

## STAFF REPORT

**TO:** Environment & Planning Subcommittee - Commissioner Hearing

**FROM:** Godwell Mahowa, Consent Planner

**REFERENCE:** RM050664V1, RM100238 and RM100443

**SUBJECT:** **B AND T DUNN - REPORT REP10-11-01** - Report prepared for meeting of 8 November 2010

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### 1. SUMMARY OF PROPOSAL

The applicant is applying for a variation to a consent condition which required the removal of a replacement dwelling (RM050664V1), new resource consent to allow the retention of the replacement dwelling at the subject site (RM100443) and a retrospective consent for the extension of an existing cottage (RM100238).

For clarity and for the purposes of this report, the farm house which is not the subject of this resource consent is referred to as the principal dwelling, the cottage which needed to be removed is referred to as the green cottage (RM050664V1) and the extended cottage seeking retrospective consent is referred to as the brown cottage (RM100238). The structures are shown on the appendix attached to this report.

The most recent dwelling on this 10.9058 hectare Rural 3 property was established by resource consent RM050664 as a replacement dwelling and will be referred to as the retirement cottage. At the time of the original consent application, the property contained three residential activities, one main dwelling and two workers cottages that were remnants from the time when the property was a developed orchard. The three were formally established and had existing use rights according to Section 10 of the RMA 1991.

The applicant's original proposal (RM050664) was in effect to replace one of the two existing cottages with a new dwelling set back purposefully away from the coastal margin further onto the property. At the end of the day the current variation and resource consent would allow for four dwellings on the site with three being very close to Mean High Water Springs. Due to the fact that one of the cottages (the brown cottage) was extended, a corresponding upgrade in the wastewater discharge facilities was necessary and became the subject of resource consent RM100239. For the purposes of the hearing all land use resource consents have been bundled under RM100443. The brown cottage extension application is no longer limited to controlled activity issues as it lost its existing use rights as soon as the cottage was enlarged beyond the original cottage footprint. The impact of the combination of activities on the site creates special circumstances that require the application to be bundled as a discretionary activity.

## 2. APPLICATION SITE

The application site is a 10.9058 hectare property located at 710 The Coastal Highway, Appleby, Motueka. The property is zoned Rural 3 and is within the Coastal Environment and Tasman Coastal Design Guide Areas under the Tasman Resource Management Plan. The property is part of the Waimea Inlet, an enclosed estuary parts of which are of national and international significance. The inlet is of international importance for migratory bird species and is of national significance for other endangered or threatened species. These include birds like the banded rail that have been identified around the Dunn's property.

## 3. STATUS OF APPLICATION

Zoning: Rural 3  
Areas: Coastal Environment, Wastewater Management Area, Coastal Design Guide Area, Road Designation 121 and 138, Protected Tree T580

### APPLICABLE 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 and section 127 of the Resource Management Act.

## 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 Brigitte Richards dated 29 March 2010. As approval was conditional, the letter may not be considered as formal written approval for the purposes of this consent.

### 4.2 Notification

The application was fully notified 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	Support the proposal but would like the retirement cottage to be landscaped to reduce its visibility from surrounding properties	No

7173		
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

#### Neutral submissions

Submitter	Reasons	Heard?
None	N/A	N/A

#### 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 RM 050664 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 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	Yes

	<p>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 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.</p>	
<p>Friends of Nelson Haven and Tasman Bay(INC), C/-Gillian Pollock, P.O. Box 365 Nelson 7040</p>	<p>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</p>	<p>Yes</p>

#### 4.4 Comments on Submissions

Robin Cameron Collier supports the proposal but is worried about the fact that the new retirement cottage is not properly landscaped to reduce the visual impact of the dwelling from the surrounding area. While there is no condition of consent directly requiring the establishment of amenity plantings, the applicant volunteered that they would plant around the dwelling and condition 1 of RM050664 alludes to the fact that the proposal would be undertaken according to the information provided and the Dunns had an obligation under this condition to undertake amenity plantings as volunteered in the application submitted to Council.

Patrick Stowe supports the proposal, and it is understood that while his support for the retention of the cottages on the current sites based on circumstances in the Dunn family may be objective, he is technically part of the Dunn family and can be considered an interested party. The enlarged brown cottage is visible from State Highway 60 contrary to Patrick's report that the cottages are screened from neighbouring sites.

There is a high degree of public interest as far as the protection of estuarine area and the provision of access along the estuarine area is concerned. This is witnessed by submissions against the proposal by Nelson Tasman Branch of Royal Forest & Bird Protection Society, Mapua & Districts Cycle and Walkway and Friends of Nelson Haven and Tasman Bay (INC). The Mapua estuarine is of particular interest as parts of the estuarine are of national significance. Apart from the protection of estuarine

areas and the provision of walking access, the submitters who oppose the proposal also believe that granting this consent will set precedence and would compromise the effective use of the provisions of the TRMP in the future. The application is contrary to the policies and provisions of the TRMP.

## **5. STATUTORY CONSIDERATIONS**

### **Section 104**

A decision on this application must be made under Section 104 of the Act. The matters for the Council to address are:

- Part 2 (Sections 5, 6, 7 and 8)
- Effects on the environment (positive and negative)
- Objectives and Policies of the TRMP
- Other matters
- Precedence

## **6. PART 2 SECTIONS 5, 6, 7 AND 8**

The following matters are relevant to this application:

### **Purpose**

- S.5(1)(2) The purpose of the Resource Management Act 1991 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. Managing coastal margins and creating sound habitats for fauna and flora while providing well managed access to and along rivers, lakes and the coast is a significant component of part two matters. These matters are also reflected in the objectives and policies in chapters 5, 6 and 8 of the Tasman Resource Management Plan (TRMP).

### **Matters of national importance**

- S.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.
- S.6(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers.

### **Other matters**

- S.7(b) the efficient use and development of natural and physical resources:
- S.7(c) the maintenance and enhancement of amenity values:
- S.7(f) maintenance and enhancement of the quality of the environment:
- S.7(g) any finite characteristics of natural and physical resources:

## **Treaty of Waitangi**

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

## **7. KEY ISSUES**

The key issues are:

- Existing use rights
- Permitted baseline
- Site and rural amenity
- Fragmentation of productive land
- Coastal Environment Area and Public Access
- Precedent

### **7.1 Existing Use Rights**

Council records have plans showing the main dwelling, the brown cottage and the green cottage at the subject site as legally established buildings and all had existing use rights prior to the establishment of the retirement cottage. When the applicant sought resource consent RM050664 for a retirement cottage, existing use rights for the green cottage that had to be replaced were automatically lost. At this point the principal dwelling and the brown cottage had existing use rights. However, the extension of the brown cottage within the coastal environment area and towards mean high water springs resulted in the loss of existing use rights for the brown cottage. The only dwellings with existing use rights on the site remain as the principal dwelling. The applicant have also confirmed loss of existing use rights for the brown cottage in their application.

### **7.2 Permitted Baseline**

The permitted baseline is comprised of the existing environment and what is permitted as of right under the Plan. In some instances it can also include what is authorised under a current but yet to be implemented resource consent.

The effects of permitted activities are considered on a case-by-case basis and councils may, rather than must, consider the adverse effects of activities on the environment if a plan permits an activity with those effects. Section 104(2) of the RMA states that - *“When forming an opinion for the purposes of subsection (1)(a) a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect”* .

As such, this enables a consent authority to disregard adverse effects of activities that the Plan permits, if it so wishes. The permitted base line will not be given priority over consideration of all of the effects of an activity and the Plan in its entirety.

In this instance, the site is zoned Rural 3 and the TRMP permits one dwelling per site as a Permitted Activity. There are four dwellings proposed, taking the proposal well outside the bounds of the permitted baseline Dwellings or any building in the Coastal environment area is not a permitted activity and as such the permitted baseline does not directly apply to this proposal.

### **7.3 Site and Rural Amenity (Chapter 5 and 7 of the TRMP)**

The following extracts from the introduction, principal reasons and explanations for Chapter 5 are considered relevant:

“Land use frequently has effects which cross property boundaries. Those effects may add to or detract from the use and enjoyment of neighbouring properties. They may also affect natural resource values, such as air and water quality, or in some cases views or local character.

The health and safety of people, communities and property is a significant part of site amenity, both within the site and between sites. Contaminants, including noise, and fire, hazardous substances and natural hazards, are factors in maintaining or enhancing amenity values.

Adverse cross-boundary effects are commonly noise, dust, vibration, odour, contamination, shading and electrical interference. Amenity values such as privacy, outlook, views, landscape, character and spaciousness may also be affected”.

The following policies from Chapters 5 and 7 of the TRMP are considered relevant to the preservation of the amenity of the subject site;

- 5.1.3.4 To limit the intensity of development where wastewater reticulation and treatment are not available:
- 5.1.3.12 To protect the natural character of coastal land from adverse effects of further subdivision, use or development, including effects on.
  - (b) habitats such as estuaries and wetlands
  - (c) ecosystems (words omitted)
- 5.3.3.2 To maintain the open space value of rural areas:
- 7.1.3.2 To avoid, remedy or mitigate the effects of activities which reduce the area of land available for soil based production purposes in the rural areas:
- 7.3.3.1 To identify an area (Rural 3 Zone) within the Coastal Tasman Area within which rural residential development is enabled while avoiding, remedying and mitigating adverse effects on the environment
- 7.3.3.7 To enable residential and rural residential development to take place from December 2003 over the next 20 year period in the Rural 3 Zone and the Waimea Inlet Rural Residential Zone that generally reflect a ratio of 25 percent development area to 75 percent open space or unbuilt area across the total area of both zones

## Comments:

The policies from Chapters 5 and 7 of the TRMP emphasize the need to protect amenity values. In this case, the site and rural amenity values need to be safeguarded from adverse environmental effects that may result from the increased residential activities. The relevant TRMP objectives and policies allow development of residential accommodation to be assessed on their merits within the Rural 3 zone. If the adverse environmental effects of amenity, noise, traffic and visual effects can be appropriately avoided or mitigated then the activities may not be contrary to the objectives and policies.

The application proposes to increase the intensity of development by retaining the green cottage and expanding the brown cottage. This is not just contrary to policies of the TRMP but the effects of the intensification are compounded by the fact that the cottages are within the coastal margin and very close to mean high water springs.

While the proposed development forms a ribbon along the coastal margin and leaves the rest of the site as open space, the increased residential activities within the coastal margin have an impact on the level of open space anticipated by the plan in the coastal margins of the Waimea inlet.

The TRMP anticipates one dwelling per 50 hectare lot in the Rural 3 zone. In the event that a subdivision creating smaller lots than 50 hectares is granted, the TRMP still anticipates one dwelling per site on a carefully selected building site. The subject property had one main farm house and two cottages on the site before the resource consent RM050664 was granted for a larger replacement dwelling. Allowing four dwellings two of which have increased footprint will be considered to be a major change from the original configuration and subsequent Resource Consent approval and amounts to intensification of development within the coastal margin. Allowing four dwellings on the site in the current locations will compromise the amenities of the area and the coastal margin

There are some other effects that can arise from the intensity of residential development within the coastal margin and these are discussed further. Probably an effect that is likely to arise from four dwellings on the site is the potential traffic effect. In assessing traffic flows associated with rural areas, Council engineer Dugald Ley uses a figure of six vehicle movements per day from each residential use. In this case, if consent was granted the vehicle movements could increase from 18 to 24 movements per day an increase of 33%. That is considered to be a significant change and the effect could be considered to be an adverse one. The proposal could create additional traffic movements gaining access off a limited access road and contradict the rationalisation behind the original resource consent (RM050664) which sought to establish a *replacement* dwelling and maintain three dwellings on the subject site.

While TRMP policies allow residential development within chosen areas of the Rural 3 zone the subject site is not ideal for the level of residential intensification proposed by the applicant, and in particular such intensification is considered inappropriate in such close proximity to the shoreline. New Rural 3 development patterns in the area clearly illustrate strategic building site locations that are setback in excess of 50 metres from mean high water springs, a pattern that is clearly compromised by this proposal if the applicant is granted the opportunity to allow the



two cottages to remain at approximately 15 metres from MHWS. The natural character of coastal land is compromised and this is discussed in more detail under issue 6.5 below.

#### **7.4 Fragmentation of Productive Land**

The key issue associated with this proposal relates to the proximity of the structures on the coastal margin. While setting the structures back might reduce the potential land for productive use, the Waimea inlet is such a significant resource and its protection would take priority.

The District Plan aims to protect land from the potential and cumulative adverse effects of land fragmentation. In the introduction to Chapter 7 of the TRMP, fragmentation of rural land is the progressive breaking up of land parcels through subdivision in association with subsequent land use activities such as dwellings, farm buildings and other structures such as roads and related infrastructure. While in very few instances fragmentation may allow for more intensive use of rural land for soil-based and other rural activities, with resulting social and economic benefits, the principal effect of land fragmentation in the Tasman District has been the cumulative reduction in opportunities for the productive potential of land to be realised. Fragmentation also results in the progressive loss of land that could otherwise be used for soil-based production uses. Similar effects occur with fragmentation of less productive land, but the significance of the loss is likely to be less in terms of the soil resource and the potential needs of future generations.

While the addition of an extra residential activity along the coastal margin and the expansion of the brown cottage on its own do not constitute land fragmentation, each increase in the level of residential activity results in a proportionate expansion into potential productive land by way of bigger gardens, more land for onsite services and will consequently result in land fragmentation. While the proposed development has a modest effect on reducing the potential for the land to be used for soil based activity, it makes the site more attractive to residential development. In the coastal areas setting buildings away from the coastal area is important and in this instance would outweigh the modest productive land that may be compromised in the process.

#### **7.5 Coastal Environment Area**

Chapter 8 of the TRMP deals with two key issues. The provision and enhancement of public access to and along the margins of lakes, rivers, wetlands and the coast, for current and future needs of residents and visitors to the District and the protection of the natural character of lakes, rivers, wetlands and their margins, and the coastal environment, from inappropriate subdivision, use and development. These issues are both matters of national importance.

In the introduction to Chapter 8 of the TRMP it is clearly spelt out that Protection of the natural character of lakes, rivers, wetlands and their margins, and the coastal environment, from inappropriate subdivision, use and development, and the maintenance and enhancement of public access to and along these water bodies, are matters of national importance in promoting the sustainable management of natural and physical resources. The principal reasons given for the protection and maintenance of the coastal margins are varied. They include but are not limited to those discussed below. The maintenance and enhancement of public access to and

along lakes, rivers and the coast is a matter of national importance. Public access is not readily available in all localities of the District, and an increasing population is likely to require greater provision for access along coastal areas.

Setbacks or consent requirements have been imposed on activities that may detract from the natural values of riparian and coastal margins. This is in order that those impacts may be addressed either through conditions to manage the adverse effects, or by refusing consent if it is not practicable for the effects to be managed. Wide coastal setbacks provide space for coastal processes to occur, for coastal vegetation and habitat to be retained, and for recreation to be undertaken in appropriate locations without overlooking or being overlooked by other activities, they also ensure suitable buffers between development and potential coastal erosion and sea level rise. This is unlikely to happen if the cottages are retained at the current locations.

Provision and enhancement of public access to and along the margins of lakes, rivers, wetlands and the coast is necessary for current and future needs of residents and visitors to the District. Protection of the natural character of lakes, rivers, wetlands and their margins, and the coastal environment, from inappropriate subdivision, use and development, and the maintenance and enhancement of public access to and along these water bodies, are matters of national importance in promoting the sustainable management of natural and physical resources. The flood mitigation functions of riparian and coastal land resources must also be acknowledged. Some existing structures impede access to and enjoyment of water margins and may need to be relocated. Limiting the erection of new structures on riparian reserves can also assist in ensuring adequate future access. Resource consent RM050664 sought to gradually redress the existence of structures along the coastal margin by removing the green cottage and replacing it with a retirement cottage well setback from the coastal margin.

It is noted that the TRMP, describes the Waimea Inlet as a large barrier enclosed estuary, parts of which is of national and international significance for its wading shorebird communities, including Pied and Variable Oystercatchers, Wrybill, Bar-tailed Godwit, Caspian Tern, Banded Rail, and other nationally rare bird species. Subdivision and development may pose cumulative ecological risks to these values. The natural character and natural values of the margins of lakes, rivers and wetlands, and the coastal environment, have been adversely affected by people's activities. They continue to be affected by such things as earthworks, new built development and in this case the prolonging and legitimisation of inappropriate development in such close proximity to the coast. The increased density of people's living environments, provision and maintenance of roading and related infrastructure also affect these values. Preserving natural character and natural values, including aquatic habitats and water quality, requires effective management of riparian margins and the coastal environment. While the subject site might not be the actual habitat for Pied and Variable Oystercatchers, Wrybill, Bar-tailed Godwit, Caspian Tern, Banded Rail, and other nationally rare bird species, the cottages in their current location do not provide an opportunity for any form of riparian fauna.

The following policies in the Tasman resource Management Plan reflect the desire of the district to preserve and maintain coastal margins where possible and avoid developments that might have an effect on the latter:

- 5.1.3.12 To protect the natural character of coastal land from adverse effects of further subdivision, use or development including:
- (a) Natural features such as the margins of estuaries
  - (b) Habitats such as estuaries and wetlands
- 8.1.3.1 To maintain and enhance public access to and along the margins of water bodies and the coast while avoiding, remedying or mitigating adverse effects on other resources or values, including: indigenous vegetation and habitat; public health, safety, security and infrastructure; cultural values; and use of adjoining private land.
- 8.1.3.3 To avoid, remedy, or mitigate the adverse effects on public access caused by structures, buildings, and activities in or adjoining water bodies or the coastal marine area.
- 8.1.3.5 To seek public access linkages between reserves and public access adjoining water bodies or the coastal marine area in the vicinity.
- 8.1.3.7 To ensure that adequate public access is available to outstanding natural features and landscapes in the coastal environment or the margins of lakes, rivers or wetlands, except where the impact of such access is incompatible with the duty to protect these areas or access across private land cannot be negotiated.
- 8.2.3.8 To preserve natural character of the coastal environment by avoiding sprawling or sporadic subdivision, use or development.
- 8.2.3.16 To manage the location and design of all future buildings in the coastal environment to ensure they do not adversely affect coastal landscapes or seascapes.

There is a limited estuarine margin along the Dunns coastal boundary as a result of the establishment of cottages along the coast. The original cottages however were modest in scale, with limited lifespan given the bach/temporary nature of the structures which had a limited effect on the estuarine margin. When the applicant sought resource consent to replace the green cottage with a more modern retirement cottage, Council through resource consent RM050664 found an opportunity to enhance the estuarine margin by establishing the new dwelling further away from the coast. This in essence reduced the degree of non compliance of the three existing residential activities on the subject site. While the brown cottage remained on site, it would remain modest in size and limited in its potential use and so would the main dwelling on the subject site.

The applicant argues that developments on State Highway 60 affected the amenities of the estuary as a result of the earthworks that were undertaken during the construction of the State Highway 60 Deviation. The modified estuary is visible from the main dwelling on the subject site which is also located close to the estuary. The location of the main dwelling in conjunction with the modified portion of the estuary as a result of the deviation form part of the modified amenity of the coastal margins. Beyond the existing principal dwelling and further away from the motorway deviation the expectation was that the riparian amenities would be reinstated and consolidated by the removal of the green cottage and maintaining the modest scale of the brown

cottage. The application in its current state compromises the state of the estuarine margin by exacerbating coastal amenities beyond the existing principal dwelling on the site by extending the brown cottage and retaining the green cottage.

The potential for future public access around the Estuary would be further compromised by the current proposal to retain the two cottages so close to the Coastal Area. The importance of public access in this particular location is highlighted by Councils Reserves Department having consulted the applicant about the possibility of creating a wider riparian buffer by assisting the applicant to relocate the brown cottage further back from the coastal area in exchange for the creation of an esplanade strip or reserve which would create a more satisfactory outcome for the coastal margin and long term vision for public access in this location. The applicant was also advised on two occasions that Council would consider the application more favourably if the applicant was prepared to move the green and brown cottage away from the coastal area. On both occasions the applicant did not wish to pursue these options, preferring to have the green and brown cottages in their current locations. The applicant has referred to special circumstances that have befallen the family as the main reason to retain the structures. While the circumstances might have contributed to the need to retain the structures, the structures do not necessarily have to be retained in the current locations and a rational environmental outcome could have been achieved had the applicant considered council advice to relocate the two cottages further away from Mean High Water Springs. The revised setbacks would be assessed based on a comprehensive landscape report and generous amenity plantings around the new locations.

The application has been accompanied by a landscape report which does not adequately address the issues of maintaining *wide* and *extensive* riparian buffers in the Waimea Inlet, other than to comment that the area has had built form along its edge for the past 80 years and the current proposal will maintain the current status. It is the wider and longer term implications of allowing the green cottage that was to be removed to remain so close to the coast and allowing the additions and upgrading of an the brown cottage so close to the coast that will compromise the future safeguarding of a wide and extensive riparian buffer in this location. The actions of the applicant do not 'maintain' the current status but in fact create a situation where 'remnant' cottages that once had limited lifespan in this location become more established with increased probability of remaining in what is now considered to be inappropriate proximity to the coast. RM050664 sought to improve the situation by relocating the replacement dwelling further back from the coast, this is an approach that is still considered rational, practical and appropriate. The proposal has changed the site by increasing residential activities on the site and cannot be seen to be maintaining the current status as presumed by the landscape report.

In paragraph 33 of the landscape report the proposal is compared to a 10 lot subdivision. The comparison is not considered significantly relevant as the subdivision and resulting building platforms are well set back from the coast. If the subject lot was to be subdivided, rational building platforms would be established with a reasonable separation from Mean High Water Springs. A comprehensive landscape report and plans would be required to ascertain building platform locations and required separation from the coastal margin. The setbacks from mean high Water Springs would be based on the 50 metre setback of most developments in the neighbourhood.

The main issue associated with this proposal relates directly to the proximity of the brown cottage in its modified form and the green cottage to the coast. There are matters of public interest including access to the coastal area and site amenities as viewed from the estuary. The adverse effects on the environment have the potential to be more than minor and extend into the wider community as expressed by the submissions from the Nelson Tasman Branch of the Royal Forest and Bird Protection Society, the Mapua & Districts Cycle and Walkway Group and the Friends of Nelson Haven and Tasman Bay who expressed the public's desire to have acceptable and convenient access along the estuary.

## 7.5 Precedent

The proposal has the potential to set a precedence that might jeopardise the future management of the District's resources using the TRMP. At the time of the original consent application, the property contained **three "dwellings"**, with one main dwelling and two modest cottages that were remnants from the time when the property was a developed orchard and the three structures had existing use rights according to Section 10 of the RMA 1991. The applicant's original proposal (RM050664) was in effect to **REPLACE** an existing cottage with a modern retirement cottage. *The subject application seeking to allow for four dwellings on the site by retaining the cottage will compromise resource consent RM050664 as the retirement home was established as a **replacement dwelling**.* RM050664 would not have been granted on the basis that the existing cottage remained, and Council's position remains unchanged.

The potential of the continued use of the provisions of the TRMP would be compromised and this has also been reiterated by the Nelson Tasman Branch of the Royal Forest and Bird Protection Society, the Mapua & Districts Cycle and Walkway Group and the Friends of Nelson Haven and Tasman Bay who submitted in opposition to the proposal. Allowing the non-compliance with RM050664 compromises the integrity of the previous approval and overlooks, at this stage, the wider implications of allowing ongoing breach of the resource consent condition, and breach of the provisions of the District Plan. *(This approach is consistent with the opinion of Judge Dwyer 13/07/2010 ENV-2010-WLG-000060).*

In another related application (RM040589) in which the applicant wanted to retain a replacement dwelling, the hearing committee concluded among other issues that *"the construction of the new dwelling was done knowing the existing dwelling could not continue to be used as a dwelling. Two dwellings as a temporary situation are common and allowing the retention of the replaced dwelling would set a dangerous precedence."*

## 8. SUMMARY OF KEY ISSUES

The application has raised several issues and the two most important ones are:

Firstly whether or not to retain the green cottage that was required to be removed by consent RM050664. The finding of this report would be that the retention of this cottage is contrary to both the approach the Council has taken with replacement dwellings generally, and also contrary to the general thrust of the policies and objectives of the Rural 3 Zone and Part II of the Resource Management Act 1991.

Secondly this is the first expansion of the brown cottage that the Council has become aware of. It is a very small cottage and Council would be reluctant to grant retrospective resource consent for its extension for three main reasons;

- The building extension is well beyond the scope of any existing use rights and relocation of the cottage should logically occur at the time of the first major expansion;
- The building extension is contrary to the general thrust of the policies and objectives of the Rural 3 Zone and Coastal Tasman Design Guide.
- The cottage is on the edge of an estuary with nationally important natural ecosystem values and has the potential to compromise these values. This is contrary to Part II of the Resource Management Act 1991;

The proposal in its current form will compromise the ability of the district to establish and manage an optimum riparian buffer for the fauna and flora of the coastal margins on the subject site. It further compromises the ability of the public to have access along the coastal margins against the provisions of policies of the TRMP.

Overall, I consider granting consent to this application can have effects that can be seen as more than minor and more importantly, I believe it sends the wrong message to the general public in relation to the process to follow under the RMA and the TRMP. I believe consistent Plan administration is a very important aspect to consider when making a decision on this application. On that basis I cannot find sufficient grounds to support this application in its current form

## 9. SECTION 5 AND RECOMMENDATION

As a planner weighing up all of the relevant considerations in terms of Section 5 of the Act, I consider that a grant of consent **would not** promote the sustainable management of natural and physical resources and I **RECOMMEND** that the application(s) be **DECLINED.**

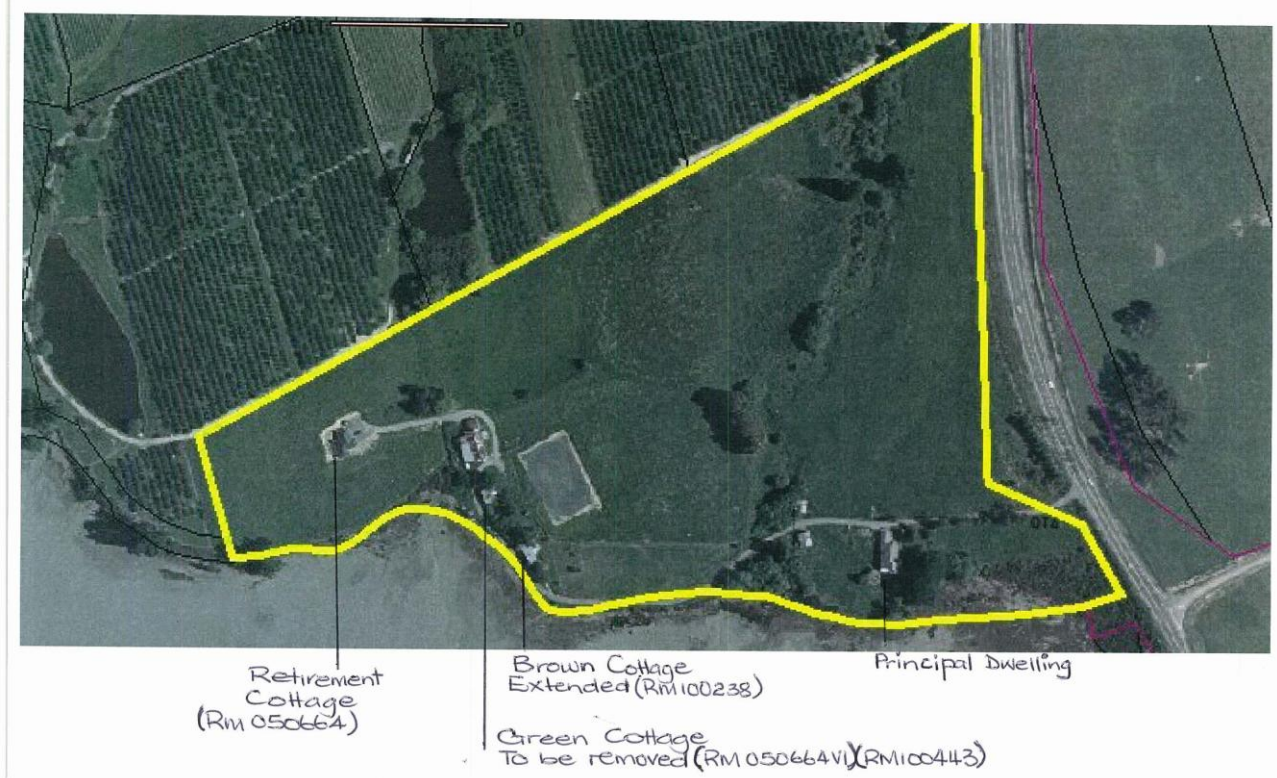
## 10. CONDITIONS, ADVICE NOTES, PLANS

Council could have anticipated better environmental outcomes had the applicant pursued options to move the developments away from the coastal margin. However each option would have to be assessed on merit.

Godwell Mahowa  
**Consent Planner**

**APPENDIX 1**

Relative positions of the subject structures



**To:** Environment & Planning Subcommittee - Commissioner Hearing  
**From:** Rosalind Squire, Forward Planner, Reserves  
**Date:** 13 October 2010  
**Subject:** **RM100238 and 100443 - B and T Dunn, 710 The Coastal Highway, Appleby-Motueka**

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## **Introduction**

The purpose of this memorandum is to provide some context to the Committee with regard to the Council's long term goals with respect to public access to and along the Waimea Estuary. I am familiar with the site and surrounding area and have considered the applications in the wider context of existing formed and unformed legal roads, reserves and walkways in the vicinity of the site.

## **Context**

The officer's report provides a summary of the background to the applications, their location and a description of the site. Further to that report it must be noted that the adjoining property to the east has recently been subdivided and an esplanade reserve (and access strip providing access to the esplanade reserve from Bronte Road East) has been vested in the Council (See Figure 1). The reserve will provide for the purposes listed in section 229 of the Resource management Act 1992, in particular to contribute to the protection of conservation values, to enable public access to and along the coastal marine area and to enable public recreational use of the reserve adjacent to the estuary.

The Coastal Highway adjoins the property on its western boundary. The Council was party to lengthy negotiations with the New Zealand Transport Agency (NZTA) which resulted in an agreement whereby the NZTA is to provide both formed and legal access for a future coastal walk/cycleway in conjunction with the reclamation at the upgraded intersection of the Highway and Trafalgar Road (See letter and diagram in Attachment 1).

## Annual Plan and Long Term Council Community Plan

Both the Annual Plan and the Long Term Community Plan have money budgeted specifically for Waimea Inlet enhancement and the ongoing development of walkways.





## Part 2 Resource Management Act 1991

The purpose of the Resource Management Act 1991 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. Providing access to and along rivers, lakes and the coast is a matter of national importance. This matter is reflected in the objectives and policies in chapters 8 and 14 of the Proposed Tasman Resource Management Plan.

### Tasman Resource Management Plan

Chapter 8 outlines Councils objectives and policies for the margins of rivers, lakes and the coast.

Objective 8.1.0 aims to maintain and enhance public access to and along the margins of lakes, rivers, wetlands and the coast.

Policy 8.1.1 provides for the maintenance and enhancement of public access to and along the margins of water bodies and the coast while avoiding, remedying or mitigating adverse effects on other resources or values, including: indigenous vegetation and habitat; public health, safety, security and infrastructure; cultural values; and use of adjoining private land.

Policy 8.1.5 seeks public access linkages between reserves and public access adjoining water bodies or the coastal marine area in the vicinity.

The Community Services Department have consistently sought the vesting of esplanade reserves and the creation of esplanade strips on subdivisions adjoining Waimea Estuary. In the majority of cases the subdivisions have created allotments less than 4 hectares and the reserves and strips have been required without compensation. However, we have also provided credits against reserve fund contributions in lieu of compensation for esplanade provisions on allotments greater than 4 hectares.

### Application

In order to assist in achieving the purpose of the Resource Management Act 1991 and the objectives in the Long Term Council Community Plan and Tasman Resource Management Plan, Council has acquired esplanade reserves and created esplanade strips when it has had the opportunity to do so on properties adjoining the Waimea Estuary. The Council's long term goal is to provide coastal walkway links adjoining the estuary and ultimately a walkway from Richmond to Mapua. The formation of sections of the walkway has begun and a number of smaller walkway links are complete or almost complete.

In order to offer some assistance to the applicant and the Council towards achieving both parties' goals, the Community Services Department 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. We suggested the creation of a 10 metre strip as this would provide sufficient room for the formation of a walkway in the short term and would minimise conflict with the relocated brown dwelling. It was acknowledged that when/if the property was subdivided at some future date then a 20 metre reserve would then be vested which would be consistent with what we have achieved on other subdivisions adjoining the estuary. If the property was

not subdivided in the foreseeable future Council would have the option of issuing a notice of requirement to designate the land for reserve purposes.

Subsequent to contacting the Council the applicant requested a meeting to discuss the issue. I reiterated Council's long term goal and the offer of a contribution towards the cost of relocating the brown cottage. At the time of writing we had received no response from the applicant on the issue. We also remain of the opinion that retaining the two cottages within 20 metres of mean high water springs will not assist the Council if/when esplanade provisions are provided for or in achieving the purposes of section 229 of the Resource Management Act 1991.

Rosalind Squire  
**Forward Planner, Reserves**



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23 February 2010

Phil Doole  
Tasman District Council  
Private Bag 4  
Richmond  
Nelson 7050

Dear Phil

**RUBY BAY BYPASS: RESTRICTED COASTAL ACTIVITY RECLAMATION CONSENT - ESPLANADE RESERVE**

- 1 Thank you for the meeting held at Tasman District Council's (TDC) offices on 9 February 2010, to discuss the issues relating to the provision of an esplanade reserve adjacent to the reclamation required for the Ruby Bay Bypass (*the Bypass*). We consider that the meeting went well, and are pleased that the NZ Transport Agency (NZTA) and TDC were able to reach an agreement that will now enable the Minister of Conservation to complete the statutory process and grant the reclamation consents required by the NZTA for the Bypass pursuant to section 119 of the RMA.
- 2 The purpose of this letter is to formally record the NZTA's position and commitments resulting from the meeting on 9 February 2010 on behalf of Andrew Adams, the NZTA's Ruby Bay Project Manager.

**Background**

- 3 The issues regarding provision of an esplanade reserve adjacent to the reclamation for the Bypass arose from enquiries made on behalf of TDC as to whether the NZTA would agree to conditions requiring provision of an esplanade reserve and public access way being added to the reclamation consent.
- 4 The enquiry by TDC arose from queries raised by the Department of Conservation (DOC) as to whether the hearings committee had considered whether an esplanade reserve or strip should be required as a condition of consent pursuant to section 105(2) of the RMA.
- 5 TDC staff have also enquired whether the NZTA is in a position to physically provide for the construction of walking and cycling facilities.

**NZTA's position in relation to the walkway/cycleway**

- 6 At the meeting the NZTA explained to TDC that it is not in a position to make changes to the Bypass to make physical provision for the construction of walking and cycling facilities, or to provide funding for that purpose. Therefore, the NZTA does not consider that it is appropriate for a condition to be provided as a condition of consent at this stage.
- 7 However, the NZTA is happy to commit to working cooperatively with the TDC to assist it to establish a walkway or cycleway on or adjacent to the reclamation similar to the attached sketch (*Possible Esplanade Footpath*), if TDC secures funding in the next five years or so to do so. In

particular, the NZTA would be happy to provide a suitable occupation licence for part of the area declared as State highway. Further, if further reclamation works are required for the construction of the walkway or cycleway, the NZTA would not object to TDC applying for the necessary resource consents for such works.

- 8 Based on the above commitments the NZTA considers that, for the purpose of section 105(2), all future arrangements for public access have been resolved and an esplanade reserve does not need to be provided for as a condition of consent.

**Next steps**

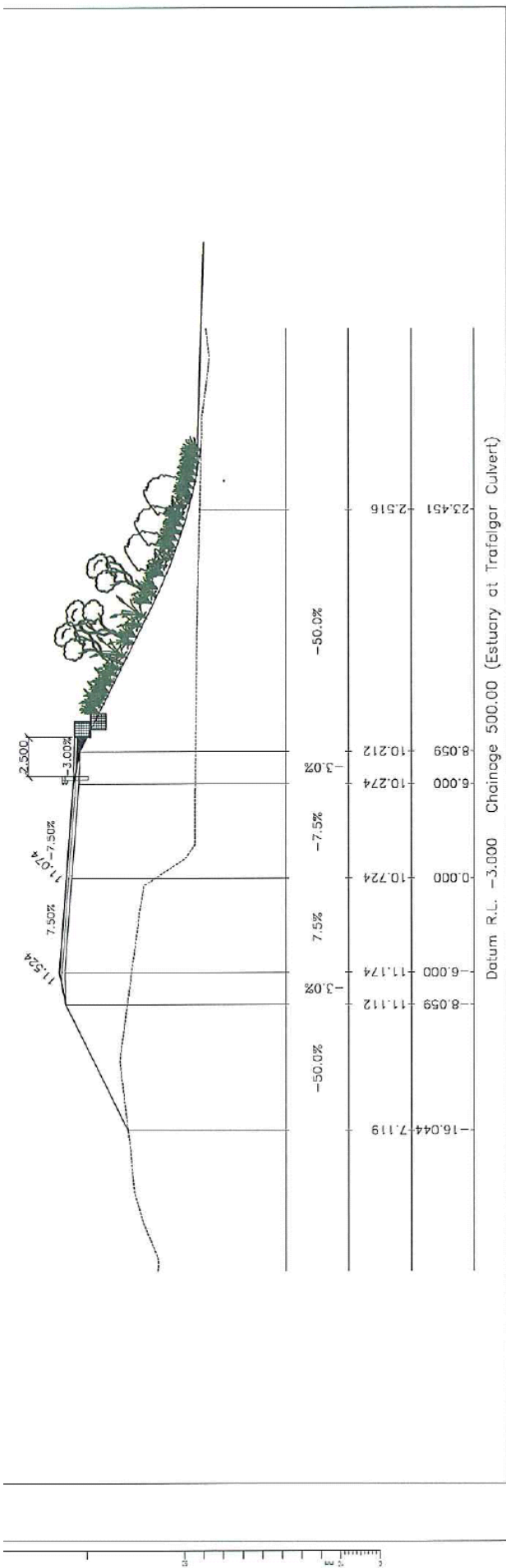
- 9 As all future arrangements for public access adjacent to the reclamation have been resolved, the Minister is in a position to consider that an esplanade reserve is not appropriate or necessary and may issue a consent for the reclamation without a further condition relating to this issue.
- 10 The NZTA understands that, on the basis of the above commitments, TDC agrees that the NZTA can now request that the Minister issue the reclamation consent with the conditions recommended by the Hearings Committee.
- 11 Should the Minister consider it necessary, the NZTA is happy for the Minister to include explicit reference to the commitment given by the NZTA in this letter in her decision.
- 12 Please feel free to contact me if you have any queries relating to the above.

Yours faithfully



Selwyn Blackmore  
Wellington Integrated Planning Manager

Encl.



Datum R.L. -3.000 Chainage 500.00 (Estuary at Traifalgar Culvert)

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Project No. 565037764  
Scale  
Date

Client: SH 60 REGION 10 RS 00  
RUBY BAY BYPASS RP 012712-176811

Project Name: POSSIBLE ESPLANADE FOOTPATH

Drawn By: [Blank]  
Checked By: [Blank]

Project No. 565037764