

MINUTES

TITLE: Environment & Planning Subcommittee
Commissioner Hearing

DATE: Monday, 22 June 2009
TIME: 10.30 am
VENUE: Motueka Service Centre, 7 Hickmott Place, Motueka

PRESENT: Mr Gary Rae (Commissioner)

IN ATTENDANCE: Planner (P Gibson), Resource Scientist Rivers and Coast (E Verstappen), Executive Assistant (V M Gribble)

1. J TAMATI AND W CURD, WHARF ROAD, RIWAKA - APPLICATION No. RM080633V1

1.1 Proposal

The application seeks to allow encroachments above the permitted daylight angle on south side of dwelling; and to change Condition 1 of land use consent RM080633 to change the building plans from a gable end to a hip roofline on the south side of the upper storey.

The property is zoned Residential and is within the Coastal Environment Area according to the Tasman Resource Management Plan.

The application site is located at 52A Wharf Road, Riwaka, being legally described as Lot 6 DP 364663.

The Commissioner proceeded to hear the application, presentation of submissions and staff reports.

The meeting adjourned at 1.50 pm

**THAT pursuant to Section 104B of the Resource Management Act, the Commissioner GRANTS consent to J Tamati and W Curd as detailed in the following report and decision.
CARRIED**

**Report and Decision of the Tasman District Council through a
Hearing Commissioner Meeting
held in the Motueka Service Centre, Motueka
on Monday, 22 June 2009, commencing at 10.30 am**

A Hearing Commissioner ("the Commissioner") for the Tasman District Council ("the Council") was appointed to hear the application lodged by **J Tamati and W Curd** ("the Applicant"), to change Condition 1 of land use consent RM080633 to change the design of a consented dwelling to incorporate a hip roofline on the south side of the upper storey at

52A Wharf Road, Riwaka, and to provide a correct ground level for the purposes of measuring the daylight control from the south boundary. The application, made in accordance with the Resource Management Act 1991 ("the Act"), was lodged with the Council and referenced as RM080633V1.

- PRESENT:** **Hearing Commissioner**
Mr G Rae
- APPLICANT:** Mr W Heal (Counsel)
Mr G Thomas (Resource Management Consultant)
Ms J Tamati, and Mr W Curd (Applicant)
- CONSENT AUTHORITY:** **Tasman District Council**
Mr P Gibson (Consent Planner)
Mr E Verstappen (Resource Scientist – Rivers and Coast)
Mrs V Gribble (Executive Assistant - minutes)
- SUBMITTERS:** Mr N McFadden (Counsel)
Mr M Barron (Architect)
Mr B and Mrs M Stevens (Submitter)

1. SUMMARY

The Commissioner has GRANTED a change to Condition 1 of RM080633.

2. DESCRIPTION OF THE PROPOSED ACTIVITY

RM080633 was granted by the Council on 15 October 2008 for a land use consent to erect a new two storey three bedroom house and attached two car garage in the Coastal Environment Area. After construction had begun on the dwelling the Council was made aware that the southern daylight angle calculation on the further information was taken from an incorrect ground level resulting in an incorrect assessment of the daylight admission line on the rear (south) boundary. The consent holder was made aware of this, and construction of the dwelling was ceased while the consent holder investigated options to rectify the situation.

The consent holders arranged for the correct ground level to be determined by a registered surveyor, and on 4 February 2009 Ms Tamati and Mr Curd applied to change the condition of their consent (application RM080633V1), and this is the current application. Plans lodged with the application show a change in the design of the consented dwelling, to incorporate a hip roofline on the south side of the upper storey instead of the gable end roof. The plans show the daylight angle planes taken from the correct ground level on the southern boundary.

On 13 March 2009 the Council issued an amended decision pursuant to section 133A in order to rectify an error in the consent. This was with respect to a reference in Condition 2 to the maximum height of the building above "natural ground level", when it should have referred to the actual (finished) ground level of the site as shown on the building plans submitted with the application for resource consent.

3. TASMAN RESOURCE MANAGEMENT PLAN (“TRMP”) ZONING, AREAS AND RULE(S) AFFECTED, CONSENT STATUS

According to the TRMP the following apply to the subject property:

Zoning: Residential

Area(s): Coastal Environment Area, Land Use Disturbance Area 1

Residential dwellings are a permitted activity in the Residential Zone, subject to compliance with permitted activity conditions.

The proposed dwelling meets all relevant Residential Zone Permitted Activity Standards, with the exception of:

- 17.1.3.1(n) Daylight over – no building projects beyond a building envelope constructed by daylight admission lines commencing from points 2.5 metres above ground level from all side and rear boundaries; and
- 17.1.3.1(o) Exception to daylight over – for any roof with a slope of 15 degrees or greater and the roof ridge generally at right angles to the boundary, the end of the ridge may be up to 1.5 metres above the indicator plane and the end area up to 2.5 square metres when viewed in elevation.

It is noted here that non-compliances with rules pertaining to the Coastal Environment Area were granted as part of RM080633 and are not revisited through the change of conditions process, nor the hearing.

The current application for change of condition is a discretionary activity under Section 127 of the Act.

4. NOTIFICATION AND SUBMISSIONS RECEIVED

The application was limited notified on 15 April 2009 pursuant to Section 93 of the Act. One submission, in opposition, was received from B and M Stevens, owners of the property at 16 Wharf Road, Riwaka.

The main issues raised in the submission are summarised as:

- Lack of information and assessment of effects on the submitters' property;
- No consideration of Residential zoning on submitters' property; and
- Adverse amenity and visual effects.

5. PROCEDURAL MATTERS

There were no particular procedural matters that arose during the hearing.

6. EVIDENCE HEARD

Evidence was heard from the applicant, expert witnesses, submitters, and the Council's reporting officers. The following is a summary of the evidence heard at the hearing.

6.1 Applicant's Submissions and Evidence

Mr W Heal, counsel for the applicant, stated that this was an application for a change of condition under Section 127 of the Act. He said that whilst it was for the Commissioner to determine whether the application be treated as a new application or as a variation to the existing consent, in his view the Council was correct to treat it as a variation.

Mr Heal outlined the background to this application, which can be summarised as:

- Building work commenced shortly after receiving building consent,
- Solicitors for neighbours requested that building work stop because the building did not comply with the consent,
- An application was made to the Environment Court to cancel the consent, and this was subsequently withdrawn, with a decision awaited on costs,
- Mr Heal became aware of an error relating to the maximum permitted height and pointed this out to the Council,
- The Council amended the consent to correct this error,
- A surveyor engaged by the applicant determined that if the building was completed according to the approved plans it would infringe daylight admission angles required by the Plan.

Mr Heal said it was this non-compliance with the daylight control, on the southern boundary, that resulted in the current application being made. He said that under Section 127 the only adverse effects that can be considered are those arising from the application itself. In the present context, he said, this means only the extra shading, or other effect caused by the non compliant part of the building, can be considered at this hearing.

Mr Heal supported the findings of the Council's reporting officer, with the exception of Mr Gibson's recommended 'no build' condition (which would prevent any future outbuildings being located in a position alongside the site's south boundary).

Mr G Thomas, resource management consultant, referred to the subdivision conditions that were imposed on the Ruapapa subdivision (from which the application site had originated) requiring the filling of the land to three metres above Mean Sea Level for future building, and that the ground levels had been raised but not by the full amount required by that condition. The filled ground was battered back from the boundaries, but a low level retaining wall has since been erected along the southern boundary of the application site. This was relevant as to the calculation of daylight admission angles.

He said that the proposed dwelling complies with all permitted standards of the TRMP except for Rule 17.1.3.1(n) Daylight Over and Rule 17.1.3.1(o) Exception to Daylight Over. He said the Coastal Environment Area Overlay was not relevant to this application.

Mr Thomas stated that the relevant matters for consideration arise from the non-compliance with rules 17.1.3.1 and 17.1.3.2, these being reflected in the matters to which Council has restricted its discretion in 17.1.3.4. He stated that in his assessment those matters relating to density, height, character of the site and surrounding area, effects on other sites, shading, privacy, views, building design and appearance, and mitigation of adverse effects were all relevant and were met with this proposal. He referred in particular to the shadow lines diagram prepared by survey firm Verrall and Partners, which were tabled at the hearing. He said that there would not, in his opinion, be a significant shading effect reducing the sunlight and daylight admission to the Stevens' property. It was noted that the Stevens' property would need to be raised if it were developed, and that would create a 'level playing field' for the measurement of daylight angles from a raised ground level, thereby reducing any shading effect on the Stevens' property. He discussed the drawings prepared by Verrall and Partners which show a reduced shading effect on a potential dwelling built on that property.

He also noted there is a sewerage easement on the Stevens' land, adjacent to the common boundary with the application site, and this will further restrict future development on that land to locations at least 4 metres away from the common boundary. Mr Thomas further outlined the reasons in the TRMP for the daylight angle rule, and emphasised that the angles ensure reasonable amenity protection, whilst allowing development potential on adjoining sites.

In response to a question, Mr Thomas agreed that the TRMP intends that the daylight angle rule and the height rule are to be used together to retain outlooks and to ensure good access to sunlight and daylight, and levels of privacy consistent with urban living.

Mr B Curd was asked about the implications of the 'no build' restriction that Mr Gibson was suggesting. Mr Curd said it would impede him from building a garden shed in the future.

6.2 Submitters' Submissions and Evidence

Mr McFadden, counsel for the submitters, outlined the background and the submitters' concerns with the process followed by the Council in granting RM080633 (and the corrected decision). He noted the Stevens' were not considered by the Council to be affected parties to the original application despite the dwelling exceeding the 5.0 metre height limit in the Coastal Environment Area Overlay, and also that the decision was made on the assumption the dwelling complied with the daylight angle, when a subsequent survey showed this not to be the case.

Mr McFadden confirmed however that "from the Stevens point of view they accept that Resource Consent RM080633 has issued" and that the only avenue they have to challenge the lack of notification of the application and the subsequent issue of consent is judicial review proceedings, which is being considered.

He then referred to evidence from Mr Marc Barron, architect, who had found the extent of non-compliances with the daylight over rule were greater than those calculated in Mr Gibson's staff report. Mr Barron had difficulty, due to a lack of detail in the application plans, in determining whether Rule 17.1.3.1(l) was met, this requiring an offset of at least 2.5 metres at intervals no greater than 15 metres along any wall. Mr McFadden concluded that "the effects cannot be as calculated by the Reporting Officer".

Mr McFadden then went through the relevant matters in the TRMP to which the Council has restricted its discretion, and he contested the views put forward in the Council's planning report. In summary he made the following points:

- In the context of the Coastal Environment Area it is incorrect to compare new development with older development,
- The proposed dwelling will be of a greater scale than the other dwellings in the Ruapapa subdivision, and dwellings under construction,
- It cannot be assumed the existing shelter trees on the Stevens land will remain, and that any 'mitigation' must be provided on the applicant's site,
- The effects of shading on the Stevens' property (assuming it will be developed with dwellings built near the common boundary) will be greater than that calculated in the Council's shading diagrams. Mr McFadden stated that whilst "it is accepted the total area of shading resulting from the Applicants dwelling is smaller in area than a complying dwelling", he said the depth of shading will be considerably more. Mr McFadden also commented that the shading effect calculated by Mr Barron was greater than that referred to by Mr Thomas as a result of the Verrall and Partners diagrams,
- If the 5.0 metre height restriction had been observed it would have made compliance with the daylight angles a lot easier,
- There is no guarantee that the Stevens land can be required to be raised to a level to match the level of the application site (reference was made to the Council's Engineering Standards and a survey plan prepared by Planscapes which uses a different datum bench mark to that used by Verrall and Partners), and
- The "no-build" condition recommended by Mr Gibson will have no benefits for the Stevens' property in terms of reducing the impact of shading.

Mr M Barron, architect, presented evidence on shading effects based on modelling in Archicad 12, a three dimensional CAD software package.

He produced a set of plans, and said the modelling showed the intrusions through the daylight recession planes are greater than those shown in the plans accompanying the application for resource consent.

Mr Barron concluded:

- The modelled shading effect at midday on June 22 (winter solstice) was similar to that as shown in the Council's shading diagram, from both the proposed dwelling and the reference dwelling (i.e. a fully complying dwelling) on the applicant's site,
- The modelled shading effect at 9.00 am and 3.00 pm on the same day showed the Tamati and Curd dwelling had a greater depth of shading effect onto the Stevens land than the shading effect from a reference dwelling on the application site, and the impact on a potential dwelling on the Stevens land is therefore greater.

Mr Barron was asked if the diagrams showed the incremental effect of shading (i.e. the difference between shading from the complying parts of the dwelling and the non-complying parts). Mr Barron said the reference building was taken as the complying building, and therefore his diagrams show the difference between a fully complying building and the proposed Tamati and Curd dwelling. (It is noted here that the shading analysis was based on the current ground level on the Stevens' property, and the shading analysis did not differentiate the shading caused by the complying and non-complying parts of the dwelling, it simply assessed the total effects from the building as proposed, notwithstanding that the height of the building was approved as part of RM080633).

At this point Mr McFadden commented that if the evidence of Mr Barron is accepted, then the area of non compliance is far greater than has been applied for. He said in the absence of accurate information, the effects cannot be considered.

Mr Stevens, the submitter, said the developer of the Ruapapa subdivision requested an easement for sewerage. The developer did not advise him that he had to raise the level of ground, or that a boundary fence would be erected as is now in place. He said he should have been given the opportunity to voice concerns early on in this project. It would have then been possible to solve the problem, but instead has cost thousands of dollars.

6.3 Council's Reporting Officer's Report and Evidence

Mr Gibson commented on the question which had arisen as to whether the application should be a change of condition or a new resource consent. He noted that on page 8 of the application it specifically requests the proposal be assessed as change of condition. It is up to the Commissioner as to whether he treats it that way. If it is treated as a change of condition then only the actual change and effects can be considered.

He said that the correct ground level is crucial to assessing the application. The engineering plans for the Ruapapa subdivision were tabled, and he said the as built plans showed building platforms away from the boundary that had been accepted by the Engineering Department and signed off. In terms of the daylight angle rule, he said this relates to daylight angles at 2.5 metres above ground level from all side and rear boundaries. For the purposes of the calculation "ground level" is either the natural ground level or, where altered as part of a subdivision it is the actual finished ground level when all earthworks are completed and excludes excavation for building activity. It is consistent with the plans submitted.

Mr Gibson was asked if Mr Stevens develops his land, and it is required to be raised, will that land be similarly battered as shown on the engineering plans, as this may be critical to where daylight plane would be measured in future.

Mr Verstappen said that the land has to be raised to minimise sea level rise effects to the building. He said it is conceivable that a “V” trench could be left near the common boundary, but in practice he would hardly expect that to happen (and the ground level between the two properties would be continuous at the same level).

Mr Gibson commented on the scale, design and appearance of the dwelling, and said that many other dwellings in the area were constructed prior to the coastal environment rules. The proposal had to be assessed against the current environment, which includes those dwellings.

Mr Gibson said this is the third resource consent application that has been granted for developments in the Ruapapa subdivision, but the others were for infringements of rules other than the height rule. In response to a question he said breaches of the 5 metre height rule are site specific. Of the applications solely for excess height in the coastal area that he is aware of, the vast majority did not require written approval from neighbours.

Mr Gibson said the key issue for this application is the extent to which the dwelling will shade adjoining sites. He said the shading shown in Mr Barron’s diagrams is consistent with the shading plan on page 15 of the agenda report, both of which show the effect at midday. He said the Reasons for Rule set out in the TRMP specifically state that this control is based on obtaining some sun in mid winter at midday. He said it is also valid to look at the effect on other times and on other days. His conclusion was that the area of shading of the permitted baseline house is 99 square metres, and from the proposed Curd dwelling is 81 square metres, and therefore the effect is minimal in terms of shading. Mr Gibson also said that at 9.00 am the application house has less shading effect on the reference house than the permitted baseline, and at 3.00 pm the application house has a fairly similar effect to the permitted baseline (i.e. 22 square metres shading, compared to 18 square metres).

Mr Gibson commented that the reference house is not currently there, and as the orchard site is over 6 hectares, there are opportunities to site a dwelling in a more favourable position. He said that there will be no more than minor effects on privacy, particularly as the non-compliant part of the dwelling has only a small window, and it is for an ensuite and it has a high sill. He had recommended obscure glass for that window. The small area of building exceeding the daylight angle will not obscure views from the submitters’ property in his view.

Mr Gibson accepted that his recommended ‘no-build’ restriction would not now be appropriate.

Mr Verstappen, in further addressing what the ground level might be for a future development of the Stevens land, said new dwellings would be caught with meeting requirements under the building code and/or a requirement on subdivision to raise the level of land.

Mr Verstappen said if the land was raised to a level that makes it flood free in a lifetime of subdivision of 50 -100 years, this would determine what floor levels would be for dwellings. If the land levels were not to be raised to that level, then the Council would inevitably set minimum floor levels for houses. Given that this land is at risk from a flooding hazard, then the Building section at Council would consider appending a Section 72 Building Act notice on the titles which landowners generally do not wish to have.

Mr Verstappen said that the Council is currently investigating the anomaly between reduced levels of 1.9 metres and the reference benchmark at the entrance to Wharf Road and intersection School Road (this matter was earlier raised by Mr McFadden). It appears there is a 0.58 metre discrepancy which was only picked up on close examination of the LIDAR map which indicated land levels of the Ruapapa subdivision as raised were not at around 4 metres as was believed, but more likely 4.5 metre, which would reflect the 0.58 metre discrepancy. He said that whilst this has the "happy outcome" of having a land level higher than what people believe it to be, he did not see any need to change the advice in his report regarding the need to raise ground levels on the Stevens land for future development.

Mr Verstappen noted this land is essentially surrounded on three sides by water, and whilst the engineering standards and guideline report from Ministry for the Environment (2009) take into account a half metre rise compared to 0.3 metre in 2003, there is an additional recommendation in the Ministry for the Environment report that councils should consider a 0.8 metre sea rise. The consequences would be direct in terms of land flooding near the coast. He concluded that if the Stevens land is subdivided, or a site created for a new house on that title, ultimately the land levels at the Ruapapa development of around 4.5 metres and for the land immediately to south would be similar, with perhaps a difference of only 0.1 or 0.2 metres.

He said that if the Ruapapa land remained at a higher level, there is much lower lying land to west and east that sea water may then invade the Stevens land from. Therefore, having similar levels to the applicants' property would be an expected outcome.

6.4 Applicant's Right of Reply

Mr Heal recapped the extensive history to this application, and emphasised that the Commissioner should not be drawn into re-litigating what has happened in past. He said it is only the current application, and the effects it generates, that can be determined at this hearing. He said this is an appropriate case to be determined as a Section 127 change of condition, and he supported the way Council has considered it. Even if it were not to be considered as a variation, the original consent stands and the baseline effects are there, and have to be taken into account.

He took issue with Mr McFadden's contention that older dwellings, which were built prior to the Coastal Environment Area, should not be considered part of the environment. He said that the overlay becomes of lesser significance in locations such as where existing residential development has already occurred, such as at Wharf Road, and it is more relevant to consider the Residential zone, and where buildings have been permitted up to 7.5 metres in height in this location.

Mr Heal then addressed the purpose of the rule in question, and said it is not an absolute rule. Rather, it is designed to provide reasonable sunlight and daylight admission at midday in midwinter, and that is for only one day of a year, the effect will be diminished at other times.

Mr Heal then addressed the additional element of the non compliance that Mr Barron had identified (i.e. the continuous wall rule). He said that the Commissioner would need to determine whether this was within the scope of the application as notified.

In conclusion, Mr Heal said it was his submission the impact of shading caused by the departure from the daylight rule is minimal, particularly when you consider the potential use of the affected land. It will be "fleeting, minimal and it fully meets the test of minor under the Act".

7. PRINCIPAL ISSUES

The principal issues that were in contention were:

- a) What is the status of the original consent?
- b) What is the current application for?
- c) What is the scope of effects that can be considered?
- d) What is the environment that needs to be considered?
- e) How significant is the shading effect?
- f) Are there any other effects that are more than minor?

8. MAIN FINDINGS OF FACT

I consider the following are the main facts relating to this application.

a) What is the status of the original consent?

The Council's processing of RM080633 was a cause for concern for the submitters, and in particular that it was not required to be notified and adjacent neighbours were not deemed to be affected. That consent was issued for a dwelling with infringements of rules in the Coastal Environment Area, but ostensibly meeting all relevant rules in the Residential Zone. It was later discovered that there was also a daylight angle intrusion over the southern boundary, and this had apparently not been assessed by Council officers due to an incorrect ground level being shown along the south boundary.

However, it is not within my powers in determining the current application to review the issue of RM080633. That consent stands, and any review must be in terms of a judicial review to a separate authority.

b) What is the current application for?

I am satisfied this application can and should be dealt with as a change of condition, under Section 127 of the Act.

The application relates squarely to the original consent granted. The development now proposed is essentially the same as that consented in RM080633 except for two changes:

- i) It seeks a modification to the gable end roofline on the south side, by providing a hip roof design, which is of less bulk and consequently has less adverse effects than the original roofline approved as part of RM080633, and
- ii) It provides a correct representation of the ground level along the south boundary, so that the daylight angle can be measured in its true position.

I am also satisfied that, notwithstanding that the extent of encroachments may in fact be greater than that calculated by Mr Gibson (according to Mr Barron's evidence), the application provides sufficient information and detail to enable the effects to be assessed by all parties.

The shape, size and detail of the proposed dwelling is correctly shown, and the application now shows the correct ground levels. I consider that regardless of whether Mr Gibson's or Mr Barron's calculation of daylight intrusion is accepted, the effects can still be assessed from the plans and information contained in the application. In relation to the additional area of non-compliance suggested by Mr Barron, a site visit and reference to the survey plan included in the application readily establishes that there is a step in plan (i.e. an offset) along the southern wall and so this is not a matter that requires further consideration.

c) What is the scope of effects that can be considered?

A consequence of this application is that more of the building than was contemplated under RM080633 infringes the daylight plane from the south boundary. For clarity, the increased infringement results from the amended position of the daylight plane rather than any increase in the size of the house. The amended roof design has reduced the actual effect on Stevens' land from what was authorised by RM080633.

The infringing part of the building is a triangular 'wedge' shape affecting the upper storey, which by Mr Barron's calculations equates to a surface area of 12 square metres when viewed from the south side, and a much smaller "sliver" portion of the roof at first floor level on the western side which Mr Barron calculates at 5.6 square metres in surface area viewed from the south.

As noted above, the Council was unaware of these infringements when it granted consent to a new dwelling in the Coastal Environment Area, and for a dwelling exceeding the maximum permitted height of 5.0 metres in that overlay, and that is why I have isolated those non-complying parts of the building as being subject to this application.

I am satisfied therefore that the scope of this particular application is limited to consideration of those parts of the building exceeding the daylight angle over the southern boundary, and the effects arising from those parts of the building.

d) What is the environment that needs to be considered?

For the purposes of assessing the effects of a discretionary activity, it is appropriate to consider both the existing environment, and the future environment having particular regard to the zoning of adjacent land.

The existing environment consists of established residential development along the landward side of Wharf Road, which now includes newer dwellings as part of the Ruapapa subdivision, and vacant sites in various stages of development. The Tamati and Curd house is also part of this environment, as it has substantially been constructed, notwithstanding that the portions of the house that exceed the southern daylight plane are the subject of this application as discussed above, and cannot be considered part of the existing environment

A major component of the existing environment is the orchard land to the south of the subject site, an area of some 7.45 hectares. This land, owned by the submitters Mr and Mrs Stevens, has a dwelling at the south end, and is extensively planted in orchard trees and with a substantial shelter belt of trees at the northern end adjacent to the application site. It also has a sewerage easement of 4 metres depth running along the northern boundary.

There was considerable evidence and discussion at the hearing on the residential zoning of the Stevens' land, and I was correctly urged by all parties to consider its likely development for residential activity in the future. The submitters were concerned that the proposal for a dwelling exceeding the daylight planes would have adverse effects on future development of this land, and that I should consider the effects on a dwelling erected as close as is possible to the north boundary adjacent to the Tamati and Curd dwelling. Notwithstanding the very large site and the multitude of potential sites for dwellings, I accept it is valid to consider the "worst case scenario", and to assess the effects from the non-complying parts of the proposed dwelling on such a theoretical future dwelling.

The evidence of the applicant, and from the Council reporting officers, went one step further and asked me to consider the form that future residential development may take on the Stevens land. Mr Gibson, and Mr Verstappen in particular, were adamant that for any residential subdivision of the Stevens land the ground would need to be raised to at least the level of the adjacent Ruapapa subdivision, and failure to do so would ultimately risk inundation by seawater from lower lying land to the east and west. Mr Verstappen also said that if a "one-off" dwelling was proposed to be erected on the Stevens land, his expectation would be that the Council would at least require its floor level to be raised, even if the ground level was not required to be raised. He said he could even envisage the situation arising where the Council may require filling as well as a minimum floor level to mitigate the risk of inundation.

It is therefore very clear to me that when considering the probable future environment in this area and in particular the Stevens' land, it is reasonable to assume any residential development will be built on land that is raised to the same or similar level as the application site, or will otherwise be raised by way of minimum floor levels.

e) How significant is the shading effect?

Most of the evidence focused on the shading effect from the proposed dwelling onto the Stevens property. It seems widely accepted that the shading effect on the existing environment will be minor or less than minor, particularly as the affected parts of the Stevens' property are currently occupied by densely planted shelter and orchard trees, and the existing dwelling is a considerable distance away.

The focus is very much on the shading effect in terms of future development of that property. The evidence on this consisted of shadow diagrams prepared by a staff member of the Council, which were included in Mr Gibson's report, shade drawings by Verrall and Partners contained in Mr Thomas's report, and Mr Barron's modelled drawings.

The Council drawings and Mr Barron's drawings showed a very similar shading effect on the shortest day of the year at midday. That evidence showed that the shading from the proposed dwelling would be less than the shading from a fully complying dwelling built on the application site. (i.e. a "reference dwelling"). Mr Barron's diagrams showed the shading effect from the Tamati and Curd dwelling, at 9.00 am and 3.00 pm on the same day, extended to a greater depth onto the Stevens land than did the shading from the reference dwelling on the application site.

It is however interesting that from Mr Barron's diagrams, at 9.00 am on the shortest day, the extent of shadow cast onto a reference dwelling on the Stevens' land (57 square metres) would be considerably less than the shading from a reference house on the application site (200 square metres). The shading diagram for 3.00 pm on the same day shows there is only slightly more shading at that time from the proposed dwelling onto a reference house on the Stevens' land (22 square metres compared to 16 square metres).

I consider that this effect on a reference dwelling is no more than minor. In terms of the greater depth of shading to other parts of the property I consider this is still within what the TRMP contemplates, in the reason for the daylight rule, as being "reasonable amenity protection, whilst allowing reasonable development potential on adjoining sites". It is also to be remembered that the analysis of shading above is taken (appropriately) as a worst case scenario, i.e. it is for the shortest day of the year when shading effects are greatest, and it assumes a dwelling built in a location with the greatest exposure to any shading from the proposed dwelling. It follows that the effect for other times of the year must be less.

I would also comment that Mr Barron's assessment is based on the existing ground level on the Stevens' land remaining at the same level. If the land were raised, as I expect it would need to be if the land is developed, the shading effect would be less. The Verrall and Partners diagrams included a diagram which showed the shading and daylight admission effects assuming the Stevens' land is raised to the same level as the application site. The effects are shown as being of even less significance.

Ironically, if the Stevens' land were to be filled to the same level as the application site, the daylight plane could, for all intents and purposes, then be

taken from the ground level shown in the original application because this would be the prevailing ground level for the area. Another way of expressing this is to say a future dwelling on the Stevens' land will be afforded the same or a similar level of protection from effects of shading and daylight intrusion as was intended in the TRMP. This is essentially the "level playing field" suggested by Mr Thomas.

f) Are there any other effects that are more than minor?

Other effects raised at the hearing were in relation to effects on privacy and outlook from the Stevens property, and effects on character.

It is important to emphasise that a major part of the dwelling has been consented under RM080633 and therefore a two storey building now forms part of the existing environment.

I accept the evidence of Mr Gibson and Mr Thomas that the portion of the small upper storey that is exceeding the daylight plane is not of sufficient bulk or prominence in itself to cause an adverse effect that is more than minor on the outlook or views from existing or future development on the submitter's property. The effects on privacy will be less than minor given the south-facing window on the upper story is for an ensuite, and it has an elevated sill height. There is no need for this window to be made opaque as recommended in the Staff Report, notwithstanding that the applicant may choose to do this.

I also accept the evidence of Mr Gibson that the proposed dwelling, including that part of the second level which exceeds the daylight control, will not be out of character with the nature of other houses in this area. As noted, RM080633 allows a two storey dwelling to be built in the Coastal Environment Area, and the incremental effect of the non-complying portion will have little or no discernable effect on the overall character of the area.

9. RELEVANT STATUTORY PROVISIONS

9.1 Policy Statements and Plan Provisions

In considering this application, the Commissioner has had regard to the matters outlined in Section 104 of the Act. In particular, the Commissioner has had regard to the relevant provisions of the following planning documents:

- a) Tasman Regional Policy Statement (TRPS); and
- b) the Tasman Resource Management Plan (TRMP).

9.2 Part 2 Matters

In considering this application, the Commissioner 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.

10. DECISION

Pursuant to Section 104B of the Act, the Commissioner **GRANTS** the application to change condition 1 of RM080633.

11. REASONS FOR THE DECISION

Effects on the Environment

The main effects arising from the activity are considered to be in terms of shading and loss of daylight, privacy, outlooks and views and character.

The actual and potential effects are considered to be no more than minor for the following reasons:

1. There is less than minor effect on the Stevens' land in terms of its current use as an orchard.
2. The effects in terms of shading and loss of daylight on future residential development of the Stevens' land are not significantly greater than the effects from a fully compliant dwelling on the application site.
3. The future development of the Stevens' land for residential purposes will in all likelihood result in the ground level being raised to a level similar to the application site, and the effects from the proposal on that future development will therefore be similar to that arising from fully complying development.
4. The grant of RM080633 allows a two level dwelling to be erected on the application site in its current location, and the adverse incremental effects on privacy, loss of outlook and views, and the character of the area from the "non-complying" parts of the building are not considered significant.

Objectives and Policies of the TRMP

The proposed activity is not considered contrary to the relevant objectives and policies with respect to site amenity in Chapter 5, for the following reasons:

1. The adverse effects of development on site amenity are avoided, remedied or mitigated by the nature of the existing environment, the extent of existing consented development on the application site, the small scale of encroaching development now proposed, and the expected filling of adjacent land as part of any future development of that land (Policy 5.1.3.1).
2. Adequate daylight and sunlight, and privacy for adjacent residential properties will be maintained (Policies 5.2.3.1, 5.2.3.2).
3. Whilst there is an infringement of the daylight angle rule, the proposal is not inconsistent with the TRMP's stated Reason for the daylight rule, in that it will ensure "reasonable amenity protection, whilst allowing reasonable development potential on adjoining sites".

Purposes and Principles of the Act

By taking into account the relevant considerations in Sections 6 and 7 of the Act, the Commissioner considers that the proposal does not compromise the sustainable management of natural and physical resources and is therefore consistent with Section 5 of the Act.

12. AMENDED CONDITION OF CONSENT

Condition 1 of the original consent is hereby amended as follows. Only the consent condition which is changed is presented below and the changes are shown as underlined for additions or ~~strikethrough~~ for deletions. For the purposes of clarity, a complete amended set of conditions for the consent is attached at the end of this decision. The revised set of conditions is hereinafter referred to as Resource Consent RM080633V1.

General

1. The development shall be undertaken in accordance with the documentation submitted with the application and with Plan A attached dated ~~25 September 2008~~ and Plan B attached dated ~~21 January 2008~~ 9 April 2009 and Plan B attached dated 25 September 2008, and with Plan C (the Survey Plan) attached dated March 2009. Where there is any apparent conflict between the information provided with the application and any condition of this consent, the conditions shall prevail.

Issued this 14th day of July 2009



Mr Gary Rae
Commissioner

RESOURCE CONSENT DECISION

Resource consent number: RM080633V1

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

Janis Tamati and William Raymond Curd
(hereinafter referred to as "the Consent Holder")

Activity authorised by this consent: To construct a new dwelling and a water tank.

Location details:

Address of property: 52A Wharf Road, Riwaka
Legal description: Lot 6 DP 364663
Certificate of title: 269369
Valuation number: 1933034306

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

CONDITIONS

General

1. The development shall be undertaken in accordance with the documentation submitted with the application and with Plan A attached dated 9 April 2009 and Plan B attached dated 25 September 2008, and with Plan C (the Survey Plan) attached dated March 2009. Where there is any apparent conflict between the information provided with the application and any condition of this consent, the conditions shall prevail.

Height

2. The height of the proposed dwelling shall not exceed 6.4 metres, measured above the natural ground level of the site as at 15 October 2008.

Colour

3. The exterior of the building shall be finished in colours that are recessive and blend in with the immediate environment. The Consent Holder shall submit to the Council's Consent Planner, Motueka for approval prior to applying for building consent the following details of the colours proposed to be used on the walls and roof of the building:
 - a) the material to be used (e.g., paint, Colorsteel);
 - b) the name and manufacturer of the product or paint;
 - c) the reflectance value of the colour;
 - d) the proposed finish (e.g., matt, low-gloss, gloss); and
 - e) Either the BS5252:1976 (British Standard Framework for Colour Co-ordination 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:

The Consent Holder should engage the services of a professional to ensure the exterior cladding and colour selection are compatible with the long-term durability of the building material in the subject environment and in accordance with the requirements under the Building Act 2004.

Earthworks

4. In the event of Maori archaeological sites (e.g., shell midden, hangi or ovens, garden soils, pit depressions, occupation evidence, burials, taonga) or koiwi (human remains) being uncovered, activities in the vicinity of the discovery shall cease. The Consent Holder shall then consult with the New Zealand Historic Places Trust's Central Regional Office (PO Box 19173, Wellington, telephone (04) 801 5088, fax (04) 802 5180), and shall not recommence works in the area of the discovery until

the relevant Historic Places Trust approvals to damage, destroy or modify such sites have been obtained.

Advice Note:

The discovery of **any** pre-1900 archaeological site (Maori or non-Maori) which is subject to the provisions of the Historic Places Act needs an application to the Historic Places Trust for an authority to damage, destroy or modify the site.

ADVICE NOTES

Council Regulations

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

Proposed Tasman Resource Management Plan

2. Any activity not referred to in this resource consent must comply with either:
 1. the relevant permitted activity rules in the Proposed Tasman Resource Management Plan (PTRMP);
 2. the Resource Management Act 1991; or
 3. the conditions of a separate resource consent which authorises that activity.

Consent Holder

3. This consent is granted to the abovementioned Consent Holder but Section 134 of the Act states that such land use consents “attach to the land” and accordingly may be enjoyed by any subsequent owners and occupiers of the land. Therefore, any reference to “Consent Holder” in the conditions shall mean the current owners and occupiers of the subject land. Any new owners or occupiers should therefore familiarise themselves with the conditions of this consent, as there may be conditions that are required to be complied with on an ongoing basis.

Interests Registered on the Certificate of Title

4. The Consent Holder should note that this resource consent does not override any registered interest on the property title.

Colour

5. 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 ≤50%	A09 to A14 and reflectance value ≤25%
Group B	B19 to B29 and reflectance value ≤50%	B23 to B29 and reflectance value ≤25%
Group C	C35 to C40, reflectance value ≤50%, and hue range 06-16	C39 to C40, reflectance value ≤25%, and hue range 06-16
Group D	D43 to D45, reflectance value ≤50%, and hue range 06-12.	Excluded
Group E	Excluded	Excluded
Finish	Matt or Low-gloss	Matt or Low-gloss

* Based on BS5252:1976 (British Standard Framework for Colour Co-ordination 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.

Development Contributions

- 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.

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

Issued this 14th day of July 2009



Mr Gary Rae
Commissioner

PLAN A

22° pitch

22° pitch

4800wide sectional colorsteel garage door

elevation 1

selected entrance door

200mm max overclutch @ corner

22° pitch

22° pitch

selected aluminium joinery

elevation 3

Roof
PVC GUTTER
SEC DOOR
W.I.R
STAIRS

22° pitch

22° pitch

25° AD

selected 70series brick veneer - ensure cavity & weep holes are free from excess mortar. Fixed with stainless steel brick ties

elevation 2

ENDURA longrun corrugated colorsteel roofing

22° pitch

22° pitch

25° AD

elevation 4

hip roof on south end added 9/04/09

3.06 3.06

ss = 100mm safety slats
sg = Safety glass - as shown.
Glazing in accordance with NZS 4223
All glazing clear float, except wet areas, obscure glass
Double glazing to all window and door joinery excluding garage

APR 2009

Tasman District Council
BUILDING CONSENT AUTHORITY
APPROVED DRAWINGS
Consent Number BC.0820.216

Signed: SM
Dat: 22nd 7/09

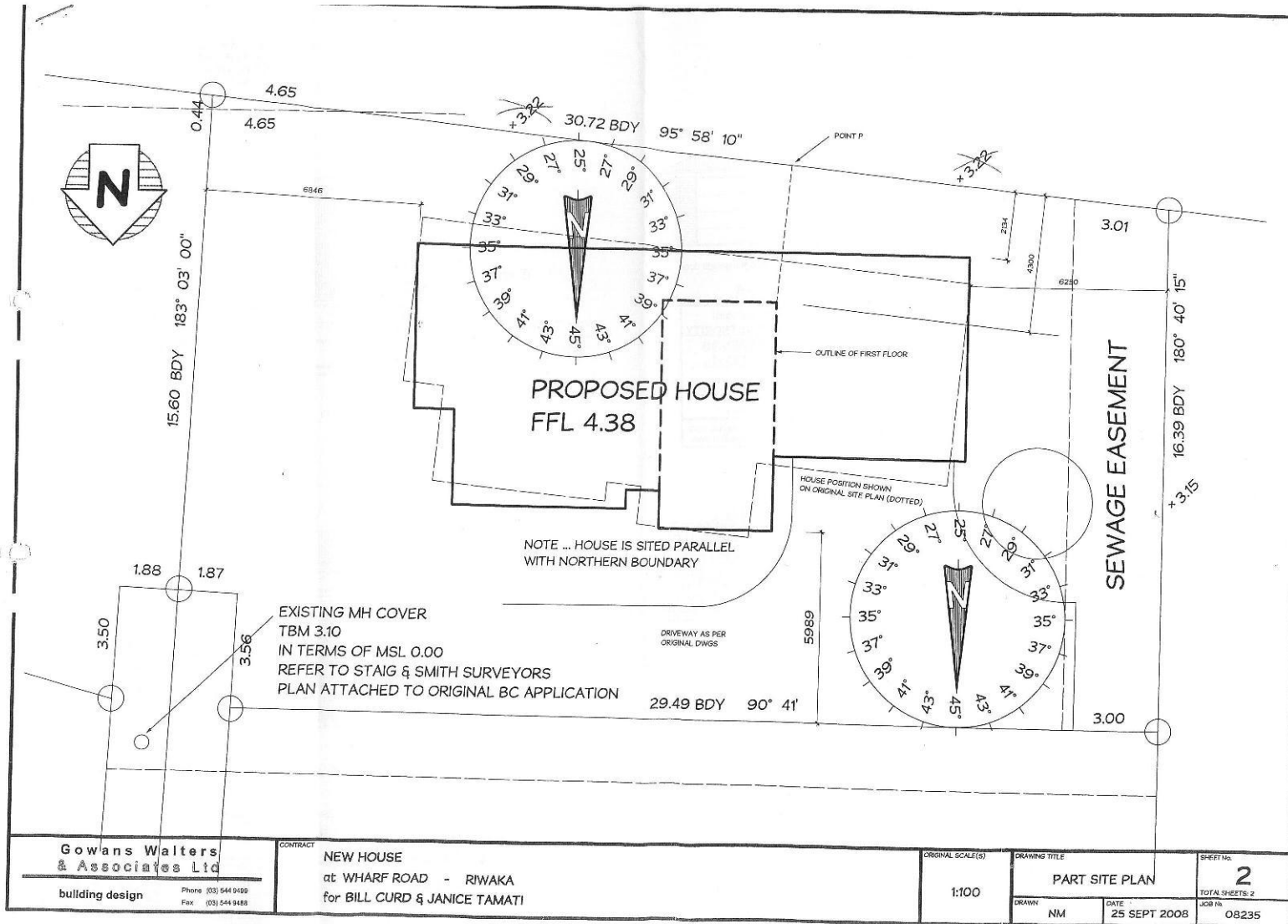
ALL WORK IS TO COMPLY WITH THE NZ BUILDING CODE
DO NOT MAKE CHANGES WITHOUT PRIOR APPROVAL

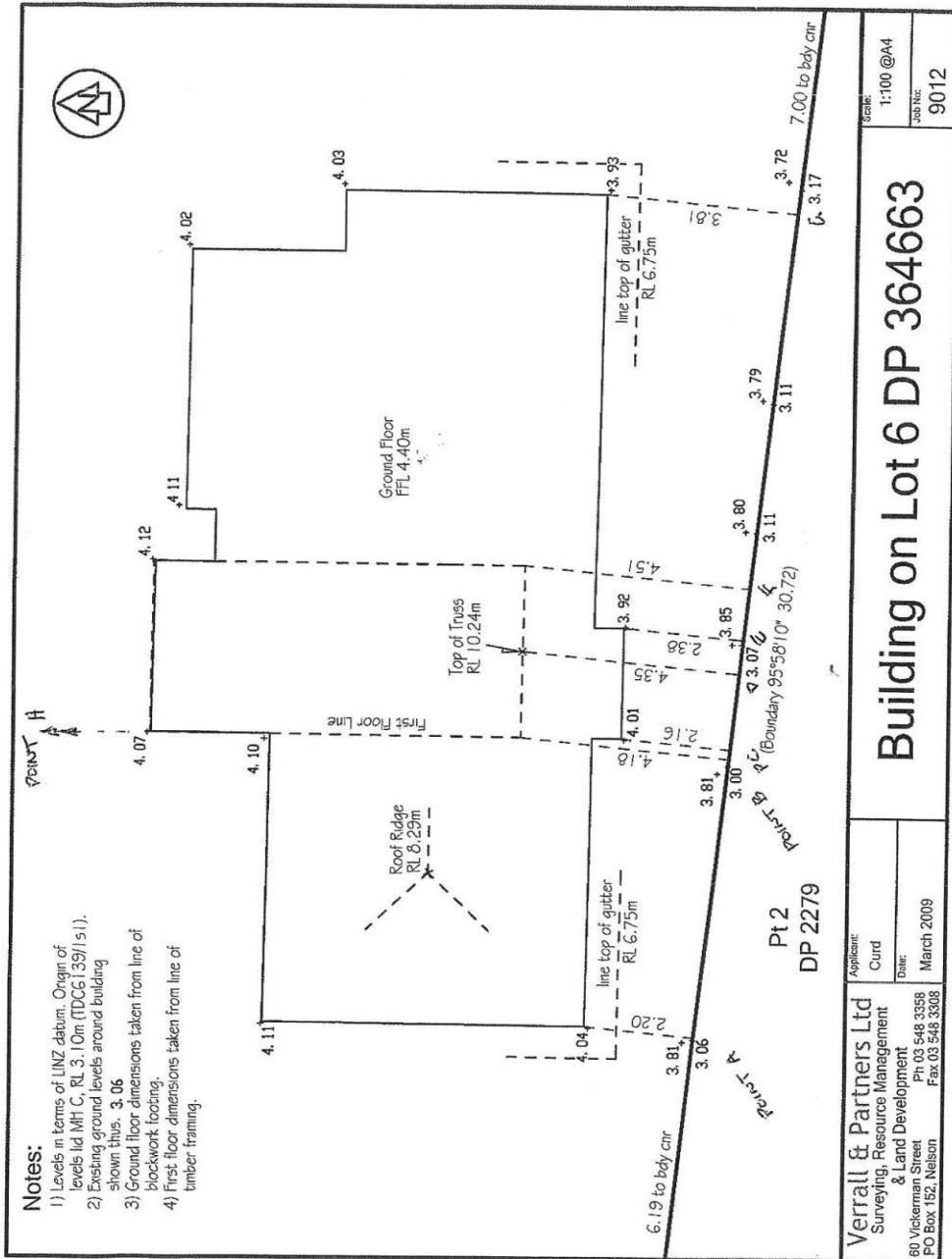
weatherboard cladding

Drawn: CH	Wind Zone: high	Sheet: ELEVATIONS	<p>All dimensions & underground service locations to be checked prior to commencement of all works. DO NOT scale off drawings. Check reference all drawings, confirm site levels, floor heights & restrictions prior to earthworks. If any discrepancies occur, ask the designer or contractor immediately before commencing works or ordering. COPYRIGHT: These drawings remain the property of A1 HOMES NZ and are provided for use as described above and may not be used or reproduced in whole or part without written permission. Product dimensions listed by all suppliers & tradesmen where applicable. Any alterations to works are not to commence until building permits become unconditional.</p>	Client: BILL CURD & JANICE TAMATI	Date: 21 JAN 07	Job no: GC135
Checked: AC	Exposure Zone: A			Project: PROPOSED RESIDENCE FOR LOT 6, WHARF ROAD, RIWAKA	Scale: 1:100	Sheet no: A01
					Revision: A105 all PERMIT	

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PLAN B





Date Confirmed:

Chair: