

# MINUTES

**TITLE:** Environment & Planning Committee  
**DATE:** Monday, 8 September 2008  
**TIME:** 9.30 am  
**VENUE:** Council Chamber, 189 Queen Street, Richmond

**PRESENT:** Crs T B King (Chairman), S G Bryant and J L Edgar

**IN ATTENDANCE:** Principal Consents Planner (J Butler), Consents Planner (J S Harley), Administration Officer (B D Moore)

## 1. C AND S THELIN AND S J BERGMAN, 201 EDENS ROAD, HOPE

### 1.1 Proposal

The application is for land use consent to construct a second dwelling on a 2.10 hectare Rural 1 zone property to house Carl and Susan Thelin, who are the parents of the landowner Shelly Bergman.

The subject property at 201 Edens Road, Hope is located on the south side of Edens Road and is described as Lot 3 DP6112 in Certificate of Title NL5A/461.

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

The Committee reserved its decision.

### RESOLUTION TO EXCLUDE THE PUBLIC

**Moved Crs King / Bryant**  
**EP08/09/01**

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

C and S Thelin and S J Bergman

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

<b>General subject of each matter to be considered</b>	<b>Reason for passing this resolution in relation to each matter</b>	<b>Ground(s) under Section 48(1) for the passing of this resolution</b>
C and S Thelin and S J Bergman	Consideration of a planning application	A right of appeal lies to the Environment Court against the final decision of Council.

**CARRIED**

**Moved Crs Edgar / Bryant**  
**EP08/09/02**

**THAT the open meeting be resumed and the business transacted during the time the public was excluded be adopted.**

**CARRIED**

**2. C AND S THELIN AND S J BERGMAN, 201 EDENS ROAD, HOPE**

**Moved Crs King / Bryant**  
**EP08/09/03**

**THAT pursuant to Section 104B of the Resource Management Act, the Committee GRANTS consent to C and S Thelin & S J Bergman as detailed in the following report and decision.**

**CARRIED**

**Report and Decision of the Tasman District Council through its Hearings Committee**

**Meeting held in the Tasman Room, Richmond**

**on Monday, 8 September, commencing at 9.30 am**

A Hearings Committee (“the Committee”) of the Tasman District Council (“the Council”) was convened to hear the application lodged by **Carl and Susan Thelin and Shelley Bergman** (“the applicant”), to construct a second dwelling at 201 Edens Road, Hope. The application, made in accordance with Section 88 of the Resource Management Act 1991 (“the Act”), was lodged with the Council and referenced as RM080356.

**PRESENT:**

**Hearings Committee**

Cr T King, Chairperson

Cr S Bryant

Cr J Edgar

**APPLICANT:**

Mr F Bacon (planning consultant)

Mr C Thelin (the applicant)

**CONSENT AUTHORITY:**

**Tasman District Council**

Mrs Jane Harley (Consent Planner, Land)

**SUBMITTERS:**

Mr S Sutton (Eden Road Farm Ltd)

Ms J Hilson (planning consultant for Concept Family Trust)

Ms J Proctor (for The Concept Family Trust)

Mr S Wane (for The Concept Family Trust)

Mr L Maxwell (supporting witness for The Concept Family Trust)

Ms V White

**IN ATTENDANCE:**

Mr J Butler (Principal Resource Consents Adviser) –  
Assisting the Committee  
Mr B Moore (Committee Secretary)

**1. DESCRIPTION OF THE PROPOSED ACTIVITY**

This application is for a land use consent to construct a second residential dwelling on a 2.1018 hectare property to house Carl and Susan Thelin, who are the parents of the land owner, Shelley Bergman.

The legal description of the land is Lot 3 DP 6112, Certificate of Title NL 5A/461. The property is located at, and hereafter referred to as 201 Edens Road, Hope.

The site is a 2.1018 hectare block of land located at the north-western end of Edens Road. It is one of the last small holdings at this end of this road before the land of Edens Road Farm (Orchard) and Weingut Seifried Ltd (Vineyard) begins. These larger blocks are located between Edens Road and the confluence of the Wairoa and Wai-iti Rivers to the northwest.

Running through the subject property is an alluvial scarp (known as Burkes Bank) that separates two old river terraces. Burkes Bank divides the property into a large area of flat land on the lower terrace and a small triangle of land on the upper terrace, on which the existing house has been built, and on which the second dwelling that is the subject of this decision is proposed.

There are two properties adjoining the subject site to the south that are of similar size, being approximately 1 hectare blocks, each with a single residential dwelling on them.

The wider area is characterised by a mixture of larger horticultural blocks and small lifestyle holdings.

**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 activity does not comply with Permitted Activity Rule 17.4.4(b) of the PTRMP and is deemed to be a discretionary activity in accordance with Rule 17.4.6 of the Plan.

The earthworks proposed for the driveway access and the building platform for the second dwelling will not extend below the water table (18.6.2(ic)(iii)) and therefore do not require a resource consent.

### **3. NOTIFICATION AND SUBMISSIONS RECEIVED**

The application was notified on 19 July 2008 pursuant to Section 93 of the Act. Two parties (Weingut Seifried Ltd and Eden Road Farm) had provided written approvals for the proposal. Three submissions were received; two opposing the proposal and both wishing to be heard, and one in support also wishing to be heard.

The following is a summary of the written submissions received and the main issues raised:

#### **Ian and Vanessa White (Submission 1)**

They are opposed to the concept of a second dwelling in a Rural 1 zone and the precedent this could set for more applications and the possibility of subdivision. They purchased their rural block to escape the suburbs and felt protected by the PTRMP rules that do not allow more than one dwelling on a property as a permitted activity. While they state that they are not directly affected by this development, they do see it as a precedent which may threaten the privacy they enjoy in this rural environment.

They wish to be heard in support of their submission.

#### **Julie Proctor and Simon Ware (Submission 2)**

They oppose the application based on concerns regarding loss of their rural amenity and existing separation from neighbours and the privacy it affords. They have renovations planned that will be directly impacted by the location of the second dwelling. The proposed building will compromise their outlook and the second residential activity will compromise their privacy. The proximity of the dwelling will erode their sense of open-space and right to enjoy a quiet rural environment.

They believe the proposed second dwelling is clearly not subsidiary or dependent on the main dwelling and is not what is anticipated by the PTRMP. It is contrary to the policies and objectives of the PTRMP and Part 2 of the Act. The applicant does not provide sufficient detail as to the design of the second dwelling, and it is unacceptable to leave this to the discretion of the architect given the potential adverse affect of this proposal on their use and enjoyment of their own property. They do not have confidence that the volunteered covenant would prevent further application to remove the covenant, change the use, or subdivide the property.

They wish to be heard in support of their submission.

#### **Stephen Sutton (Submission 3)**

The application will have no effect on Eden Road Farm Ltd, as adjoining land owner. The submitter seeks a condition that the dwelling will be removed, or one of the two dwellings no longer used as a dwelling, once the applicants (C and S Thelin) no longer require it.

They wish to be heard in support of their submission.

### **4. PROCEDURAL MATTERS**

There were no procedural matters that required a decision by the Chair.

## **5. EVIDENCE HEARD**

The Committee heard evidence from the applicant, submitters, and the Council's reporting officer. The following is a summary of the evidence heard at the hearing.

### **5.1 Applicant's Evidence**

#### **Mr F Bacon**

Mr Bacon introduced the proposal and stressed that the second dwelling would only be temporary and that in the long term there will be no subdivision and only one building on the site. He said that while Mr and Mrs Thelin are in good health they wish to live near their daughter and that this proposal makes this possible.

Mr Bacon stated that the Act allows effects to be not only avoided or remedied, but also mitigated, and it is mitigation which should be considered in this case.

Mr Bacon then addressed the submissions made on the application. During consultation with Ms Proctor and Mr Ware (the Concept Family Trust) an alternative location was considered to the north west of the existing Bergman house. The alternative was not supported by the applicant.

A rural emanations easement was volunteered as a result of consultation with Weingut Seifried Ltd who owns adjacent productive land.

Mr Bacon then described the site and the small triangular-shaped section of raised land. He said that the proposed house is to be constructed at the apex of the triangular area and extending slightly out beyond the edge of the bank. A garage is to be constructed under the house.

Mr Bacon then addressed the PTRMP requirements. He said that a house may contain two self contained housekeeping units as a permitted activity provided that the second unit is no larger than 60 square metres in floor area. Mr Bacon said that the PTRMP emphasises the protection of productive land from fragmentation. He raised Objective 5.2.0 and Policies 5.2.1 and 5.2.7 as relevant and supporting this application.

Mr Bacon then disputed the distances given by the Concept Family Trust in their submission. He said that the submitter's dwelling is about 27 metres from the common boundary and that the proposed dwelling is a further 10 metres from the boundary. He considered that the majority of the outlook from the house will not be affected.

Mr Bacon considered that a permitted baseline exists which allows the interruption of such views by buildings other than dwellings to be erected as of right. Such buildings could be higher and more extensive. He said that the proposed house will be orientated to the north and west and not towards the submitter's house and that a screening hedge along the boundary is volunteered.

The house is to have a floor area of 96 square metres and a garage floor area of 42 square metres. Mr Bacon considered this to be a small house.

Mr Bacon then referred to aerial photographs that accompanied his evidence and stated that there is a pattern of building clustering on the Waimea Plains. He considered that the PTRMP allows a built-up character as a result of farm related buildings (e.g., greenhouses sheds, etc.)

While no subdivision is proposed, Mr Bacon acknowledged that PTRMP recognises that erection of buildings can fragment land. Again, he considered that the permitted activity rules allow this to happen with buildings other than dwellings. He stated that the total coverage will be about 309 square metres which is not out of the ordinary for dwellings now being erected on some rural sites.

With regard to productive values, Mr Bacon considered that the house is sited on an area of land that is not likely to be used for productive purposes in the foreseeable future and in due course one of the houses will be removed or cease to be a dwelling. He gave little weight to the Concept Family Trust's lack of confidence that one of the dwellings will be removed.

Mr Bacon stated that the applicant is happy to move the new wastewater discharge area away from the Concept Family Trust's water supply bore in order to comply with the permitted activity standards in the PTRMP.

Mr Bacon then addressed the Whites' submission and stated that it is more concerned about the precedent that will result from the granting of this consent. Mr Bacon defended the rights of people to live near family, particularly with changes to social structures and longer life-spans.

Mr Bacon then turned to the reporting officer's report. He stated that he does not agree with Mrs Harley's recommendation but that he does agree with the conditions she has recommended.

Mr Bacon considered that an increased density of residential activity could happen as of right if the property was sold to a larger family or if the existing house was enlarged or if a new building was erected, perhaps on a different location on the site.

Mr Bacon compared the effects of two mature people living in a small house to that of a farm shed where animals may be housed and noise and odours emitted.

Mr Bacon then returned to the productive use issue. He stated that, discounting the access track, only about 1.8% of the property will be unavailable for productive use and that this area has significant constraints on it due to its topography.

He stated his opinion that the proposal will have no adverse effect on the productive potential of the site and cannot constitute an undesirable level of land fragmentation. He also stated that, in any case, many of the adverse effects are not permanent.

With regard to precedent, Mr Bacon stated that the possibility that other applications may be made is not the point. He considered the point to be that applications have to be evaluated individually and if it cannot sit comfortably within the PTRMP requirements and anticipated outcomes it can be declined. Mr Bacon did, however, identify areas where he considered the application to be unique in scope, such as the small area that will be taken up by the second dwelling and its proposed position on the small triangle of raised land.

Mr Bacon considered the application to be an important part of the applicant's wish to provide for their social needs and wellbeing as defended by the Act. Mr Bacon did not consider that the Act requires complete avoidance of effects; it allows mitigation which does anticipate some adverse effects.

Cr Bryant asked what the land use is on the top terrace aside from the house. Mr Bacon stated that it is currently in rough pasture.

Cr Bryant also asked whether the rural emanations easement would be retained. Mr Bacon replied that it would be retained in perpetuity even once a dwelling is removed.

Cr Edgar sought to clarify the position of the driveway. Mr Bacon stated that is along, and cut into, Burkes Bank.

Cr Edgar also questioned statements in the evidence that referred to either removing or "otherwise making the dwelling unusable". Mr Bacon said that the building could be used to house workers but that it would not be a dwelling.

Cr King asked Mr Bacon whether his client had considered one house and working within the permitted rules. Mr Bacon stated that his clients had a preference for privacy and that it is a common preference for people to have. The permitted activity rules did not fit in with that preference.

Cr King referred to recommended condition 5 and stated that it says that a building "shall be removed". He asked Mr Bacon whether he was happy with this or whether he would want it changed to allow a building to be made unusable. Mr Bacon said that he was happy with the recommended condition and that the applicant may apply to the Council to have it changed if desired and appropriate.

## **5.2 Submitters' Evidence**

### **Mr S Sutton**

Mr Sutton stated that he supports this application on the grounds that it is not a subdivision and that the applicant has volunteered to go back to one dwelling when the building is no longer required.

Although he does not reside on his property (nearby to the applicant's) he is planning to move there in the future.

Mr Sutton did not consider that one more dwelling would change the rural character at all and that a large shed would do as much damage to the rural character as a dwelling. He also did not consider the proposal was to fragment the land.

Mr Sutton also did not consider that the proposal would take away any productive land.

### **Ms Jane Hilson (for Concept Family Trust – Ms Proctor and Mr Ware)**

Ms Hilson introduced herself and her client (Ms Proctor and Mr Ware) who live at 197 Edens Road.

Ms Hilson commented on Mr Bacon's evidence. She stated that there is nothing special about the applicant's situation with the parents in good health. This will only extend the duration of the effects on her client.

Ms Hilson stated that she concurs with the reporting officer's recommendation that the consent should be declined. She stated that the PTRMP does not contemplate second dwellings of this scale and nature in the Rural 1 zone. She considered it to be directly contrary to the objectives and policies for the Rural 1 zone. Also, the proposal will compromise the rural open space and amenity values that the submitter is entitled to enjoy.

Ms Hilson summarised her client's concerns as: compromising of views, privacy and amenity; more intensive residential use of the applicant's site resulting in fragmentation of the Rural 1 land resource; no established genuine need for the second dwelling; an intensification of residential activity; over-capitalisation of the applicant's property leading to greater risk of pressure on the Council for subdivision or alternative use; the adverse effect of the new wastewater discharge site on the submitter's bore; that there are no unusual features or circumstances to the proposal that avoid the setting of a precedent; and that the proposal will not promote the sustainable management of rural resources and is contrary to Part 2 of the Act.

Ms Hilson stated that her client currently enjoys uninterrupted views of the Mount Arthur Range and the Waimea Plains. She provided an aerial photograph which shows the viewshaft from 197 Edens Road as being directly across the applicant's property. She also described the proposed renovations of their house which are currently going through the building consent process. She stated that these plans have been put on hold pending the outcome of this hearing. Architectural plans were provided to the Committee.

Ms Hilson acknowledged the possibility of farm buildings interrupting the views. However, she said that it is human activity, congregation and noise that will adversely affect rural amenity values. She said the PTRMP acknowledges these effects and provides for them in the permitted activity rules through separation distances from houses and maximum floor areas.

Ms Hilson directed the Committee to various parts of the PTRMP which address land fragmentation and loss of productive land. She considered that the proposal will cause both of these effects.

In particular, Ms Hilson considered the proposal to be contrary to Objective 7.1.0, Policies 7.1.2, 7.1.3 and 7.1.4.

Due to the physical constraints of the site, Ms Hilson considered that the applicant's site will appear much more built-up and settled than is anticipated in a rural environment, to the detriment of neighbours and contrary to the PTRMP. She considers the existing clustering of buildings in the immediate area to be reason to decline consent to avoid cumulative adverse effects.

Ms Hilson stated that the use of a covenant to address temporary specific needs cannot even be considered until the Committee is first satisfied that the dwelling will be sited and designed with not more than a minor impact on neighbours. She did not believe this will be achieved. Ms Hilson considered there will be a significant chance that subdivision will be pursued regardless of a covenant being on the title. She



referred to a recent case at 398 Pugh Road whereby an application was lodged to retain a second dwelling that was required by a covenant to be removed.

Ms Hilson also stated concerns about the setting of a precedent. She considered rural land to be under growth pressure and that this application is something of a test-case which will guide future consent processing. She considered that this proposal challenges the integrity of the PTRMP in its management of adverse effects on Rural 1 land resources and character.

Ms Hilson stated that she believed the opportunities for family living are fairly provided for in the PTRMP and that the site is not suitable for the proposed activity. She stated that she has reviewed the recommended conditions in the Council's reporting officer's report and that she finds nothing in them that satisfactorily addresses the adverse effects. She stated that, in her opinion, the consent should be declined.

### **Ms J Proctor**

Ms Proctor stated that her house will be closer to the proposed house than Mrs Bergman's will be. The proposal will not affect Mrs Bergman but will affect the submitter.

She also stated that she is concerned about the wastewater discharge close to her bore.

Ms Proctor stated that she is concerned that the application is not what it seems. She relayed an alleged statement from Mrs Bergman that she intends to go overseas for a considerable amount of time and rent out her property. This means that the well separated houses on the applicant's property will be able to exist in isolation from one another. Ms Proctor also said that Mrs Bergman had stated that one house would eventually be turned into a Bed and Breakfast.

Ms Proctor considered it to be very unfair that the proposal will affect her property so much without affecting Mrs Bergman.

Cr King asked whether it is a requirement in the consent process to demonstrate a genuine need. Ms Hilson stated that the PTRMP, in a sense, requires a genuine need. The overriding issue is adverse effects, however.

Cr King also asked about over-capitalisation of the property. Specifically, would two smaller dwellings over-capitalise the property by more than what would occur should one very large house be constructed. Ms Hilson considered that, in reality, people will not build overly large houses which over capitalise properties. She also stated that attached householding units can be absorbed into the house once not needed.

Cr Bryant asked Ms Proctor about the productive usage of their land. She stated that cows were grazing pasture both in front of her house and on land on the lower terrace behind her house.

Ms Hilson then called Mr Maxwell.

### **Mr L Maxwell**

Mr Maxwell stated that he resides at 185 Edens Road and that he is appearing in support of Ms Proctor's case. He considered that the proposal clearly affects the residents of 197 Edens Road. He considers it more appropriate that the house be built closer to the applicant's existing dwelling.

### **Ms V White**

Ms White identified her property as 191 Edens Road.

Ms White stated that while she does not have any views towards the proposed activity she considers that it will adversely affect the rural amenity. She considered the proposal to be the first step towards subdivision. She also considered that others will try to subdivide as a result.

Ms White stated that she has no problem with the applicant taking advantage of the current permitted rules to allow two householding units, but that she does not want two houses to be on the site.

## **5.3 Council's Reporting Officer's Report and Evidence**

### **Mrs J Harley**

Mrs Harley took her report as read but sought to discuss some points raised in evidence so far and reiterated some of her main findings.

With regard to 398 Pugh Road, she stated that the existing dwelling was only allowed to be retained while the owners built their new dwelling. At that time the old dwelling was to be removed. Therefore, it is quite a different situation. The owners of the property had applied to the Council to change the covenant so that the original dwelling needn't be removed. This application had been recently withdrawn.

Mrs Harley agreed with Ms Hilson that this is somewhat of a test-case as very few applications of this sort get this far. Potential applicants are informed that their chances of success are low.

Mrs Harley restated that the proposal does not fit in with policies and objectives of the PTRMP and should be declined. She stated that the Council must be consistent in the way the plan is applied to applications. Should this application be granted, there is a likelihood of further applications arising, along with an expectation that they would be treated consistently.

She considered the comparisons with farm buildings to be of limited value as dwellings are different in terms of effects such as noise, amenity, and privacy.

Mrs Harley referred to her recommended Condition 5. She stated that the wording had been agreed upon by the Council's Land Use Consents Team. She cautioned, however, that covenants or consent notices can be changed or removed and avoiding that situation at the outset is the only way to ensure that no land fragmentation or other adverse effects occur.

In summary, Mrs Harley said the proposal does not offer unique or outstanding circumstances that could not be replicated on other sites. She considered that there is currently room for a 60 square metre unit with the existing dwelling and that these permitted standards should be used.

Cr Edgar referred to the statement that there are many requests for second dwellings. Mrs Harley stated that there are many such enquiries but very few examples where consent has been granted. Construction of a second dwelling essentially gives people another reason to push for subdivision of land; with or without a covenant in the Council's experience.

Cr King asked whether, in Mrs Harley's opinion, there are other adverse effects aside from the threat of subdivision and land fragmentation. Mrs Harley said that she absolutely believed there were other adverse effects. She considered the adverse effects on the neighbours at 197 Edens Road (Concept Family Trust) to be more than minor and also reason to decline.

Cr King also raised the question of what examples, if any, are there of past approvals for second dwellings in the Rural 1 zone, aside from the scenario where a dwelling is only retained until another dwelling is completed.

The only relevant example that Mrs Harley could find was resource consent RM020813V1 which had allowed a cottage to be constructed on Rural 1 land (near Wai-iti) in 2002 and, in 2007, had allowed the second dwelling to be retained. Mrs Harley also said that she considered land fragmentation to occur as a result of additional dwellings as well as subdivision.

Mrs Harley stated that second dwellings should be removed and not just "made unusable" as it is Council's staff's experience that if a house can be lived in (i.e. left as a house albeit without a kitchen) it will be lived in.

#### **5.4 Applicant's Right of Reply**

Mr Bacon said that he was concerned about the assumption that a condition that is put in place would be "got around". He said that it is a fair expectation that the Council will retain and enforce any conditions that are imposed.

Mr Bacon considered that everyone is entitled to apply for consent and each application is to be assessed on its merits.

Mr Bacon restated that he considered a permitted baseline effect to be set by the large agricultural buildings that could be built as of right.

Mr Bacon also stated that the position of the proposed second dwelling was not necessarily fixed and that there was some room for movement. He indicated that the house could be moved closer to the existing dwelling.

With regard to the location of the bore he stated that he was not aware of the position of the submitter's bore at 197 Edens Road and that he would accept a condition that required compliance with the applicable PTRMP rule.

## **6. PRINCIPAL ISSUES**

The principal issues that were in contention were:

- a) How significant will the direct adverse effects of the proposal be on the immediate neighbours (Ms Proctor and Mr Ware of the Concept Family Trust) at 197 Edens Road?
- b) To what extent does an effective permitted baseline exist for the proposed activity, and is it appropriate to apply it?
- c) Will the proposal cause a more than minor loss of rural character and amenity in the immediate area? Does the proposal contribute in a more than minor way to a cumulative loss of rural character and amenity in the immediate area?
- d) Will the proposal contribute to land fragmentation to an extent that is more than minor?
- e) How appropriate and effective are covenants such as that proposed in recommended Condition 5 of the hearing agenda? Is it likely that the Council will come under pressure to allow the retention of both dwellings and to subdivide?
- f) Will the proposal cause a loss of productive land to an extent that is more than minor?
- g) To what extent is the proposal consistent with the PTRMP?
- h) Would the granting of this consent set a precedent that, as a result of consistent decision making on other similar applications, may cause more than minor cumulative adverse effect on rural land in the district? Or is this case suitably unique such that it can not be used as a precedent for other applications?

## **7. MAIN FINDINGS OF FACT**

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

- a) In the location proposed the second dwelling will have a more than minor adverse effect on the submitter at 197 Edens Road. The new dwelling will be very close to the boundary and will adversely affect the rural amenity that the submitter currently enjoys. While the Committee is aware that there is no duty on any land owner to maintain the views of another across their land views are a component of the definition of amenity in the PTRMP. In this case, with the Burkes Bank drop-off being so close and the land being used for pasture, the Committee considers it appropriate that the views should be maintained as far as possible by the applicant. The Committee also notes that the sight-lines from the property at 197 Edens Road are wider than just the location in which the second dwelling is proposed.

The proposed screening is not sufficient to offset the adverse effects that the proposal will have on the submitter's rural amenity.

With regard to wastewater, the Committee is satisfied that the applicant was not aware of the location of the bore used by the submitter for its potable water supply. It is considered a simple matter to relocate the wastewater discharge area so that it complies with the permitted rules in the PTRMP and causes minimal risk.

- b) The Committee gives little weight to the permitted baseline evidence presented by various parties during the hearing. The Committee does not believe that the permitted baseline argument is very relevant in this case given the wide range of permutations that are possible. Farm buildings and the like can be constructed but these are different in effect to dwellings. The rural environment can be noisy, but the nature of the noise is very different to that created by residential activities. Therefore, the Committee is mindful of what the applicant is permitted to do under the rules of the PTRMP but does not consider it profitable to dwell on contrived permitted baseline permutations. The Committee is also aware that consideration of the permitted baseline is not mandatory.
- c) The Committee considers that the proposal will contribute in a very minor way to a loss of rural character and amenity in the immediate area at the end of Edens Road. Aside from the immediate neighbours at 197 Edens Road (discussed in point a) above), the new dwelling will not be visible from a wide range of locations in the immediate area. There will unavoidably, however, be a small increase in the density of the cluster of buildings and, thereby, a more residential character.
- d) In its proposed location the new dwelling will have a minor land fragmentation effect. The Committee accepts the evidence that subsequent dwellings, and not just subdivisions, may fragment the land. The Committee considers that the closer the dwellings are together physically, the less land fragmentation will occur and curtilage can be shared and space is used in a more efficient way.
- e) Evidence was presented at the hearing from both a theoretical and a practical perspective on the matter of the covenanting second dwellings to require subsequent removal. Essentially, Mr Bacon said that effective, clear and decisive decision-making and enforcement by the Council should either require compliance or else allow changes where appropriate. Mrs Harley considered that while that is fine in theory, once time has elapsed and circumstances change, it can in practice be very difficult and politically problematic to require houses to be removed.

The Committee sees both sides of this argument, but considers that, with a well documented assessment process and decision it should be clear to anyone reading the file in say 20 years time what the reasons for the decision were. This will allow an effective defence of the decision to be mounted based on those reasons. As such the Committee does not believe that the risks and vulnerabilities arising from the use of such a covenant are reasons to decline the consent. Further, the Committee considers that, regardless of any pressure or circumstances, such a covenant would be a condition and must be complied with by the applicant and enforced by the Council.

- f) The Committee does not consider that there will be a loss of productive land that is more than minor. The triangle of land on the top of the terrace is very small and the section remaining outside the curtilage of the existing house would be of limited value for productive purposes.
- g) Overall, the Committee considers that the proposal is generally inconsistent with the relevant objectives and policies of the PTRMP. The Committee agrees with evidence presented which identified the provisions of Chapters 5 and 7 of the PTRMP as being most relevant to this case. Aside from the effects on the immediate neighbours which are addressed above, the Committee does not consider that the proposal offends the objectives and policies of Chapter 5.
- h) The position of the proposal is on a small triangle of land that is physically separated from the vast bulk of the productive land on this lot. While the Committee agrees with the evidence of Mrs Harley and Ms Hilson that precedent and consistent decision making is an important consideration, the Committee does not agree that there are no unique or exceptional circumstances in this case. The Committee considers that while there are effects, they can be mitigated, and that the case is not likely to be the same as other cases where second dwellings are proposed on productive land. The Committee is therefore satisfied that each case will be examined on its merits and that the decision on this case will not unduly influence other similar decisions.

## **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); and
- b) 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 104B of the Act, the Committee **GRANTS** consent subject to conditions.

## **10. REASONS FOR THE DECISION**

As the application was originally presented the Committee was not satisfied that the development would be appropriate. However, as a measure to avoid and mitigate many of the adverse effects of this proposal, the location of the building has been restricted to within the curtilage of the existing house. The Committee considers that this limitation will:

- Mitigate the effects on the submitters at 197 Edens Road to a point where they are minor;
- Reduce the overall footprint (dwellings and curtilage) of the residential area such that effects on productive values, land fragmentation and rural character and amenity become minor; and
- Reduce the chances of the owners seeking subdivision of the land in the future.

Having considered the evidence presented at the hearing the Committee is satisfied that the risk of substantial pressure being applied to the Council for subdivision is low. As stated above, amendment to the authorised location of the second dwelling further reduces this risk.

Nevertheless the Committee is clear that the Council has an ability and responsibility to control subdivision in the future. As such, the granting of this consent in no way gives any indication that this Committee condones the future subdivision of the property. It is expected that the subdivision rules will, in the future, be applied without any weight being given to the presence of two dwellings.

The Committee considers the covenant requiring the removal of one of the dwellings when no longer needed to be an important mitigating consideration. The Committee wants to make it clear that the consent has been granted on the basis of the consent holder (or any subsequent landowner) honouring the covenant and that the Council should not be swayed from this position by the passage of time or superficial arguments. There may of course be legitimate reasons that emerge for keeping the two dwellings. These should be assessed dispassionately and, as for subdivision above, without weight being given to the existence of the two dwellings.

The Committee believes that the newly restricted position of the house is not such that an undesirable precedent will be set. The position of the dwelling within the curtilage of the existing dwelling and on the raised terrace area means that many of the adverse effects are avoided or mitigated. If the house was located down on the flat land it is unlikely the Committee would have granted the consent.

Overall, while the Committee realises that the proposed activity is generally not consistent with the PTRMP, however the adverse effects are considered to be minor and the Committee is satisfied that the proposal is consistent with Part 2 of the Act and achieves sustainable management of natural and physical resources as set out in Section 5 of the Act.

## **11. COMMENTARY ON CONDITIONS OF CONSENT**

Condition 2 is a crucial condition as it alters the location in which the new dwelling is allowed to be built. As discussed above, the Committee considers this line to be the point, to the southwest of which, adverse effects become unacceptable. This line should be strictly observed.

## 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 23<sup>rd</sup> day of September 2008

A handwritten signature in black ink, appearing to read 'T King', is written over a light grey rectangular background.

Cr T King  
**Chair of Hearings Committee**



**RESOURCE CONSENT NUMBER:** RM080356

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

**Carl and Susan Thelin and Shelley Bergman**  
(hereinafter referred to as “the consent holder”)

**ACTIVITY AUTHORISED BY THIS CONSENT:** Construction of a second dwelling.

**LOCATION DETAILS:**

Address of property:	201 Edens Road
Legal description:	Lot 3 DP 6112
Certificate of title:	NL5A/461
Valuation number:	1939020600
Easting and Northing:	2520371E 5984132N

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

**CONDITIONS**

**Development**

1. The proposed dwelling shall be constructed in accordance with the details presented in the application and with Annexures A and B dated May 2008 (attached), with the exception of the location of the building which is controlled by Condition 2 below. Where there is any apparent conflict between the information provided with the application and any condition of this consent, the conditions shall prevail.
2. All parts of the building, including decking or any above ground water tanks, shall be located to the northeast of the building restriction line shown on Annexure C dated September 2008 (attached) and within the curtilage of the existing house. However, the dwelling shall still be generally positioned on the upper terrace as described in the application and in Condition 1, and the driveway shall be positioned and constructed as shown in the original application. The orientation and aspect of the house shall still be to the north and west.
3. The dwelling shall have a building footprint not exceeding 96 square metres. The dwelling shall have a maximum height of 5.5 metres above natural ground level.

**Wastewater Discharge**

4. The location of the wastewater discharge field shall be amended from that shown in Annexure A dated May 2008 (attached) so that it is at least 20 metres away from the potable water supply bore for 197 Edens Road.

### Advice Note

The 20 metre separation distance reflects the corresponding criterion in permitted activity rule 36.1.4 of the Proposed Tasman Resource Management Plan ("PTRMP"). It is recommended that the separation distance be increased beyond this where practicable.

### Colour/Cladding

5. The exterior of the building shall be finished in colours that are recessive and which blend in with the immediate environment. The consent holder shall submit to the Council's Environment and Planning Manager for approval the following details of the colours proposed to be used on the walls and roof of the building:
- (i) The material to be used (e.g. paint, colour steel);
  - (ii) The name and manufacturer of the product or paint;
  - (iii) The reflectance value of the colour;
  - (iv) The proposed finish (e.g. matt, low-gloss, gloss); and
  - (v) Either the BS5252:1976 (British Standard Framework for Colour Coordination for Building Purposes) descriptor code, or if this is not available, a sample colour chip.

The building shall be finished in colours that have been approved by the Council.

### Advice Note

As a guide, the Council will generally approve colours that meet the following criteria:

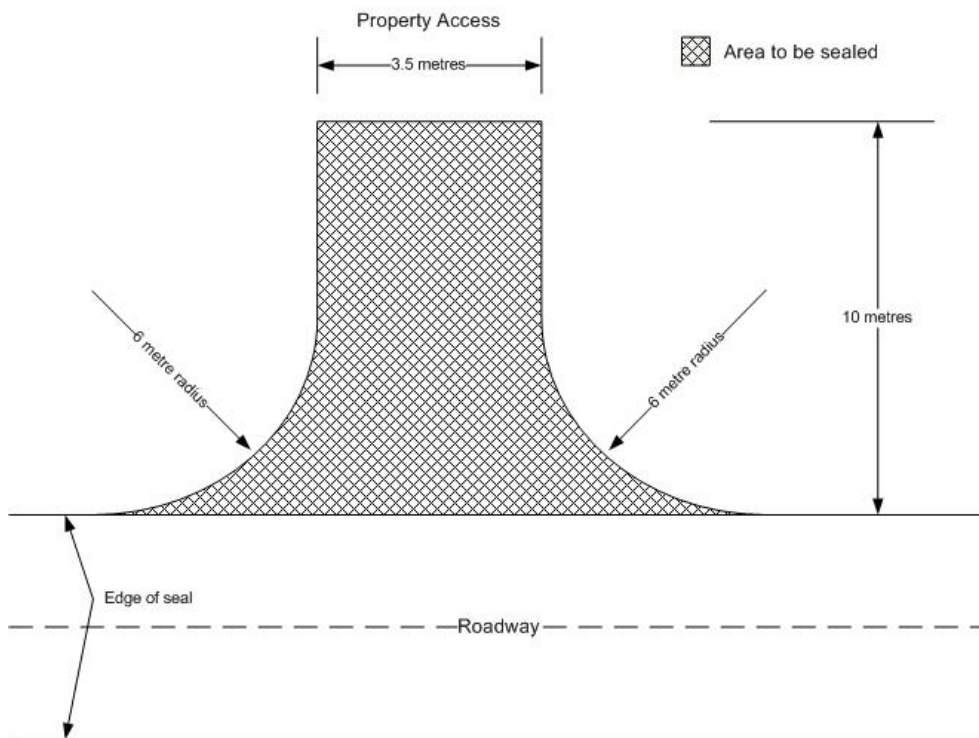
Colour Group*	Walls	Roofs
Group A	A05 to A14 and reflectance value $\leq 50\%$	A09 to A14 and reflectance value $\leq 25\%$
Group B	B19 to B29 and reflectance value $\leq 50\%$	B23 to B29 and reflectance value $\leq 25\%$
Group C	C35 to C40, reflectance value $\leq 50\%$ , and hue range 06-16	C39 to C40, reflectance value $\leq 25\%$ , and hue range 06-16
Group D	D43 to D45, reflectance value $\leq 50\%$ , and hue range 06-12.	Excluded
Group E	Excluded	Excluded
<b>Finish</b>	Matt or Low-gloss	Matt or Low-gloss

\* Based on BS5252:1976 (British Standard Framework for Colour Coordination for Building Purposes). Where a BS5252 descriptor code is not available, the Council will compare the sample colour chip provided with known BS5252 colours to assess appropriateness.

### Access

6. The consent holder shall extend the seal of the Edens Road carriageway to a point not less than the location of the second vehicle crossing proposed for the second dwelling. The road shall be a minimum two coat chip seal at a minimum width of 3.5 metres and be completed within three months of the dwelling authorised by this consent becoming habitable.

7. The consent holder shall seal, with a minimum two coat chip seal, the access to the subject property from Edens Road within three months of the dwelling authorised by this consent becoming habitable. The seal shall extend 10 metres from the existing sealed road edge. The design shall be in accordance with the diagram below.



#### Advice Note

All costs associated with the road and access upgrade specified in Conditions 6 and 7 are to be met by the consent holder and a Vehicle Access Crossing Permit is required to be obtained through the Council's Engineering Department.

#### Covenant

8. A covenant, pursuant to Section 108(2)(d) of the Act shall be registered against the title on CT NL5A/461 and shall state that:
- Resource consent RM080356 has been issued such that it is personal to Carl and Susan Thelin and Shelley Bergman and does not, therefore, "attach to the land" in accordance with Section 134 of the Resource Management Act 1991. Resource consent RM080356 expires (i.e., it becomes null and void) if the property is sold or if the use of the second dwelling differs from that authorised by this consent (i.e., if it is used by others than those named above), whichever is the sooner.
  - The residential use of the second dwelling authorised by resource consent RM080356 is limited to Carl and/or Susan Thelin and shall not be rented as long or short-term accommodation or used for any type of accommodation for profit;
  - At such time as the second dwelling authorised by resource consent RM080356 is not required for use by Carl and/or Susan Thelin, the legal owner of the property shall inform the Council's Chief Executive in writing and one of the two dwellings on the property shall be physically removed, returning the property back to containing only one dwelling;

- d) The two dwellings shall not provide a future basis for subdivision of the property for the property owner, unless the zone rules are changed so that this becomes a permitted or controlled activity;
- e) Both dwellings on the property shall not be extended or altered to contain more than one self-contained housekeeping unit each

The covenant is to be registered by the consent holder's solicitor, with all costs being met by the consent holder. Evidence that the covenant has been registered shall be forwarded to the Council within six months from the date of commencement of this consent.

### **Landscaping**

- 9. Screening planting shall be carried out along the south-eastern boundary of the site adjoining Lot 2 DP 6112 (197 Edens Road) in the location show on Annexure C dated September 2008 (attached). As a minimum, the planting shall consist of evergreen species with a mature height of between 3 metres and 4 metres of sufficient density to provide an effective visual screen between the proposed dwelling and the neighbouring dwelling to the south east.

#### **Advice Note**

This condition has been volunteered by the consent holder.

- 10. The planting required by Condition 9 above shall be completed by 30 November 2008 and thereafter maintained by the consent holder.

### **Rural Emanation Easement**

- 11. A Rural Emanations Easement shall be registered on CT NL5A/461 prior to the building consent for the second dwelling being lodged, and shall read:

"The owners and occupiers of Lot 3 DP 6112 (CTNL5A/461) shall not object to or cause objection to be made to, or take action in respect of, any activity carried out on Lot 3 DP 302634 that is in accordance with the provisions of the Proposed Tasman Resource Management Plan as a permitted activity, or is carried out in accordance with any Resource Consent for use of the that property that is granted by the Tasman District Council."

#### **Advice Note**

This condition has been volunteered by the consent holder.

### **Financial Contribution**

- 12. The consent holder shall, no later than the time of uplifting the building consent for the second dwelling, pay a financial contribution to the Council. The amount of the financial contribution shall be assessed as a percentage of the value of the building consent component in accordance with the following:

<b>Financial Contribution – Building</b>	
<b>Component</b>	
Building Consent (\$0 to \$50,000 value)	0%
Building Consent (\$50,001 to \$200,000 value)	0.5%
Building Consent (above \$200,001 value)	0.25%
<b>Notes:</b>	
(1) The financial contribution is GST inclusive.	
(2) The building consent value is GST exclusive.	
(3) The contribution due on a building should be identified separately from other contributions set for any resource consent for an activity that includes buildings.	
(4) The financial contribution shall be determined by taking the total estimated value of the work required for a building consent and applying each component identified in the table to that value and the contribution is the sum of the components.	

## Review

13. Pursuant to Section 128 of the Resource Management Act 1991, the conditions of this consent may be reviewed during the month of September each year for any of the following purposes:
- a) deal with any unexpected adverse effect on the environment which may arise from the exercise of the consent;
  - b) to require compliance with operative rules in the Tasman Resource Management Plan or its successor plan;
  - c) when relevant national environmental standards have been made under Section 43 of the RMA; and/or
  - d) deal with any other matters relevant to the authorised activity that may be raised through the review.

## ADVICE NOTES

### Council Regulations

1. This is not a building consent and the consent holder should meet the requirements of the Council with regard to all Building and Health Bylaws, Regulations and Acts.

### Other Proposed Tasman Resource Management Plan Provisions

2. Any activity not covered in this consent should either comply with:
  1. the provisions of a relevant permitted activity rule in the PTRMP; or
  2. the conditions of a separate resource consent for such an activity.
3. As required by the PTRMP, the consent holder should supply additional on-site water storage of not less than 23,000 litres and whether the storage is provided by an above-ground or an underground tank. The consent holder has identified a pool may

be used, this is required to be submitted as part of the building consent application for the proposal.

4. The consent holder should provide plans and design details of the onsite domestic waste water system to be installed as part of the building consent application for the proposal. This system should meet the permitted activity standards of Rule 36.1.4 or seek additional resource consent approval.

### **Development Contributions**

5. The consent holder is liable to pay a development contribution in accordance with the Development Contributions Policy found in the Long Term Council Community Plan (LTCCP). The amount to be paid will be in accordance with the requirements that are current at the time the relevant development contribution is paid.

The Council will not issue a Code Compliance Certificate until all development contributions have been paid in accordance with the Council's Development Contributions Policy under the Local Government Act 2002.

### **Monitoring**

6. Monitoring of this resource consent will be undertaken by the Council as provided for by section 35 of the Act and a one-off fee has already been charged for this monitoring. Should the monitoring costs exceed this fee, the Council reserves the right to recover these additional costs from the consent holder. Costs can be minimised by consistently complying with conditions, thereby reducing the necessity and/or frequency of Council staff visits.

### **Interests on the title**

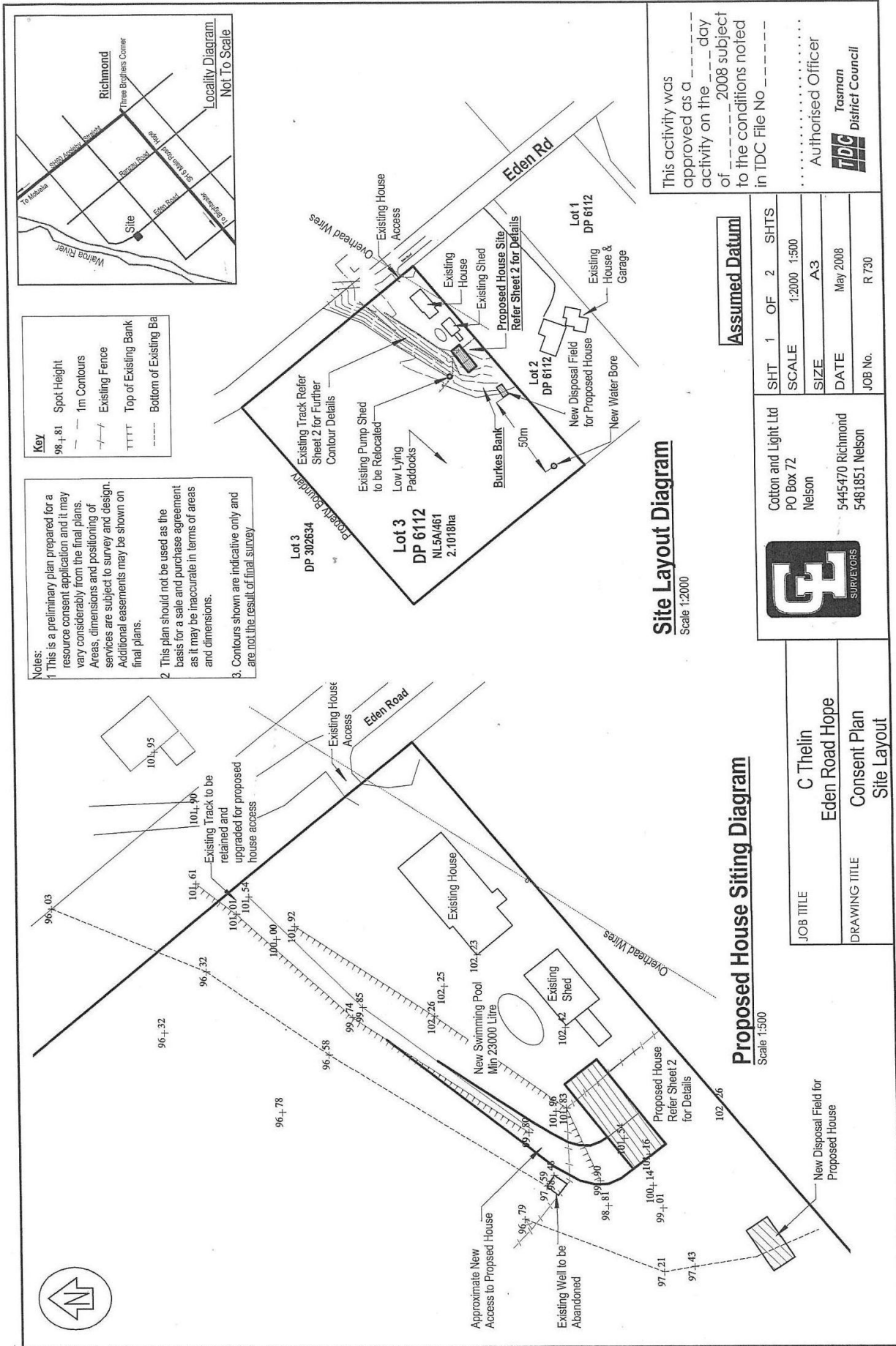
7. The consent holder should note that this resource consent does not override any registered interest on the property title.

Issued this 23<sup>rd</sup> day of September 2008



Cr T King  
**Chair of Hearings Committee**

# Annexure A Site Plan

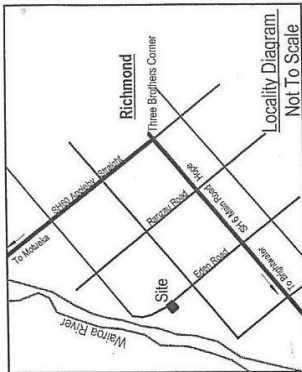


**Notes:**

1. This is a preliminary plan prepared for a resource consent application and it may vary considerably from the final plans. Areas, dimensions and positioning of services are subject to survey and design. Additional easements may be shown on final plans.
2. This plan should not be used as the basis for a sale and purchase agreement as it may be inaccurate in terms of areas and dimensions.
3. Contours shown are indicative only and are not the result of final survey.

**Key**

- 98+81 Spot Height
- 1m Contours
- - - Existing Fence
- TTTT Top of Existing Bank
- Bottom of Existing Bank



**Site Layout Diagram**  
Scale 1:2000

**Proposed House Siting Diagram**  
Scale 1:500

**Assumed Datum**

SHT	1	OF	2	SHTS
SCALE	1:2000			1:500
SIZE	A3			
DATE	May 2008			
JOB No.	R 730			

**GP SURVEYORS**

Cotton and Light Ltd  
PO Box 72  
Nelson

5445470 Richmond  
5481851 Nelson

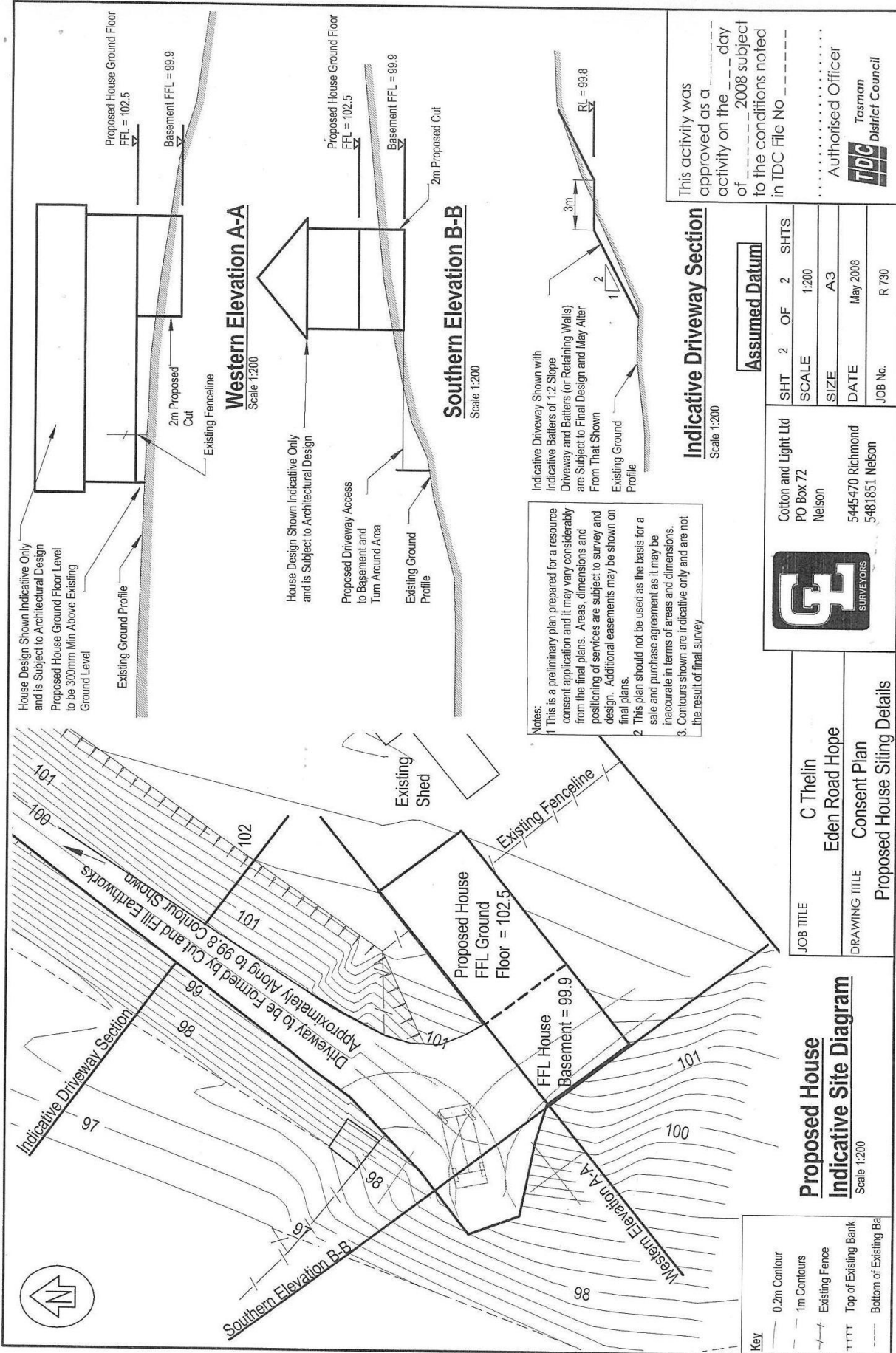
JOB TITLE  
**C Thelin**

DRAWING TITLE  
**Eden Road Hope  
Consent Plan  
Site Layout**

This activity was approved as a \_\_\_\_\_ day activity on the \_\_\_\_\_ of \_\_\_\_\_ 2008 subject to the conditions noted in TDC File No \_\_\_\_\_

.....  
Authorised Officer  
**TDC Tasman**  
District Council

**Annexure B  
Site Details**



House Design Shown Indicative Only and is Subject to Architectural Design Proposed House Ground Floor Level to be 300mm Min Above Existing Ground Level

Existing Ground Profile

**Western Elevation A-A**  
Scale 1:200

House Design Shown Indicative Only and is Subject to Architectural Design

Proposed Driveway Access to Basement and Turn Around Area

Existing Ground Profile

**Southern Elevation B-B**  
Scale 1:200

**Notes:**  
 1 This is a preliminary plan prepared for a resource consent application and it may vary considerably from the final plans. Areas, dimensions and positioning of services are subject to survey and design. Additional easements may be shown on final plans.  
 2 This plan should not be used as the basis for a sale and purchase agreement as it may be inaccurate in terms of areas and dimensions.  
 3. Contours shown are indicative only and are not the result of final survey

Indicative Driveway Shown with Indicative Batters of 1:2 Slope Driveway and Batters (or Retaining Walls) are Subject to Final Design and May Differ From That Shown

**Indicative Driveway Section**  
Scale 1:200

**Key**

0.2m Contour
1m Contours
Existing Fence
TTTT Top of Existing Bank
----- Bottom of Existing Bank

**Proposed House Indicative Site Diagram**  
Scale 1:200

**JOB TITLE**  
C Theelin

**Eden Road Hope**

**DRAWING TITLE**  
Consent Plan

**Proposed House Siting Details**



Cotton and Light Ltd  
PO Box 72  
Nelson

5445470 Richmond  
5481851 Nelson

**Assumed Datum**

SHT	2	OF	2	SHTS
SCALE	1:200			
SIZE	A3			
DATE	May 2008			
JOB No.	R 730			

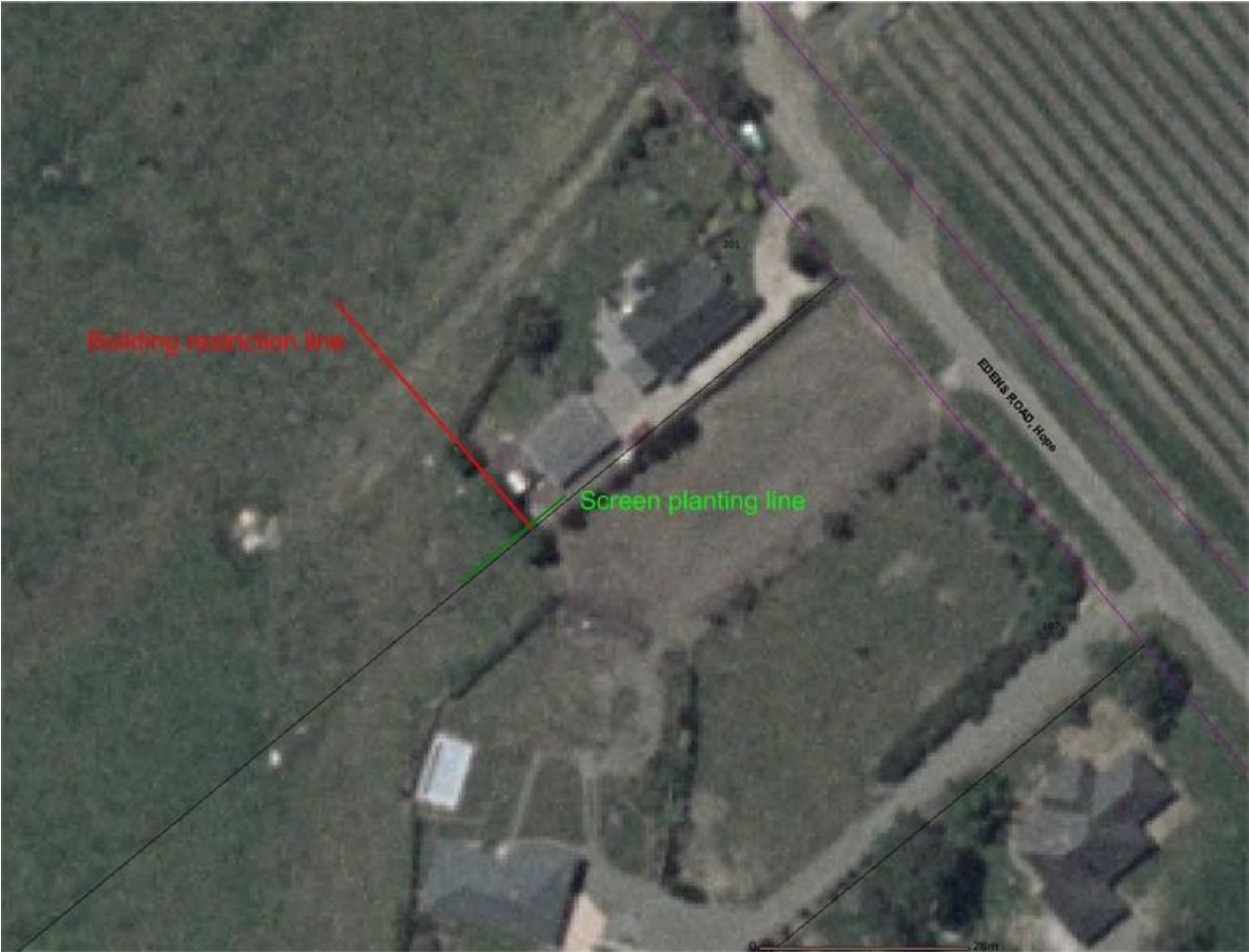
This activity was approved as a activity on the \_\_\_ day of \_\_\_ 2008 subject to the conditions noted in TDC File No. \_\_\_\_\_

..... Authorised Officer

**TDC** Tasman District Council



**Annexure C  
Building restriction line and boundary planting  
(September 2008)**



**Date Confirmed:** \_\_\_\_\_

**Chair:** \_\_\_\_\_