

# MINUTES

**TITLE:** Environment & Planning Subcommittee -  
Commissioner Hearing  
**DATE:** Monday, 8 November 2010  
**TIME:** 9.30 am  
**VENUE:** Council Chamber, 189 Queen Street, Richmond.

**PRESENT:** Mr David Collins (Chair), Ms E Briggs (Commissioner)

**IN ATTENDANCE:** Consent Planner – Land (J Harley), Forward Planner,  
Reserves (R Squire), Principal Resource Consents Advisor  
(J Butler), Administration Officer (J A Proctor)

**1. B and T DUNN, COASTAL HIGHWAY, RICHMOND – APPLICATION NO:  
RM100443, RM100238, RM100239**

**Land Use Consent – RM100443**

To retain a cottage as a fourth dwelling on the site to be used later as a workers' cottage. This cottage is subject to resource consent RM050664 which authorised a new dwelling on the site in exchange for the removal of the subject cottage (change of the conditions on consent RM050664 is also required).

**Land Use Consent – RM100238**

Retrospective consent for cottage extensions within the Coastal Environment Area, the extensions are greater than 50% of the Gross Floor Area and potentially reduce the current setback to Mean High water Springs (MHWS). This is a second cottage on the property located less than 20 metres from MHWS.

**Discharge Consent – RM100239**

To discharge domestic wastewater in the Wastewater Management Area for the extended cottage that is the subject of RM100238.

The application site is located at 710 The Coastal Highway (State Highway 60), being legally described as Part Lot 14 DP 639, CT Identifier NL6B/639.

Mr Collins clarified the purpose of resource consent hearings and explained the role of a Commissioner. Mr Collins advised that he had worked with Mr Briggs; and that Commissioner Higgs was once married to Mr Briggs.

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

**Report and Decision of the Tasman District Council through Independent Hearing  
Commissioners**

**Meeting held at the Council Chambers, Richmond on 8 November 2010  
Site visit undertaken on 7 November 2010  
Hearing closed 22 November 2010**

A Hearing Panel for the Tasman District Council (“the Council”) was convened to hear three applications lodged by **B and T Dunn** (“the Applicant”), to vary a consent condition which required the removal of a replacement dwelling, a new consent to allow the retention of the replacement dwelling and a retrospective consent for the extension of an existing cottage. The applications, made in accordance with the Resource Management Act 1991 (“the Act”), were lodged with the Council and referenced as RM050664V1 (variation to condition), RM10043 (retention of replacement dwelling), RM100238 (retrospective consent for extensions) and RM100239 (discharge wastewater).

**HEARING COMMITTEE:** Commissioner David Collins, Chairperson  
Commissioner Liz Briggs

**APPLICANT:** Ms Barbara Dunn  
Mr Hugh Briggs (Resource Management Consultant)

**CONSENT AUTHORITY:** **Tasman District Council**  
Ms Rosalind Squire (Reserves Forward Planner)  
Ms Jane Harley for Mr Godwell Mahowa (Consent Planner,  
Natural Resources)  
Mr Michael Croxford for Mr Mike MacKiggan

**SUBMITTERS:** Mr Patrick Stowe  
Mr D Mitchell (Mapua and Districts Cycle and Walkways  
Group)  
Ms Helen Campbell (Nelson Tasman Branch, Royal Forest and  
Bird Protection Society) and on behalf of Friends of Nelson  
Haven and Tasman Bay (Inc)

**IN ATTENDANCE:** Mr J Butler (Principal Resource Consents Adviser) - Assisting  
the Committee  
Ms Julie Procter, (Committee Secretary)

## 1. SUMMARY

The Committee has DECLINED one of the resource consents and APPROVED the other two with conditions.

## 2. DESCRIPTION OF THE PROPOSED ACTIVITY

### The Site:

The site is a 10.9058 hectare property located at 710 The Coastal Highway, Appleby, Motueka, adjacent to the Waimea Inlet legally described as Part Lot 14 DP 639, CT identifier NL6B/639. The property is zoned Rural 3 and is within the Coastal Environment and Tasman Coastal Design Guide Areas under the Tasman Resource Management Plan (TRMA). The Waimea Inlet, is of international importance for migratory bird species (it has been classified as a RAMSAR site) and is of national significance for other endangered or threatened species.

### The Proposal:

The proposal consists of three applications as follows:

- Land use consent **RM100443**: To retain an existing cottage (the “green” cottage) as a fourth dwelling on the site to be used later as a worker’s cottage. This cottage is subject to resource consent RM050664 which authorised a new dwelling on the site in exchange for the removal of the subject cottage. A change of the conditions on consent RM050664 is also required (**RM050664V1**)
- Land use consent **RM100238**: Retrospective consent for extensions to another existing cottage (the “brown” cottage)
- Discharge Consent **RM100239**: To discharge domestic wastewater in the Wastewater Management Area for the extended cottage (the “brown” cottage)

The site was originally an orchard and contains three dwellings in existence at that time, namely the original homestead and the two cottages used as workers’ accommodation (the “brown” and “green” cottages) located close to the edge of the estuary. They have existing use rights under section 10 of the RMA 1991. The homestead is not part of this application.

In November 2005, the applicant was granted consent to construct a new dwelling set back about 50 metres from the coastline at the eastern end of the site. This was to be “*a replacement for an existing dwelling on the same property*”.<sup>1</sup> This new dwelling has been completed and is presently lived in by one of the applicants - Mrs Thelma Dunn. A volunteered condition of the consent was that “*The existing workers’ accommodation (the “green” cottage)...shall be removed from the property within two years from the date of issue of the building consent for the new dwelling.*” This has not occurred, hence the application under RM100443.

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<sup>1</sup> Decision from Tasman District Council on RM050664.

The other cottage (the “brown” cottage) has been doubled in size by an extension constructed without a resource consent or building consent. Retrospective consent is sought under RM100238 which includes an application (RM100239) to discharge domestic wastewater to land.

In summary, request is sought to allow four dwellings on the one site. The zoning is Rural 3 in which only one dwelling per site is a permitted activity and two dwellings a discretionary activity.

### **3. TASMAN RESOURCE MANAGEMENT PLAN (“TRMP”) ZONING, AREAS AND RULES AFFECTED**

According to the TRMP the following apply to the site:

**Zoning:** Rural 3

**Areas:** Coastal Environment Area, Wastewater Management Area, Coastal Design Guide Area, Road Designation 121 and 138, Protected Tree T580.

**Rules:** The proposed activity breaches rules:

- 17.7.3.1(b)(dwelling in Rural 3 Zone),
- 17.7.3.2 (a)(more than one dwelling),
- 17.7.3.2(h)(non re-locatable workers’ accommodation),
- 17.7.3.2(i) (site for workers’ accommodation less than 50 hectares),
- 17.7.3.3(a)(no more than two dwellings),
- 18.11.2.1 (c)(i) and (ii) (extension in the CEA that are greater than 50% and reduce existing setback to MHWS),
- 36.1.13A New discharge of wastewater in the Wastewater Management Area in Category 6 soils) of the TRMP.

Overall the proposal is a discretionary activity according to the TRMP.

### **4. NOTIFICATION AND SUBMISSIONS**

#### **4.1 Written Approvals**

Prior to notification no formal written approvals were received in relation to the application. However there was a conditional letter of approval from Ms Brigitte Richards dated 29 March 2010. As approval was conditional, the letter cannot not be considered as formal written approval for the purposes of this consent, however we have noted Ms Richards’ conditional support.

#### **4.2 Notification**

The application was publicly notified on 7 August and submissions closed on 3 September 2010.

### 4.3 Submissions

Submissions in support:

Submitter	Reasons	Heard?
Robin Cameron Collier. 42 Apple Valley Road East, RD1 Upper Moutere 7173	Support the proposal but would like the retirement cottage to be landscaped to reduce its visibility from surrounding properties	No
Patrick Leon Stowe 710 Coastal Highway, RD 1, Upper Moutere, Nelson 7173	The brown and green cottages are of limited footprint, have been used for the past 70 years, and could be used as worker accommodation. Patrick also raises the fact that the cottages are screened from the adjacent neighbours and will not have any environmental effects. He also alludes to the family circumstances the Dunns are in following the passing away of Annabel and Owen Dunn	Yes

Submissions in opposition:

Submitter	Reasons	Heard?
Nelson Tasman Branch of Royal Forest & Bird Protection Society, P.O Box 7126 Nelson Mail Centre Nelson 7042	The retrospective consent for the cottage extension would set precedence and the applicants should have applied for the resource consent prior to the extension. Non compliance with a condition under RM050664 to remove the cottage undermines the provisions of the Resource Management Act and the Tasman Resource Management Plan. The cottages are too close to the Waimea Inlet, an estuary of national importance. The location of the cottages may result in possible pollution and disturbance to the estuarine fauna and flora and is contrary to the New Zealand Coastal Policy Statement. The location of the cottages would limit the Council's ability to take a 20 metre esplanade strip in the event of a subdivision and limit proposals for walkways, cycle ways and coastal habitat restoration and enhancement. Bird and forest do not have issues with the retention of the cottage that was to be demolished other than the integrity of the RMA and TRMP process, and suggest that a sensible solution would be to relocate the cottages away from the estuary edge	Yes
Mapua & Districts Cycle and Walkway Group C/-David Mitchell 107 Aranui Road Mapua 7005	The retention of the green cottage and the extension of the brown cottage will have an effect on the implementation of a shoreline reserve on the estuary. The group recognises the applicant's circumstances but does not feel that the circumstances warrant retrospective approvals for buildings that do not comply with Council rules. The group feels that the proposal is against policy 8.2.3.9-protection of the ecological values of the Waimea Inlet, 8.2.3.11-maintain and acquire 20 metre wide reserves along the coastline for natural character, ecological reasons and public access. More so in the light of the new rural residential developments in the Mapua Area that have attracted more residents to the area. The group	Yes

	believes the provision of cycle -walkways will allow people in the periphery of Mapua to cycle or work to facilities in Mapua as an alternative to driving. The estuary reserve proposed in the area of the Dunn property would be part of a walkway linking Mapua to Apple Valley, Westdale and Hoddy Roads. This would provide an effective way of encouraging a healthy and effective community and would also attract tourists to the area. The group also believes granting the consents will set a bad precedence.	
Friends of Nelson Haven and Tasman Bay(INC), C/- Gillian Pollock, P.O. Box 365 Nelson 7040	The society believes that granting the consent will set bad precedence and will compromise the provisions of the RMA and the TRMP. The location of the cottages will also hinder the possibility of having a 20 metre riparian area along the estuary	Yes

## 5. PROCEDURAL MATTERS

The following was written by Commissioner Collins.

Ms Dunn suggested in her evidence at the hearing that it was inappropriate for Commissioner Briggs to hear the applications because she was “*estranged*” from Mr Briggs, (Ms Dunn’s planning consultant) and that there was “*animosity*” between them.

My understanding is that Commissioner Briggs and Mr Briggs have been divorced since 1989, and that they have been leading separate lives since then. Commissioner Briggs assures me that they have had amicable times over the years when there are family events with their adult children, such as the marriage of their daughter in January 2008. I do not see any issue of potential for bias against the applicant because of Mr Briggs’ involvement, just as there has been no advantage to the applicant from my former relationship with Mr Briggs from when we worked for the same major consultancy firm, many years ago.

## 6. EVIDENCE HEARD

We heard evidence from the applicant, an expert witness, submitters, and the Council’s reporting officers. The following is a summary of the evidence heard at the hearing.

### 6.1 Applicant’s Evidence

**Mr Hugh Briggs** (Resource Management Consultant for the applicant)

Mr Briggs summarised his written evidence. In his opinion, the main environmental issues were:

- Whether the applications met the purpose of the Rural 3 zone:

His opinion was that the existing dwellings surrounded by mature vegetation formed two small clusters close to the shore and are consistent with the zone

purpose. The relocation of one or both of the cottages would limit the productive use of the rest of the site and the cottages would be more visible.

- The number of dwellings on the site:

He confirmed that the required site size and the nature and number of dwellings on the site do not comply with current provisions of the Rural 3 zone.

- The visual impact on the coastal landscape and natural landscape character:

Mr Briggs had commissioned a landscape assessment by Ms Liz Kidson, landscape architect. Based on her findings, he said that the retention of the two cottages would have minimal visual impact or effect on the existing coastal character or amenity. This was due to their size, location amongst existing vegetation and the fact that they had been alongside the coast for some time and were part of the natural coastal character. Ms Kidson did recommend that some further planting be implemented around the two cottages to mitigate views from the sea but Mr Briggs thought this unnecessary as he did not consider there was any real adverse impact to mitigate.

- The coastal setback from mean high water springs (MHWS):

Mr Briggs was of the opinion that the presence of the two old cottages close to the shore has not and will not have any impact on the presence of birds or fish on these shores. He considered that the creation of foreshore access would increase human activity very close to the shore and would be more detrimental to birdlife than the continued presence of the cottages. He had reservations about the practicality and feasibility of the completion of the proposed walkway/cycleway around the coastline as identified in Chapter 8 of the TRMP.

In conclusion, he considered that the granting of these applications would not set a precedent because of the unusual and unique family circumstances; that the retention of the green and brown cottages in their present location (along with the addition) would not have any visual or physical impacts on the coastal environment; and their retention in the present position would also enable the remainder of the site to maintain its potential for productive rural use.

### **Ms Barbara Dunn (applicant)**

With the aid of a Powerpoint display, Ms Dunn outlined her main points and the present family situation. Her mother (the other applicant) is living alone in the new dwelling after the death of her husband. Ms Dunn and her two daughters and partner Mr Stowe are living in the brown cottage. Her brother is living in the green cottage. Her brother-in-law and his family are living in the old homestead. Her sister died three years ago.

The family wish to continue this arrangement to support each other and to live quietly and modestly on this private rural property.

She pointed out that the construction of the adjacent coastal highway had caused disruption to the coastal environment and was visually unsightly from their property. The family are aware of the values of the estuary and have left the habitat untouched.

The two-bedroomed brown bach had been extended to provide a further bedroom or "sleepout". She considered that the extension was built in a style and with materials that are sympathetic to the vernacular of the area. Ms Dunn also noted that the two baches are not visible from most parts of the coastline, including Bronte Road East. If they were relocated further up the site, they would be highly visible from the highway. At present, they are well above any predicted rise in sea level.

The family wish to retain the potential for the rest of the site to be used for rural purpose.

They oppose a 20 metre esplanade strip or reserve and consider it would breach their property rights and would be an intrusion on the privacy and security of the landowners.

## **6.2 Submitters' Evidence**

### **Mr Patrick Stowe**

Mr Stowe is the owner and winemaker of the adjacent Rimu Grove winery and is the partner of Ms Dunn. He outlined his support for the applications.

**Ms Helen Campbell:** (Nelson Tasman Branch of Royal Forest and Bird Protection Society Inc.)

Ms Campbell spoke to her written submission, where she emphasised the Society's ongoing concern over the effect of proposed development adjacent to the Waimea Inlet. The Society's main concerns are summarised above. Ms Campbell elaborated on the policy provisions of the 1994 New Zealand Coastal Policy Statement and the new NZCPS which seek that natural finite and representative values associated with estuarine and coastal environments are protected, preserved and enhanced. With regard to an esplanade strip or reserve, she pointed out the Society's preference for a future strip or reserve for conservation values rather than walking or cycling in order to further protect the ecological values of the estuary.

The Society requested that approval not be granted to the resource consents. In the event that consideration is given to granting them, they request a finite lifetime (say up to 10 years) to enable the family to make other alternative living arrangements, or that the cottages are relocated beyond the 100 metre line. This would be conditional on an immediate agreement to establish some riparian or coastal reserve or strip with the Council and a covenant on the title.

Ms Campbell also read out the submission from Friends of Nelson Haven and Tasman Bay (Inc) which had similar concerns to Royal Forest and Bird.



**Mr David Mitchell** (Mapua and Districts Cycle and Walkways Group)

Mr Mitchell spoke to his written submission which elaborated on the Groups' main concerns summarised above. The Group is pursuing a cycleway-walkway link around the Waimea Estuary from Mapua to Apple Valley, Westdale and Hoddy's Road. An esplanade reserve or strip along the Dunn's property would be likely to be part of this proposal. Mr Mitchell agreed that there could be a conflict between conservation values and users of a cycle/walkway but was of the opinion that access could be designed to minimise conflict by measures such as planting coastal ribbonwood to screen the bird habitats.

The Group considered that the consent for the green cottage should be declined because its removal was a requirement under a consent condition imposed for the new dwelling. A main reason for this condition was that the site of the cottage was close to the estuary in the area of a potential reserve. The Group considered that granting retrospective consent for the brown cottage would set a precedent and was concerned that both the cottages could become permanent fixtures if consents were granted.

### **6.3 Council Reporting Officers' Evidence**

**Mr Michael Croxford (Consent Planner, Natural Resources)**

Mr Croxford attended on behalf of Mr Mike Mackiggan, Consent Planner, who wrote the report relating to the consent for discharging domestic wastewater to land.

In his report, Mr Mackiggan stated that the wastewater system type that is proposed for the site is suitable for the intended use and that it is not expected that there would be any adverse effects on the soils, surface water or groundwater if designed appropriately. He suggested a list of conditions should the application for discharge be approved. Mr Croxford confirmed these findings.

**Ms Rosalind Squire (Reserves Forward Planner)**

Ms Squire emphasised the importance of obtaining an esplanade strip or reserve along the coastline on the site in order to link up with a recently acquired esplanade strip on recently subdivide land to the east and a future coastal walk/cycleway alongside the Coastal Highway to the west. The Council's long term goal is to provide coastal walkway links adjoining the estuary and ultimately a walkway from Richmond to Mapua. There are policies and an objective in the TRMP supporting this goal.

In order to offer some assistance to the applicant and the Council towards achieving both parties' goals, the Community Services Department had contacted the applicant and suggested that it could contribute towards the costs of relocating the brown cottage away from the coastal margin in exchange for the applicant volunteering an esplanade strip. The creation of a 10 metre strip was suggested as this would provide sufficient room for the formation of a walkway in the short term and would minimise conflict with the brown cottage if it was relocated. It was

acknowledged that when/if the property was subdivided at some future date, a 20 metre reserve would then be vested which would be consistent with other subdivisions adjoining the estuary. The applicant had not yet responded to this suggestion at the time of the hearing.

### **Ms Jane Harley (Consent Planner, Land Use)**

The Council's section 42A report was prepared by Godwell Mahowa, Consent Planner. Ms Jane Harley attended the hearing on his behalf.

In his report Mr Mahowa emphasises the need to provide and enhance public access along the coast and to protect the natural character of the coastline in line with section 6(a) and (d) of the RMA and relevant policies in Chapter 8 of the TRMP.

In his opinion, the landscape report accompanying the application did not adequately address the need to maintain wide and extensive riparian buffers along the Waimea Inlet because of the continued presence of the "green" and "brown" cottages.

His overall conclusions are that the retention of the cottages would be contrary to the general thrust of the policies and objectives of the Rural 3 Zone and Part 2 of the Act and that the granting of the consents would set a precedent which would undermine consistent administration of the TRMP.

Ms Harley confirmed that the green cottage was to be removed as part of the consent granted for the new dwelling in March 2008. She said that the applicant knew about the Council's intention to form an esplanade strip along the coast and that Council officers had attempted to work with the applicant to try to find a solution, including financial assistance with the relocation of the brown cottage. On other sites in this zone, the general intention was to require new buildings to be set back about 100 metres from MHWS.

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

### **Mr Hugh Briggs:**

Mr Briggs stated that there was no Council plan for esplanade strips or reserves on this part of the coastline. He questioned the fundamental purpose of the "strip" if taken. He suggested provisions for esplanade reserves or strips should be included in a planning document such as a Mapua Structure Plan or Foreshore Plan and that consultation with landowners was required. He pointed out the conflict in providing public access in areas of high wildlife value.

He discussed the interpretation of the term "natural character" and said that it was not defined in the TRMP. He considered that the provisions of the Rural 3 zone in the TRMP were contradictory because they encouraged residential development on rurally productive land and as a result of new development the natural character of the coast may not be retained.

Mr Briggs suggested that the rest of the site could be used productively as a vineyard.

He concluded that the retention of the cottages does not conflict with the Rural 3 Zone provisions and that they are part of the existing coastal character.

He volunteered the removal of the green cottage following a “reasonable period” after the death of Mrs Dunn senior.

### **Ms Barbara Dunn**

Ms Dunn reiterated that their family situation is unique and that there are significant personal issues involved. Having to move the cottages further inland would create more stress.

She stated that the landscaping around the new dwelling is an “ongoing process” and that the family wish to enhance it.

## **7. RELEVANT STATUTORY PROVISIONS**

### **7.1 Policy Statements and Plan Provisions**

In considering this application, we have had regard to the matters outlined in sections 104, 104(B) and 107 of the Act.

In particular, we have had regard to the relevant provisions of the following planning documents:

- a) The New Zealand Coastal Policy Statement (NZCPS);
- b) The Tasman Regional Policy Statement (TRPS); and
- c) The Tasman Resource Management Plan (TRMP).

### **Part 2 Matters**

In considering this application, we have 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.

The provisions of particular relevance are:

#### **Section 5:**

The purpose of the RMA is:

*“To manage the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while;*

- (a) *sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) *Safeguarding the life-supporting capacity of air, water, soils and ecosystems; and*
- (c) *Avoiding, remedying or mitigating any adverse effects on the environment.”*

#### **Section 6:**

- 6(a) *“the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development”;*
- 6(d) *“the maintenance and enhancement of public access to and along the coastal marine area ...”*

#### **Section 7:**

We have also had particular regard to the following other matters in making our decision:

- 7(c) *“the maintenance and enhancement of amenity values”;*
- 7(d) *“intrinsic values of ecosystems”;* and
- 7(f) *“maintenance and enhancement of the quality of the environment”.*

### **8. PRINCIPAL ISSUES AND OUR MAIN FINDINGS**

The three proposals under consideration are related, but legally they are separate applications and we have to consider them individually as well as considering the effects of them as a “package”.

Based on the evidence presented and the criteria for assessment under sections 104 and 104B of the RMA 1991, we consider that the principal issues and our main findings are:

#### **Whether the “status quo” is represented by the four dwellings presently on the site:**

It was submitted by the applicant that we should focus on the “status quo” as being the homestead, the two cottages which have been there for a long time and are causing no adverse environmental effects, (one with a recent addition) along with the new dwelling.

We have difficulty with this proposition because in our assessment the new retirement home cannot be ignored. The applicants could have continued using the homestead and the two cottages indefinitely, relying on RMA section 10 existing use rights, but chose to extend the “brown” cottage and to lodge an application for a new house. That application specifically volunteered that the

“green” cottage would be removed within two years if consent was granted and it is clear from the Council’s decision that this was a crucial factor in granting consent. As we see it, it is not appropriate to now treat the new house as a given and focus just on the cottages. The future of the green cottage is an integral part of the conditions of approval for the new dwelling. The resource consent under section 127 of the RMA revisits the basis for the consent granted.

**Whether the “green” cottage should be retained:**

This cottage has existing use rights but these were effectively relinquished when the application was made for the new dwelling, and the consent was granted subject to this cottage being removed within two years of the consent. In the AEE report submitted with the application for the new dwelling, it states that *“It has been agreed with Council’s planners that one of those two workers cottages (the green cottage) will be removed within two years as a condition of this consent”*. This was primarily to bring the application into line with the Rural 3 Zone which allows one dwelling per site as a permitted activity and two as a discretionary activity, i.e. the two dwellings would be the old homestead and the new dwelling. The brown cottage would remain as a workers’ cottage under existing use rights.

In the decision relating to the new dwelling it is clear that the green cottage was to be removed within two years of the date of issue of the building consent, and that the granting of the consent was influenced by the location of the new dwelling being set back about 50 metres from MHWS to minimise the effects on the *“attractive and nationally important coastal and rural environment”*.

Given that the new house is now constructed, there is no legal basis for retaining the “green” cottage. We are effectively being asked whether the consent for the new house could have been granted without the benefits of removing the green cottage. In terms of environmental effects and the provisions of the TRMP, we do not think it could have been.

**Whether retrospective consent should be granted for the extension to the brown cottage:**

Our understanding of the case law is that retrospective applications are not to be used to “punish” applicants who have done something illegal (enforcement is a separate process), but equally applicants should not gain any benefit in the sense of a “fait accompli”. We have therefore considered this application as if it was for a proposed extension, having no regard to the fact that it is already in place.

As discussed below, the policy framework in the Tasman Resource Management Plan, the New Zealand Coastal Policy Statement, and sections 6(a) and 6(d) of the Act is strongly against the erection and use of structures this close to the coast. The question is whether these strong directions are outweighed in this case by the particular circumstances of the family.

There is also the issue of whether permission should be granted for a third dwelling on this site given that the existing use rights of the brown cottage related to a workers’ cottage which we understand was occupied only seasonally. The cottage is presently in permanent occupation, including the extension.

Ms Dunn explained that she needed to stay in her present accommodation to assist other family members and that constructing another dwelling on another part of the site was not financially viable for them at present. We accept that if Ms Dunn, her two daughters and her partner are to live in the brown cottage there is a need for more room and that the logical location for an extension or sleepout is next to the cottage.

The only way we can see an extension attached to the cottage overcoming the policy obstacles in the relevant statutory documents is for it to be considered as a temporary structure in this location.

It seems to us that the family have various options for using this large and favourably zoned property to meet their combined needs, including the option of subdivision, but they need some time to assess these options and move forward. A consent for a limited period would allow Ms Dunn to continue to provide care for her wider family while assessing these options.

One option might be to move the cottage and extension back from the coast. The Council has previously offered to assist in the cost of this, and may be prepared to do so again. Only the cottage has existing use rights so if the two structures are to be used as a connected dwelling they both will have to be moved.

Two arguments against moving the buildings were advanced by the applicant at the hearing; loss of productive rural land, and greater visibility of the structures.

Loss of productive rural land does not seem to have been an important consideration when the new house was sited away from existing buildings. At present the site is used predominantly for grazing a small number of horses. If it is now a concern, the amount of productive land lost could be minimised by the careful siting of a relocated building. In any case the buildings are quite small so the issue is really how much land would be set aside for the curtilage, driveway etc. The cottage and extension only need to be moved back beyond 20 metres of MHWS in order to allow consideration of an esplanade strip or reserve should subdivision of the site occur at a future stage. The requirements of the Rural 3 zone envisage a setback for a new dwelling to be 50-100 metres but this might be relaxed in the present circumstances given that the cottage has existing use rights.

The visibility of the cottage and extension if moved would obviously depend on the position and the landscaping. We are not persuaded that another position would necessarily be unacceptable on landscape grounds and in any case the granting of a temporary consent does not rely on later relocation - it simply provides time for this and other options to be explored.

We appreciate that there is a danger in time-limited consents in that consent holders may argue for time extensions on the grounds that if the effects on the environment were acceptable at the time of granting consent and nothing has changed, the effects must be acceptable for a further period. There is no way to prevent the Dunns applying for another temporary consent (that is everyone's right) but we wish to record that we do not consider the effects of a building extension this close to the coast acceptable. It can be justified only as a

temporary measure to allow time for other options to meet particular family circumstances to be explored.

**Whether there will be any adverse effects from the proposed effluent treatment and disposal system:**

The third application seeks consent for a new effluent treatment and disposal system to serve the enlarged brown cottage.

We are satisfied from the information provided in the application and Mr Mackiggan's report that the proposed system, with proper maintenance, will be effective and will not have any significant adverse effects on the estuary or riparian areas. We accept the conditions attached to his recommendations.

Our only concern has been that it might consolidate and perpetuate the enlarged brown cottage in a location which, as already indicated, we do not consider appropriate. As we understand it though, the proposed wastewater system is designed for five people and could be used for a house further uphill, if the cottage were relocated or moved. The disposal system it is set back far enough from the coast to not extend into the strip that would probably be taken as reserve in the event of future subdivision.

**Whether the granting of the consent to allow the brown cottage and extension to remain would set a precedent:**

As we have stated, we are only considering the retention of the brown cottage on a temporary basis. If this was to be a permanent arrangement or if this was a new structure, we consider it would set a precedent and would undermine public confidence in the TRMP.

**Whether the existing cottages have an adverse visual effect on the natural character of the coastline:**

The applicant commissioned a landscape report by Ms Liz Kidson, landscape architect, which was attached to the section 42A report. She did not attend the hearing, but Mr Briggs made reference to her findings in his evidence. Her brief was to consider the landscape effect of retaining the cottages in their current location and form.

She assessed the existing cottages against the landscape provisions of the TRMP (ie Ch 5: Site Amenity Effects; Ch 7: Rural Environment Effects; Ch 8: Margins of Rivers, Lakes, Wetlands and the Coast; Ch 9: Landscape) and came to the conclusion that the rural and coastal character will not be unduly affected by the presence of the green and brown cottages. She considered that these cottages form *"an integral part of the rural character of this coastline which is at risk of being lost to large houses on lifestyle sections."* She also considered that the cottages do not adversely affect the shoreline visual interface due to the discreet nature of their form and the fact they are located amongst established vegetation.

In order to assist mitigating any adverse visual effects, she recommended:

- i) An increase in vegetative screening along the north-western facades to further reduce the visibility and privacy issues on users of the inlet
- ii) Additional native vegetation around the cottages to further enhance the local ecosystem.
- iii) A landscape plan to be submitted for approval by the TDC to achieve the above, using species from the Moutere Downlands-Hill Country Native Plant Restoration list.
- iv) Painting the cottages in recessive colours eg Dulux Colours of NZ; “Uruwera” on trim and “Bushy Park” on the external facades.

She also assessed the cottages against the Rural 3 Design Guidelines for the Waimea Inlet, with the assistance of photographs taken on sites overlooking the estuary and the cottages. She concluded that the cottages and the extension were either reasonably difficult to see or not visible from selected locations along surrounding roads. The visual effect would be the greatest from the shoreline and tidal areas of the estuary.

She considered that the new dwelling has a greater visual effect than the existing cottages due to its location away from existing vegetation and in a more exposed location.

In general we agree with her assessment of the visual impact of the existing structures on the landscape and her recommendations, but “landscape” effects are not limited to the visual. In this case, they also include effects on the landscape itself, including effects on the existing natural character, ecology, habitats for endangered species and potential access to the coastline.

**Whether the combined effects of the consents (ie the retention of the two cottages and the extension of one) are contrary to the relevant statutory documents:**

**a) The objectives and policies of the TRMP:**

The most relevant policies and objectives are found in Chapter 8 of the TRMP. This Chapter relates to two key issues:

- (i) The protection of the natural character of ....wetlands and their margins and the coastal environment from inappropriate subdivision, use and development and
- (ii) The provision and enhancement of public access to and along the margins of ....wetlands and the coast.

These two issues are similar to sections 6 (a) and (d) of the RMA and can be described as:

**b) Any effects on the existing ecology and natural character of the estuary and the coastal riparian areas:**



The two cottages pre-date the TRMP and the RMA. We understand that they were used as seasonal workers' cottages for those employed in the orchard and would have had a limited life-span. It is unlikely that they were permanently occupied or that effects of any activities extended much beyond the curtilages.

We have already stated that the green cottage should be removed. We now have to consider the effects of the enlarged brown cottage and the fact that it is permanently occupied.

We are concerned that the intensification of domestic use in such a sensitive location will have adverse effects on the ecology and adjacent riparian areas of the estuary, which is of international significance for migratory bird species. Disturbance to both indigenous plant species which provide habitats for the birds, and also to the birds themselves, is possible from people living in the brown dwelling and from domestic dogs and cats. Ms Dunn stated that they had fenced off part of the shoreline to prevent this, but on further questioning at the hearing, showed that only a small area to the west of the cottage had been fenced. In order to be effective, fencing needs to be continuous and designed to deter any disturbance.

Were this a consent for a new dwelling in this location, we would consider it inappropriate because of the proximity to the estuary and the need for wide setbacks to protect estuarine values, as set out in the TRMP and section 6(a) of the RMA. This now has to be weighed up against the case put to us by the applicant relating to family circumstances.

**c) The maintenance and enhancement of public access to and along the coastal marine area:**

Provision of public access to the coast is a matter of national importance under the Act and the NZCPS, and it also has a high level of importance in the TRMP. As stated in the report by Rosalind Squire, the Council has consistently sought the vesting of esplanade reserves and the creation of esplanade strips on subdivisions adjoining the Waimea Estuary. The site to the east, which has recently been subdivided, has an esplanade strip varying in width from 10 to 20 metres and a local purpose reserve of 1.2613 hectares on the adjoining boundary. Access along the highway to the west will be provided by a 2.5 metres walkway/cycleway adjacent to the shoreline. This site is therefore the missing "link" in a continuous esplanade strip or reserve on this part of the coast.

Concerns were expressed by several parties at the hearing with regard to the potential conflict between providing access along the shore and protecting wildlife values. We are of the opinion, having visited other significant wetlands and estuaries in New Zealand, that this conflict can be mitigated by the design of the walkway and the planting of appropriate indigenous species on the coastal side of the walkway which will screen disturbance from any sensitive habitats.

There is no present application for subdivision, so any “strip” could only be acquired by negotiation with the applicant.

Again, were this an application for a new house, we would expect both a subdivision application and for the building platform to be set back 50-100 metres from MHWS, in line with the provisions of the Rural 3 Zone.

We would encourage the applicant to consider such an application, which might also resolve the appropriate location of a more permanent and spacious dwelling, as well as providing funding from the sale of other subdivided sites within the existing site.

**Whether the present particular family circumstances are such that, under Section 5 of the RMA, they outweigh consideration under other relevant parts of the Act:**

It was suggested by the applicant that the particular present family circumstances of the Dunn family justify granting the consents.

The purpose of the Act as set out in section 5 is to enable “*people and communities*” (our emphasis) to use resources to meet their needs (subject to the provisos listed in section 5(2)). We therefore accept that this is a relevant matter to be taken into consideration. The present needs of the Dunn family would be met by granting the consents sought.

With regard to the green cottage, it was put to us that it should be retained as a residence for Ms Dunn’s brother in order to keep the family together on the site. We have to say that it has been difficult for us to assess what weight to give to this. The basic facts about the family circumstances were set out in the applications, but Ms Dunn made it clear at the hearing that she did not want to discuss her brother-in-law’s condition in any detail (he is living in the homestead with his family). We understand and respect that, but it does not assist us.

She noted that she has appreciated support from her brother since he came to live in the green cottage but she did not explain why her brother had to live in the green cottage in order to assist in her mother’s care. When asked about her mother’s needs Ms Dunn indicated that her mother needs daily visits but she also mentioned that she is still able to drive a vehicle.

While it must be convenient and economic for her brother to live in the cottage, we do not have any evidence that the level of care needed by her mother and her brother-in-law and family are such that it is necessary for her brother to live on the application site or in the green cottage in particular. We therefore consider that the green cottage should be removed, for the reasons previously discussed.

With regard to the brown cottage and extension, in our assessment the clear policy direction of the TRMP, the RMA and the NZCPS creates an insuperable hurdle to granting the consent as sought. However, we consider that a temporary consent would not offend those policies to anything like the same extent, and a temporary consent would recognise the particular family circumstances by

allowing time for other options to be explored. We have no difficulty granting the consent for the discharge of treated domestic sewage (RM100239).

## 9. DECISION

For the reasons set out above, pursuant to sections 104, 104B and 107 of the Act:

- consent to application RM100443 (and also a variation to resource consent RM050664) to retain the “green cottage” is refused,
- consent for retrospective application RM100238 to retain the extension to the “brown cottage” is granted, but with a duration of only two years, and
- consent for application RM100239 for the discharge of treated effluent is granted.

Consent RM100238 and consent RM100239 are granted subject to the attached sets of conditions.



David W Collins  
Elizabeth M Briggs  
**Hearings Commissioners**

Dated 13 December 2010



## RESOURCE CONSENT

**RESOURCE CONSENT NUMBER:** RM100238

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

**B and T Dunn**  
(hereinafter referred to as “the Consent Holder”)

### ACTIVITY AUTHORISED BY THIS CONSENT:

Retrospective consent to extension to the “brown” cottage.

### LOCATION DETAILS:

Address of property:	710 The Coastal Highway
Legal description:	Pt Lot 14 DP 639
Certificate of title:	NL6B/693
Valuation number:	1938069400
Easting and Northing:	2516281E 5993644N

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. Where there is any apparent conflict between the information provided with the application and any condition of this consent, the conditions shall prevail.

#### Term

2. Pursuant to section 123(a) of the Resource Management Act this consent shall have a duration of two years from the date of commencement of this consent.

### ADVICE NOTES

1. This consent is issued pursuant to the Resource Management Act 1991 and the Tasman Resource Management Plan. It does not constitute building consent and

if the project involves any form of building, consent should be sought pursuant to the Building Act 2004.

2. 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 monitoring costs exceed the initial fee, 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.
3. 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.
4. 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.
5. The Consent Holder should note that this resource consent does not override any registered interest on the property title.



David W Collins  
Elizabeth M Briggs  
**Hearings Commissioners**

Dated 13 December 2010



## RESOURCE CONSENT

**RESOURCE CONSENT NUMBER:** RM100239

Pursuant to Sections 104B and 107 of the Resource Management Act 1991 (“the Act”), the Tasman District Council (“the Council”) hereby grants resource consent to:

**B and T Dunn**  
(hereinafter referred to as “the Consent Holder”)

### ACTIVITY AUTHORISED BY THIS CONSENT:

To discharge domestic wastewater in the Wastewater Management Area for the extended cottage (the “brown” cottage).

### LOCATION DETAILS:

Address of property:	710 The Coastal Highway
Legal description:	Pt Lot 14 DP 639
Certificate of title:	NL6B/693
Valuation number:	1938069400
Easting and Northing:	2516281E 5993644N

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

### CONDITIONS

1. The design and the construction and operation of the approved wastewater treatment and disposal system shall be in general accordance with the design report prepared by Rounce Project Solutions Ltd, (reference Stowe/Dunne and dated March 10) with the application for resource consent, unless inconsistent with the conditions of this consent, in which case these conditions shall prevail.

#### **Advice Note:**

The wastewater system designer should be involved from an early stage with other parties responsible for the design. Design flow volumes, design and sizing of the land application area and reserve land application area needs to be undertaken concurrently with, for example, landscaping designs and planning.

(While the application refers to aerated systems, any form of secondary treatment capable of treating wastewater to comply with Condition 4 is considered suitable.)

2. The maximum rate of discharge shall not exceed 900 litres per day and shall occur in the location shown on Plan A (attached) with a minimum setback from the boundary of at least 25 metres. Should the applicant wish to move the field further from the boundary or alter the field shape, the applicant must first obtain the written approval of the Council's Co-ordinator Compliance Monitoring
3. The maximum loading rate at which the wastewater is applied to land shall not exceed 2.14 millimetres per day (2.14 litres per square metre per day). The land application areas shall be no less than 420 square metres in area and incorporate at least 420 lineal metres of pressure-compensating drip irrigation line. The land application areas shall incorporate at least 1 lineal metre of pressure-compensating drip irrigation line for each square metre of land application area. The emitters in the drip irrigation line shall be spaced no more than 0.6 metres apart along the line and each shall emit wastewater at a rate of no more than 2.3 litres per hour. Adjacent lateral drip irrigation lines shall be laid 1 metre apart or more.
4. The treated wastewater entering the land application area, as measured at the sampling point required to be installed in accordance with Condition 11, shall comply at all times with the following limits:
  - a) the five day biochemical oxygen demand (BOD<sub>5</sub>) in any single sample shall not exceed 20 grams per cubic metre; and
  - b) the concentration of total suspended solids (TSS) in any single sample shall not exceed 30 grams per cubic metre.
5. The wastewater treatment system shall be fitted with an audible and visual alarm.
6. There shall be no ponding of wastewater on the ground surface, or any direct discharge or run-off of wastewater to surface water.
7. The construction and installation of the wastewater treatment plant and land application system shall be carried out under the supervision of a person who is suitably qualified and experienced.

That person shall provide a written certificate or producer statement to the Council's Co-ordinator Compliance Monitoring prior to the exercise of this resource consent. This certificate or producer statement shall include sufficient information to enable the Council to determine compliance with Conditions 1, 3, and 11 and shall also confirm the following:

- a) that all components of the wastewater system (including the treatment plant and the land application area) have been inspected and installed in accordance with standard engineering practice and the manufacturer's specifications;
- b) that all components of the wastewater system are in sound condition for continued use for the term of this resource consent.

8. The Consent Holder shall submit a set of final “as-built” plans to the approval of the Council’s Co-ordinator Compliance Monitoring, showing the location of all components of the wastewater treatment and land application system. For the purpose of this condition, the Consent Holder shall ensure that the “as-built” plans are drawn to scale and provide sufficient detail for a Council monitoring officer to locate all structures identified on the plans, including the sampling point required to be installed in accordance with Condition 11.
9. No grazing stock shall be allowed access to the land application area at any time. In the event that such stock are held elsewhere on the property, suitable fences shall be installed around the land application area to prevent access by such animals.
10. A suitable reserve land application area equivalent to not less than 100% of the land application area (see Condition 3) shall be kept available for future use of wastewater disposal. This reserve area shall remain undeveloped. For the purpose of this condition, “undeveloped” means that no buildings or structures shall be constructed on the area set aside as reserve land application areas, however the reserve areas may be planted with trees or other vegetation.
11. A sampling point to allow collection of a sample of the treated wastewater shall be provided at a point located after the final pump-out chamber and before the point where the wastewater discharges to the land application area.

### **Maintenance and Monitoring**

12. Samples of the treated wastewater shall be collected 6, 12 and 24 months following the first exercise of this consent from the sampling point referred to in Condition 11. The samples shall be tested for BOD<sub>5</sub> and TSS by an accredited environmental testing laboratory. Results of these tests shall be forwarded to Council’s Co-ordinator Compliance Monitoring within 10 working days of the results of each test being received by the Consent Holder.

The samples required by this condition shall be taken at times where the dwelling is being used in a typical fashion. “Typical fashion” means that the occupancy, at the time of sampling and during the preceding 48 hours, varies by no more than one person from the number of people who normally reside in the dwelling. The samples shall be taken using laboratory supplied containers and according to the procedures directed by the accredited environmental testing laboratory and shall be transported to the laboratory under chain of custody.

13. The Consent Holder shall enter into, and maintain in force at all times, a written maintenance and monitoring contract with an experienced wastewater treatment plant operator, or a person trained in the wastewater treatment operation by the system designer, for the ongoing maintenance of the treatment and land application systems.

The contract shall specify the frequency of treatment plant inspections and maintenance during the term of this resource consent and shall include an inspection and maintenance schedule that is in accordance with the conditions of this consent.



A signed copy of this contract shall be forwarded to the Council's Co-ordinator Compliance Monitoring prior to the exercise of this consent.

14. Notwithstanding Condition 13, the wastewater treatment and land application system shall be inspected and serviced at least every six months and a copy of the service provider's maintenance report shall be forwarded to the Council's Co-ordinator Compliance Monitoring within two weeks of each inspection. The inspection report shall include, but not be limited to, the following information:
  - a) the date the inspection was undertaken and the name of the service provider;
  - b) a list of all components of the treatment and land application systems that were inspected and the state of those components;
  - c) any maintenance undertaken during the visit or still required, and a timetable for the expected completion of this work;
  - d) a description of the appearance of the filter/s and tanks;
  - e) the location and source of any odour detected from the system; and
  - f) a description of the appearance of the land application area (ponding, vegetation growth, etc).

### **Review of Consent Conditions**

15. The Council may, during the month of September each year, review any or all of the conditions of the consent pursuant to Section 128 of the Resource Management Act 1991 for all or any of the following purposes:
  - a) to deal with any adverse effect on the environment which may arise from the exercise of the consent that was not foreseen at the time of granting of the consent, and which is therefore more appropriate to deal with at a later stage; and/or
  - b) to require the Consent Holder to adopt the best practical option to remove or reduce any adverse effects on the environment resulting from the discharge; and/or
  - c) to review the contaminant limits, loading rates and/or discharge volumes and flow rates of this consent if it is appropriate to do so; and/or
  - d) to review the frequency of sampling and/or number of determinants analysed if the results indicate that this is required and/or appropriate;
  - e) to require consistency with any relevant Regional Plan, District Plan, National Environmental Standard or Act of Parliament.

## **Lapse Date**

16. Pursuant to Section 125 of the Act this consent shall lapse 5 years after the date of this consent unless either the consent is given effect to, or the Council has granted an extension pursuant to Section 125(1)(b) of the Act.

## **Expiry**

17. This resource consent expires on 13 December 2025 (15 year duration)

## **ADVICE NOTES**

1. Officers of the Council may also carry out site visits to monitor compliance with resource consent conditions.
2. The Consent Holder should meet the requirements of the Council with regard to all Building and Health Bylaws, Regulations and Acts. Building consent will be required for these works.
3. Access by the Council or its officers or agents to the property is reserved pursuant to Section 332 of the Resource Management Act.
4. All reporting required by this consent should be made in the first instance to the Council's Co-ordinator Compliance Monitoring.
5. Council draws your attention to the provisions of the Historic Places Act 1993 that require you in the event of discovering an archaeological find (eg, shell, midden, hangi or ovens, garden soils, pit, depressions, occupation evidence, burials, taonga) to cease works immediately, and tangata whenua, the Tasman District Council and the New Zealand Historic Places Trust should be notified within 24 hours. Works may recommence with the written approval of the Council's Environment & Planning Manager, and the New Zealand Historic Places Trust.
6. 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:
  - a) comply with all the criteria of a relevant permitted activity rule in the Tasman Resource Management Plan (TRMP);
  - b) be allowed by the Resource Management Act; or
  - c) be authorised by a separate resource consent.
7. Plans attached to this consent are (reduced) copies and therefore will not be to scale and may be difficult to read. Originals of the plans referred to are available for viewing at the Richmond office of the Council. Copies of the Council Standards and documents referred to in this consent are available for viewing at the Richmond office of the Council.



David W Collins  
Elizabeth M Briggs  
**Hearings Commissioners**

Dated 13 December 2010

Date Confirmed:

Chair: