



STAFF REPORT

TO: Environment & Planning Subcommittee

FROM: Jane Harley, Consent Planner – Land Use

REFERENCE: RM080356

SUBJECT: **C AND S THELIN & S BERGMAN – REPORT EP08/09/01-** Report prepared for hearing of 8 September

1. APPLICATION BRIEF

1.1 Proposal

The application is for land use consent to construct a second residential dwelling on a 2.1018 hectare property to house Carl and Susan Thelin, who are the parents of the land owner, Shelley Bergman.

1.2 Location and Legal Description

The property is located at 201 Edens Road, Hope (see Annexe 1 attached).

The legal description of the land is Lot 3 DP 6112, Certificate of Title NL 5A/461.

1.3 Zoning and Consent Requirements

The land is zoned Rural 1 under the Proposed Tasman Resource Management Plan. This zoning is considered to be operative (as there are no outstanding appeals of relevance to this proposal), so no analysis is given of the Transitional Plan provisions.

The application site is within Land Disturbance Area 1. The site is also identified as being in a flood hazard area.

The site is identified as within the Land Disturbance 1 area; the earthworks proposed for the driveway access and the building platform for the second dwelling will not extend below the water table (18.6.2(ic)(iii)) and therefore do not require an earthwork consent for the works.

Council's Resource Scientist, Glenn Stevens has reviewed the proposal in relation to the flood hazard and concludes that Council has no concerns regarding the proposal's exposure to flood hazard provided that the development all occurs on the upper terrace.

The area overlays have little relevance to this land use consent as it is situated on the only high terrace of the property. There are no other areas of special value identified in the Tasman Resource Management Plan.

The application is considered to be a Discretionary Activity under the relevant rules of the Proposed Tasman Resource Management Plan in that the proposal involves a second residential activity and construction of more than one dwelling on a site less than 24 hectares in area (Rule 17.4.5(b)).

2. INTRODUCTION

2.1 The Setting

The site is a 2.1018 hectare block of land located at the north-western end of Edens Road. It is one of the last small holdings at this end of this road before the land of Edens Road Farm (Orchard) and Weingut Seifried (Vineyard) begins. These larger blocks are located between Edens Road and the junction of the Wairoa and Wai-iti Rivers to the North.

There are two properties adjoining the subject site to the south that are of similar size, being approximately 1 hectare blocks, each with a residential dwelling.

Edens Road is sealed up to a point prior to the proposed entrance for the second dwelling.

The wider area is characterised by a mixture of larger horticultural blocks and small lifestyle holdings.

3. NOTIFICATION AND SUBMISSIONS

3.1 The application was publicly notified on 19 July 2008. Two parties (Weingut Seifried and Eden Road Farm / AMA and S Sutton) had provided written approvals for the proposal.

Three submissions were received; two opposing the proposal and both wishing to be heard and one in support also wishing to be heard.

3.2 Ian and Vanessa White (Submission1)

They are opposed to the concept of a second dwelling in a rural one zone and precedent effect this could create for more applications and threat of subdivision. They purchased their rural block to escape the suburbs and felt protected by the Proposed Tasman Resource Management Plan rules that do not allow more than one dwelling on a property. This application is in conflict with this and threatens the privacy they enjoy in this rural environment.

They wish to be heard in support of their submission.

3.3 Julie Proctor and Simon Ware (Submission 2)

They oppose the application based on concerns regarding loss of their rural amenity and existing separation from neighbours and the privacy it affords. They have renovations planned that will be directly impacted by the location of the second dwelling. The proposed building will compromise their outlook and the second residential activity will compromise their privacy. The proximity of the dwelling will erode their sense of open-space and right to enjoy and quiet rural environment.

They believe the proposed second dwelling is clearly not subsidiary or dependent on the main dwelling and is not what is anticipated by the Proposed Tasman Resource Management Plan. It is contrary to the policies and objectives of the Proposed Tasman Resource Management Plan and Part II of the Resource Management Act 1991. The applicant does not provide sufficient detail as to the design of the second dwelling, which is unacceptable to leave this to the discretion of the architect given the potential adverse affect of this proposal on their use and enjoyment of their own property. They do not have confidence that the volunteered covenant would prevent further application to remove the covenant, change the use or subdivide the property.

They wish to be heard in support of their submission.

3.4 Stephen Sutton (Submission 3)

The application will have no effect on Eden Road Farm Ltd, as adjoining land owner. The submitter seeks a condition that the dwelling will be removed, or one of the two dwellings no longer used as a dwelling, once the applicants (C and S Thelin) no longer require it.

They wish to be heard in support of their submission.

(The written approval of Stephen Sutton has also been obtained prior to notification)

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 activity must be deemed to represent the sustainable use and development of a physical resource and any adverse effects of the activity on the environment are avoided, remedied or mitigated.

The critical issue of this consent is whether the creation of a second residential activity and the construction of an additional dwelling will result in unacceptable effects in terms of rural character and amenity, land fragmentation and productive values and cumulative effects.

These principles underpin all relevant Plans and Policy Statements, which provide more specific guidance for assessing this application.

Section 104

Subject to Part II matters, Council is required to have regard to those matters set out in Section 104. Of relevance to the assessment of this application, Council must have regard to:

- Any actual and potential effects of allowing the activity 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 dominant planning document, given its progress through the public submission and decision-making process.

Section 104B sets out the framework for granting or refusing consent, and setting conditions if consent is granted, based on the status of the activity as a discretionary activity in the Tasman Resource Management 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 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 Tasman Resource Management Plan (TRMP)

The most relevant Objectives and Policies are contained in: Chapter 5 “Site Amenity Effects”, Chapter 7 “Rural Environment Effects”. These chapters articulate Council’s key objectives: To ensure land uses do not significantly adversely affect local character, to provide opportunities for a range of activities in rural areas.

The most relevant Rules which follow from these imperatives are contained in Chapter 17.4 “Rural 1 Zone Rules”.

Details of the assessment of the proposed activity in terms of these matters are set out in the chapters following.

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 activity, have regard for any relevant objectives, policies, rules, and consider any other matters relevant and reasonably necessary to determine the application.

When considering an application the Council must not have regard to any effect on a person who has given written approval to the application unless before the date of the hearing, that person gives notice in writing that the approval is withdrawn.

5.1 Matters of Discretion and Control in the Plan

The proposal has discretionary status and is therefore not restricted to matters of control. The council is not limited to the following matters, however they are considered most relevant to the proposed activity:

1. The extent to which the activity will result in the loss of rural character on the site and in the vicinity of the site.
2. The location of the building on the site and the effects of the building on the potential availability of productive land, including any effects relating to the extent of the building and capitalisation of the site.
3. Location and effects of servicing, including wastewater disposal, water supply, access and traffic safety.
4. Effects on the amenities and the rural character of the area and the potential impact from new residential activities arising from adverse cross-boundary effects.
5. The effects of natural hazards.
6. The nature of adjoining uses, buildings and structures, and all adverse effects of closer development on these.
7. The extent to which the proposed building and activity would detract from the openness and rural character of the locality.
8. The extent to which the building and activity would be compatible with existing development in the vicinity.
9. The potential for landscaping to maintain privacy for neighbours.
10. The degree to which views are obscured.
11. Any effects on areas of predominantly natural rural landscape.

5.2 Permitted Baseline

When forming an opinion for the purpose of Section 104 (1)(a) above, the Council may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect (104(2)). Under this provision the proposal is compared with what could be done as a permitted activity under the relevant Plan. In the case of this application there is no “permitted baseline” against which to assess the proposal. There are no permitted activity rules for second dwellings in the Rural 1 Zone so the permitted baseline test is not a relevant consideration. The Plan has a subsidiary 60 m² self contained unit, as part of the main dwelling as a controlled activity. This application is a full discretionary activity.

5.3 Assessment of Environmental Effects

Following a site visit, reviewing the application and further information received and consideration of the matters raised by submitters; the adverse effects, both actual and potential can be summarised into the following groups:

1. Rural Character and Amenity
2. Land Fragmentation
3. Cumulative and Precedent Effects
4. Servicing Effects

Pursuant to Section 104(1)(a) of the Resource Management Act, the following effects assessment has been set out:

5.3.1 Rural Character and Amenity Values

Amenity values, as defined in Section 2 of the Resource Management Act 1991, mean:

“those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.”

The qualities of the locality and those that the TRMP seeks to protect include allotment sizes, the retention of the extent of productive values, openness, greenness, separation, style and scale of structures.

Second dwellings and more than one residential activity per lot in rural areas have the potential to adversely affect rural character and amenity values. This needs to be assessed in the context of the character and amenity of the locality and what could be done as a permitted activity, which in this case is one dwelling for the existing title.

The application site is within an existing area of Rural 1 zoned properties that have a wide range of allotment sizes. The area is not typically Rural 1, with approximately four allotments of sizes considerably smaller than the 12 hectare minimum threshold in the PTRMP for the Rural 1 Zone. This is however, a result of an historical pattern of development.

Along this western stretch of Edens Road there are a total of four sites with land areas between 1 hectare and 3.7 hectares and the remaining blocks are larger in area with intensive horticultural activities operating such as vineyard plantings, fruit and vegetable crops and grazing.

Even within the context of the present environment the proposed second dwelling would create an increased density of residential activity, similar to creation of an additional allotment and building opportunity. The dwelling would be solely for the purposes of residential use, with little if any scope for productive activities, and retention of open space which are both an associated part of the rural character.

Whilst a proposed boundary setback of 10 metres is proposed along the south eastern boundary adjoining Lot 2 DP 6112 the residential activity is within close proximity (approx 20m) to the neighbouring outdoor living and pool area, and within the northern outlook of the neighbouring dwelling. The density proposed and scale of the secondary dwelling will compromise the rural character of this location, creating a change in local character and amenity value with a more urbanised style which will be noticeable in this locality, and in particular from Lot 2 DP 6112. In my opinion this could introduce adverse effects on the amenity values directly to the adjoining sites as well as the general locality. If the Committee were of a mind to grant consent the matter of boundary fencing and screening should be considered further to ensure it is appropriate to the locality and the visual and amenity effects on Lot 2 DP 6112 were further managed. I have addressed this in the conditions of consent.

The style, scale, height and bulk of the proposed dwelling and associated garaging is significantly larger and more dominant than the controlled activity and actively encouraged option of incorporating a second 60 square metre self-contained unit within the main dwelling. The lack of design detail does leave a level of uncertainty as to which parts of the dwelling will have the greatest impact on the neighbouring site. It is acknowledged, however, that the southern wall of the dwelling will be the most visible from Lot 2 DP 6112 and it could be assumed that this aspect will incur less active residential activity than the northern aspect of the proposed dwelling. The applicant proposes to design the dwelling to meet the remainder of the bulk and location standards for a dwelling within the Rural 1 Zone.

While the visual adverse effects associated with any building on an adjoining site can partly be mitigated by landscaping conditions of consent, in my view the introduction of a second substantial dwelling on this site will compromise the values that the TRMP is seeking to maintain and enhance; namely local rural character and amenity values, open space, and productive values. The applicant could erect an accessory building in a similar location as a permitted activity, however it is the nature of the use of the proposed building as a full time residence that generate the greatest impact on the rural amenity and character in this proposal.

The cumulative impact of similar applications is something that would lead to a distinct change in character and loss of productive values (discussed in more detail in Section 5.6).

The submitters have raised the fact that the two written approvals obtained by the applicant are from landowners that do not reside in this location. The two submissions received in opposition reflect the opinions and concerns of the nearby residents who are directly adversely affected by changes to the rural character and amenity in this location.

5.3.2 Fragmentation of Rural Land

The Tasman District Council's Regional Policy Statement (RPS) describes land fragmentation as:

“the increase over time in the number of separately developed properties within any area. This arises through successive subdivisions of land to form new parcels, and associated land development activities such as the establishment of buildings and roads.” RPS Issue 6.2, p42

The TRMP states that the effects of rural fragmentation can lead to a reduction in the opportunities available to use the productive versatility of soils, to maintain and enhance amenity values and the quality of the environment, and rural character, as well as the ability to maintain a range of rural property sizes to provide continued access to land for a range of productive land uses. The establishment of dwelling on rural land, without any productive use of the land, has been significant cause of the land fragmentation in the District.

Council's Subdivision Officer, Ross Shirley reviewed the proposal and has commented that the potential adverse effect future subdivision on the grounds of the two dwellings needs to be considered. Council do experience pressure for further fragmentation based on the level of physical resource and capitalisation of a site, and although a covenant has been volunteered that one of the dwellings will be removed in the future and it will not form a basis for subdivision it is Council experience that covenants can be challenged and altered as a result of subsequent applications.

This application is based upon the applicant's current personal circumstances.

By placing another building on the higher, less flood prone land the proposal further reduces land available for productive purposes as the lower terraced land has already been described as a flood plain, with restricted productive potential. This may have a further fragmenting effect on the use of the property as well as challenging the already limited productive potential of the site.

The Proposed Tasman Resource Management Plan identifies one of the pressures on rural land is for residential purposes. The application if approved will result in two substantial dwellings on one rural one allotment of 2.1 hectares. The additional non productive activity (dwelling) will be on land that contains highly productive soil and is surrounded by larger sites highly productive land in a locality with few sites of a similar size (excluding the existing historical adjoining 3 sites of similar size).

The site could be over capitalised by this proposal. The TRMP states that the establishment of dwellings on rural land, without any productive use of the land, has been a significant cause of land fragmentation in the District. The effect is not limited to the residential site. The prospect of residential development may increase the value of other rural land in the vicinity to the extent that soil-based productive activities are progressively rendered uneconomic. This is a major issue in areas where land has a high productive value. It is occurring predominantly close to the larger settlements, where the demand for rural-residential living is greatest.

In my opinion the proposed second dwelling could have an adverse fragmentation effect on productive land values, rural character and amenity values that is more than minor.

The potential adverse effects of fragmentation identified in the TRMP include:

- Visual landscape qualities such as open space, and other amenity values or rural lands;
- The character of rural areas derived from such attributes as open space, and the density, scale, pattern and form of buildings, roads and utility structures, productive activity;

- Increased likelihood and intensity of adverse cross-boundary effects;
- The irreversible loss of productive values can arise through continued land fragmentation or conversion to non-productive land uses.

The proposal is not associated with the productive use of the land or linked closely to the existing dwelling (by way of the attached 60 square metre unit) as anticipated by the Proposed Tasman Resource Management Plan.

5.3.3 Cumulative Effects

As discussed in Rural Character and Amenity Values above, the additional residential activity at the scale proposed in the application is over and above that normally associated with rural allotment of this size. The cumulative effect on the amenity values and rural character of the area is also considered to be more than minor, as another substantial dwelling is not considered to be compatible with the local rural environment. There are no outstanding or distinguishing features that separate this application that would avoid the setting of precedent effect (which is discussed in more detail under Section 5.6 - "Other Matters")

5.3.4 Servicing

The site is not within a special domestic wastewater area, the applicant propose a wastewater system that will meet the minimum standards of 36.1.4. This must be located to meet the setback standards from neighbouring water bores and boundaries which was an issue raised by a submitter. The onsite water storage is also proposed to meet minimum standards of the plan. Water will be obtained from an existing bore that currently services the first dwelling and a swimming pool with a minimum storage capacity of 23,000 litres and a 50 mm camlock coupling fitted to an accessible drain is proposed to meet the fire fighting requirements of the plan.

The second dwelling will be accessed via a new driveway access, the Engineering Department of Council have reviewed the application and requires the Applicant to extend the seal of Edens Road to a point not less than 10 metres within the property boundary. If the Committee were of a mind to grant consent this requirement has been included in recommended conditions at the end of this report.

5.3.5 Summary of Effects

Overall my assessment is that the actual adverse effects on the environment are more than minor in respect of rural character and amenity values, and fragmentation of rural land as well as cumulative effects.

5.4 Relevant Plans and Policy Statements.

The land use activity must be deemed to be consistent with relevant objectives and policies pursuant to Section 104(1)(b) of the Act. The most relevant Plan is considered to be the proposed Tasman Resource Management Plan and will be used in this assessment. Because this was developed to be consistent with the Regional Policy Statement, the assessment would also be considered to satisfy an assessment under the Policy Statement.

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

Chapter 5 - Site Amenity Effects Council must ensure that the character and amenity values of the site and surrounding environment are protected, and any actual or potential effects of the proposed activities must be avoided remedied or mitigated, including cross-boundary effects.

Objectives: 5.1, 5.2 Avoid, remedy or mitigate adverse effects from the use of land on the use and enjoyment of other land and on the qualities of natural and physical resource. Maintaining and enhancing amenity values onsite and within communities.

Policies:5.1.1, 5.1.4, 5.1.12, 5.2.1,5.2.3, 5.2.8, Policies 5.2.1 and 5.2.3 seek to maintain privacy and opportunity for outdoor living in residential properties and for rural dwelling sites.

Objectives 5.3 The maintenance of open space value of rural areas

Policies 5.3.2 Open space values or rural areas need to be protected

Chapter 7 – Rural Environment Effects Residential activities and associated development in rural areas can potentially detract from the environmental quality and rural character.

Objectives: 7.1,7.2, 7.3 The Plan seeks to avoid the loss of potential for all land of existing and potential productive value while providing for a range of activities in rural areas and managing their effects. The avoidance, remedy or mitigation of adverse effects of existing and future activity including effects on rural character and amenity.

Policies:7.1.2, 7.1.2A, 7.2.1A, 7.3.1, 7.3.3, 7.3.4, 7.3.9 There is significant emphasis on ensuring the maintenance of and enhancement of rural attributes such as open space and separation and scale of structures. The Plan does encourage a wide range of activities and proposals with the Rural Environment, but only where the adverse effects can be managed at a level that is no more than minor.

Chapter 17.4 – Rural 1 Zone Rules – The proposed activity trips the Permitted Activity Land Use Rule 17.4.2(ix) for a second residential activity and does not meet the permitted activity building construction or alteration performance standards 17.4.4(b) controlled activity standards 17.4.5(a) or the restricted discretionary activity standards 17.4.6(b).

Reasons for the Rules in Chapter 17.4 highlight the following reasons why an application such as this is a fully discretionary activity:

The construction of buildings, especially dwellings, has been recognised as a contributing factor to fragmentation of land which limits the productive values, including versatility of land. The rules relating to land use, including those for buildings and location are to control the adverse effects of land fragmentation on the productive values of land, as well as on rural character and amenity values. The more highly valued, versatile land in the Rural 1 Zone is at greater risk of fragmentation and the rules seek to limit those adverse effects through more stringent controls than in Rural 2... Small subsidiary units that are dependent on the main dwelling are permitted whereas consent is required for additional dwellings because of their propensity to contribute to land fragmentation. Cooking facilities are not allowed in these subsidiary units as these can encourage separation and independence from the main dwelling.

Chapter 5 “Site Amenity Effects” is concerned with the effects of land uses that cross property boundaries that may add to or detract from the use and enjoyment of neighbouring properties. They may also affect local character.

As detailed in the assessment of effects (Section 5.3 above), the existing character and amenity values will be challenged by the nature and scale of the proposed second dwelling activity.

The effect on the rural character of the area and as appreciated by nearby residents will be altered by this proposal. The scale of the proposed dwelling in addition to the dwelling already established on the property does not fit in with the existing rural environment. The opposing submissions have clearly identified the effects this proposal will have on the use and enjoyment of their sites. The associated use of the road will maintain the privacy for other rural dwelling sites and not cause any significant increase in dust, noise or odour given the existing traffic movements

Chapter 7 “Rural Environment Effects” is concerned with the fragmentation of rural land, the availability of rural land for a range of purposes, and the protection of rural character and amenity.

Objective 7.1.0 and related policies seek to avoid the loss of potential for all land of existing and potential productive value. Objective 7.2.0 seeks to provide opportunities to use rural land for other activities, including tourist services, while avoiding the loss of land of high productive potential. Objective 7.3.0 and related policies are concerned with the adverse effects of uses or activities in rural areas.

The proposed activities will indirectly fragment the land, the plan clearly identifies that it is not solely subdivision but also land use activities such as additional dwellings that create fragmentation and progressive breaking up of land parcels. While the site is considered to be already small at 2 hectares with limited productive potential the proposal does not enhance or make efficient use of what existing potential it has. The rural character will be compromised by the scale of the proposal both in terms of the rural location but on the current rural character enjoyed and appreciated by those also living in this location.

In conclusion, it is considered that the proposed second dwelling is not only contrary to the site amenity and rural environment policies and objectives of the Proposed Plan, but it contradicts the overall thrust and integrity of The Proposed Tasman Resource Management Plan.

5.5 Part II Matters

The proposed activity is considered to be inconsistent with the purpose and principles contained in Part II of the Resource Management Act.

Part II of the Act is concerned about:

- sustaining physical resources to meet the needs of future generations (Section 5(a));
- avoiding, remedying or mitigating any adverse effects of activities on the environment (Section 5(c));
- the efficient use and development of physical resources (Section 7(b));
- maintaining and enhancing amenity values (Section 7(c));
- maintaining and enhancing the quality of the environment (Section 7(f)); and
- recognising any finite characteristics of natural resources (Section 7(g)).

While the application would make efficient use of a new physical resource once constructed, it is not clear that it can be constructed and established without compromising the other matters of relevance in Part II of the act. Once a physical resource of this size and capital investment is established it is not considered practical or efficient to require its removal, and it is likely to therefore lead to further pressure on Council for alternative uses, changes to covenants and even subdivision despite the volunteered conditions by the applicant. The activity is inconsistent with the Act's purpose of maintaining or enhancing the amenity values and quality of the environment currently enjoyed by existing rural and residential properties.

5.6 Other Matters (Section 104(c))

5.6.1 Precedence and Cumulative Effects

Cumulative Effects

To establish a cumulative effect there are two parts:

- a) effects have to be certain and predictable
- b) they become certain and predictable because the pattern of consents is the same which arises from granting like applications.

Successive development or subdivision over time or of the same site (and/or in conjunction with other adverse effects) can lead to a reduction in rural character and amenity values, productive values, and use of the land for rural activities.

The dominant land pattern in this locality has largely occurred as a result of historic patterns of land use and comprises titles well below 12 hectares. However, there are few situations of a secondary residence of the size and nature proposed by this application within the locality. The proposal will be out of keeping with the pattern of land development in the area.

The point at which cumulative effects become significant is difficult to determine, particularly where individual developments may have limited adverse effects on their own. In my view it is often the first that contributes the most noticeable effect, and while not perhaps cumulative of itself, there is potential for further applications of a similar nature.

Precedent Effects

Having regard to the potential cumulative effects on the environment of approving the application, the real significant concerns are the potential cumulative loss of productive land on the Waimea Plains, the loss of and cumulative impact on rural character and amenity values.

The application site is in an area where there are extremely few proposals for this level of residential density. The area has been stable with very few applications for more than one dwelling or subdivision.

While each application is required to be assessed on its merits, I have a significant concern that the circumstances associated with the application in front of the Committee has no special features or distinguishing characteristics that would not be found elsewhere in the rural zone, that would set it apart from other sites in this locality or the Rural 1 zone. Should consent be granted there is likely to be a high probability that it would lead to further applications of a similar nature.

The existing cadastral pattern of this area suggests that what is being applied for can be replicated on any of the existing allotments in the vicinity. Given the public expectation that like will be treated as like, there is a real possibility that grant of this consent will lead to further applications of a similar nature that cumulatively will result in the loss of productive land, rural character and amenity values, and adversely impact on the capacity and capability of the services within the area. The Plan promotes a certain level of development to enable dependent relatives to reside together on a site but this application does not reflect the Plan's intentions or seek to maintain a level of development considered acceptable by Council and others in the zone who expect these rules to be upheld and respected.

Both opposing submissions have also expressed concern that approval of an application of this nature would lead to the decrease in a scarce resource (Rural 1 land), and also raises a risk of further development and potential subdivision by precedent.

6. CONCLUSIONS

6.1 The site is zoned Rural 1 in the proposed Tasman Resource Management Plan.

6.2 The land use proposal is a Discretionary Activity under the Proposed Tasman Resource Management Plan.

- 6.3 The Proposed Tasman Resource Management Plan is considered to be the dominant planning document due to its advanced state and its development under the purpose and principles of the Resource Management Act 1991.
- 6.4 The Proposed Tasman Resource Management Plan is consistent with the Regional Policy Statement and is considered to be the most relevant document in the assessment of this application.
- 6.5 The existing pattern of development within the locality of the application site is historical, with few smaller lot sizes than 12 hectares and associated dwellings. The average size of allotments of the smaller blocks ranges from 1 hectare to 3.7 hectares.
- 6.6 The section 104(1)(a) assessment of effects has identified overall the actual and potential effects of allowing the activity are more than minor. There are some visual mitigation measures able to be imposed by conditions of consent. However in terms of Section 104(1)(b) the application is contrary to the Objectives and Policies in Chapters 5 and 7 of the PTRMP, and in respect of Section 104(1)(c) of the Resource Management Act 1991 the potential cumulative and precedent effects are more than minor.
- 6.7 The key matter in respect of this proposal is the potential cumulative effect of further fragmentation of Rural 1 land on productive potential, rural character and amenity values of the locality that may arise as a consequence of granting this consent, in the circumstances of treating like with like, should other people take up the opportunity. The PTRMP clearly articulates the effects of fragmentation and the importance of avoiding these effects on rural land.
- 6.8 Consideration needs to be given to whether the grant of this consent and the potential precedent effect better achieves the purpose of the Act than not granting consent knowing that it may well have a flow on effect of further applications. In my opinion the grant of consent in this case will result in further similar applications that will lead to the rural land resource not being used in a way anticipated for the zone, and will result in adverse effects on productive values, rural character and amenity values that are more than minor.
- 6.9 Having considered the relevant matters of assessment, the Proposed Tasman Resource Management Plan, Resource Management Act 1991 section 104 assessments, and the purpose of the Resource Management Act 1991, I have reached the view that consent should be declined.

7. RECOMMENDATION

Land Use Consent (RM080356)

That pursuant to Section 104B of the Resource Management Act 1991 the Tasman District Council **DECLINES** consent to the application by C and S Thelin & S Bergman to construct a second dwelling on CT NL5A/461.

8. CONDITIONS

Should the Hearing Committee grant consent I recommend the following conditions be imposed:

Development

1. The proposed dwelling shall be in accordance with the application submitted, as shown on the attached plans marked RM080356 (A - D) dated May 2008. Where there is any apparent conflict between the information provided with the application and any condition of this consent, the conditions shall prevail.

Colour/Cladding

2. The exterior of the building shall be finished in colours that are recessive and which blend in with the immediate environment. The Consent Holder shall submit to the Council for approval the following details of the colours proposed to be used on the walls and roof of the building:
 - (i) The material to be used (e.g. paint, colour steel);
 - (ii) The name and manufacturer of the product or paint;
 - (iii) The reflectance value of the colour;
 - (iv) The proposed finish (e.g. matt, low-gloss, gloss); and
 - (v) Either the BS5252:1976 (British Standard Framework for Colour Coordination for Building Purposes) descriptor code, or if this is not available, a sample colour chip.

The building shall be finished in colours that have been approved by the Council.

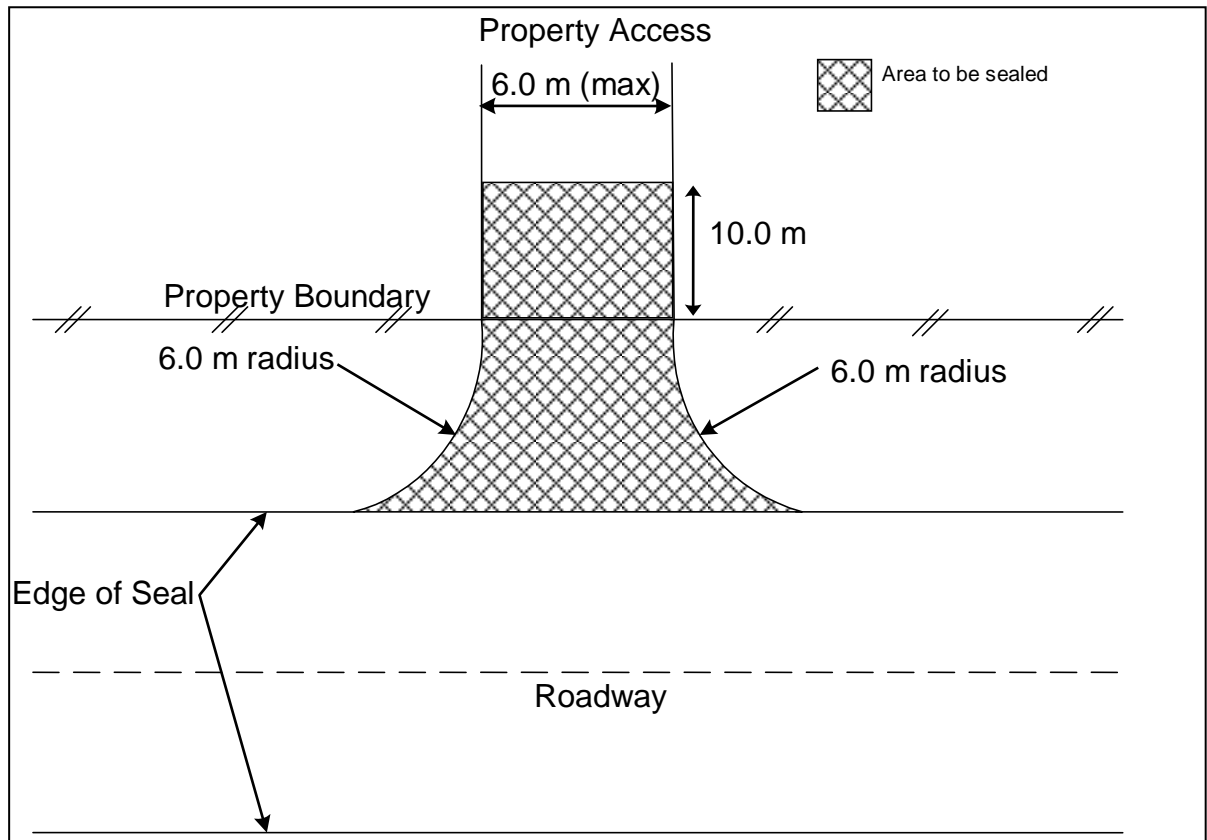
Advice Note: As a guide, the Council will generally approve colours that meet the following criteria:

Colour Group*	Walls	Roofs
Group A	A05 to A14 and reflectance value $\leq 50\%$	A09 to A14 and reflectance value $\leq 25\%$
Group B	B19 to B29 and reflectance value $\leq 50\%$	B23 to B29 and reflectance value $\leq 25\%$
Group C	C35 to C40, reflectance value $\leq 50\%$, and hue range 06-16	C39 to C40, reflectance value $\leq 25\%$, and hue range 06-16
Group D	D43 to D45, reflectance value $\leq 50\%$, and hue range 06-12.	Excluded
Group E	Excluded	Excluded
Finish	Matt or Low-gloss	Matt or Low-gloss

* Based on BS5252:1976 (British Standard Framework for Colour Coordination for Building Purposes). Where a BS5252 descriptor code is not available, the Council will compare the sample colour chip provided with known BS5252 colours to assess appropriateness.

Access

3. The consent holder shall extend the seal of Edens Road carriageway to a point not less that the location of the second vehicle crossing proposed for the second dwelling; it shall be a minimum two coat chip seal at a minimum width of 3.5 metres and be completed within three months of the proposed dwelling becoming habitable.
4. The Consent Holder shall seal the access to the subject property from Edens Road within three months of the proposed dwelling becoming habitable. The seal shall extend from the existing sealed road edge to a distance of at least 10 metres inside the subject property. The design shall be in accordance with the diagram below.



Note:

All cost associated with the road and access upgrade is to be met by the Consent Holder and a Vehicle Access Crossing Permit is required to be obtained through Council's Engineering Department

Covenant

5. A covenant under Section 108 of the Resource Management Act 1991 shall be registered against the title on CT NL5A/461 and shall state:
 - a) *The residential use of the second dwelling permitted by RM080356 is limited to Carl or Susan Thelin and shall not be rented as long or short-term accommodation or used for any type of accommodation for profit;*

- b) *At such time as the second dwelling permitted by RM080356 is not required for use by Carl or Susan Thelin, one of the two dwellings on the site shall be removed, returning the property back to containing one dwelling;*
- c) *The two dwellings shall not provide a future basis for subdivision of the property for the Consent Holder or any successors in title, unless the Zone Rules are changed so that this becomes a permitted or controlled activity;*
- d) *Both dwellings on the property shall not be extended or altered to contain more than one self-contained housekeeping unit.*

The covenant is to be registered by the applicant's solicitor, with all costs being met by the applicant. Evidence that the covenant has been registered shall be forwarded to the Council within six months from the date of granting of consent.

Landscaping

- 6. Screen planting shall be carried out along the south-eastern boundary of the site adjoining Lot 2 DP 6112 for a distance not less than 20 metres in a south westerly direction from the southern most end of the existing shed. As a minimum the planting shall consist of evergreen species with a mature height of between 3 metres and 4 metres of sufficient density to provide an effective visual screen between the proposed dwelling and the neighbouring dwelling to the south east.

Advice Note: This condition has been volunteered by the applicant

- 7. Planting details in condition 6 above shall be completed by 30 November 2008 and thereafter maintained.

Rural Emanation Easement

- 8. A Rural Emanations Easement shall be registered on CT NL5A/461 prior to the second dwelling being occupied, and shall read:

The owners and occupiers of Lot 3 DP 6112 (CTNL5A/461) shall not object to or cause objection to be made to, or take action in respect of, any activity carried out on Lot 3 DP 302634 that is in accordance with the provisions of the Proposed Tasman Resource Management Plan as a permitted activity, or is carried out in accordance with any Resource Consent for use of the that property that is granted by the Tasman District Council.

Advice Note: This condition has been volunteered by the applicant

Financial Contribution

- 9. The Consent Holder shall, no later than the time of uplifting the building consent for the second dwelling, pay a financial contribution to the Council. The amount of the financial contribution shall be assessed as a percentage of the value of the building consent component in accordance with the following:

Financial Contribution – Building	
Component	
Building Consent (\$0 to \$50,000 value)	0%
Building Consent (\$50,001 to \$200,000 value)	0.5%
Building Consent (above \$200,001 value)	0.25%
Notes:	
(1) The financial contribution is GST inclusive.	
(2) The building consent value is GST exclusive.	
(3) The contribution due on a building should be identified separately from other contributions set for any resource consent for an activity that includes buildings.	
(4) The financial contribution shall be determined by taking the total estimated value of the work required for a building consent and applying each component identified in the table to that value and the contribution is the sum of the components.	

ADVICE NOTES

Council Regulations

1. This is not a building consent and the Consent Holder shall meet the requirements of Council with regard to all Building and Health Bylaws, Regulations and Acts.

Other Proposed Tasman Resource Management Plan Provisions

2. Any activity not covered in this consent shall either comply with:
 1. the provisions of a relevant permitted activity rule in the Proposed Tasman Resource Management Plan; or
 2. the conditions of a separate resource consent for such an activity.
- 2.a As required by the Proposed Tasman Resource Management Plan, the Consent Holder shall supply additional on-site water storage of not less than 23,000 litres and whether the storage is provided by an above-ground or an underground tank. The applicants has identified a pool may be used, this is required to be submitted as part of the building consent application for the proposal.
- 2.b The applicants shall provide plans and design details of the onsite domestic waste water system to be installed as part of the building consent application for the proposal. This system shall meet the permitted activity standards of Rule 36.1.4 or seek additional resource consent approval.

Consent Holder

3. This consent is granted to the abovementioned Consent Holder but Section 134 of the Act states that such land use consents “attach to the land” and accordingly may be enjoyed by any subsequent owners and occupiers of the land. Therefore, any reference to “Consent Holder” in the conditions shall mean the current owners and occupiers of the subject land. Any new owners or occupiers should therefore familiarise themselves with the conditions of this consent, as there may be conditions that are required to be complied with on an ongoing basis.

Development Contributions

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

Council will not issue a Code Compliance Certificate until all development contributions have been paid in accordance with Council's Development Contributions Policy under the Local Government Act 2002.

Monitoring

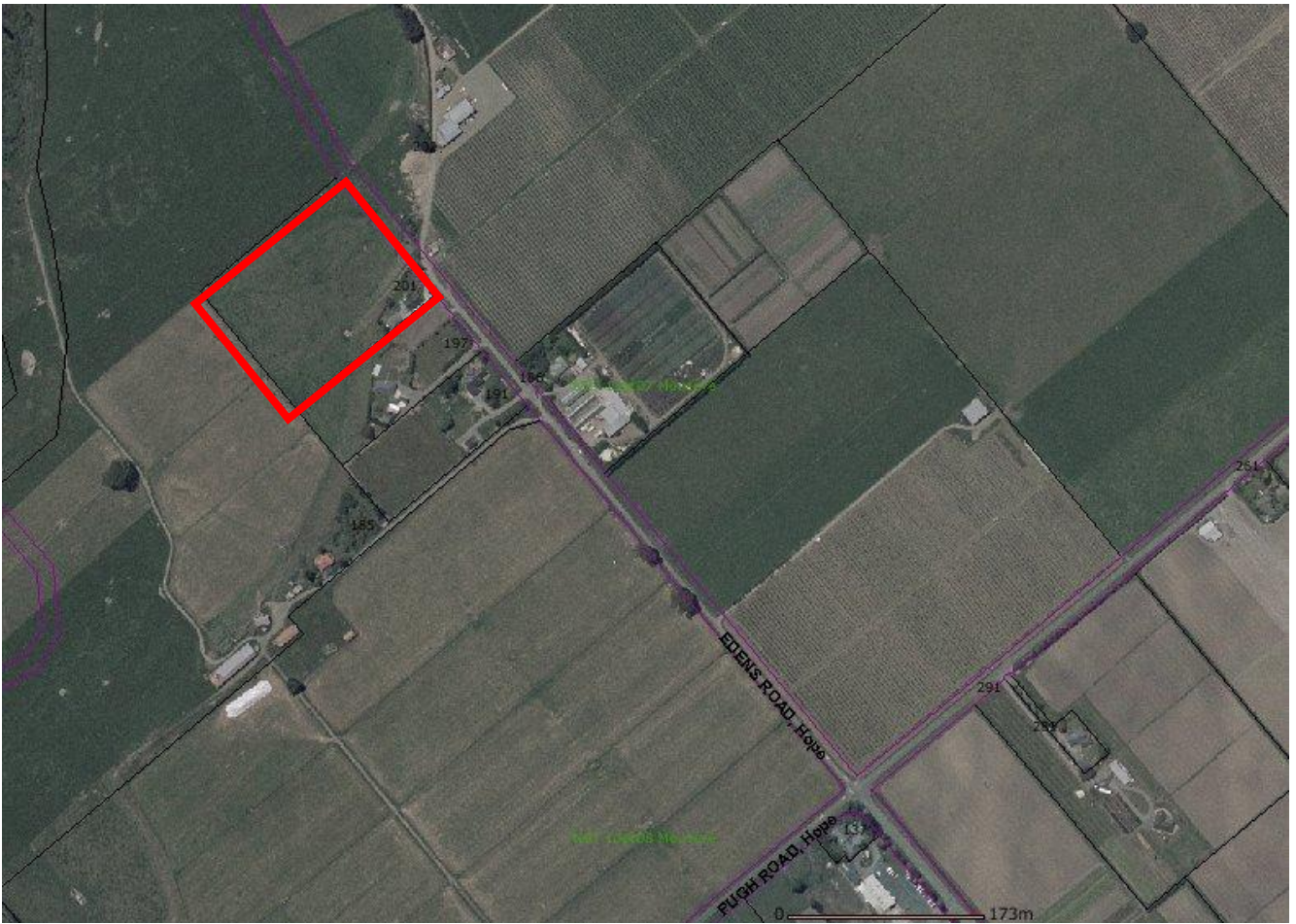
5. Monitoring of the consent is required under Section 35 of the Resource Management Act 1991 and a deposit fee is payable at this time. Should monitoring costs exceed the initial fee, Council will recover this additional amount from the Consent Holder. Costs can be minimised by consistently complying with conditions, thereby reducing the frequency of Council visits.

Interests on the title

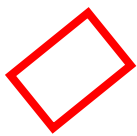
6. The Consent Holder should note that this resource consent does not override any registered interest on the property title.

Jane Harley
Consent Planner, Land Use

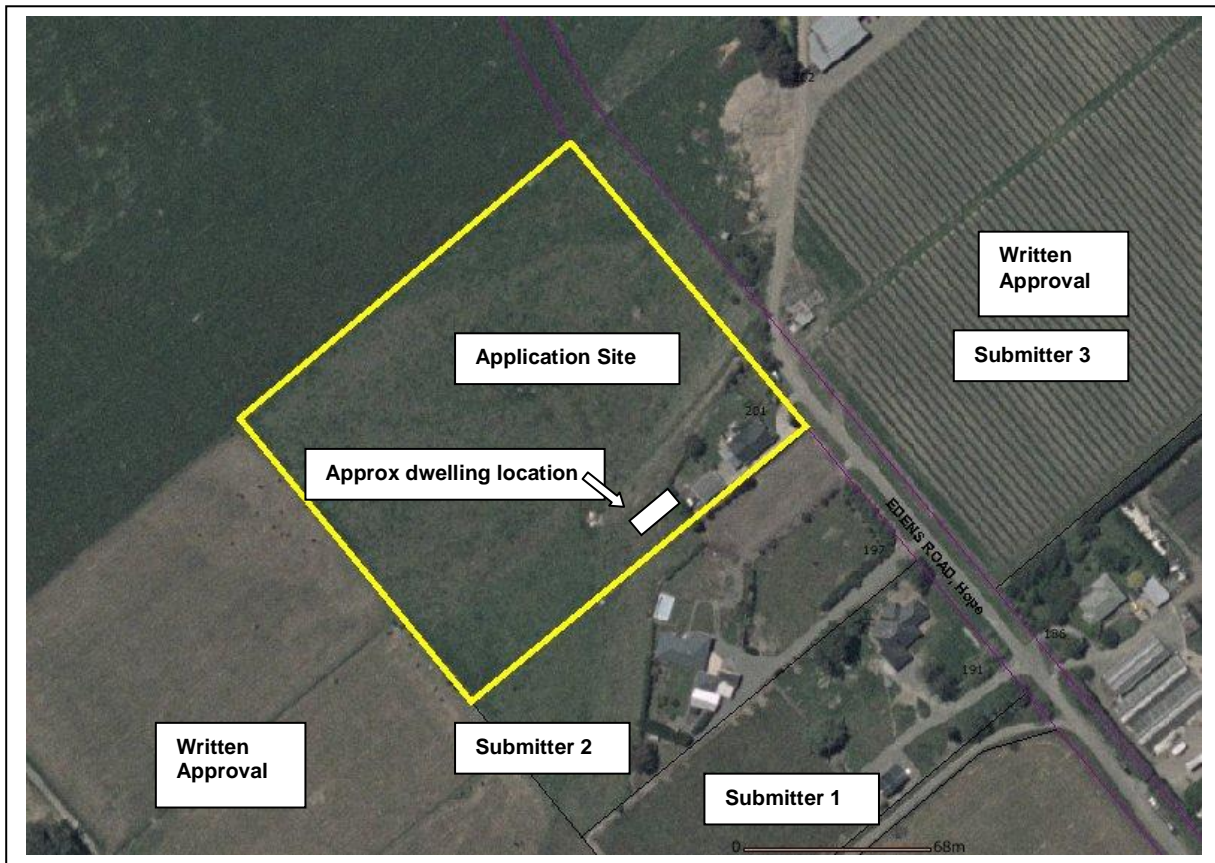
**ANNEXE 1:
Application Site – 201 Edens Road**

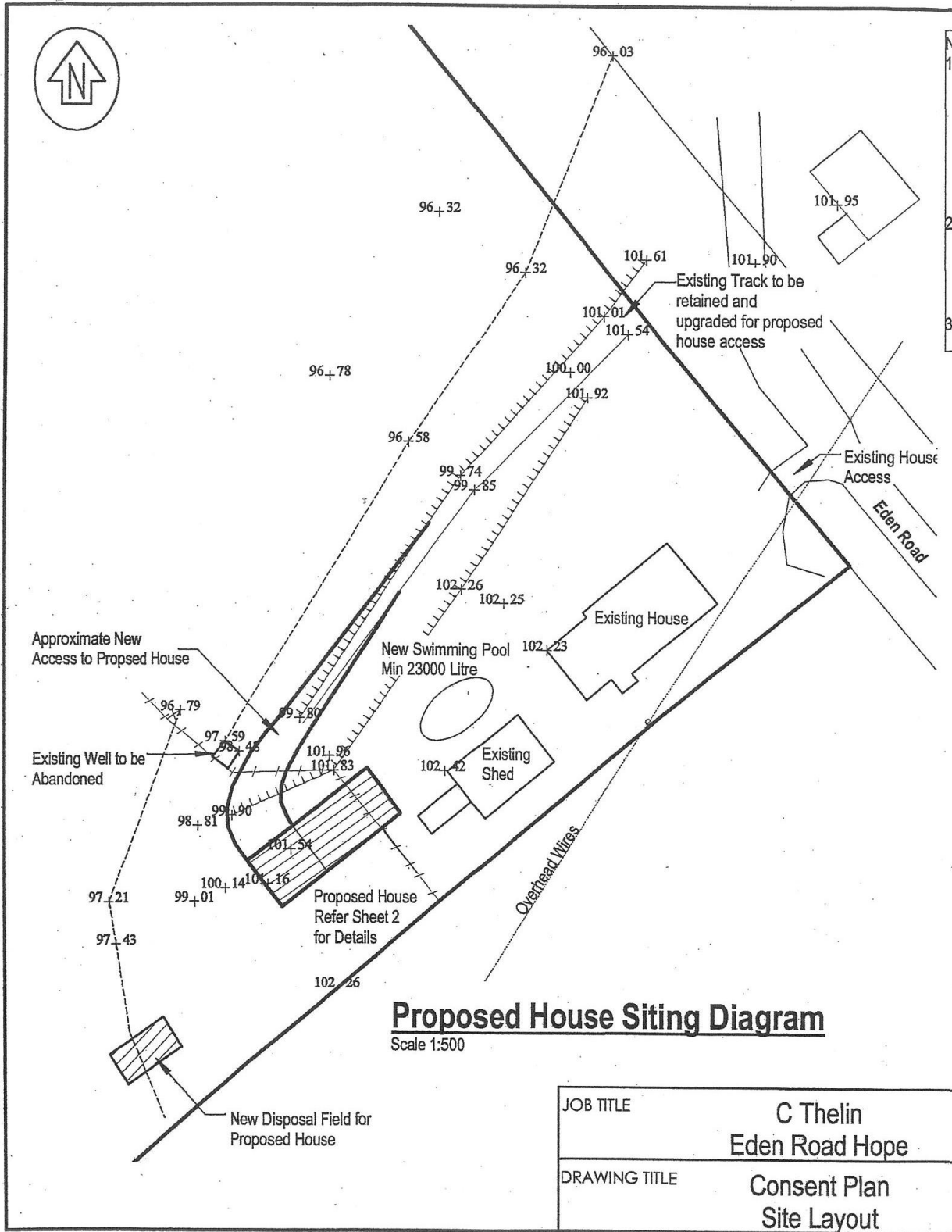


Application Site



**ANNEXE 2:
Aerial Map showing Application Site, Submitter's Properties
and Written Approvals obtained**



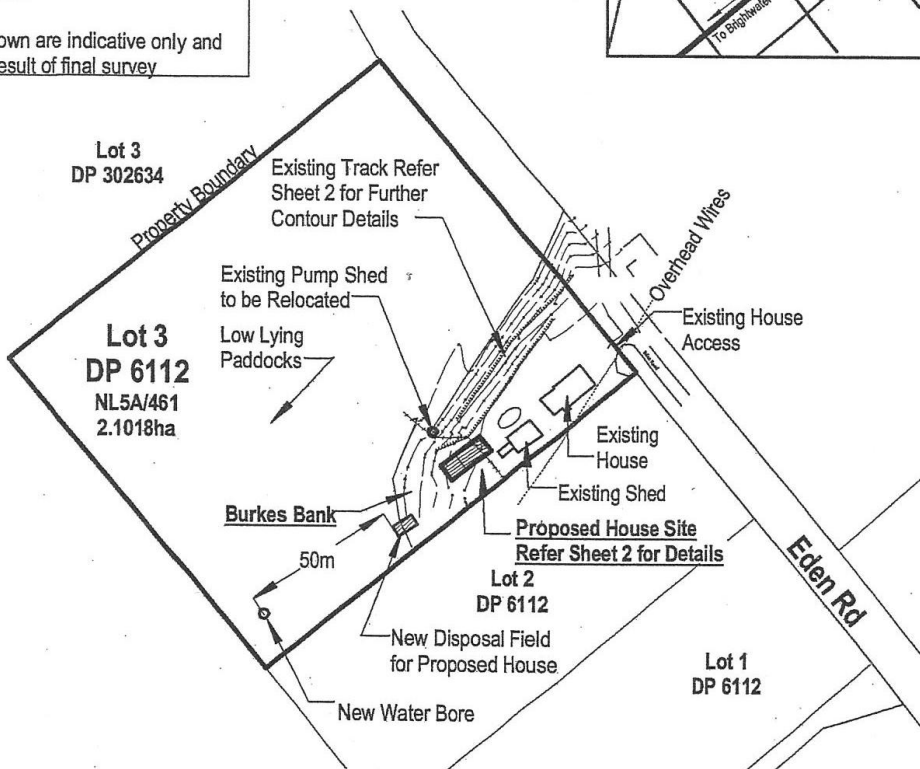
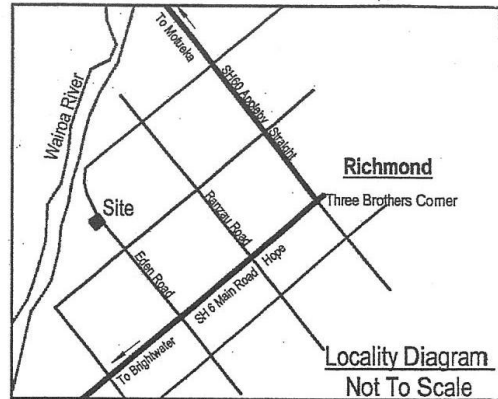


Notes:
 This is a preliminary plan prepared for a resource consent application and it may vary considerably from the final plans. Areas, dimensions and positioning of services are subject to survey and design. Additional easements may be shown on final plans.

This plan should not be used as the basis for a sale and purchase agreement as it may be inaccurate in terms of areas and dimensions.

Contours shown are indicative only and are not the result of final survey

Key	
98.81	Spot Height
- - -	1m Contours
- / - /	Existing Fence
TTTT	Top of Existing Bank
- - - -	Bottom of Existing Bank




Site Layout Diagram

Scale 1:2000

This activity was approved as a _____ activity on the ____ day of _____ 2008 subject to the conditions noted in TDC File No _____

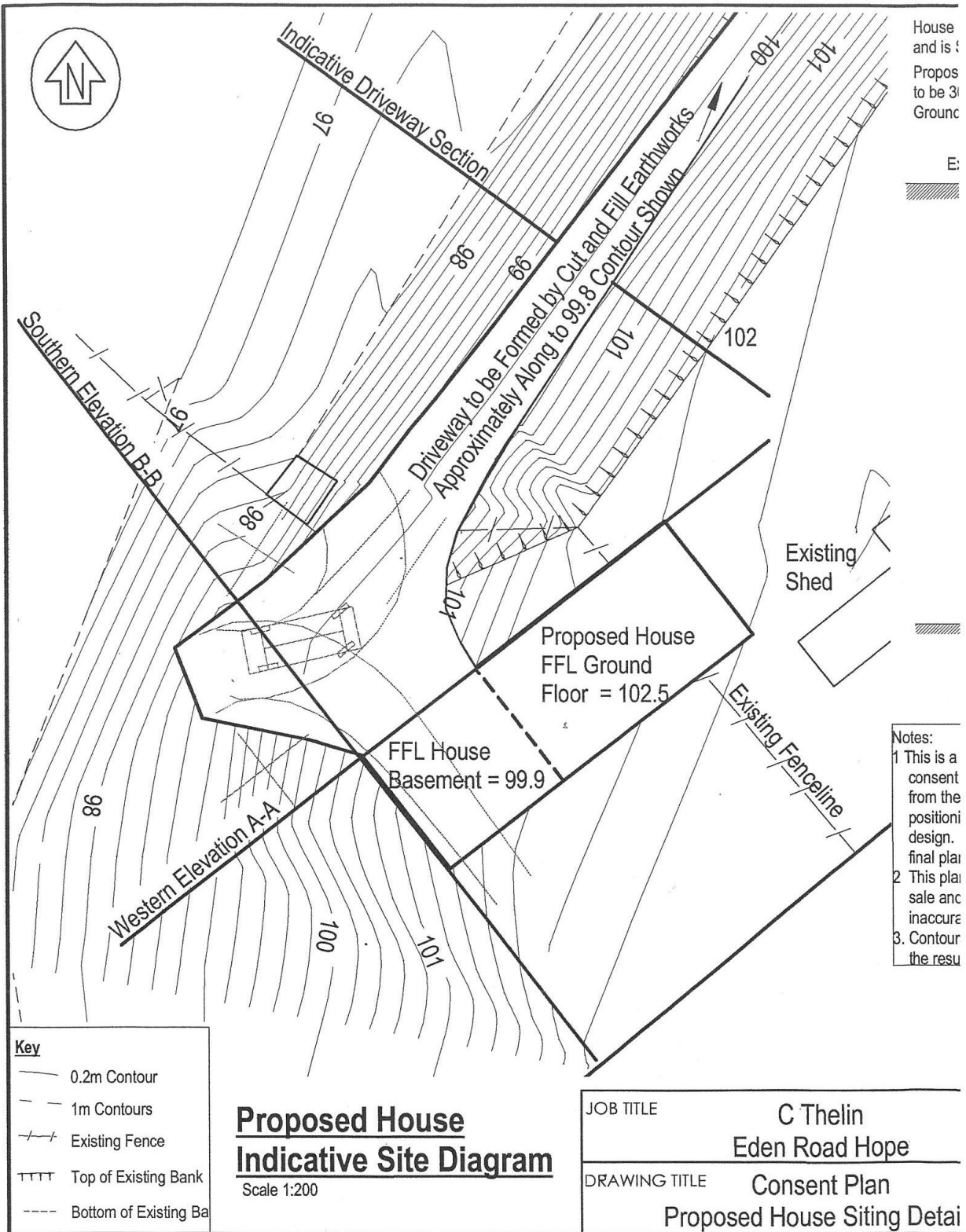
Assumed Datum

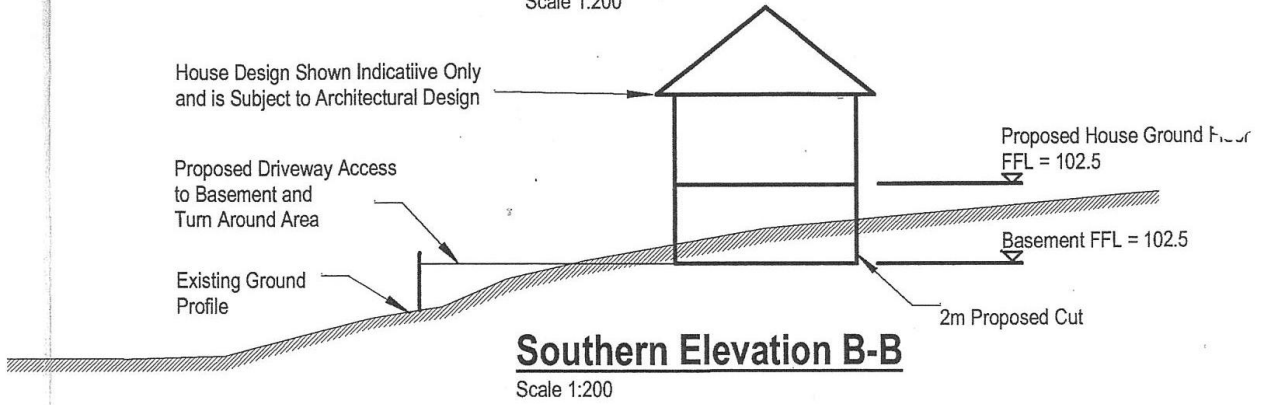
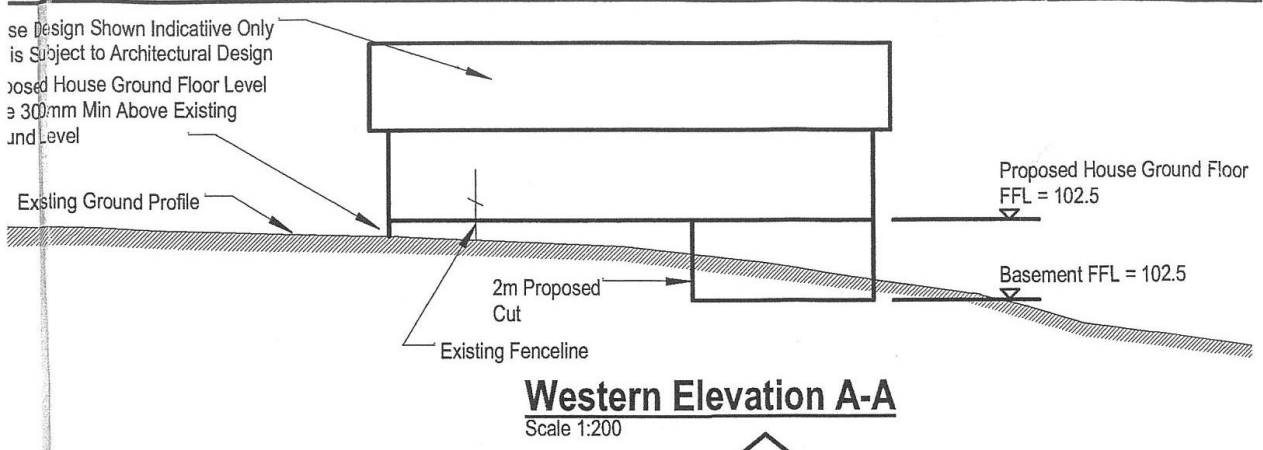
	Cotton and Light Ltd PO Box 72 Nelson 5445470 Richmond 5481851 Nelson	SHT 1 OF 2 SHTS
		SCALE 1:2000 1:500
		SIZE A3
		DATE May 2008
		JOB No. R 730

.....
 Authorised Officer

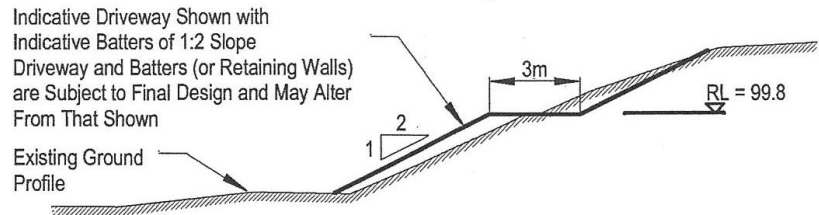


[Handwritten Signature]






This is a preliminary plan prepared for a resource consent application and it may vary considerably from the final plans. Areas, dimensions and timing of services are subject to survey and confirmation. Additional easements may be shown on the plans. This plan should not be used as the basis for a purchase agreement as it may be inaccurate in terms of areas and dimensions. Dimensions shown are indicative only and are not the result of final survey.



This activity was approved as a _____ activity on the ____ day of _____ 2008 subject to the conditions noted in TDC File No _____

.....
Authorised Officer

TDC Tasman District Council

 <p>Cotton and Light Ltd PO Box 72 Nelson</p> <p>5445470 Richmond 5481851 Nelson</p>	Assumed Datum	
	SHT	2 OF 2 SHTS
	SCALE	1:200
	SIZE	A3
	DATE	May 2008
JOB No.	R 730	

