STAFF REPORT

TO: Environment & Planning Subcommittee

FROM: Phil Doole, Senior Planning Consultant, MWH New Zealand Ltd

REFERENCE: RM070807, RM070808, RM070809, RM070810

SUBJECT: **SUBDIVISION APPLICATION – R and N BENSEMANN - REPORT EP08/03/13 -** Report prepared for 31 March Hearing.

---

1. APPLICATION BRIEF

1.1 Proposal

The application is for the following consents:

RM070807 Subdivision

To subdivide in three stages, two existing titles comprising 7.4 hectares to create:

- Proposed Lots 1-16 being 16 rural residential allotments ranging between 1690 square metres and 1.25 hectares in size;
- Proposed Lot 17, being an allotment of 7390 square metres to vest in Council as road;
- Proposed Lot 18, being an allotment of 1050 square metres to vest in Council as Local Purpose Reserve;
- Proposed Lot 19, being an allotment of 145 square metres to vest in Council as Local Purpose Reserve (Walkway); and
- Associated easements.

A seven year lapsing period is being sought for the subdivision consent.

RM070808 Land Use Consent

To undertake the following land use activities associated with the subdivision described above (Application RM070807):

- Construct a dwelling on each of proposed Lots 1-12 and Lots 14-16 (Lot 13 contains an existing dwelling), with a minimum setback of 5 metres from any boundary, and no minimum setback from water bodies on site.
- Construct dwellings on those allotments located within the Coastal Environment Area, all meeting the controlled activity criteria as set out in Rule 18.14.3 of the Proposed Tasman Resource Management Plan.
- Land disturbance to:

1) fill the areas of the proposed building sites of approximately 600 square metres each on Lots 1-12 and Lots 14-16 to a minimum level of RL 3.4m;

2) fill and realign an unnamed tributary of the Moutere Inlet (locally known as Thorp Drain); and

3) create roading on the subject site.

Some of these works will occur within 200 metres of the Coastal Marine Area.

The application seeks, for the land use consent to construct dwellings, a lapsing period of five years from the date of the Section 223 survey plan approval being granted for the relevant stage of the subdivision. A 10 year lapsing period is being sought for the land disturbance component.

RM070809 Discharge Permit

To discharge stormwater from the subdivision described above (Application RM070807) to an unnamed tributary of the Moutere Inlet (locally known as Thorp Drain).

A 10 year lapsing period is being sought for the discharge permit.

RM070810 Permit to Divert Water

To divert water by way of re-alignment of an unnamed tributary of the Moutere Inlet (locally known as Thorp Drain).

A 10 year lapsing period is being sought for the water permit.

1.2 Amendments to Original Application

In response to requests for further information, and to issues raised by submitters, the applicant has made several amendments to the application that was publicly notified. The amendments are incorporated where relevant into the above descriptions of the proposed activities, and comprise the following:

1. Changing the re-alignment of Thorp Drain at the north end of the property (proposed Lot 10);

2. Changing the re-alignment of Thorp Drain at the south end of the property to avoid Sanctuary Pond;

3. Amending the layout of proposed Lots 7-10 and 13 so that the re-aligned Thorp Drain will flow through Lots 10 and 13 only, and shifting the Council's existing drainage easement to the new alignment of Thorp Drain to ensure continued rights of drainage and maintenance;

4. Amending the proposed minimum building platform level from 3.3m, to 3.4m;

5. Amending the minimum level for both the proposed road and the private way (ROW) from 2.5m and 2.0m respectively, to 2.6m;

6. Shifting the proposed sewer pumping station further north to within the proposed ROW area; and

7. Providing an ecological assessment of the proposed changes to Thorp Drain and the ponds on the property.

These amendments are set out in the letter dated 3 March 2008 (with amended plans) responding to the requests for further information. In my view, these amendments are minor and do not alter the general scope or of the application. They are intended to further mitigate potential effects of the proposed residential development.

My report assesses all aspects of the application, taking account of advice from Council staff. An engineering report has been provided by Council's Development Engineer, Dugald Ley, which is appended to this report as Attachment 2.

1.3 Location and Legal Description

The property is located on the north (landward) side of Old Wharf Road, Motueka, adjacent the Moutere Inlet. It is part of a low-lying area with rural zoning within Motueka township.

The legal description of the land is Lot 2 and 3 DP 16330 Certificates of Title NL 10C/812 and 11B/324.

1.4 Zoning and Consent Requirements

The land is zoned Rural 1 in the proposed Tasman Resource Management Plan (TRMP). As there are no outstanding references on the relevant rules in the TRMP it is considered that those rules are operative pursuant to Section 19 of the Resource Management Act 1991 (the Act). Therefore no assessment is required under the Transitional District Plan.

The proposed subdivision is considered to be a **discretionary** activity under Rule 16.3.7A of the TRMP in that the minimum lot size is less than the 12 hectares required under the controlled activity rule 16.3.7 for the Rural 1 Zone.

Rule 16.4.2 provides that subdivision of land which involves creation of allotments less than 4 hectares in size adjacent to a "river" having an average width of 3m or more is a **restricted discretionary** activity with regard to consideration esplanade reserves or strips.

It is noted as being potentially relevant to this application, that Section 106 of the Act provides:

> *"a consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that –*
> *(a) the land in respect of which a consent is sought, or any structure on the land, is or is likely to be subject to material damage by erosion, falling debris, subsidence, slippage, <u>or inundation</u> from any source;…" (emphasis added)*

Financial Contributions are required on subdivisions in accordance with Rules 16.5.2, 16.5.3 and 16.5.5.

Construction of dwellings on the proposed new residential allotments in the Rural 1 Zone would be **discretionary** activities under Rule 17.4.6. The envisaged building sites on proposed Lots 1, 2 and 15 are within, or partially within the Coastal Environment Area as defined in the TRMP; they are between 100m and 200m from the line of mean high water springs (defined as being on the seaward side of the Thorp Drain culvert under Old Wharf Road). This means that any new building on those allotments not exceeding 6.5 metres in height would be a **controlled** land use activity under Rule 18.14.3.

Reduction and/or waiver of the minimum set back distances from road and zone boundaries, and from river and lake margins that apply in the Rural 1 zone would be a **discretionary** land use activity under Rule 17.4.6.

The property is in Land Disturbance Area 1 as defined in the TRMP. The proposed earthworks involving the re-alignment of Thorp Drain and the raising of building platforms and the road and ROW alignments, do not comply with several of the conditions of Rule 18.6.1 for Land Disturbance Area 1 pertaining to river margins, flood plain and flood hazard, and the coastal environment area. Those aspects of the proposal are **restricted discretionary** land use activities under Rule 18.6.6.

Application has been made for consent for the stormwater discharges to Thorp Drain from the proposed road and residential allotments, although these appear to comply with all of the relevant conditions in Rule 36.4.2. If the proposed stormwater discharges do not comply with Rule 36.4.2, then they will be discretionary activities under Rule 36.4.4. It is noted that Subdivision Rule 16.3.7A also requires that regard be had to stormwater drainage criteria in the assessment of the subdivision proposal (refer TRMP Schedule 16.3A(19A)).

Regarding diversion of water (both surface and groundwater) via the proposed re-alignment of Thorp Drain, Section 14 of the Act requires that consent be obtained for the diverting of water, unless expressly allowed by a rule in a regional plan or proposed regional plan. I consider “diversion of water” to be the appropriate description of the activity in this case, rather than it being a “take” of groundwater. In this case diversion of water is a **discretionary** activity per Section 77C of the Act.

In addition, Section 13 of the Act requires that consent be obtained for works in a watercourse, unless expressly allowed by a rule in a regional plan and in any relevant proposed regional plan or resource consent. Presently, the only proposed or operative regional plan pertaining to the use of river and lakebeds is the Transitional Regional Plan (TRP). Under the provisions of the TRP, resource consent is required for the **discretionary** activities of filling and modifying the existing alignment of Thorp Drain.

Overall the proposal should be assessed as a **discretionary** activity. The controlled activity component of the land use application (ie, buildings in the Coastal Environment Area) will become redundant if the subdivision application is declined.

1.5 Status of Thorp Drain

Several of the consent requirements set out above are dependent on Thorp Drain being considered to be a "river", rather than a drainage channel, in terms of the definition in Section 2 of the Act, which is:

> *"**River** means a continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse; but does not include any artificial watercourse (including … … farm drainage channel)"*

The application specifically leaves it for Council to determine the status of Thorp Drain (refer paragraph 3.11, page 11). The public notification of the application assumed that the length of Thorp Drain on the Bensemann property fits the definition of a river, referring to Thorp Drain as being a tributary of Moutere Inlet. However, the situation is not clear cut.

Old survey plans of Motueka show that the original port road (now known as Old Wharf Road) cut off the head of the north arm of Moutere Inlet; and some of the area on the northern side of the road has effectively been reclaimed from the estuary over time. Natural surface drainage flowed from the west until it reached the remnant sand dune feature along the present day Thorp Street, where it was deflected southward, following the lowest path in the terrain to the estuary shoreline. As land development proceeded, the natural pattern of swales was effectively replaced by drainage channels. A 1947 aerial photograph of the area (refer to copy provided in Attachment 1), shows the natural swales and the drain alignment on the Bensemann property - the drain alignment has not altered significantly over the past 60 years.

The Motueka Borough Council obtained a 4 metre wide easement along the Thorp Drain alignment in 1963, when drainage across from the Woodland Avenue area was improved. This drainage easement is shown on the copy of survey plan DP 16330 included with the application.

Much of the original catchment run-off from the west has now been diverted to the Woodlands Drain. The flows in Thorp Drain now comprise a mix of stormwater drainage from the Greenwood Street area of Motueka township, local stormwater run-off and flows from freshwater springs and the high water table in the low-lying areas of the Bensemann property.

None of the old survey plans define or show a watercourse in the vicinity of what is now the Thorp Drain. The 1947 aerial photograph shows both the straight-line drainage channel, and another water body of which the present day Sanctuary Pond and adjacent ponds are remnants. It can be argued that the Thorp Drain did not originate from a discernable natural stream or watercourse, so the drain alignment should be regarded as being an artificial watercourse.

Counter-arguments are that the natural pattern of surface flows in the area have been modified and diverted over time into the Thorp Drain channel so that it now carries the natural surface flow, as well as some outflow from groundwater springs and tidal water; and that the proposed new alignment will to some extent be reverting to the line of a previous water body.

My advice to the hearing subcommittee is that both the existing Thorp Drain on the Bensemann property, and the future alignment (if consent is granted) should be regarded as being modified water courses, which are "rivers" for RMA purposes.

If accepted, this determination would mean that the RMA provisions and TRMP rules for activities in or near rivers, as outlined in Section 1.3 above, do apply to the application. I will cover all those matters in this report.

I note that the consent requirements for diverting water, and for discharging stormwater to water, will apply to the proposed activities, regardless of what decision is made on the status of Thorp Drain.

2. NOTIFICATION AND SUBMISSIONS

The application was publicly notified on 13 October 2007. Seventeen submissions were received. Nine submissions support the application, with three of these being conditional support. Five submissions oppose the application. Three submissions are neutral, but seek conditions if consent is granted. Seven submitters wish to be heard. The following table provides a summary of the 17 submissions received:

No.	Submitter	Support or Oppose	Key Submission Points
1	S Budgen 95 Motueka Quay	Support	• The area is surrounded by houses and is no longer suitable for rural use • Pleased to see low density housing / larger sections proposed • Wetlands will continue to provide wildlife habitat
2	W and V Ross 200 Thorp St	Neutral (with conditions)	• That the existing ROW (off Thorp St) be sealed to reduce vehicle noise • That this ROW service only the existing house (Lot 1 Dp17194) and Lot 16 of the proposed subdivision
3	G Trainor 136 Thorp St **To be heard**	Neutral (with conditions)	• Property bisected by northern part of Thorp Drain, low-lying land frequently floods during periods of high rainfall • Re-alignment of the drain must not hinder or slow the flow of water • Increased stormwater discharge must not interfere with drainage of our property especially during periods of high tide
4.	C J Budgon 95 Motueka Quay **To be heard**	Support	• Bensemann family offered land for playing fields, also Sanctuary Pond area • Untenable to farm pip fruit on the remaining property; unreasonable for spray and other horticultural activities next to sports fields and houses • Conversion of the area to houses is logical and reasonable solution
5.	Tiakina te Taiao	Oppose	• Loss of open space for people and wildlife habitat in Motueka - overall cumulative effects have not been taken into consideration • 16 new properties will bring loss of habitat as well as domestic animals, further threatening native birds • Impacts of Thorp Drain re-alignment on

			native fish including whitebait and eels are not covered adequately • The fish will need to be salvaged • Sediment from all works needs to be properly managed • Fish passage needs to be maintained • Avoid whitebait and spawning seasons • The area is on or adjacent to Maori made soils. Impose standard archaeological condition
6.	Public Health Services NELSON	Support (with conditions)	• Supports reticulation of potable water • Supports connection to the waste water reticulation and treatment system • Swales for stormwater management in close proximity to dwellings have the potential to create nuisance conditions with breeding of mosquitoes, midges • Thoughtful design and on-going maintenance of swales is required to mitigate the effects of nuisance insects
7.	J and C Gatenby 240 Thorp St **To be heard**	Oppose	• The most positive result for all would be for TDC to purchase all of that area of the property in the coastal zone and enlarging and enhancing sanctuary ponds, resulting in the deletion of Lots 1 and 2, and possibly Lot 3. • If consent is granted, the following issues need to be addressed: - impose a significant monitoring bond to ensure compliance with conditions - delete the car parks at the rear of Lot 2 DP 13222, and replace with vegetation - relocate the access road to the sports field boundary and enlarge Sanctuary Pond - why the need for the long leg-in access for Lot 13? - impose height and single story restriction on the proposed dwellings, taking account of the raised building sites; proposed level of 3.3m is too low, should be 4.6m - impose 10m building set backs from the new road on proposed Lots 1 and 2 to retain openness - no extension to the consent period - impose controls on adverse effects during construction - impose long-term restrictions on the number of users of the ROW and prevent future upgrade - impose controls on the intensity of street lighting - impose restrictions on use of the land for commercial or industrial activities - upgrade Old Wharf Road to Council standards - require noise control to be a feature of the proposed new road (eg, hush asphalt, 30 kph speed limit) - concerned re effects of proposed alterations on operation of Thorp Drain - retain right to discharge stormwater from submitters property to Thorp Drain

			- upgrading of water reticulation and sewage disposal systems should be at cost of the applicant - restrict to one residential dwelling unit per new title - concerned re water safety aspects of new ponds - proposal is contrary to the Rural 1 zoning and loss of the Rural aspect could have a serious detrimental effect on the submitters Bed and breakfast operation
8.	G A Tonkin 230 Thorp St	Support (with conditions)	• No walkway to soccer fields (Lot 19) to lessen traffic using road • No "spite strip" for Lot 13 • Thorp Drain left in current location
9.	P D and S Bourke 160 Thorp St **To be heard**	Support (with condition)	• Realigning Thorp Drain with a right angle bend may cause water backing up onto Bourke property during flood times • Confirmation from engineers that property will not be effected by flooding
10.	Department of Conservation	Support (conditions)	• Supports enhancement of the waterway • The proposed works should - not adversely on eels and other native fish, both during construction and as a result of the proposed re-alignment - result in a net benefit to freshwater fish values - not occur during whitebait spawning and catching seasons • Salvage eels and other fish • Engage a consultant with ecological expertise to undertake fish salvage, and to advise on restoration and to supervise the works • The new drain should have gently sloping sides to enhance whitebait spawning opportunities • Restoration to include riparian planting to enhance in-stream values
11.	R and L Brereton 126 Thorp St	Support	• It will be a good use of otherwise unused land
12.	D Jackson Motueka	Oppose	• Cumulative effect of the proposed subdivision will ruin the semi-rural feel of the area and the environment enjoyed by existing nearby landowners and the town as a whole
13.	L C and D M Keith 156 Thorp St	Support	• Realigning Thorp Drain with a right angle bend may cause water backing up onto Bourke property during flood times • Confirmation from engineers that properties above will not be effected by the realignment of Thorp Drain
14.	Nelson/Tasman Branch Royal Forest and Bird Society **To be heard**	Neutral Conditions required)	• Acknowledge that subdivision may be an appropriate use of this land, but cannot see why the rural-residential and other rules should not apply • The usual rural-residential set backs from margins of lakes and rivers, and from open space zones should apply • Thorp Drain should be regarded as being a river, it has significant conservation values,

			and the presumption that esplanade reserves should be taken should be upheld • The restoration of improved and significant wetland values will be possible provided conditions are imposed for plantings and building set backs • Increased likelihood of detergents and other pollutants to get into the water bodies, hence all stormwater should be appropriately treated • Consider covenants to prohibit domestic animals such as cats to protect birdlife that frequents the water margins • The locations of the proposed building platforms should be indicated, flooding of this land has occurred and sea level rise will make the situation worse
15.	R H Sandford 148 Thorp St	Support (with condition)	• That no water backs up on neighbouring property – make sure that drainage is adequate
16.	V Cantwell and B O'Reilly 190 Thorp St **To be heard**	Oppose	• Currently Thorp Drain forms a natural boundary to the west of our property and a nesting area for birds – the impact of realigning the drain is unclear • The effect on an existing drainage easement through our property from Thorp Road to the drain is unclear • The minimum set back should be 10m from the edge of the filled-in drain and not obstruct our view of Mt Arthur • There will be significant loss of privacy unless significant planting and other controls • The subject area could be a building site for many years • No contact and no input to application
17.	A Webber Upper Moutere **To be heard**	Oppose	• The area is low lying and incorporates Thorp drain, one of the major flood drains of Motueka • It is proposed to fill several of the existing ponds - typical of a greenfield urban development • Refers to Water and Sanitary Services Assessments (2005) regarding stormwater capacity issues in Motueka • No provision made for legal access to clear drain if required • Drainage functionality should be primary consideration • Use of sports fields and associated noise in evenings should be considered for house sites • Proposed reserve area (Lot 18) should not be used for car parking • Sharp angle proposed where the drain enters the subdivision, for the maximisation of building sites • Building set back from the drain should be required to allow flood protection work • Refers to RMA provisions to have regard to climate change, and Section 106 RMA • The 10 year lapsing period sought is too

			long, with a review of minimum ground levels due in 2010 • Given a 50 year life span for the proposed houses, the expected increase in flood events and the low-lying nature of this area, is the development of sections responsible? • Decline consent for building within 200m of the coastal marine area • Decline consent for the infilling of coastal inlet, tributary or wetland area • Require a water take permit for the construction of new ponds as these are spring fed • Impose a set back from Thorp drain to ensure access for machinery

4. STATUTORY CONSIDERATIONS

4.1 Resource Management Act

Part II Matters

In considering an application for resource consent, Council must ensure that if granted, the proposal is consistent with the purpose and principles set out in Part II of the Act. If consent is granted, the proposed subdivision and residential development, and associated changes to Thorp Drain must be deemed to represent sustainable use and development of the land and water resources.

The principles in Part II of the Act underpin all relevant Plans and Policy Statements, which provide more specific guidance for assessing this application.

Section 104 of the Act

Subject to Part II matters, Council is required to have regard to the matters set out in Section 104 when assessing an application for resource consent, as follows:

- Any actual and potential effects of allowing the proposal to go ahead (Section 104 (1) (a));

- Any relevant objectives and policies in the Tasman Regional Policy Statement and the Proposed Tasman Resource Management Plan (Section 104 (1) (b));

- Any other relevant and reasonably necessary matter(s) to determine the consent (Section (1) (c)).

In respect of Section 104 (1) (b), the Proposed Tasman Resource Management Plan is now considered to be the relevant planning document, given the operative status of the relevant rules.

Section 104B sets out the framework for granting or declining consent based on the status of the proposed activities as set out in the relevant Plan.

4.2 Tasman Regional Policy Statement

The Regional Policy Statement seeks to achieve the sustainable management of land and coastal environment resources. Objectives and policies of the Policy Statement clearly articulate the importance of protecting land and water resources from inappropriate land use and development.

Because the Proposed Tasman Resource Management Plan was developed to be consistent with the Regional Policy Statement, it is considered that an assessment under the Proposed Plan will satisfy an assessment against Policy Statement principles.

4.3 Proposed Tasman Resource Management Plan

The most relevant Objectives and Policies in the TRMP are contained in: Chapter 5 'Site Amenity Effects'; Chapter 6 'Urban Environment Effects'; Chapter 7 'Rural Environment Effects'; Chapter 8 'Margins of Rivers, Lakes, Wetlands and the Coast'; Chapter 13 'Natural Hazards'; Chapter 14 'Reserves and Open Space'; Chapter 30 'Diverting Water' and Chapter 33 'Discharges to Land and Fresh Water'. These chapters articulate Council's key objectives, which are considered in Section 5.3 this report.

The relevant rules in the TRMP, referred to in Section 1.3 above, set out a wide range of assessment criteria - including Schedule 16.3A for subdivisions, and Schedule 36.1D for discharges.

The key matters for assessment of the proposed subdivision and associated activities are set out in the following section of this report.

5. ASSESSMENT

In accordance with Section 104 of the Resource Management Act, Council must consider the actual and potential effects on the environment of allowing the proposed activities, have regard for any relevant objectives, policies, rules, and consider any other matters relevant and reasonably necessary to determine the application.

From my assessment, I consider the key issues for this application to be:

- the potential risks of inundation of the proposed rural-residential development and associated infrastructure,
- the flood capacity and natural values of Thorp Drain, and
- the effects on amenity values associated with the existing rural land use and the associated Rural 1 zoning.

I have taken into account all of the assessment criteria in the TRMP and the matters raised by submitters in the following assessment.

5.1 Assessment of Environmental Effects

Risk of Inundation

The Bensemann property is at the lower end of a low-lying area between Tudor Street and Old Wharf Road which has had a history of flooding during times of heavy rain events. This area has been perceived to be generally unsuitable for urban development because of the flooding, and a high water table and the presence of springs. It was given a specific "Thorp Drain Protection" zoning in the previous Planning Scheme for Motueka.

The application, including the further information, provides an assessment of the present day situation regarding the risk of flooding and inundation (refer Appendix 2 to the original application, and Appendix 1 in the Response). The construction of Woodlands Drain running parallel to Thorps Drain 250 metres to the west, and other changes to the stormwater reticulation system in the township north of Tudor Street have markedly reduced the stormwater catchment that Thorp Drain has to serve down to 50 hectares.

The applicant's further assessment takes account of the influences of predicted sea level rise (from climate change) and storm surges within the Moutere Inlet, as well as the moderating effect of the causeway and culvert systems between the Inlet and the subdivision land, to propose a minimum ground level of 3.4m amsl for the proposed dwelling sites in the subdivision. This level is calculated to provide 0.5m freeboard above a likely ultimate high flood level of 2.9m. The level proposed for the road and ROW is now 2.6m which is intended to avoid drainage inflows to the proposed sewer system to a Q20 design flood event (per Council's proposed new standards).

The proposed house site ground levels of 3.4m amsl differs from the 3.8m minimum level proposed in the current review of Council's Engineering Standards and Policies for coastal land in Motueka. This is because the minimum ground level in the Engineering Standards is an "open coast" minimum land level, without any modifications based on a site specific assessment of predicted tide and flood levels at the actual site in question – as is allowed for in Council's standards.

With reference to the Engineering Report on Filling and Excavation Works submitted with the application (Appendix 3), the existing ground levels varying between 1.6m and 1.8m will require up to 2.2m depth of compacted fill (allowing for removal of top soil) to achieve the 3.4m level proposed for the building platforms.

The information presented indicates that the proposed house sites, roading and sewer system can be constructed to avoid significant inundation risks. It is relevant to note that the proposed building site level of 3.4m is higher than the levels required for the residential zone nearby on the estuary side of Old Wharf Road, and in the Sanderlane Drive residential development to the west.

Council's Resource Scientist (Rivers and Coast), Eric Verstappen, has reviewed the additional assessment of the influences of storm surge, flooding hazard from the Thorp Drain and sea level rise on possible flood levels in the proposed subdivision. He reports that in discussions with the applicant's consultant, Mr J P McCartin, potential effects from seawater inundation have been assessed assuming that both the Wharf Road and Old Wharf Road culvert structures are open to full tidal

exchange. Under these circumstances, site observations by Mr McCartin during a high spring tide indicate that sea levels are suppressed by the causeway and culvert structures by around 0.4m. That is to say, sea levels are around 0.4m lower north of Old Wharf Road in the vicinity the subdivision land than in the Moutere Inlet.

Other than culvert tide suppression, all other factors relating to flooding have been preserved as per the 2007 Engineering Standards Review in terms of setting a minimum ground level for residential dwelling construction. This includes an allowance of 0.60m for highest astronomical tide, sea level rise of 0.50m, 0.70m for storm surge and 0.30-0.50m for freshwater flooding influences and a small factor of safety. These factors combine to produce a theoretical future extreme water level of 3.80m, reduced to around 3.40m by culvert suppression effects.

Mr McCartin has determined a probable future ultimate water level of 2.90m, which is 0.50m less than the 3.40m level derived above. This is on the basis that there is only an extremely small probability over the next 50-100 years that a highest astronomical tide combining with a 0.7m storm surge and extreme flooding in the Thorp catchment will occur, even if a 0.50m sea level rise eventuates. This would then give each house site a 0.50m freeboard above reasonable future extreme flood levels, with minimum house floor levels being higher still.

Mr Verstappen has some sympathy with this position, but comments that factors such as sea level rise, as well as climatic change effects, may become more extreme than currently predicted. Any future house owner would wish their house site to have freeboard and be completely free from any flooding effects, or in the most extreme case, certainly not get water in the house. He notes that the type of houses that are likely to be built in this subdivision will have concrete slab floors that cannot be readily raised.

Despite Old Wharf Rd being around 2.80m amsl and thus likely to be flooded at both the 2.90 and 3.40m flood levels, road levels can be raised in the future to offset such extreme outcomes. Also, the assumption that both culvert flood gates are fully open at all times is a possibility that must be taken into account, but can significantly reduce flooding risk in the subdivision area through rigorous operation and management. Nevertheless, simple prudence dictates that the absolute minimum ground level for house sites should be at the highest practicable level possible. Such a level should also take the extreme probability of events into account. A minimum house site ground level of 3.40m satisfies this and is proposed for the subdivision. The minimum floor level of concrete slab houses will be at least 225mm higher than this, due to Building Act requirements.

While much of the area of the proposed subdivision will remain low-lying and will remain at risk of inundation, the proposed raising of the dwelling sites and road alignment should avoid or mitigate most risks of significant damage to property or infrastructure, unless the combination of actual sea level rise and high tides and/or storm surges exceeds the predicted levels.

Capacity and Re-alignment of Thorp Drain

The proposed realignment of Thorp Drain is described in the application as an elongated pond, with minimum top widths varying from 12-15m out to the width of the existing ponds through which the new water course will be routed.

The application includes design calculations of stormwater flow volumes, which indicate that the proposed cross-section, and culverts, will have sufficient capacity for future Q50 flood events in the drain catchment. – allowing for the water level that will be maintained in the ponded watercourse.

The amended layout of the proposed re-alignment at the north end of the property should mitigate concerns expressed by submitters regarding the right-angle bend. Council's Parks and Reserves Staff have indicated acceptance of the amended layout for the drain adjacent to Sanctuary Pond.

Council will need to ensure that it secures on-going rights to drain water (including maintenance) by transferring the existing drainage easement to the new alignment. The upstream catchment is comprised of urban and pastoral areas; hence maintenance to keep the waterway clear is not expected to be a significant issue.

Natural Values of Thorp Drain

Approximately 400m of Thorps Drain is proposed to be re-aligned. The new alignment incorporating several existing ponds will be close to 600m in length.

The further information received includes an assessment of native fish values in this lower section of Thorp Drain (Tom Kroos & Associates Ltd, January 2008). Section 6 of that report (pages 6-10) sets out detailed proposals for the new channel design, riparian plantings, fish passage through culverts and a methodology for effecting the diversion including fish salvage. A key recommendation of this report is that the new water course should be constructed and planted well in advance of the diversion.

These proposals should address many of the concerns raised by submitters, including tangata whenua, regarding the loss of in-stream values, particularly whitebait habitat in the existing drain, and how they would be restored in the new watercourse.
The application proposes covenants and consent notices as suitable mechanisms for ensuring the on-going protection of the waterway network, the drainage flow and the riparian plantings. Those instruments would need to be compatible with the drainage easement and maintenance provisions that Council will need to have to ensure effective functioning of the drain.

If consent is granted, the preparation of a detailed design and management plan for the new alignment of Thorp Drain, and methodology for implementing the diversion should be required prior to works commencing.

Effects of Water Diversion

The proposed realignment will divert the main stormwater drainage flow through the other water bodies on the property. To the extent that those ponds are springs or otherwise fed from groundwater, their waters are classified in the TRMP (Schedule

36.1A) as MP1 – Management for aquatic ecosystems, fisheries, contact recreation and irrigation. A range of water quality standards apply for the consideration of any proposed discharges requiring consent.

The ponds are already connected to the water flow from Thorp Drain by several culverts; hence they are not totally separate water bodies. While recognising that the stormwater entering Thorp Drain upstream is likely to contain the typical mix of contaminants in run-off from an urban area, the re-alignment is unlikely to significantly change the quality of the water bodies.

Stormwater Discharge

The application proposes that stormwater run-off from the road carriageway surfaces will pass over swales before discharging into Thorp Drain or adjacent ponds. However, in contrast, the stormwater discharges from the proposed dwelling sites are proposed to be discharged directly in to the watercourses.

While it can be argued that the run-off from 15 more houses might not add much more contaminant to what is already in the stormwater being carried by Thorp drain, there should be scope within this subdivision proposal to use low impact design (LID) techniques to treat the stormwater run-off from the dwelling sites – particularly given the efforts otherwise being made to enhance the habitat values in Thorp Drain. I consider that a LID method of stormwater treatment should be required as a condition of subdivision consent.

Building Set Backs

The application requests set backs of 5 metres on all boundaries, and no minimum set back from the water bodies on site. Reducing the road boundary set back from 10m, to 5m, appears reasonable in terms of the overall style of development envisaged. However, there are two concerns regarding other set backs.

Firstly, the establishment of riparian plantings along the new Drain alignment requires building set backs. Taking account of the integrated design approach to the development, I suggest that a set back of 8 metres be imposed along the margins of the new waterway (this is the TRMP standard for rivers less than 5m width). This requirement would apply to the main waterway only, not to the other ponds, and should be compatible with the proposed covenants for protecting the riparian plantings and habitat.

Secondly, retention of the 20 metre set back on the boundaries of proposed allotments 3, 4, 5 and 12 adjoining the sports fields which are in a recreation zone is desired to assist in avoiding or mitigating cross-boundary issues which arise.

Building Heights

Building heights are usually measured from original ground level. In this proposal the sites for the proposed dwellings will be raised at least 1.8 metres. The permitted maximum height of dwellings in Rural 1 and Rural Residential Zones is 7.5 metres, leaving a balance of 5.7 metres for the dwellings if that height is imposed. The height restriction for Lots 1, 2 and 15 in the coastal environment area is 6.5 metres in

terms of controlled activity rule 18.14.3, leaving a balance height of 4.7 metres for the dwellings. The application does not seek any increase in the permissible height.

A submitter requests that a height and single story restriction be imposed on the proposed dwellings, taking account of the raised building sites. In the context of the site and proposed style of development and in the absence of any specific assessment of this potential effect in the application, I consider that a height restriction should be imposed on the new residential allotments by deducting the raised building platform level from the usual permitted height.

Effects of Proposed Filling

The proposed filling of dwelling sites and road alignment will raise the ground level over a total of approximately 2 hectares in a way that may result in the damming or diversion of flood waters (Rule 18.6.2(p)). The application assesses the likely characteristics of higher flood events affecting the locality, stating that flood flows will spread out across the low-lying playing fields towards Woodlands Drain to the west (refer Appendix 2 to the original application, and Appendix 1 to the Response).

If flood waters overtop Woodlands Drain and spread eastwards the proposed road formation that is to be raised between 0.6-1.0m above existing ground levels will deflect the flow. The dwelling sites will become "islands" if the highest predicted flood event occurs. Rural-residential properties along the east boundary occupy a remnant dune sitting well above the low-lying area, and as such the effects of the raised road formation on flood ponding should not have adverse effects on those properties.

The proposed diversion of the drain through the pond system, and filling of dwelling sites and road alignment will require extensive sediment control methods to avoid sediment discharge into the water flow and out into the estuary.

Rural Land Productivity

Protection of productive land would usually be a major issue for a subdivision proposal in a Rural 1 Zone within Tasman District. The property clearly does have some productive value for horticultural based on previous uses, although that is described in the application as being limited by the urban location, with sports fields to the west and housing to the east.

In the context of the land being zoned as a rural enclave mainly because of its limitations for urban development because of flood risks, I consider that the adverse effects of the subdivision on productive values would be no more than minor.

Rural Character and Amenity

Several submitters, some being neighbours on the Thorp Street side, are concerned about the adverse effect that the proposed development will have on the rural or semi-rural outlook and environment on the Bensemann property that they currently enjoy. The proposal would certainly change the character of the area.

The point made in the application is that the Rural 1 Zoning of the Bensemann property has come about because of its perceived limitations for urban development, because of flooding risks, not for the reason of retaining a rural land use enclave

within the Motueka township. That some of the neighbours have expectations to continue to enjoy a "rural" outlook from their own rural-residential properties is not a compelling reason, in my view, to prevent a similar scale and intensity of development on the Bensemann property.

Coastal Environment

Old Wharf Road forms a strong demarcation line between the Inlet and the land in terms of the natural character of the coast in this locality. Apart from the proposed new road into the subdivision, the proposed development will be set back 100 metres from the shoreline. In view of the residential zoning and existing residential use along Old Wharf Road, the proposed additional three dwelling sites in the Coastal environment Area should not have any significant adverse effect on the existing character of the locality.

Cultural and Archaeological Sites

Although there is no record of specific archaeological sites on the property, the submission from Tiakina te Taiao indicates that caution should be exercised during earthworks activity. I consider that imposing a standard condition of consent dealing with disturbance of archaeological remains would be appropriate.

Servicing Effects

The low-lying nature of the property presents serious concerns regarding the proposed services infrastructure – particularly for roading and sewerage, in terms of both establishment, and on-going maintenance, unless the effects of inundation can be avoided or mitigated. The potential effects of inundation on the proposed road and sewerage system have been discussed above.

Council's engineering staff also have concerns with regard to expanding the network of sewer pumping stations in Motueka, although it is acknowledged that if residential development is to occur in the low-lying Thorp Drain rural zone area, then at least one additional pump station will be required to service that area.

The further information refers to "future proofing" the location and design of the pump station proposed for the Bensemann subdivision, to provide for the possibility of servicing future residential development in the area to the north. This is accepted in principle, but would require additional investigation at the detailed engineering design stage to define the area that could actually be serviced. The high water table in the area may be a limiting factor for gravity sewers depending on the natural grade of the ground surface.
The existing configuration of sewer pumping stations in the area may change, and as there is a lapse period of five years on subdivision consents, some flexibility is desirable with regard to the siting of the proposed pumping station and the rising main connection to Council's network. The application expresses a preference for a connection to the northwest, however it may be more appropriate in terms of the functioning of the overall system that connection is made to the rising main in Thorp Street. If consent is granted, this is a matter that should be able to be resolved in a satisfactory manner when the consent holder moves to the detailed engineering design stage.

Council's engineering services require the pumping station site to vest with Council as a separate defined allotment, minimum area 15 x 10 metres to allow for future capacity, and with suitable access for maintenance purposes.

Underground water reticulation, and power and telephone connections can be provided to each of the building sites.

In conclusion it is considered that the additional allotments can adequately serviced without adverse effects on the environment, provided the recommended servicing conditions are imposed and adhered to.

Traffic Effects

The design of the proposed new road will be sufficient to meet the traffic demands of the residential development. The new intersection with Old Wharf Road will be designed to meet Council standards.

Old Wharf Road is categorised as a Collector Road in Council's roading hierarchy, so should have the capacity to carry the additional traffic movements that would be created by this proposal. Roading development contributions will be payable.

Proposed Reserves

Council's Community Services staff have advised that the proposed reserve shown as Lot 18 is not required for recreation or amenity reserve purposes. There is considered to be no need to provide for additional off road parking on that area. Proposed Lot 18 should vest with Council as drainage reserve.

The proposed walkway reserve giving to the playing fields (Lot 19) needs to be 6 metres wide.

Subdivision Layout

Submitters have raised several concerns regarding details of the subdivision layout, including the long "leg-in" access to Lot 13, and the "spite strip" (part of Lot 13) between the proposed road and the existing rural-residential properties along the eastern boundary.

The access way to Lot 13 avoids needing a bridge or culvert over the Thorp Drain realignment; and as road frontage is not required for further development of the rural-residential properties to the extent allowed by the zone standards, I consider the proposed layout to be reasonable in the circumstances. If consent is granted and the development proceeds, then neighbours who may want to benefit from having road access from the west should negotiate that with the owner of Lot 13 (consents may be required).

Amendments have been made to the layout of Lots 6-11 and Lot 13 in order to reduce the number of separate titles through which the new alignment of Thorp Drain will be routed. These changes reduce the sizes of Lots 6-9, but do not change the overall density of the proposed development. These allotments are on the west side of the proposed development, 60-70m away from the rural residential properties along the east boundary.

Future Subdivision

A submitter raises a concern regarding possible further subdivision, or extension of the road to give access to further development of the rural zone area to the north of the Bensemann property. Both scenarios would alter the basis for the current proposal being of similar scale and intensity to what is permitted or expected in the adjoining rural-residential zone. For that reason, I consider that a restriction on further subdivision would be a reasonable condition of consent.

Esplanade Reserves or Strips

The presumption in TRMP Rule 16.4.2 is that esplanade reserves or strips should be created when land is subdivided into allotments less than 4 hectares in size adjoining a river having an average width of 3 metres or more. Reserves or strips are created for the purposes of protecting conservation values, enabling public access and/or enabling public recreation.

Assuming that it is deemed to be a "river", the existing drain through the Bensemann property may or may not qualify as having an average width of 3 metres or more. Upstream the drain is definitely narrower than 3 metres. On the Bensemann property the drain is wider partly because of the amenity enhancement work that has been done over time. The proposed new drain alignment will be wider than 3 metres, and would (I am assuming) be subject to the esplanade reserve provisions.

It is relevant to observe that the proposed width of 10-12 metres results from the applicant's intentions to merge the water bodies on the property and to enhance the habitat values of the drain, otherwise the drain could be left as is and not trigger the esplanade reserve provisions.

In this case, Council's community services staff do not support the taking of esplanade reserves or strips along the new Drain alignment because there are large existing reserves adjoining the site that provide for pubic recreation, the public will have access to the lower end of the Drain where it flows through proposed Lot 18, and the applicant is volunteering covenants to protect the conservation values of the Drain margins.

I concur that there is no reason for Council to acquire further rights or responsibilities over the land or waterway in addition to the drainage easement.

Staging of Subdivision

A submitter has raised concerns regarding the proposed timing and staging of the subdivision, regarding uncertainties as to when the effects of earthworks and construction activities will occur. I consider that the applicant does need to confirm the proposed sequence of development, particularly regarding the road formation, sewer and pump station construction, filling of house sites, and the diversion of Thorp Drain to the proposed new alignment.

Lapse of Consent

The applicant is requesting that the usual lapse date for consent of five years, be extended to seven years. I cannot see any strong justification for this, unless the seven year period can be applied to the proposed Stage 3 only (ie, proposed Lots 7-12).

The lapse date for the drain realignment earthworks and the water diversion, should equate to whatever lapse date applies to the first stage of the subdivision (ie, five years to Section 223 approval, plus three years to Section 224 approval), giving eight years.

Lapse dates for the other earthworks required for the building sites and roading should equate to the lapse dates for the subdivision stages (if granted), plus three years to Section 224 approval.

5.2 Relevant Plans and Policy Statements.

The following table summarises the most relevant Plan matters and provides brief assessment commentary:

Chapter 5 – Site Amenity Effects Objectives: 5.1.0, 5.2.0, and 5.3.0	Avoid, remedy or mitigate adverse effects on the use and enjoyment of other land and on the qualities of natural and physical resources; maintain and enhance amenity values on site and within communities; maintain and enhance the special visual and aesthetic character of localities.
Policies: 5.1.1, 5.1.2, 5.1.3D, 5.1.9, 5.2.1, 5.2.7, 5.2.8, 5.2.13, 5.3.2, 5.3.4.	As recognised in the assessment of effects (in 5.1 above), the proposed development will affect the character and amenity values of the locality. There will be some loss of rural character to the area. The site is within a wider urban environment. The proposed development will be similar in scale and intensity to that allowed in the adjoining rural residential zone, and intends to maintain and enhance the water bodies on the site.
Chapter 6 – Urban Environment Effects Objectives: 6.1.0, 6.2.0, and 6.3.0 Policies: 6.1.1, 6.1.3, 6.1.4, 6.1.6, 6.2.1, 6.2.1A, 6.2.3, 6.2.4, 5.3.2, 5.3.4. 6.8 Motueka 6.81, 6.8.3A, 6.8.10	Urban buildings, places, spaces and networks that together, by design, sustain towns as successful places to live, work and play; sustainable urban growth that is consistent with the capacity of services and has access to the necessary infrastructure; containment of urban subdivision, use and development so that it avoids cumulative adverse effects on the natural character of the coastal environment. Policies for Motueka seek to consolidate urban growth away from areas of versatile and productive land where practicable; to maintain the semi-rural amenity of the Thorp Street area; and to control land use in areas subject to risk of flooding. The proposed development is generally consistent with these objectives and policies for Motueka.

Chapter 7 – Rural Environment Effects Objectives: 7.1.0, 7.2.0, 7.3.0	Avoid the loss of potential for all land of productive value; provide opportunities to use rural land for activities other than soil-based production, including rural residential activities; and avoid, remedy, or mitigate adverse effects on rural character and amenity values.
Policies: 7.1.1, 7.1.2, 7.1.2A, 7.1.3, 7.2.1A, 7.3.3, 7.3.5, 7.3.9.	The actual adverse effects of the proposed development on productive values are not considered to be significant. As recognised in the assessment of effects, the proposed development will affect the character and amenity values of the locality. There will be some loss of rural character to the area. The site is within a wider urban environment, with the Rural 1 zoning based more on the history of flooding risk in the area, rather than rural character values. The proposed development will be similar in scale and intensity to that allowed in the adjoining rural residential zone.
Chapter 8: Margins of Rivers, lakes, Wetlands and the Coast	Maintain and enhance public access to and along the margins of rivers that are of recreational value to the public; and maintain and enhance the natural character of the margins of rivers and wetlands
Objective: 8.1.0,8.2.0 Policies: 8.1.1, 8.1.4, 8.2.3, 8.2.4, 8.2.6, 8.2.14	Thorp Drain is a modified watercourse. The application intends to enhance the collective natural values of the water bodies on the property. Public access to Thorp Drain upstream of Sanctuary Pond is not considered a priority n the context of the proposed development and adjacent public reserves and foreshore access.
Chapter 13 – Natural Hazards Objectives: 13.1.0 Policies: 13.1.1, 13.1.2A, 13.1.3.	Manage areas subject to flooding and inundation to ensure that development is avoid or mitigated, depending on the degree of risk. The degree of risk of flooding or inundation associated with the proposed development has been assessed as acceptable provided that the proposed building sites, roading and infrastructure are raised to the proposed levels; and that the design flood capacity of the drain realignment is maintained.
Chapter 14 – Reserves and Open Space Objectives: 14.1.0, 14.2.0: Policies: 14.1.7, 14.1.8, 14.2.1	Adequate provision and efficient and effective use of reserves and open space for recreation and amenity; including esplanade reserve to facilitate public access to water bodies. Public access to Thorp Drain upstream of Sanctuary Pond is not considered a priority n the context of the proposed development and adjacent public reserves and foreshore access.
Chapter 30 – Diverting Water Objectives: 30.1.0 Policies: 30.1.19, 30.1.20	Maintain, restore and enhance, where necessary, water flows and levels in water bodies to preserve their life supporting capacity (the mauri of the water), protect their natural values and maintain their ability to assimilate contaminants; maintain, restore and enhance the quality and extent of wetlands The application intends that the highly modified water bodies on the property will be maintained and enhanced.
Chapter 33 – Discharges to Land and Water Objective: 33.1.1, 33.1.2, 33.3.0	The discharge of contaminants in such a way that maintains existing water quality. Stormwater discharges that avoid, remedy or mitigate the actual and potential adverse effects of downstream stormwater inundation, erosion, water contamination, and on aquatic ecosystems. To manage primary and secondary flows, and the potential for flooding

Policies: 33.1.1, 33.1.2, 33.3.1, 33.3.2, 33.3.3, 33.3.5, 33.3.9	and inundation. To require the use of low impact design in the management of stormwater discharges in any new development where practicable.
Schedule 36.1A Water Classification	Conditions are required on the proposed earthworks and stormwater discharges to avoid or mitigate the potential adverse effects from sediment and house site run-off on the water bodies.

With regard to the Bensemann property, I consider that the proposed development is not contrary to the specific urban environment policies for Motueka, - particularly to those to provide for urban growth away from areas of versatile and productive land, where practicable; and to control land use in areas subject to risk of flooding. The explanation to those policies (written in the mid-1990s) acknowledges that "major improvements undertaken in the Lower Thorp drain area have eased drainage constraints somewhat and are allowing development of residential land east of Woodlands Avenue and alleviating other flooding problems affecting parts of the Thorp Drain catchment" (TRMP Section 6.8.30).

The Rural 1 zoning of the property suggests that the property has high existing or potential productive and versatile land values. The Plan (in Sections 7.3.20 and 7.3.30) explains that the rural zoning enables the maintenance of a rural character as well as rural amenity values. However, there is no specific explanation as to why the rural character of the Thorp Drain area should be protected.

I concur with the application which states (at paragraph 3.27) that the site is within an urban environment – albeit with rural residential density of land use immediately adjoining. With residential density development occurring to the west of the playing fields, I consider that the style of residential development proposed for the Bensemann property is not contrary to the relevant Plan objectives and policies when they are read as a whole, and the context of the rural zoning is taken into account.

5.3 Other Matters

Precedence and Cumulative Effects

Precedence in itself is not an "effect" but approval of this proposed subdivision and associated residential development may lead to other similar applications for the remainder of the land in the Rural 1 Zone north of the Bensemann property, each wanting like treatment. This could lead to cumulative effects that would be relevant adverse effects under Section 3 (d) of the Act.

The issue of "precedence" must be acknowledged in practical terms as potentially giving rise to cumulative adverse effects.

Applications for consent are lodged on the basis that consent to previous applications has been granted in similar circumstances. Council is expected to act consistently in its application of Plan objectives, policies, rules and assessment criterion. That is, Council is expected to be consistent in its decision-making. The cumulative effect of establishing a pattern of consent decisions based on other applicants wanting similar outcomes, can have adverse effects on significant resource management issues.

A subdivision consent for the property at the north end of the Rural 1 Zone was granted in July 2002 – that allowed subdivision of a 3.20 hectare allotment into two lots, one being 2.43 hectares in size, the other being 8,600 square metres. That proposal was deemed to be not contrary to the objectives and policies of the Plan; and written approvals were obtained from all persons who were identified as being potentially adversely affected.

If as result of this application being granted, similar applications are made for the rural land to the north, the key issues would be: the potential for a cumulative loss of rural character and amenity values associated with residential development, and servicing requirements such as additional sewer pump stations. Increased risks to property and infrastructure from flooding are likely to be less of an issue as the land is nominally higher and further from the coastal margin.

On the basis that the rural zoning of the area derives from previous drainage constraints, I consider that any future proposals that might be put forward for development in the remainder of the rural zone area should be consider on their merits, and the potential for that should not influence a decision on the current application.

Permitted Baseline Test

Under Section 104 (2) of the Resource Management Act, a consent authority may use what is called the "permitted baseline test" to assess what are the actual and potential effects on the environment of allowing the activity. Under this principle the proposal is compared with what could be done as permitted activities under the relevant Plan.

In this case because most of the site is within a Rural 1 Zone, no subdivision or additional residential development could occur as a permitted activity. Also, there are no permitted activities for diversion of water or works in waterways similar to what is proposed.

I consider that the permitted baseline test is not relevant to this application.

5.3 Part II Matters

The proposed subdivision and associated land use activities are considered to be consistent with the purpose and principles contained in Part II of the Act.

Section 6

Section 6 requires that matters of national importance be recognised and provided for, in achieving the purposes of the Act. Matters of relevance to the application are:

(a) the preservation of the natural character of the coastal environment, wetlands and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development;

(d) the maintenance and enhancement of public access to and along rivers; and

(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

I have considered these matters in the assessment in Section 5 of this report.

Section 7

Section 7 requires that various matters shall be had regard to, in achieving the purpose of the Act. The matters of relevance to the application are:

(aa) the ethic of stewardship;

(b) the efficient use and development of natural and physical resources;

(c) the maintenance and enhancement of amenity values;

(d) maintenance and enhancement of the quality of the environment;

(i) the effects of climate change.

I have had regard to these matters when making the assessment in Section 5 of this report.

Section 8

Section 8 requires that the principles of the Treaty of Waitangi shall be taken into account, in achieving the purpose of the Act.

In this regard, tangata whenua have opposed the application because it would cause cumulative effects in loss of open space for people and for wildlife habitat in Motueka. I have considered the specific issues raised by Tiakina te Taiao in their submission, and believe that many can be addressed by conditions of consent.

Overall I consider that the application is consistent with the Act's purpose of achieving the sustainable management of natural and physical resources.

6. CONCLUSIONS

6.1 The proposal should be assessed overall as a discretionary activity in terms of the provisions of the Act and the Proposed Tasman Resource Management Plan.

6.2 Thorp Drain should be treated as being a "river" in terms of the Resource Management Act 1991 definition.

6.3 The application is for a rural-residential style subdivision that is similar in scale and density to what is provided for as a controlled activity in the adjoining rural-residential zone.

6.4 The applicant has provided an assessment of the future risks of flooding and inundation of the property, and proposes to avoid or mitigate those risks by filling the proposed dwelling sites to at least the same level or potentially above the predicted design flood levels (taking account of predicted sea level rise resulting from climate change over the next 90 years).

6.5 The risks of flooding or inundation of infrastructure and services will be mitigated by raising the proposed road alignment above the Q20 design flood level as required by Council's engineering standards.

6.6 Objectives and Policies of the Proposed Plan seek to ensure that development in areas subject to inundation is avoided or mitigated, depending on the degree of risk. In this case, the proposed ground levels should avoid significant risk, except for the highest predicted flood levels.

6.7 The proposed filling of dwelling sites and road alignment should not cause any adverse effects in terms of damming or diversion of flood waters onto other land. The proposed re-alignment of Thorp Drain will have sufficient capacity to accommodate up to Q100 rainfall events in the stormwater catchment area, taking account of the influence of high tides and sea level rise on the lower portion of the drain.

6.8 A new sewer pumping station will be required, to connect to the Courtney Street or Thorp Street rising mains, with the on-going maintenance of this facility falling to Council. This proposed pumping station may be able to serve further residential development on land to the north of the property, although the high water table in the area may be a limiting factor for gravity sewers depending on the natural grade of the ground surface.

6.9 The potential effects of stormwater discharges from dwelling sites in the proposed development on the watercourse should be avoided or mitigated with low impact design (LID) treatment systems such as on-site swales.

6.10 The property is zoned Rural 1 under the Proposed Plan. Objectives and policies of the Proposed Plan seek to avoid the loss of highly productive rural land. In this case the Rural 1 zoning within the perimeter of Motueka township is largely because of the history of flooding in the Lower Thorp Drain area. The productive potential of the property is limited to an extent by the proximity of residential and other urban activities on the boundaries. I consider that the effects of the loss of this land from rural production would not be significant.

6.11 The Proposed Plan also seeks to avoid, remedy or mitigate the adverse effects of subdivision and associated development on rural character and amenity. The property is part of a small "rural enclave" within Motueka township and, again, the rural zoning is largely because of the history of flooding in the Lower Thorp Drain area, rather than a deliberate policy to maintain rural character in this specific area within an urban environment – although that is a consequence of the rural zoning.

6.12 The proposed subdivision and residential development would change the environment and outlook for the neighbouring properties in the adjoining rural-residential zone, and in that regard will have varying degrees of adverse effect on those properties. The proposed style of residential development should result in maintaining rural-residential (or "semi-rural") amenity values in the area, provided the range of conditions discussed in this report are imposed.

6.13 I consider that the proposal in consistent with the urban policies for Motueka, and that the envisaged development would be a reasonable outcome in terms of the principles of sustainable management. While acknowledging that development in

flood prone areas should generally be avoided, I consider that the degree of risk appears to be acceptable, and the mitigation measures proposed exceed those imposed on other residential developments in the locality.

6.14 The proposed re-alignment of Thorp Stream should enhance the in-stream and riparian habitats, provided that the recommendations of the ecological report are incorporated into the design.

6.15 Regarding the matters in Sections 6, 7 and 8 of the Act, I consider that the proposal is an appropriate form of development for this area, for the reasons discussed earlier in this report.

6.16 Providing that the recommended conditions are adhered to, and the proposed allotments are not further subdivided (resulting in more intensive development), I consider that the adverse effects on the environment will be not be significant.

6.17 Regarding the proposed staging of the subdivision, the applicant needs to confirm their intentions regarding the provision of sewer services, the relative timing of the diversion of Thorp Drain, and the timing of earthworks for the filling of dwelling sites on the proposed allotments adjoining the rural-residential zone along the east boundary of the property. I consider that the full drain realignment, road and sewer main (including pumping station) should be completed as part of Stage 1. I have included proposed conditions regarding those matters.

6.18 Regarding the potential for further subdivision in the future, the only way to effectively prevent this happening is to impose consent notices on all of the proposed residential allotments prohibiting further subdivision. I recommend that applicant volunteer this at the hearing to ensure that Council and the public can be satisfied that environmental outcome of the subdivision will be achieved and there will not be further subdivision of the property.

7. RECOMMENDATION

7.1 I recommend that pursuant to Section 104B of the Resource Management Act 1991 the Tasman District Council **grants** consent to the applications by R and N Bensemann as follows:

1. Subdivision consent (RM070807) to subdivide Lots 2 and 3 DP 16330 Certificate of Titles NL 10C/812 and 11B/324 into 16 rural-residential allotments and associated roads and reserves, subject to conditions; and

2. Land Use Consent (RM070808) to:

   (i) Construct a dwelling on each of the proposed Lots 1-12 and Lots 14-16 in subdivision consent RM070807, subject to conditions; and

   (ii) Reduce the minimum set backs from road boundaries for all buildings on proposed Lots 1-12 and Lots 14-16 in RM070807, to 5 metres; and

   (iii) Reduce the minimum set back to at least 8 metres from the top of the bank of the proposed Thorp Drain re-alignment for all buildings on Lots 1-16 in subdivision consent RM070807; and

(iv) Waive any minimum set back requirement for buildings that would otherwise apply to other water bodies on Lots 1-16 in subdivision consent RM070807; and

(v) Fill the proposed dwelling sites on Lots 1-16 in subdivision consent RM070807 to level of at least 3.4m amsl, subject to conditions; and

(vi) Fill the alignment of the road and private way (ROW) as per subdivision consent RM070807, subject to conditions; and

(vii) Fill and realign Thorp Drain, subject to conditions.

3. Water permit consent (RM070810) to divert water for the realignment of Thorp Drain, subject to conditions.

It is my view that the proposed stormwater discharges from the proposed development would meet the conditions for permitted activities set out in Rule 36.4.2, therefore consent is not required.

7.2 I recommend that pursuant to Section 104B of the Resource Management Act 1991 the Tasman District Council **declines** land use consent to the application by R and N Bensemann as follows:

1. Land use consent to waive the required set back of at least 20 metres from the recreation zone boundary for all buildings on Lots 3-5 and Lot 12 in subdivision consent RM070807.

8. RECOMMENDED CONDITIONS

If the Committee decides to grant consents, I recommend that the following conditions be imposed:

SUBDIVISION CONSENT RM070807

General

1. The subdivision shall be undertaken in general accordance with the information submitted with the application for consent and in particular with the plans entitled "Lots 1-19 being Proposed Subdivision of Lot 2 and pt Lot 3 DP 16330" Job No. 8743, Draft 6 dated 03/03/2008, and Plan of Proposed Engineering Services DWG8743D Amended 3 March 2008, prepared by Staig & Smith Ltd, and attached to this consent, subject to any changes required by the conditions of consent. If there is any conflict between the information submitted with the consent application and any conditions of this consent, then the conditions of this consent shall prevail.

2. The Subdivision Plan shall be amended as follows:

   (a) Addition of Lot 20 as a utility allotment 10 x 15m in size being the site for the proposed sewer pumping station which shall have adequate legal and physical access provided from the proposed road for heavy vehicles; and Lot 20 shall be shown as "reserve to vest (wastewater disposal)".

   (b) Lot 19 being reserve to vest (walkway) shall be 6 metres wide; and

   (c) Lot 18 shall be shown as "reserve to vest (drainage purposes)".

Vesting of Ownership

3. The survey plan which is submitted for the purposes of Section 223 of the Act shall show Lots 18, 19 and 20 as vesting in the Tasman District Council as Local Purpose Reserves for the purposes shown on the Subdivision Plan.

4. Lot 17 shall vest in the Tasman District Council as road.

Building Location and Building Platform

5. The building platform areas for Lots 1-12 and 14-16 shall be shown on the survey plan which is submitted for the purposes of Section 223 of the Act.

6. The location of any new buildings on Lots 1-12 and 1-16 shall be contained entirely within the building platform areas shown on the survey plan as required by Condition 5.

7. The Consent Holder shall fill the building platform areas on Lots 1-12 and 14-16 so as to form a building platform on each of those allotments which has a finished level of at least 3.4 metres above mean sea level.

8. The building platforms referred to in Condition 5 shall be constructed prior to a completion certificate being issued pursuant to Section 224(c) of the Act.

9. The location of any new buildings on Lot 13 shall be contained entirely within a building platform that shall be formed to a finished level of at least 3.4 metres above mean sea level.

Advice note:
Resource consent may be required for filling a building platform on proposed Lot 13 which is not included in land use consent RM070808.

On-site Stormwater Treatment

10 A low impact design stormwater treatment system shall be provided on each of Lots 1-16.

11 Prior to installing the on-site stormwater treatment systems required by Condition 12, plans of the preferred system or systems detailing the treatment methods and suitability shall be submitted for approval by the Councils resource Consent Manager.

Easements

12. Easements shall be created over any services located outside the boundaries of the lots that they serve as easements-in-gross to the Tasman District Council for Council reticulated services or appurtenant to the appropriate allotment.

13. Easements shall be created over any right-of-way and shall be shown in a Schedule of Easements on the survey plan submitted for the purposes of Section 223 of the Act. Easements shall be shown on the Land Transfer title plan and any documents shall be prepared by a Solicitor at the Consent Holder's expense.

14. The survey plan which is submitted for the purposes of Section 223 of the Act shall include reference to easements.

Advice Note:
Any services located within the Council's road reserve will require a License to Occupy to be obtained.

Power and Telephone

15. Full servicing for live underground power and telephone cables shall be provided to the boundary of Lots 1-16. The Consent Holder shall provide written confirmation to the Council's Engineering Manager from the relevant utility provider that live power and telephone connections have been made to the boundaries of each allotment. The written confirmation shall be provided prior to a completion certificate being issued pursuant to Section 224(c) of the Act.

Commencement of Works and Inspection

16. The Council's Engineering Department shall be contacted at least five working days prior to the commencement of any engineering works. In addition, five working days' notice shall be given to the Council's Engineering Department when soil density testing, pressure testing, beam testing or any other major testing is undertaken.

Engineering Works

17. All engineering works, including construction of the road, private way (ROW), culverts and other services shall be constructed in strict accordance with the Tasman District Council Engineering Standards and Policies operative at the time of the works, or to the Council's Engineering Manager's satisfaction.

18. Prior to the commencement of works, engineering plans shall be submitted for approval by the Councils Engineering Manager, detailing the filling for building platforms and road and private way, and construction details for the road and private way, culverts and other services. All plan details shall be in accordance with the Tasman District Council Engineering Standards and Policies operative at the time.

Engineering Certification

19. At the completion of works, a suitably experienced chartered professional engineer or registered surveyor shall provide the Council's Engineering Manager written certification that the road, private way (ROW), culverts and other services have been

constructed in accordance with the consent conditions and the Tasman District Council Engineering Standards and Policies operative at the time.

20. Certification that the building platforms on Lots 1-12 and Lots 14-16 are suitable for the erection of a residential building shall be submitted from a chartered professional engineer or geotechnical engineer experienced in the field of soils engineering and more particularly, foundation stability). The certificate shall define within the building location areas, the area suitable for the erection of residential buildings and shall be in accordance with Appendix B Section 11 of the Tasman District Engineering Standards and Policies 2004, and shall be provided to the Council's Engineering Manager.

Staging of Subdivision

21. The subdivision may be staged in three stages as follows:

- Stage 1: comprising Lots 1-6, Lots 13-15 and Lots 17-20, and requiring completion of the realignment of Thorp Drain (per Consent RM070808), completion of the road, completion of the sewer pumping station and rising main connection to Council's sewerage network, and completion of the building platforms and other service connections for Lots 1-6 and Lots 13-15.

- Stage 2: comprising Lot 16, and requiring completion of the building platforms and service connections for Lots 16.

- Stage 3: comprising Lots 7-12, and requiring completion of the building platforms and service connections for Lots 7-12.

Financial Contributions

22. The Consent Holder shall pay a financial contribution for reserves and community services in respect of 15 allotments in accordance with the following:

(a) The amount of the contribution shall be 5.5 per cent of the total market value (at the time subdivision consent is granted) of the area of the allotment or a notional building site on each allotment of 2,500 square metres for each of Lots 1-12 and 14-16.

(b) The Consent Holder shall request in writing to the Council's Consent Administration Officer (Subdivision) that the valuation be undertaken. Upon receipt of the written request the valuation shall be undertaken by the Council's valuation provider at the Council's cost.

(c) If payment of the financial contribution is not made within two years of the granting of the resource consent, a new valuation shall be obtained in accordance with (b) above, with the exception that the cost of the new valuation shall be paid by the Consent Holder, and the 5.5 per cent contribution shall be recalculated on the current market valuation. Payment shall be made within two years of any new valuation.

Advice Note:
Council will not issue the Section 224(c) certificate in relation to this subdivision until all development contributions have been paid in accordance with Council's Development Contributions Policy under the Local Government Act 2002.

The Development Contributions Policy is found in the Long Term Council Community Plan (LTCCP) and the amount to be paid will be in accordance with the requirements that are current at the time the relevant development contribution is paid in full.

This consent will attract a development contribution on 15 allotments in respect of water, wastewater, roading and stormwater.

Consent Notices

23. Consent notices shall be issued for proposed Lots 1-16 with regard to the following:

    a) No further subdivision of Lots 1-16 shall be allowed.

    b) The low impact design stormwater treatment systems on Lots 1-16 shall be maintained [per Condition 10].

24. Consent notices shall be issued for proposed Lots 1-12 and Lots 14-16 with regard to the following:

    a) New residential buildings on Lots 1-12 and Lots 14-16 shall be restricted to the Building Platform area marked on the Title Plan [per Condition 5].

25. Consent notice shall be issues for proposed Lot 13 with regard to the following:

    a) The location of any new buildings on Lot 13 shall be contained entirely within a building platform that shall be formed to a finished level of at least 3.4 metres above mean sea level [per Condition 9].

26. Consent notices shall be issued for proposed Lots 1-3 and 6-11 with regard to the following:

    a) Riparian planting and the in-stream habitat values and drainage capacity of Thorp Drain shall be maintained and protected.

Advice Note:
The applicant has also volunteered that protective covenants will be placed on the new titles of the relevant proposed allotments to ensure that riparian plantings and habitat along the new Alignment of Thorp Drain is maintained into the future.

LAND USE CONSENT RM070808

General

1. The land use activities authorised by this consent shall be undertaken in general accordance with the information submitted with the application for consent, subject to any changes required by the conditions of consent. If there is any conflict between the information submitted with the consent application and any conditions of this consent, then the conditions of this consent shall prevail.

2. The lapse date for this consent shall be 5 years from the date of the Section 223 title plan approval being granted to the relevant stage of subdivision consent RM070807.

Dwellings

3. The location of any new buildings on Lots 1-12 and 1-16 shall be contained entirely within the building platform areas shown on the survey plan (as required by Condition 5.of subdivision consent RM070807).

4. The maximum height of the dwellings shall be 7.5 metres above the original ground level of the site prior to the building platform areas being formed, except that the maximum height for the dwelling son Lots 1, 2 and 15 shall be 6.5 metres above the original ground level prior to the building platform areas being formed.

5. The minimum set backs from road boundaries for all buildings on proposed Lots 1-12 and Lots 14-16, to 5 metres.

6. The minimum set back for dwellings on Lots 3-9 and Lot 12 from the west boundary of those Lots (being the boundary of a recreation zone) is 20 metres.

7. The minimum set back from the top of the bank of the proposed Thorp Drain re-alignment for all buildings on Lots 1-16, is 8 metres.

8. The minimum set back for all buildings from the top of bank of other water bodies on Lots 1-16, is 3 metres.

Earthworks

9. All earthworks shall be carried out during fine weather periods and the consent holder shall take all practical measures to limit the discharge of sediment with stormwater run-off to water or land where it may enter water during the construction period, and thereafter.

10. Earthworks shall not be carried out during the whitebait spawning season (mid-February to 31 May) and catching season (mid-August to 30 November) in any year.

11. Sediment controls shall be implemented and maintained in effective operational order at all times during the works.

12. The consent holder shall arrange with Tiakina te Taiao, if they so wish, to engage an Iwi monitor to be present on site for the periods that excavations are being carried out, including for the realignment of Thorp Drain.

13. All exposed ground shall be reinstated with a suitable vegetation cover as soon as practicable at completion of the works.

Realignment of Thorp Drain

14. Prior to the commencement of works, a design and maintenance plan for the drain realignment shall be submitted for approval by the Councils Resource Consent Manager and Engineering Manager, detailing the proposed cross-sections of the watercourse and in-stream enhancements, the establishment and maintenance of

riparian plantings, and the proposed extent of the new drainage easement. The design plan shall be based on the proposals in the report 'Assessment of Native Fish Values' prepared by Tom Kroos & Associates Limited (January 2008) submitted with the application for resource consent, and the conditions of water permit RM070810.

15. The works to realign Thorp Drain shall be carried out in accordance with the approved design and maintenance plan approved in terms of Condition 14.

16. Prior to commencement of the works, the Consent Holder shall confirm to Councils engineering Manager that the existing drainage easement over Thorps Drain can and will be transferred to the new drain alignment.

17. At completion of the drain realignment works the Consent Holder shall arrange for the drainage easement to be transferred to the new alignment.

Review

18. Council may for the duration of this consent and within three months following the anniversary of its granting each year, review conditions 9-15 of this consent pursuant to Section 128 of the Resource Management Act 1991 to:

    a) deal with any adverse effect on the environment which may arise from the consent and which it is appropriate to deal with at a later stage; or

    b) to require compliance with operative rules in the Tasman Resource management Plan or its successor; or

    c) when relevant national standards have been made under Section 43 of the Resource Management Act 1991.

WATER PERMIT RM070810

1. The diversion of the water flow of Thorp Drain authorised by this consent shall be undertaken in general accordance with the information submitted with the application for consent, subject to any changes required by the conditions of consent. If there is any conflict between the information submitted with the consent application and any conditions of this consent, then the conditions of this consent shall prevail.

2. The diversion shall be carried out in one action for the total realignment of Thorp Drain (ie, not in stages).

3. Prior to the water diversion being carried out, a plan setting out the methodology for the diversion shall be submitted for approval by the Councils Resource Consent Manager, detailing how the water flow will be diverted and how impacts on fish and other aquatic life avoided or mitigated. This plan shall be based on the proposals in the report 'Assessment of Native Fish Values' prepared by Tom Kroos & Associates Limited (January 2008) submitted with the application for resource consent.

4. The consent holder shall arrange with Tiakina te Taiao, if they so wish, to engage an Iwi monitor to be present on site for the period when the diversion of Thorp Drain is put into effect.

5. The diversion shall be supervised by a suitable expert in freshwater ecology.

Add standard advice notations regarding Building Act, archaeological sites etc.

Phil Doole
Consultant Planner (MWH)

Attachments:

1) Copy of 1947 aerial photograph

2) Engineering Services Report


© 1947