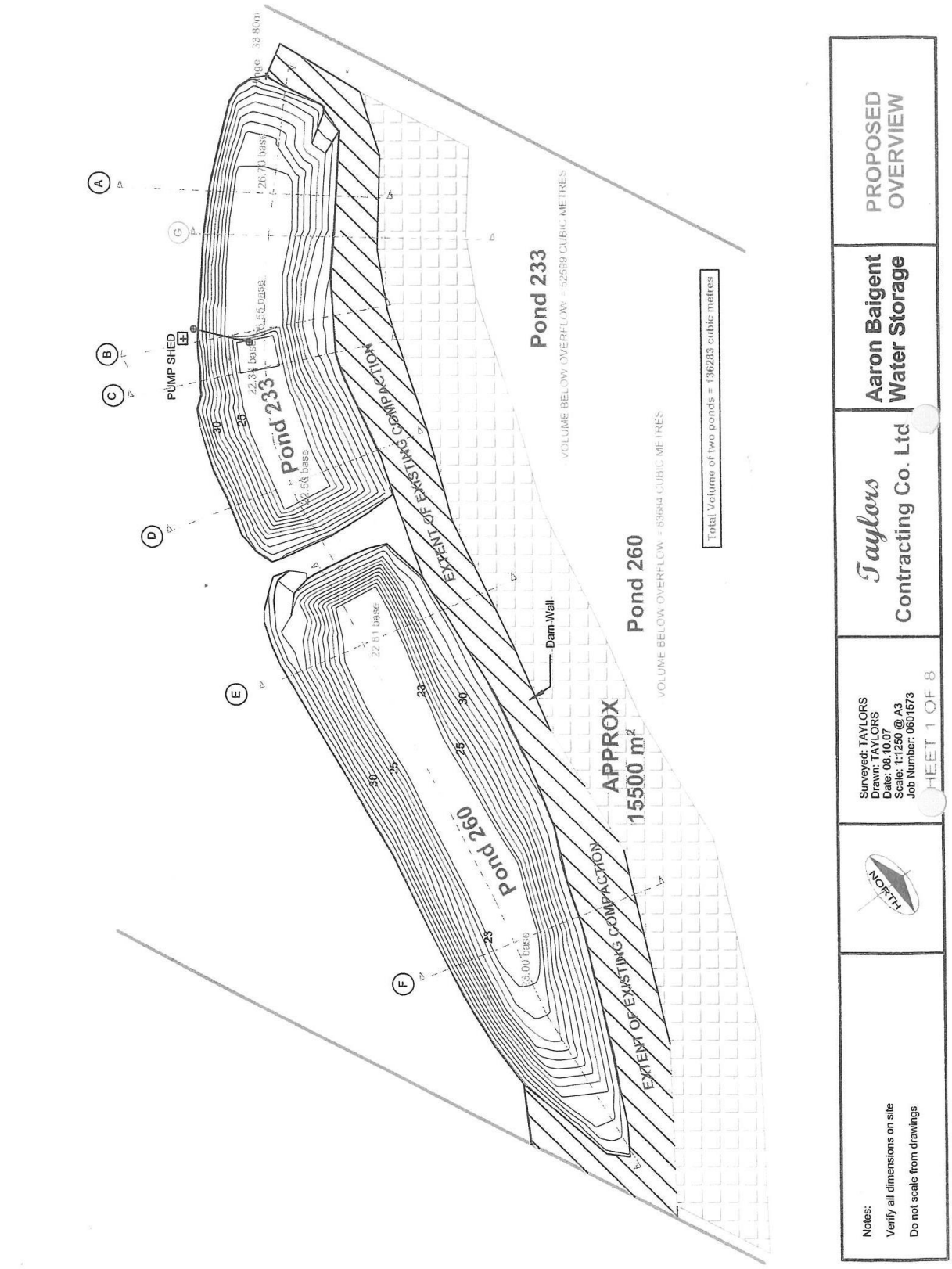
Issued this 28th day of April 2008

Mr Edward (Ted) M O'Regan
Chair of Hearings Committee

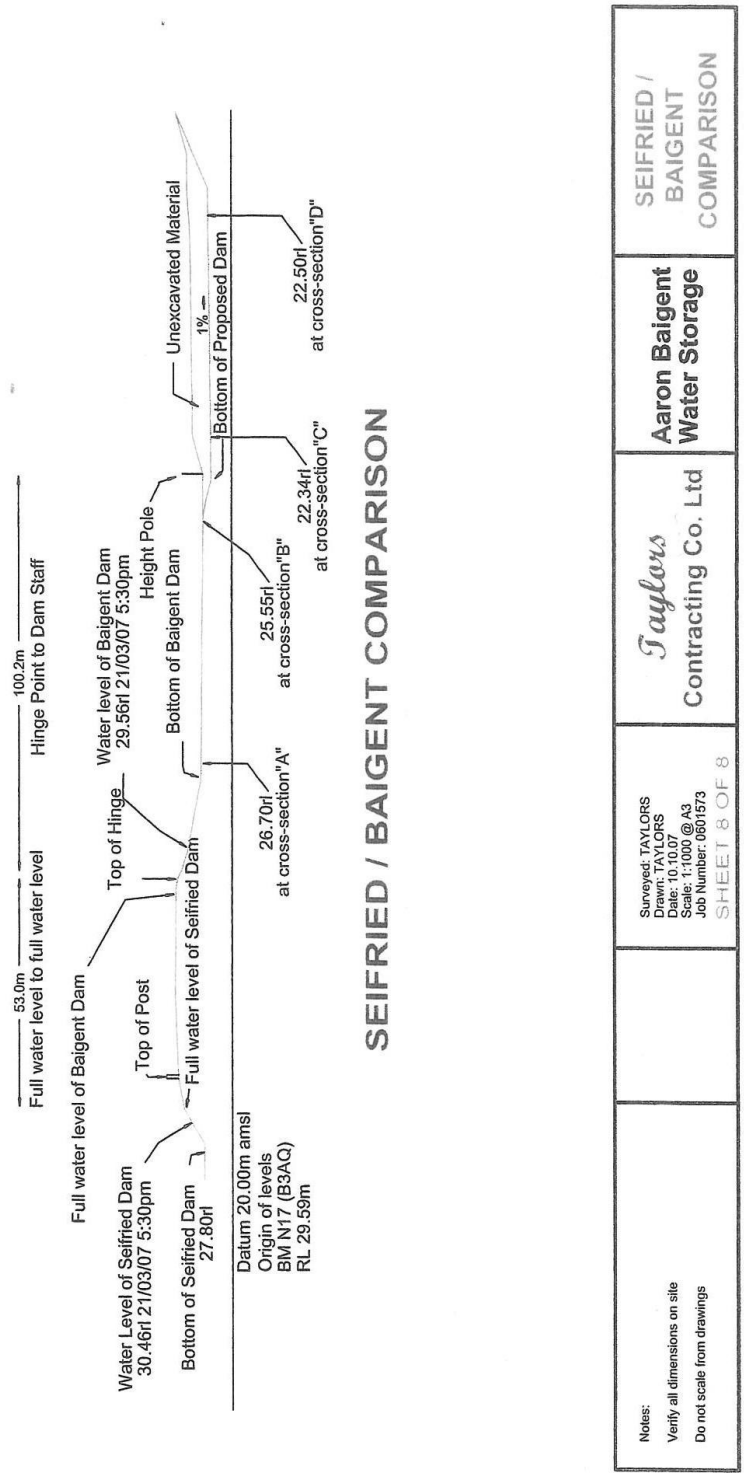
Plan A – 15 March 2006 – A M and N D Baigent



Plan B – 8 October 2007 – A M and N D Baigent



Plan C – 10 October 2007 – A M and N D Baigent

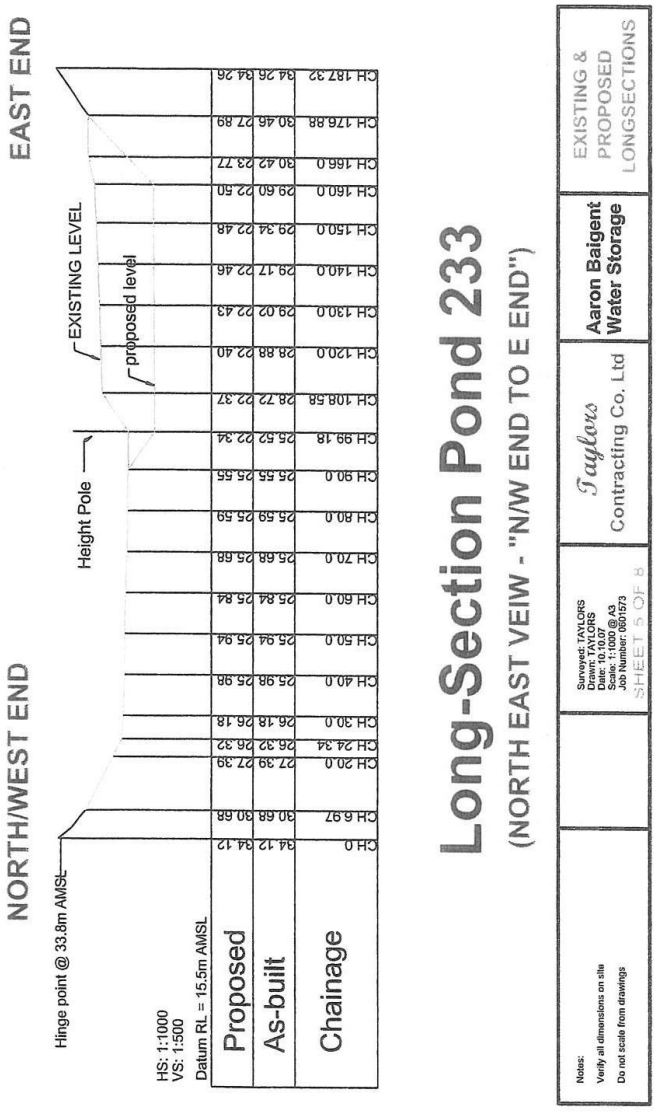


CROSS SECTION A (POND 23
Unexcavated Material
Proposed level of 26.70
HS: 1:250
VS: 1:250
Datum RL = 20.00 AMSL
Proposed
As-built
Chainage
34.00 31.21 31.02
34.00 30.58 26.70
CH 0 CH 6.25 CH 16.70 CH 26.00 CH 31.00 CH 39.00 CH 48.90
33.00 26.70 26.70 26.70 26.70 26.70 33.00
CROSS SECTION B (POND 233)
Unexcavated Material
Proposed level of 25.55
HS: 1:250
VS: 1:250
Datum RL = 20.00 AMSL
Proposed
As-built
Chainage
34.00 30.00 25.55 30.00 25.55 30.00 25.55 25.55 33.00
34.00 30.00 30.00 30.00 30.00 25.55 25.55 25.55 33.00
CH 0 CH 12.00 CH 19.50 CH 26.00 CH 32.00 CH 41.50 CH 51.50
Notes:
Verify all dimensions on site
Do not scale from drawings
Surveyed: TAYLORS
Drawn: TAYLORS
Date: 08.10.07
Scale: 1:750 @ A3
Job Number: 0601573
SHEET 2 OF 8
Taylors
Contracting Co. Ltd
Aaron Baigent
Water Storage
PROPOSED &
EXISTING CROSS
SECTION
POND 233

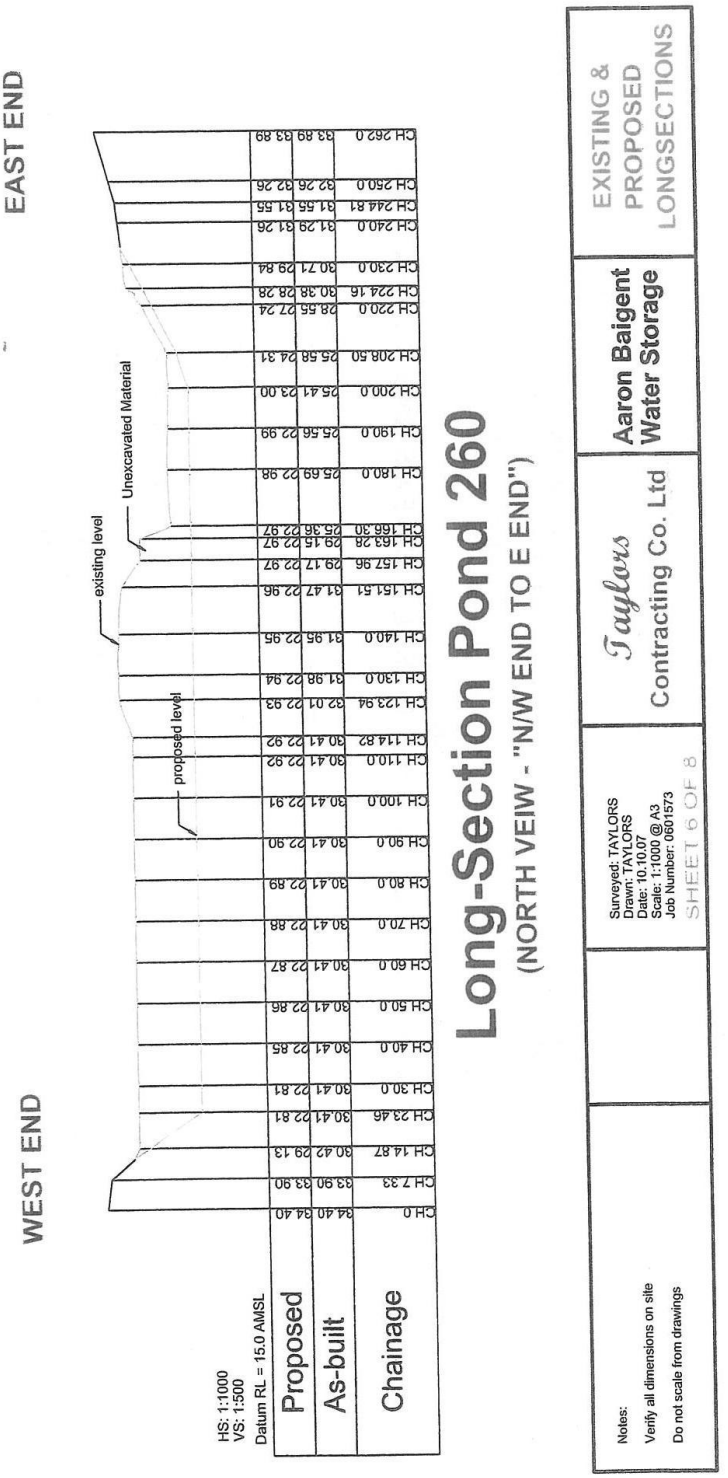
CROSS SECTION C (POND 233)
HS: 1:250
VS: 1:250
Datum RL = 20.00 AMSL
Proposed level of 22.34
Proposed
As-built
Chainage
CH 0
CH 9.00
CH 20.00
CH 29.00
CH 32.00
CH 36.00
CH 47.00
CH 54.50
34.00
31.00
30.45
30.00
29.00
29.00
29.00
34.00
34.00
28.75
22.34
22.34
22.34
22.34
22.34
29.27
CROSS SECTION D (POND 233)
HS: 1:250
VS: 1:250
Datum RL = 20.00 AMSL
Proposed level of 22.50
Proposed
As-built
Chainage
CH 0
CH 6.00
CH 22.00
CH 38.00
CH 40.00
CH 49.50
CH 58.00
34.00
31.20
30.50
30.00
30.00
30.00
35.00
34.00
31.20
22.50
22.50
22.50
28.54
35.00
Notes:
Verify all dimensions on site
Do not scale from drawings
Surveyed: TAYLORS
Drawn: TAYLORS
Date: 08.10.07
Scale: 1:750 @ A3
Job Number: 0601573
SHEET 3 OF 8
Taylors
Contracting Co. Ltd
Aaron Baigent
Water Storage
PROPOSED &
EXISTING CROSS
SECTION
POND 233

CROSS SECTION E (POND 260)
HS: 1:250
VS: 1:250
Datum RL = 20.00 AMSL
Proposed
As-built
Chainage
CH 0
CH 8.00
CH 19.00
CH 41.00
CH 54.00
CH 65.60
34.00
31.00
29.05
22.81
29.70
35.00
Proposed level of 22.81
CROSS SECTION F (POND 260)
HS: 1:250
VS: 1:250
Datum RL = 20.00 AMSL
Proposed
As-built
Chainage
CH 0
CH 11.00
CH 16.00
CH 18.00
CH 36.00
CH 41.00
CH 53.00
33.00
31.00
26.88
27.00
24.11
23.00
27.00
27.00
35.00
Proposed level of 23.00
Notes:
Verify all dimensions on site
Do not scale from drawings
Surveyed: TAYLORS
Drawn: TAYLORS
Date: 08.10.07
Scale: 1:750 @ A3
Job Number: 0601573
SHEET 4 OF 8
Taylors
Contracting Co. Ltd
Aaron Baigent
Water Storage
PROPOSED &
EXISTING CROSS
SECTION
POND 260

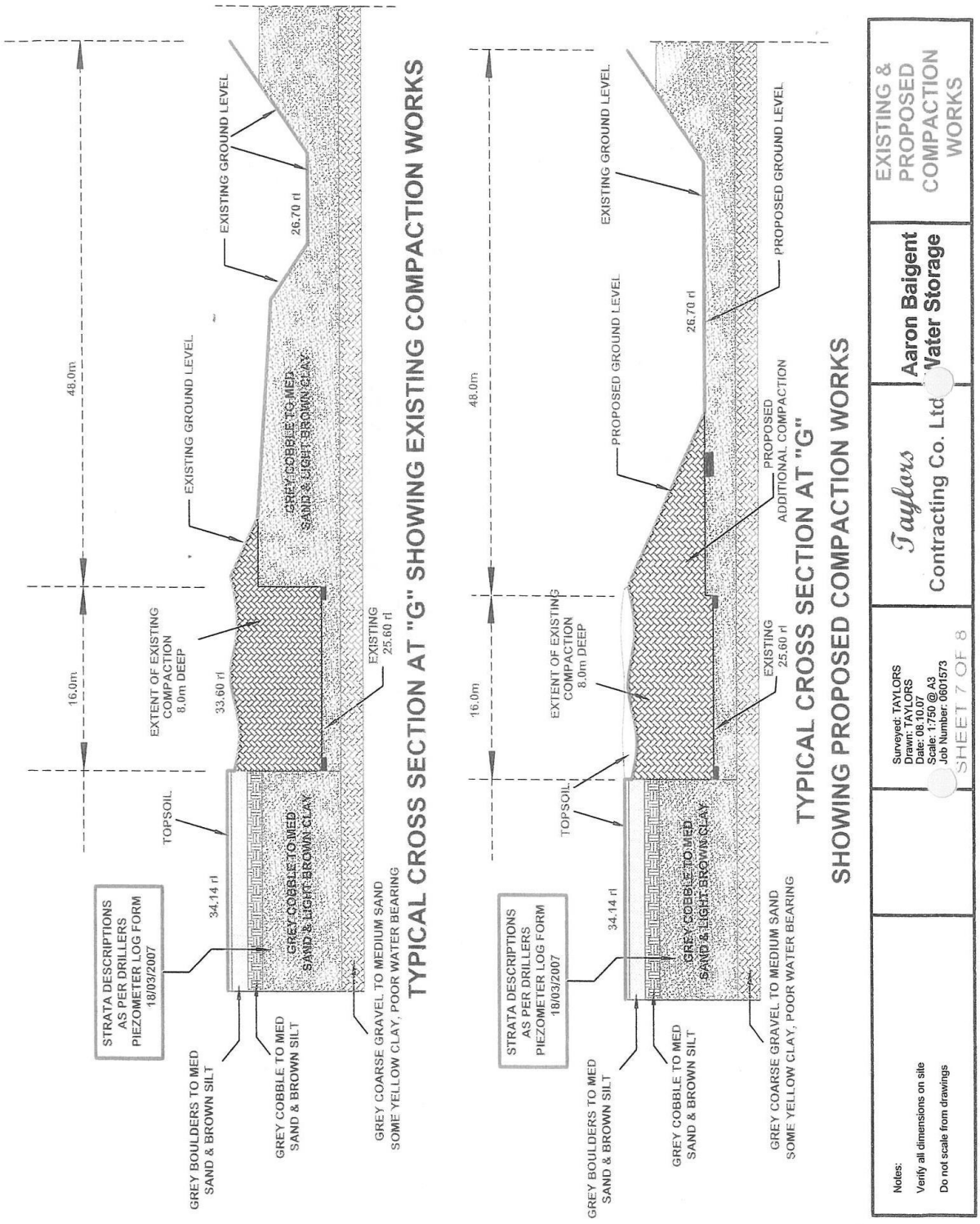
Plan G – 10 October 2007 – A M and N D Baigent



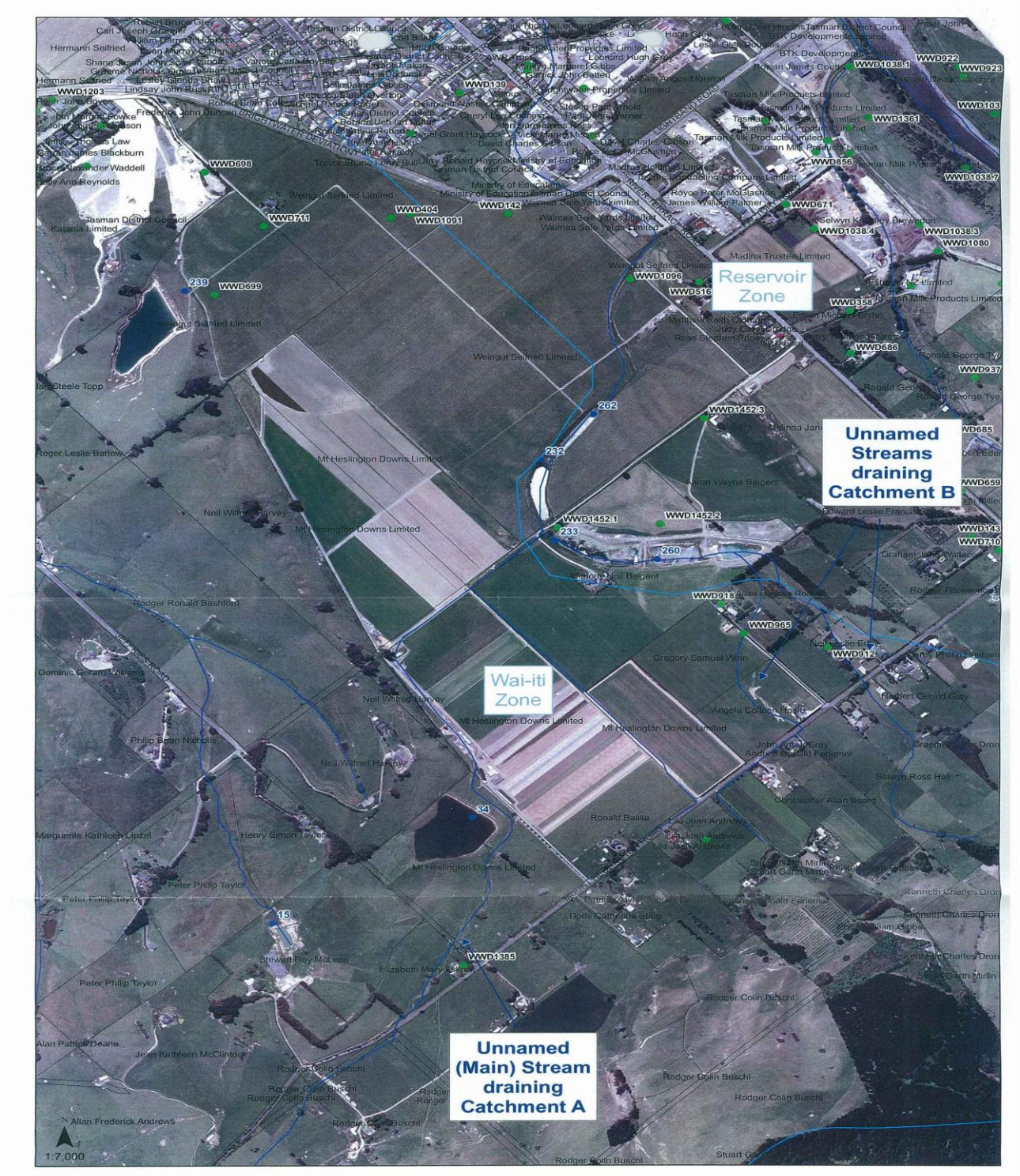
Plan H – 10 October 2007 – A M and N D Baigent



Plan I – 8 October 2007 – A M and N D Baigent



Plan J – 17 April 2008 – A M and N D Baigent



Date Confirmed: **Chair:**