

Report No:	REP11-09-02
File No:	RM110261
Report Date:	1 September 2011
Decision Required	

Report to: Commissioner Hearing
Meeting Date: Monday, 12 September 2011
Subject: Anchorage Holidays Ltd
Report Author: Mark Morris, Co-ordinator - Subdivision Consents

1. SUMMARY OF PROPOSAL

The applicant is applying for a retrospective consent to allow an existing dwelling to have reduced setbacks on the eastern boundary and non-compliance with daylight recession angles required for a Residential zone.

The property is owned by Mark and Joanna Sherlaw who are the joint directors of Anchorage Holidays Ltd.

A building consent was issued for the dwelling in 1991 and the dwelling was constructed on the site between 1991 and 1993. It was not until 2004, when the applicant was seeking consent for use of the dwelling as a tourist lodge (subsequently withdrawn), that the owners of the neighbouring property the Stevenson's became aware that the dwelling in fact encroached into their property.

In order to get the applicant to remove those parts of the dwelling that encroached over the boundary the Stevenson's had taken the matter to the High Court in 2006. The Court found in favour of Stevensons and the judgement of Judge Wild is attached to this report as Attachment 2.

The judgement gives much of the background to the construction of the Sherlaw dwelling. As a result of the Court decision the applicant has removed portions of the dwelling that encroach over the Stevenson boundary. However, this did not deal with the issue of non-compliance with the boundary setback and daylight recession angles in relation to the Stevenson boundary. Council's compliance team advised in January 2011, that enforcement action was being taken over the non-compliance of the dwelling in relation to the Stevenson property.

The applicant has responded by applying to obtain retrospective resource consent for the non-complying parts of the dwelling.

2. STATUS OF APPLICATION

Zoning: Residential (Closed)
Areas: Coastal Environment Area]

Activity	Relevant permitted rule	Applicable rule	Status
Building setback from boundary	17.1.3.1(s)	17.1.3.4	Restricted discretionary
Building Envelope - Daylight Over	17.1.3.1 (n)	17.1.3.4	Restricted discretionary

Overall the proposal is a restricted discretionary activity.

3. NOTIFICATION AND SUBMISSIONS

3.1 Written Approvals

No written approvals were received.

3.2 Notification

The application was limited notified to:

- Department of Conservation
- Robert Stevenson (owner of property adjoining the eastern boundary address & legal description)

3.3 Submissions

Submitter (Opposing)	Reasons	Wants to be heard?
Robert Stevenson	<ul style="list-style-type: none"> • The adverse effects on the Stevenson property are more than minor. • The proposal is contrary to the objectives and policies of the TRMP. • The proposal fails to achieve the purpose & principles of Part II of the RMA. • Consent for this application would undermine the subdivision application recently issued for this property in which the applicant committed to removing the offending parts of the building. 	Yes

The Stevenson property is shown in Appendix 1.

4. 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

5. SECTIONS 6, 7 AND 8

The following matters are relevant to this application:

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(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development.

While Section 6 does seek to preserve the “natural character of the coastal environment” and the “protection of outstanding natural features and landscapes” from “inappropriate subdivision, use, and development”, this does need to be seen in the context of the fact that the property in question is zoned for residential development. Therefore, residential development such as the dwelling in question, is anticipated by the zone rules, though it would still need to comply with the bulk and location rules in the Tasman Resource Management Plan which has not happened in this instance.

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.

Section 7 (c) seeks “the maintenance and enhancement of amenity” values, as a matter to have regard to. In this case, I do not believe that the dwelling in question is adversely affecting the surrounding environment, though I do believe it does adversely affect the amenity of the immediate environment, in this case the Stevenson property.

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).

6. KEY ISSUES

The key issues are:

6.1 Effects on Amenity Values.

In this case, it is considered that the Sherlaw dwelling itself does adversely affect the surrounding environment, that is the Abel Tasman National Park. The building's exterior colours and cladding blend in well with the surrounding natural environment.

Although the southern part of the building encroaches on the National Park boundary, the applicant has obtained a boundary adjustment subdivision consent (RM100607), which (when completed) will rectify this encroachment of the southern boundary.

It is considered that the proposed side yard and recession angle encroachment will have an adverse effect on Lot 2 DP13629 (Stevenson property). As the application is a restricted discretionary activity under Rule 17.1.3.4, I have set out the relevant matters of discretion and will comment on each one individually.

- 8) *The extent to which the intrusion towards the boundary is necessary in order to allow more efficient, practical and pleasant use of the remainder of the site.*

Because of the contours of the site, which slope up to the eastern (Stevenson) boundary, I can understand that, in order to get a better view, you would want to site the dwelling as close as possible to the eastern boundary. However, it is not "necessary" to encroach into the side yard set backs, and the dwelling could have easily been built to comply with the TRMP rules.

- (9) *The extent to which alternative practical locations are available for the building.*

The only obvious alternative location for the building is for it to be relocated further to the west so that it complies with the setback rules. The other alternative is to remove those areas that do not comply with the set back rules, which would leave a smaller dwelling on the property.

- (10) *The extent to which the proposed building detracts from the pleasantness, coherence, openness and attractiveness of the site as viewed from the street and adjoining sites.*

I acknowledge that the effect that the dwelling makes on other properties (other than Stevenson property) is likely to be no more than minor. It is considered that the pleasantness, openness of the Stevenson property will be adversely affected by the non compliance of the Sherlaw dwelling.

- (11) *The adverse effects of the building intrusion on the outlook and privacy of people on adjoining sites, including loss of access to daylight on adjoining sites.*

The Sherlaw dwelling does affect the outlook and privacy of the Stevenson property. However, it is acknowledged, that if the dwelling was fully complying, there would still be a loss of outlook from the Stevenson property and so the effects do need to be assessed in terms of this "permitted baseline".

- (13) *The extent to which the proposed building will be compatible with the appearance, layout and scale of other buildings and sites in the surrounding area, including the setback of existing buildings in the vicinity from boundaries, its external materials and colour.*

The Sherlaw dwelling is in an area with a very low density of built development, being part of a small residential “enclave” of four residential properties surrounded by the Abel Tasman National Park. There are two other dwellings in this “enclave”.

One of the dwellings, the Johnstone dwelling (Lot 3 DP 13629), did require resource consent (RM070836) for a small corner of the dwelling that was within 1.5 metres of the Stevenson boundary. In this case, Stevensons did provide their written consent, and so the Council could not take into account the effects on Stevensons. The effects of the Johnstone setback intrusion are minor compared to that of the Sherlaw dwelling. As far as I am aware, all other aspects of the other two dwellings comply with the relevant setback and daylight recession angle rules. Therefore, the Sherlaw dwelling is not compatible with the other dwellings, in terms of compliance with the setback rules.

- (14) *The ability to mitigate any adverse effects of the proposal on adjoining sites and the street scene, including by planting and landscaping.*

It is likely that the visual effects of the dwelling could be screened by planting and landscaping.

- (16) *The extent to which the use of the proposed building will detract from the pleasantness or amenity of adjoining sites, in terms of noise, smell, dust, glare or vibration.*

The closeness of the dwelling does affect the amenity of Stevenson property. However, the main living area of the dwelling would be on the opposite side to the Stevenson boundary which should reduce the level of effects on privacy. The applicant has also proposed to remove the existing window on the portion of the house closest to the Stevenson boundary.

- (22) *The extent to which the proposed building will shade adjoining sites and result in reduced sunlight and daylight admission beyond that anticipated by the daylight admission angle requirements for the area.*

According to the cross section plans done by Nikkel Surveying Ltd a number areas of the dwelling do not comply with the 37 degree daylight recession angle (measured at 2.5 metres) which is required for the eastern boundary.

- (25) *The ability to mitigate any adverse effects of increased height or penetration of the daylight admission angle, through increased separation distances between the building and adjoining sites, or the provision of screening.*

The applicant has proposed to alter the roofline between cross sections A & B to ensure that it complies with the 37 degree recession angle.

In conclusion, the construction of the Sherlaw dwelling so close to the Stevenson boundary, will inevitably have an adverse effect on the amenity of the Stevenson property.

In my view the applicant should continue with the removal of those areas of non-compliance so that the dwelling meets the permitted activity standard to restore the amenity for the Stevenson property.

6.2 Integrity of the Council's Planning Documents.

It is important that the public has confidence in the correct implementation of the Council's planning rules which are designed to ensure that adverse effects on neighbouring properties are kept to an acceptable level.

A landowner should not be able to build right up to a boundary (without consent) and then simply apply for retrospective consent, without consent of the affected party, to legalise the situation.

It is important that the integrity of the planning documents to be administered fairly and equitably, is maintained.

It is acknowledged that the applicant has already taken some steps to try and rectify the situation and reduce the level of non compliance of the dwelling in relation to the Stevenson boundary.

6.3 Subdivision Consent RM100607

During construction of the Sherlaw dwelling it became apparent that a large part of the access from the beach to the dwelling, was over land that is part of Abel Tasman National Park (ATNP). In order to rectify this, the applicant reached agreement with the Department of Conservation for a "land swap" whereby a portion of the ATNP land that contains the dwelling access will be swapped for portion of the coastal frontage that would be transferred to the ATNP. A subdivision consent is required for this to be given effect to and granted under RM100607.

The property is zoned Residential (Closed) which under Rule 16.3.3.6 makes any further subdivision (creating additional allotments) a prohibited activity. Boundary adjustments are allowed as a discretionary activity under rule 16.3.3.4, but only if under 16.3.3.4 (b) the following requirement is met:

"Following subdivision, existing buildings and dwellings meet the relevant permitted conditions for wastewater, water supply and boundary setbacks."

If the application cannot meet this requirement, then it falls to be prohibited activity under 16.3.3.6 and Council cannot accept or grant such an application.

In order for the application to be able to be accepted as a discretionary activity boundary adjustment, the applicant volunteered (as a condition of consent) to remove all non-complying parts of the dwelling on the Stevenson boundary. This is shown on Plan B of subdivision consent RM100607. The removal of the non-complying portions of the Sherlaw dwelling is an integral part of the subdivision proposal. If this application was approved to retain the non-complying portions of the

dwelling, then the subdivision consent could not be given effect to and could not have been granted by Council.

7. SUMMARY OF KEY ISSUES

The applicant has built a dwelling without consent for non-compliance of side yard setbacks and daylight recession angles.

The applicant has made some alterations to the dwelling which has reduced the degree of non compliance, but it still very close in places (0.4 metres) to the adjoining Stevenson boundary and Stevensons have not provided their written consent to the encroachment.

The applicant has obtained subdivision consent (RM100607) for a boundary adjustment with the adjoining Abel Tasman National Park. However, in order to give effect to the subdivision, the non-complying parts of the dwelling that encroach the side yard boundary.

8. SECTION 5 AND RECOMMENDATION

There is a technical knock out here regarding the subdivision consent as we cannot grant this consent due to the conflict with the status of the subdivision consent already granted as well as amenity effects

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, on balance, I **RECOMMEND** that the application(s) be **DECLINED**.

Mark Morris
Consent Planner

15 June 2011

M C & J M Sherlaw
365 Hardy Street
Nelson 7010

Dear Sir/Madam

**DECISION ON NON-NOTIFIED RESOURCE CONSENT APPLICATION No. RM100607
- M C & J M SHERLAW**

Pursuant to Section 114 of the Resource Management Act 1991 ("the Act"), please find enclosed a copy of the Council's decision on your application for resource consent referred to above.

Section 357A of the Act provides you with the right to lodge an objection with the Council in respect of this decision and/or any associated conditions. Any such objection must be made in writing setting out the reasons for the objection and must be lodged with the Council, together with a fixed fee of \$175.00 (GST inclusive), within 15 working days of receiving this letter.

At this stage the Council has not calculated the final costs of processing your application. Should the final costs exceed the deposit already paid, then as previously advised, you will be invoiced separately for these costs. Should the final costs be less than the deposit already paid, then you will receive a refund. Where the costs are equal to the deposit already paid, no further action is required. You will receive a letter shortly regarding the final costs of processing your application.

Please note that under Section 125 of the Act, your consent will lapse in 5 years unless you have given effect to it before then. In the case of subdivisions, the consent is given effect to when you have submitted a survey plan to the Council for the subdivision under Section 223 of the Act. Once the survey plan has been approved by the Council under Section 223 of the Act, the consent lapses 3 years thereafter unless it has been deposited with the District Land Registrar as outlined in Section 224 of the Act.

Please feel free to contact me if you have any questions regarding any aspect of your consent or its conditions. My contact details are listed at the top of this letter.

Yours faithfully

Mark Morris
Co-ordinator Subdivision Consents



RESOURCE CONSENT DECISION

Resource Consent Number: RM100607

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

Mark Charles Sherlaw and Joanna Margaret Sherlaw
(hereinafter referred to as “the Consent Holder”)

Activity authorised by this consent: Subdivision consent to subdivide Lot 1 DP 13629 as boundary adjustment with Pt Lot 3 DP 7797.

Location Details:

Address:	14 The Anchorage	Abel Tasman National Park
Legal Description:	Lot 1 DP 13629	Pt Lot 3 DP 7797
Certificates of Title	NL9A/1385	NL3B/1157
Valuation Number:	1931000204	1871000110

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

CONDITIONS

General Accordance

1. That the proposal shall be in accordance with the application plan titled: “Proposed Boundary Adjustment between Lot 1 DP 13629 and Lot 3 DP 7797” (shown as Plan A attached to this consent) and dated 15 June 2011, as amended by the following conditions of consent.

Amalgamation

2. (a) That Lots 2 and 3 hereon be held in one Computer Freehold Register.
(b) That Lot 1 hereon be held together with Part Lot 3 DP 7797 in one Computer Freehold Register.

Land Information New Zealand reference: 954865.

Easements

3. Easements are to be created over any services located outside the boundary of the allotment that they serve. Reference to easements is to be included in the Council resolution on the title plan and endorsed as a Memorandum of Easements.

Building Setbacks

4. Prior to the signing of the Section 224(c) certificate, the Consent Holder shall provide a suitably scaled as-built plan from a registered surveyor, showing that the dwelling on Lot 2 complies with the 1.5 metre setback from the boundary with Lot 2 DP 13629.

Advice Note:

The applicant has volunteered to remove the sections of the Sherlaw dwelling that are currently less than 1.5 metres from Lot 2 DP13629. These are shown in green on the attached Plan B.

Wastewater Disposal

5. The applicant shall provide a written report from a suitably qualified person confirming that the on-site wastewater treatment system within Lots 2 and 3 complies with the permitted activity rule under 36.1.4 of the Tasman Resource Management Plan, including Rule 36.1.4(d)(i), which requires any disposal field to be set back at least 20 metres from the coastal marine area. The wastewater system that is currently serving the utility shed on Lot 2 shall be removed, together with the toilet and shower that are within the utility shed.

ADVICE NOTES

Tasman Resource Management Plan

1. Any matters not referred to in this application for resource consent or otherwise covered in the consent conditions must comply with the Tasman Resource Management Plan or subsequent planning document, or authorised by another resource consent.

Other Council Requirements

2. The Consent Holder shall meet the requirements of Council with regard to all Building and Health Bylaws, Regulations and Acts.

REASONS FOR THE DECISION

Background to Proposed Activity

The applicants propose to carry out a boundary relocation with Pt Lot 3 DP 7797 (Abel Tasman National Park) as part of a boundary swap with the adjoining National Park. This will enable an area that contains Lot 2, which both parties had originally assumed was part of the Sherlaw property, to be amalgamated with the Sherlaw property, in exchange for some of the Sherlaw land along the coastal frontage to be amalgamated with the National Park. In order to comply for the permitted activity rules for the existing dwelling and the wastewater treatment permitted activity standard under 36.1.4, the applicant has agreed to

cut back the existing dwelling to meet the 1.5 metre boundary setback and to disconnect the effluent disposal system that currently services the utility shed near the coastal edge of the site.

Tasman Resource Management Plan (“TRMP”) Zoning, Area, and Rules Affected

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

Zoning: Residential (Closed), Conservation
Area(s): Land Disturbance Area 2

No person may subdivide land within Tasman District as a permitted activity according to the TRMP. The activity authorised by this resource consent is deemed to be a discretionary activity in accordance with Rule 16.3.3.4 of the TRMP. This rule allows for boundary adjustments in the Residential Closed Zone, providing the subdivided lot complies with the permitted activity rules for building setback, water and wastewater disposal. To comply with this requirement the applicant has volunteered to cut back the existing dwelling to comply with the 1.5 metre building setback with the adjoining property and to disconnect the wastewater system for the utility building, which is less than the 20 metre setback required from the coast under Rule 36.1.4. There is no permitted activity for water supply in the Residential Zone.

Principal Issues (Actual and Potential Effects on the Environment)

The principal issue(s) associated with the proposed activity involve the actual and potential effects on the environment. For this application these were:

- (a) amenity effects;
- (b) building setbacks;
- (c) public access to and along the coast.

The Council considers that the adverse effects of the activity on the environment will be no more than minor for the following reasons:

- (a) the boundary relocation is simply to rectify an existing historical situation, and will not result in any additional dwelling being erected on the site;
- (b) the change in area of the titles is minimal and will not change the development potential of either title. Therefore, the effects of the proposed subdivision on amenity values are no more than minor;
- (c) the applicant has agreed to conditions to ensure that the existing dwelling complies with the relevant side yard setbacks for a Residential Zone;
- (d) the site does not adjoin the coast directly, because of the existing 5 metre wide reserve created with the original subdivision. The coastal reserve area will be enlarged through the proposed Lot 1 being held together with the rest of the National Park. This will mean that a much larger area of coastal land will be available for public access and recreation (virtually the equivalent of a full 20 metre esplanade reserve) than what there is at present.

Relevant Statutory Provisions

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

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

Most of the objectives and policies contained within the TRPS are mirrored in the TRMP. The activity is considered to be consistent with the relevant objectives and policies contained in Chapter 7 of the TRMP.

Part II Matters

The Council has taken into account the relevant principles outlined in Sections 6, 7 and 8 of the Act and it is considered that granting this resource consent achieves the purpose of the Act as presented in Section 5.

Notification and Affected Parties

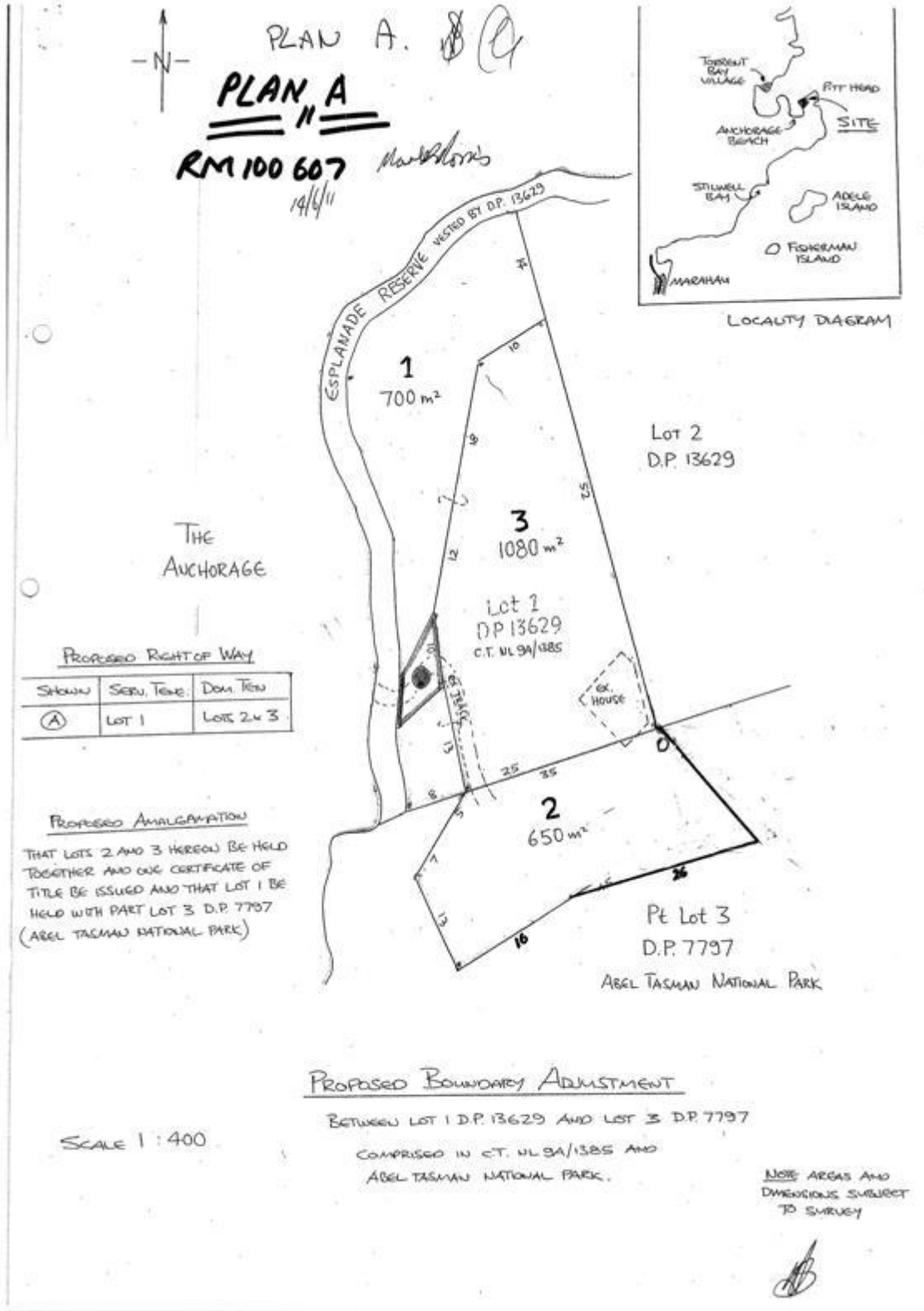
The adverse environmental effects of the activity are considered to be no more than minor. The Council's Resource Consents Manager has, under the authority delegated to him, decided pursuant to Section 95 of the Act that the application did not require public or limited notification.

This consent is granted on 15 June 2011 under delegated authority from the Tasman District Council by:

Mark Morris

Co-ordinator Subdivision Consents

Plan A
RM100607



Plan B
RM100607

