

# MINUTES

**TITLE:** Environment & Planning Subcommittee - Commissioner Hearing  
**DATE:** Friday, 9 July 2010  
**TIME:** 10.30 am  
**VENUE:** Council Chamber, 189 Queen Street, Richmond.

**PRESENT:** Mr G Rae (Commissioner)

**IN ATTENDANCE:** Principal Resource Consents Advisor (J Butler), Executive Assistant (V M Gribble)

**1. J B IRVING, G E EVANS AND I R SMITH, FARADAY RISE, RICHMOND-APPLICATION NO RM100171**

The application seeks to gain retrospective consent for house alterations within 5 metres of the internal property boundaries.

To site a garage, and construct a stairwell on the western side of the house, within 5 metres of an internal property boundary.

The application site is located at 6 Faraday Rise, Richmond, being legally described as Lot 5 DP 13853, contained in Certificate of Title NL8C/392.

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

**THAT pursuant to Section 104C of the Resource Management Act, the Commissioner GRANTS consent to J B IRVING, G E EVANS AND I R SMITH as detailed in the following report and decision.**

**Report and Decision of the Tasman District Council through a Hearing  
Commissioner**

**Hearing held in the Tasman Room, Richmond  
on 9 July 2010, commencing at 10.30 am  
Hearing closed on 9 July 2010**

A Hearing Commissioner (“the Commissioner”) for the Tasman District Council (“the Council”) was appointed to hear the application lodged by **J B Irving, G E Evans and I R Smith** (“the Applicant”), for land use consent for residential building alterations (retrospective consent), and to site a garage and construct a stairwell on the western side of the dwelling, within 5 metres of the property boundaries, at 6 Faraday Rise, Richmond. The application, made in accordance with the Resource Management Act 1991 (“the Act”), was lodged with the Council and is referenced as RM100171.

**PRESENT:** **Hearing Commissioner**  
Mr G Rae

**APPLICANT:** Mr N McFadden (Counsel)  
Mr J Irving, and Ms G Evans (Applicant)

**CONSENT AUTHORITY:** **Tasman District Council**  
Ms J Hilson (Consultant Planner)  
Mr J Butler (Principal Resource Consents Advisor - Assisting the Commissioner)  
Ms V Gribble (Executive Assistant - minutes)

**SUBMITTERS:** Mr P McRae (Counsel)  
Mrs R Purse (Submitter)

### 1. SUMMARY

The Commissioner has **GRANTED** a resource consent, subject to conditions.

### 2. BACKGROUND TO THE APPLICATION

On 2 November 2007 the Tasman District Council issued building consent BC071175 to the Applicant, to alter the house at 6 Faraday Rise by addition of living space, bedrooms, a stairwell, a new deck, and a new entrance in place of the existing carport, and to construct a new *Totalspan* 6 metre x 6 metre garage.

The Applicant carried out the alterations to the house in accordance with the approved plans, with the exception of the basement room and associated stairwell linking such to the living area. The previous carport at the south-eastern end of the house was demolished, and a low retaining wall was constructed in the southern corner of the application site. The garage was not built at that time.

In January 2010 the Applicants received advice from Tasman District Council that whilst the building was erected in accordance with the building consent, it did not comply with the permitted activity rules of the Tasman Resource Management Plan, and resource consents were therefore required. It transpired this was because the Project Information Memorandum had incorrectly advised that the land on which the building was to take place was in the Residential Zone - when in fact it was in the Rural Residential Zone; and the subsequent building work did not comply with the provisions of the TRMP rules in the Rural Residential Zone which require building additions to be set back at least 5 metres from side and rear boundaries.

It was also then made clear that the work still to be completed, namely the stairwell and the new garage, would also require resource consent.

### 3. DESCRIPTION OF THE PROPOSED ACTIVITY

The purpose of the application is to seek:

- Retrospective land use consent to the house alterations that have occurred within 5 metres of the property boundary, and

- Land use consent to construct within 5 metres of the internal boundaries to the application site (i) the stairwell along the western side of the house and (ii) the proposed garage.

The physical extent and use of those parts of buildings within the 5 metre yard and subject of this application include:

- proposed stairwell - 5 square metres in floor area, generally to the height of the existing gutter, at its closest 3 metres from the boundary and with one small window facing the south-western boundary of the application site;
- existing deck - 2 square metres, at its closest 4 metres from the south-western boundary, and with the bulk of the deck and its use orientated north to east;
- existing wing wall and corner of the office - 1 square metre in floor area, the wing wall at its closest 3 metres from the boundary, the intruding part of the building up to 2.5 metres in height, and with a window at least 4.5 metres from south-western boundary;
- existing bedroom - 6.5 square metres in floor area, at its closest 2.8 metres from the boundary, up to 4 metres in height at the apex of the roofline, no windows facing the south-eastern boundary, window at least 5.3 metres from south-western boundary;
- proposed garage - 24 square metres in floor area (36 square metres in total area), 1 metre from the boundary, 2.5 metres maximum height, vehicle entrance facing the street. [Note: The plans lodged with the application specified no particular height for the garage, with options for height ranging from 3.0 metres to 4.8metres. However the applicant confirmed in response to a section 92 request that the garage would be a maximum height of 2.4 metres. At the hearing the Applicant confirmed the height of 2.5 metres to allow for a 0.1 metre foundation].

The wall of the living room also extends into the south-western yard; however this was in existence prior to the building works consented under BC071175 so is not subject to this application.

The alterations have been painted in keeping with the overall house (with the exception of the western but original external wall to the living room), a colour scheme that is to be replicated in the proposed garage.

The proposed garage is to have a mono-style roof sloping from front (i.e. facing Faraday Rise) to back. It is proposed to be sited 1 metre from the common boundary with 8 Faraday Rise, approximately two thirds of the way back along the driveway, close to the entrance to the house. The Applicant's response to a Section 92 request for further information confirmed that a hedge of native species will be planted along its south-eastern side. A pole indicating the maximum height (2.5 metres) of the proposed garage was in position on the application site and was observed on my site visit.

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

The subject property is zoned Rural Residential (Hill Street South) in the TRMP.

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

The proposed dwelling alterations and garage meet all relevant Rural Residential Zone permitted activity standards, with the exception of:

- 17.8.3.1(h)(i) Setbacks - buildings are set back at least 5 metres from internal boundaries.

The current applications for resource consent are for a restricted discretionary activity in accordance with Rule 17.8.3.2, and the matters for which Council’s discretion are restricted are listed in that rule.

#### **5. NOTIFICATION AND SUBMISSIONS**

The application was limited notified pursuant to Section 95 of the Act to the owner of 8 Faraday Rise, Mrs R Purse.

Mrs Purse lodged a submission in opposition. The main issues raised in her submission are:

- The building extensions and proposed garage will interfere with views and vistas from her property, and associated excavations and removal of hedges have exposed the Applicants’ house to her sight;
- Properties in Faraday Rise are part of a rural residential subdivision, and the relocation of the property access and entrance to the Applicants’ house, and the size and orientation of windows in the building extensions, have compromised the aesthetics, privacy and enjoyment of Mrs Purse’s property;
- The extensions, and a garden shed near the property boundary, have deprived her citrus grove and organic vegetable garden near and west of the boundary with the application site of sunlight and air circulation, and storm water has been diverted into her property, compromising the garden; and
- The location of the garage is close to the boundary with 8 Faraday Rise, and will enhance the submitter’s visual and audible awareness of traffic movement on the application site and from use of the garage, seriously affecting the privacy, ambience and enjoyment of her home.

Submissions were also received from K O’Neill, a friend of Mrs Purse and former resident at 8 Faraday Rise, and L Abbott, a former home carer to Mrs Purse. These submissions do not have legal standing under the limited notification procedure adopted for this application, and those persons were not called at the hearing to support Mrs Purse’s submission. The letters were however attached to Mrs Purse’s written statement presented at the hearing.

## 6. PROCEDURAL MATTERS

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

## 7. EVIDENCE HEARD

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

### 7.1 Applicant's Submissions and Evidence

**Mr M McFadden**, counsel for the Applicant, outlined the history that led to this application being made (which is summarised in Section 2 above). He emphasised that this whole matter had come about through no fault of the Applicant, but was due to Council's misinterpretation of the zoning of the site and the relevant rules when processing the building consent application.

Mr McFadden referred to the relevant rules and stated that there is no reason given in the TRMP for the 5 metre boundary set back. He then referred to the matters over which Council's discretion is limited, and the scope of any conditions that may be imposed, when considering an application such as this. He said, in answer to a question that Part 2 matters should only be had regard to if consent is granted and not if it is declined, referring to *Auckland CC v Auckland Regional Council [1999] NZRMA 145*.

Mr McFadden stated that there are no adverse effects whatsoever on the amenity of adjoining domestic users, or on the landscape, on access or wider amenity values of the locality. The main reasons he gave related to existing screening between the site and the submitter's property; the alterations within the 5 metre set back area are single storey, have limited windows, and do not directly adjoin the submitter's property; the garage lies below the submitter's property, will have a mono-pitched roof at a height of only 2.5 metres, and will be painted in keeping with the house, and there will be boundary plantings; and there could be a worse effect with permitted development on the site .

Mr McFadden agreed with the section 42A report prepared by Ms Hilson, and further commented that there is no evidence to confirm any adverse effect on the citrus grove and vegetable garden. He also stated that surveyors had recently confirmed the location of the boundary and that the retaining wall is entirely with the Applicant's site, and the hedge is entirely on the submitter's property.

In answer to a question, Mr McFadden said the Faraday Rise land was originally zoned Rural and when subdivided was changed to Rural/Residential.

**Mr J Irving**, the Applicant, explained in more detail the background leading to the application. He also outlined the reasons for choosing the site for the proposed garage, which he said was in a logical place and would protect the main view shaft from the submitter's property. He then elaborated on the design aspects of the garage and of the house extensions, which would minimise their visual impact. Mr Irving produced survey information to confirm the location of the rear boundary.

In answer to questions, Mr Irving said the previous carport visible on the aerial photograph had been removed and essentially replaced by an extension to the house. He also said that landscaping of the property had been carried out some time ago, and the driveway had been built up, and its location has never changed.

## 7.2 Submitters' Submissions and Evidence

**Mrs Purse**, the submitter, tabled and read her submission in opposition to the application, and was supported by her counsel **Mr P McRae**. She also attached the letters from Mrs O'Neill and Mrs Abbot as additional information to support her submission.

Mrs Purse spoke of the special characteristics of Faraday Rise, which are the views of the bay and mountains, the rural lifestyle and privacy, gardens, and the peace and solitude and proximity to the services usually provided in residential zones. She said these qualities or amenities have been affected since the extensions were completed, and spoke particularly of the shading and loss of air circulation to the organic citrus grove and garden. She said that, as a result of this reduced air circulation, her citrus grove has developed a sooty mould which will affect the plants' health. Mrs Purse was also concerned at the proposed garage, which would interfere with views, generate noise in this location and would cause traffic problems.

Mrs Purse then took issue with the way the Faraday Rise locality had been described in Ms Hilson's report as being more residential in character than rural-residential. A large aerial photograph of Faraday Rise was produced to demonstrate this point. Mrs Purse also produced a series of photographs from her property, looking over the application site, to demonstrate "*the rural character of our rural residential area*", as well as the effects of the house extensions and proposed garage on views, privacy and shading of the garden areas.

Mrs Purse did not accept that the various mitigation measures offered by the Applicants and discussed in Ms Hilson's report would be effective. She said that she might be prepared to accept the house additions that had already been done, provided the Applicant was required to discuss and agree with her suitable mitigation work around the area of the intrusions, and that they meet the cost of such mitigation works. When asked about this, Mrs Purse said that in relation to excavations done at the back of the property, there had previously been a pleasant outlook but it has since been ruined and the retaining wall was reluctantly put in. She said the whole area should be tidied up and the back boundary defined clearly.

She also spoke of the replacement of a sense of community throughout the street now with a sense of isolation (since the extensions), and that the mutual respect and consideration of privacy of others was no longer there. She stated that a fully complying development could have and should have been possible on the application site, given its large area.

In response to a question, Mrs Purse said the current building cuts out the sun and if a garage is there, the sun will not come in. She said she does not want further shade on her vegetable garden. Mrs Purse in response to another question said that even if the garage was set back the complying distance of 5 metres to comply it would not significantly improve the noise situation.

**Mr McRae**, counsel for the submitter, presented legal submissions. He challenged the assumption in the Staff Report that Faraday Rise is more residential in character than rural or rural residential. He said the conclusions reached in the Staff Report were therefore flawed, or at least had been reached from the wrong standpoint.

Mr McRae referred to the aerial photograph that had been produced by Mrs Purse to reinforce the view that this area still retains the kind of rural character to be expected in a rural residential area. He said the TRMP has appropriate rules, such as the setback rules, to implement the rural character and amenity which is important in the rural residential zone. Mr McRae acknowledged the explanatory statements do not deal directly with boundary setbacks, other than from roads, and implied that something had been omitted from the TRMP. He said it would be reasonable to look at other zones for guidance and referred in particular to the Rural 3 Zone, which states that *“Separation between buildings on adjoining sites maintains open space and privacy and minimises shading of neighbouring properties”*.

Mr McRae said the permitted baseline has no material bearing on these applications, and that Mrs Purse would encourage the development to be built in accordance with permitted activity standards. In commenting on an earlier question of Mrs Purse, he said a process for agreement and mediation could be included as a condition.

### **7.3 Council’s Reporting Officer**

Ms Hilson referred to her section 42A report which was contained in the agenda and asked that it be taken as read.

In response to questions Ms Hilson said she stood by her assessment of the character of Faraday Rise. She believes Faraday Rise has given way to residential character, defined by large residential sections, which is different from rural areas in the greater Richmond area. She said that contrary to Mr McRae’s assessment that rural/residential zones are not rural, on the whole they are very rural, but there are some such as this that are not because of the small lot sizes. The minimum subdivision standard for this zone is 5,000 square metres, whereas Faraday Rise has an average allotment size of only 2,500 square metres approximately. Faraday Rise was approved through resource consent and the rural-residential zoning came later. She said therefore things have happened that have given this area a character that is different, and as a result you have large residential sections, with a degree of open space. Ms Hilson also said the rules are common for all residential/rural zones, regardless of section size. She said Hill Street South, not just Faraday Rise, was included in the zone, and there is still a lot of undeveloped land. The standards that were set were not necessarily set with approved subdivisions in mind.

Ms Hilson said she undertook a site visit and with Ms Purse’s guidance looked at the effects, and considered her submission carefully. Having heard the evidence she said her conclusions were unchanged. She considered that what is proposed is consistent with the prevailing residential amenity, and that setback controls for the purposes of amenity consideration are not clear in terms of the TRMP framework and it is not appropriate to look at the Rural 3 Zone in respect of this. She said her report assessed amenity impacts and took into account open space, privacy and shading. Concerning the effects of a permitted garage, the impacts would be greater on the neighbour in the event that a complying garage was built. The existing crossing and driveway should be utilised for cost efficiency reasons, and whilst a garage could be attempted in the front yard, this would impact more on the views from the submitter’s

property. In terms of the permitted baseline she said an accessory building could be built to 7.5 metres in height, and that she did not consider the height of 2.5 metres as a significant issue.

Ms Hilson said in terms of Part 2 considerations it is necessary to look at what the Act anticipates. Living in a rural/residential area does not mean there will be no amenity influences from neighbours using properties. She did not support a mediation condition, as had been suggested by the submitter, and noted that it would be to Mrs Purse's benefit to be able to control things concerning vegetation and fences, so that she can trim the top of her hedge for instance to maintain the sunlight.

In response to a question, Ms Hilson said she was not aware of circumstances where soundproofing of a garage had been done, and that a double garage is not unusual for a domestic situation and this one does not have a workshop area where noise may be generated. In terms of the permitted baseline, she said a 60 square metre self-contained unit could be included, attached to the primary residence, as a permitted activity.

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

**Mr McFadden** said some statements by Mrs Purse are not supported by evidence and are misleading. He noted that a condition regarding a process for mediation, in which discussions must be held with the submitter, should not be imposed as it is outside the Commissioner's powers. If agreement was not reached with a third party the consent would be frustrated.

Mr McFadden said the TRMP is very clear with respect to objectives, policies and principal reasons for rules. He said there is no ambiguity with respect to any of the rules relevant to the matter being considered. He emphasised that this is a rural/residential zone, and not a rural zone. It is therefore not a zone that seeks to maintain rural character and amenity. Mr McFadden emphasised that the matter of the boundary location had been resolved through two firms of surveyors and that Mr McRae had not advanced this matter as an issue through his legal submissions.

### **8. PRINCIPAL ISSUES**

#### **Status of Activity**

It is common ground that the application is for a Restricted Discretionary Activity, under Rule 17.8.3.2. This provides for the construction or alteration of a building that does not comply with the conditions for a permitted activity as a restricted discretionary activity, and the Council has restricted its discretion to a list of matters.

The matters of particular relevance to this application are considered to be:

- 1. The impact of any buildings or structure on the landscape, rural character or amenity values of the locality.*
- 2. Any likely impact on an adjacent landowner, particularly the compatibility with productive rural activities.*
- 3. Location and effects of servicing, including stormwater and wastewater disposal, water supply, access and traffic safety.*



4. *The adverse effects of a building with reduced set back.*

These matters are addressed within the discussion in later sections of this Decision.

### **Issues in Contention**

The principal issues in contention were:

- a) What is the environment that needs to be considered, in the context of this particular Rural Residential Zone?
- b) How significant are the effects on the outlook and privacy of 8 Faraday Rise?
- c) How significant are the effects of shading and air circulation on the gardens at 8 Faraday Rise?
- d) How significant are the effects of noise from the proposed garage on the amenity of 8 Faraday Rise?
- e) Should the permitted baseline be considered?
- f) Should a condition be imposed requiring an ongoing mediation process?

## **9. MAIN FINDINGS OF FACT**

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

**a) What is the environment that needs to be considered, particularly in the context of this Rural Residential Zone?**

For the purposes of assessing the effects of a discretionary activity, it is appropriate to consider the existing environment, having particular regard to the zoning of the land because that also reflects the character of future development in the area.

The evidence and submissions were at odds as to the character of Faraday Rise. The submitters urged me to consider the aspects which make this a rural setting (namely the lack of footpaths and services, separation of properties, large sections, and evidence of sheep grazing and some other rural activity). Whilst I agree that those aspects are evident to some degree, after studying the aerial photograph produced at the hearing I consider that Faraday Rise has little in the way of "true" rural character, as it is essentially a grouping of very large residential sections at a high density even by rural residential standards. This can be contrasted with land on Hill Street either side of Faraday Rise which has more of a rural character (but even then still is very much a rural-residential area) exhibiting larger sections and long driveways, greater separation of dwellings and more open space.

Ms Hilson had commented that the rural residential zones range considerably in their density, and that at the lowest density the minimum lot sizes are 4 hectares. It became apparent through questioning that Faraday Rise had been developed following a subdivision that created lot sizes only half the size

that would normally be permitted in this Hill Street South rural residential zone. The zoning of this, and adjacent land, came after the subdivision of Faraday Rise and the application site.

It is therefore clear to me that when considering the character and amenity of the area, it would be inappropriate to apply a strictly rural threshold for acceptable residential development.

It is, however, important to acknowledge that despite the subdivision having preceded the zoning, the site is nevertheless now zoned Rural Residential, and not straight Residential. The objectives and policies for the zone are relevant and need to be considered. Clause 7.2.20.1 refers to the zone covering a *'wide range of types of rural areas'* and also that *'specific rules for each zoned area take into account rural character and amenity, availability of servicing, landscaping, access, potential visual and ecological impacts of development, development history and other matters that may be particularly relevant to particular parts of the zone'*.

Therefore, it is important to take account of the rural amenity (to the degree it exists in this locality) rather than to apply a residential threshold. Whilst there is no specific explanation in the zone as to the purpose of the setback rule, it seems reasonable to conclude that as with any setback requirement it will contribute to a sense of openness and separation (and therefore the rural-residential character), and will allow a degree of sunlight penetration and daylight to adjoining properties. These are all matters which have been raised in the submission, and they are further discussed in the sections to follow.

In terms of rural-residential character, I find that the incremental effects arising from those parts of the dwelling extensions (both existing and proposed) that lie within the 5 metre set back area, and the 25 square metre portion of the proposed garage, will not significantly change or affect the rural residential character and overall amenity of the area, which will remain relatively high density rural-residential. I accept Ms Hilson's expert evidence in this regard.

In reaching that conclusion I am also mindful of the sense of openness from the presence of the vegetated gully that lies immediately to the south of the site (and which cannot be built upon) and for which minor building extensions will have little effect upon, and more particularly the effect of the specific mitigation measures that have been offered and have been imposed as conditions on this consent (e.g. conditions 3, 4 and 5 relating to the garage).

**b) How significant are the effects on the outlook and privacy of 8 Faraday Rise?**

The photographs produced at the hearing, and my own observations from the site visit, lead me to the conclusion that the house additions and the proposed garage will not have a significant adverse effect on the outlook and privacy of the submitter's property.

Whilst Mrs Purse was very clear in explaining the qualities she holds dear in terms of her enjoyment of the property, and it is entirely reasonable for her to have those expectations, it does seem that the greatest change to that level of

amenity has already occurred when the subject site was developed and the Applicant's house was built.

It is considered that the additions which are the subject of this application will, in themselves, have relatively little effect as can be seen in the photographs. The house extensions will be visible, but will not extend beyond the outline of the existing permitted house and will therefore not affect the views and outlook of the bay and mountains, and they will have no windows that would cause a privacy effect. The fact that building additions are visible from a neighbour's property does not in itself constitute an adverse effect on that property that could be described as more than minor. That is particularly so when it is considered the average allotment size in Faraday Rise is only 2,500 square metres and it is to be expected that buildings on one site may be visible from another site where densities such as this exist.

The proposed garage will be visible from some perspectives on the submitter's property, but as it lies behind a hedge and at a lower level than the submitter's property, it is not considered to cause an adverse effect on views or outlook.

**c) How significant are the effects of shading and air circulation on the gardens at 8 Faraday Rise?**

I have considerable sympathy for the concerns regarding the shading effect on Mrs Purse's citrus trees and vegetable garden. The submitter's property is unusual in that it 'wraps around' the application site at the rear, and the dwelling and extensions are close to areas that Mrs Purse has developed as gardens. On my site visit the gardens were in complete shadow, however the significance of that must be tempered by considering that the visit was in mid winter and in the early morning when shading is most extreme. The shading appeared to be caused by the fully complying portion of the house's roofline. In other words it seems probable that the house extensions (both existing and proposed) will add nothing to the shading effect.

The house extensions will, however, bring the bulk of the building closer to the vegetable gardens and the citrus trees and it is possible that this may reduce air circulation in these areas. No specialist evidence was presented from a horticulturalist or similar which would lead me to reach a strong conclusion that the citrus trees are in fact being adversely affected by loss of air circulation, or will be further affected in that way. However, I observed that the citrus trees have a type of sooty mould and Mrs Purse attributed this as an effect of the house extensions.

**d) How significant are the effects of noise from the proposed garage on the amenity of 8 Faraday Rise?**

The proposed garage is a standard double garage, which would house two vehicles. It does not have a separate workshop area, and therefore it would be reasonable to conclude that any noise emanating from the garage should be consistent with any other domestic scale garage.

**e) Should the permitted baseline be considered?**

Other than general observations, there was little in the way of specialist evidence presented on the permitted baseline.

As discussed above, I consider the effects from the existing and proposed development, within the 5 metre setback, give rise to effects that are no more than minor. I also consider it would not be a fanciful scenario for the alterations to the dwelling to be constructed in such a way that they may have worse effects on the submitter's property in terms of blocking of views and shading impacts on gardens, particularly as the greater part of the additions, including those (complying) parts which are set back more than 5 metres, are well below the permitted height limit in this zone and could have been built at a higher level to match the roofline of the existing house, with greater shading effects.

Further, if the garage was to be set back the complying 5 metres from the common boundary it could quite conceivably have an adverse effect on views and outlook from the submitter's property. I am mindful of the evidence of Mr Irving as to the reason why the location of the garage was chosen, and I accept that in the proposed location it will have the least effect on the views from the submitters property, and any noise considerations will be little different were the garage set back a further 4 metres from the boundary.

**(f) Should a condition be imposed requiring a mediation process?**

Leaving aside the question of whether it is within my powers, as Commissioner, to impose a condition requiring an ongoing consultative process, in this case I consider that there are no adverse effects arising from the proposed activities which would require an ongoing mediation condition to be imposed.

Whilst the submitter was very clear in explaining the effects of the proposal, there were no potential 'workable' mitigation measures suggested, other than those offered by the Applicant and recommended in the section 42A report by Ms Hilson. I consider that those mitigation measures will assist to maintain a reasonable level of amenity commensurate with the environment and this Rural-Residential Zone in this instance.

## **10. RELEVANT STATUTORY PROVISIONS**

### **10.1 Policy Statements and Plan Provisions**

In considering this application, I have had regard to the matters outlined in Section 104 of the Act. In particular, I have 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).

### **10.2 Part 2 Matters**

In considering this application, I have taken into account the relevant principles outlined in Sections 6 and 7 the Act, as well as the overall purpose of the Act as presented in Section 5.

## **11. DECISION**

Pursuant to Section 104C of the Act, I hereby **GRANT** the application for resource consent, subject to conditions.

## **12. REASONS FOR THE DECISION**

### **Effects on the Environment**

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

1. The incremental effects of the extensions and garage on the rural-residential character of the locality, over and above the effects caused by the existing development, will be less than minor due to the small scale and relatively low height of the building development and the other mitigation measures such as colours to match the house and additional planting along the common boundary.
2. The effects in terms of views and privacy on the submitter's property are less than minor because the extensions, whilst visible, will not protrude beyond the existing house into the view shafts, and the proposed garage lies at a lower level and is screened by a hedge on the submitter's property.
3. The effects in terms of shading and air circulation loss on adjacent trees and gardens are no different from the effects that arise from the existing complying parts of the dwelling.
4. Noise effects generated from the proposed garage near the submitter's boundary would be of domestic scale and will be similar to noise from a garage set back the complying distance from the boundary.
5. Overall, the adverse incremental effects from the "non-complying" parts of the proposed dwelling extensions and garage on the character of the area, privacy and loss of outlook and views, shading and noise are not considered to be more than minor. Ms Hilson's evidence is accepted in this regard.

### **Objectives and Policies of the TRMP**

The proposed activity is not considered contrary to the relevant objectives and policies with respect to rural amenity in Chapters 5 and 7. In this respect the opinions expressed in the Section 42A report of Ms Hilson are adopted, i.e. section 7.7 of that report.

### **Matters for which Council's Discretion is Restricted**

The matters in Rule 17.8.3.2 of particular relevance to this application (i.e. matters 1, 3, 4 and 5) are considered to be met with respect to the proposed activity.

## **Purposes and Principles of the Act**

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

Issued this 27<sup>th</sup> day of July 2010

A handwritten signature in black ink, appearing to read "G. m Rae". The signature is written in a cursive style with a large initial "G" and a lowercase "m" before "Rae".

Mr Gary Rae  
**Commissioner**



## RESOURCE CONSENT DECISION

**Resource Consent Number:** RM100171

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

**JB Irving, GE Evans and IR Smith**  
(hereinafter referred to as “the Consent Holder”)

**Activity authorised by this consent:** Residential building alterations (retrospective consent), and to site a garage and construct a stairwell on the western side of the dwelling, within 5 metres of the property boundaries.

### Location details:

Address of property: 6 Faraday Rise, Richmond  
Legal description: Lot 5 DP 13852  
Certificate of title: NL8C/392  
Valuation number: 1943046108

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

### General

1. The dwelling alterations shall be sited and of design in accordance with the application submitted, as shown on the attached plans by Daines and Associates Job 686 subject to BC071175 and dated May 2007 as amended October 2007. Where there is any apparent conflict between the information provided with the application and any condition of this consent, the conditions shall prevail.
2. The garage shall be sited and of design in accordance with the application submitted, the attached plan by Daines and Associates Job 686 Site Plan 1.0B dated May 2007 as amended October 2007, the attached plan by Totalspan and Vermont Consultants Drawing TS 8000/8NZL6, and the additional information as submitted by McFadden McMeeken Phillips via email dated 31 March 2010. Where there is any apparent conflict between the information provided with the application and any condition of this consent, the conditions shall prevail.

## Height

3. The height of the proposed garage shall not exceed 2.5 metres, measured above the existing ground level of the driveway.

## Reflectivity of Garage Roof

4. The roof of the garage shall be painted in a colour with a reflectivity value of 25% or less.

## Landscape Planting

5. The consent holder shall, immediately upon completion of construction of the garage, plant the south-eastern yard adjoining and 3 metres either side of the garage (a total of 12 metres). The planting shall use plant species, and be of a density, as to achieve a hedge effect to screen the garage from the driveway of 8 Faraday Rise within three years of planting. Once mature, the hedge shall be maintained at or about a height of 3.5 metres above ground level. The consent holder shall maintain the hedge thereafter, and any dead trees should be replaced within the first planting season following them dying.

[**Note:** This condition was volunteered by the Applicant].

## 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.

### Other Tasman Resource Management Plan Provisions

2. This resource consent only authorises the activity described above. Any matters or activities not referred to in this consent or covered by the conditions must either: 1) comply with all the criteria of a relevant permitted activity rule in the Tasman Resource Management Plan (TRMP); 2) be allowed by the Resource Management Act; or 3) be authorised by a separate resource consent.

(Note: The existing shed on the south-western boundary of the application site shall be removed to a complying location, or a resource consent shall be obtained).

### 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 which are required to be complied with on an ongoing basis.



## Monitoring

4. 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.

## Archaeological

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

## Interests registered on Property Title

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

Issued this 27<sup>th</sup> day of July 2010



Mr Gary Rae  
**Commissioner**

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**Date Confirmed:**

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**Chair:**