

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

IN THE MATTER of the Resource Management Act 1991
AND of appeals under cl 14 of the First Schedule
to the Act
BETWEEN M W WRATTEN and BOOMERANG FARM
LIMITED
(ENV-2017-WLG-000006)
AND M F and L K MANSON
(ENV-2017-WLG-000014)
AND R BRADLEY
(ENV-2017-WLG-000015)
Appellants
AND TASMAN DISTRICT COUNCIL
Respondent

Environment Judge B P Dwyer sitting alone pursuant to s 279 of the Act

In Chambers at Wellington

CONSENT ORDER

- [A] Under s 279(1)(b) of the Act, the Environment Court, by consent, orders that:
- (1) The appeals are allowed to the extent that the Tasman District Council is directed to make amendments to the Tasman Resource Management Plan, as set out in Annexure A, attached to and forming part of this Order.
 - (2) The appeals are otherwise dismissed.
- [B] Under s 285 of the Act, there is no order as to costs.



REASONS**Introduction**

[1] The Court has now read and considered the appeals and the memorandum of the parties received 19 March 2018.

Other relevant matters

[2] Horticulture NZ, R Bradley, Ewing Poultry Ltd, M Shelly and M & L Manson joined the Wratten and Boomerang Farm Appeal as parties under s 274 of the Act. M Wratten and Boomerang Farm Ltd, R Bradley, Horticulture NZ, Ewing Poultry Ltd, Nelson Forests Ltd, Tasman Pine Forests Ltd, C Russ and M Shelly joined the Manson Appeal as parties under s 274 of the Act. Nelson Forests Ltd and Horticulture NZ Inc joined the Bradley Appeal as parties under s 274 of the Act. Nelson Forests Ltd withdrew its notice on 8 September 2017. Tasman Pine Forests withdrew its s 274 notice on 3 October 2017.

[3] All parties signed the consent memorandum setting out the relief sought.

Orders

[4] The Court is making this order under s 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297. The Court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum (unless stated otherwise for specific reasons) requesting this order;
- (b) all parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

DATED at Wellington this 18th day of April 2018


B P Dwyer
Environment Judge



Annexure A

Key Text and ~~Text~~ – PC60 decisions version
 ~~Text~~ and Text – Agreed amendments to PC60 from Appeals

Rural 1 Zone

17.5.3.1 Permitted Activities (~~Building Construction, or Alteration, or Use~~)

~~Construction, or alteration, or use~~ of a building is a permitted activity that may be undertaken without a resource consent, if it complies with the following conditions:

...

(kb) ~~any habitable buildings are~~ is set back at least:

- (i) 30 metres from any internal boundary, except where:
- the activity is an alteration to a dwelling, and the existing setback to the boundary is not thereby reduced; ~~and except where or~~
 - the boundary is to the Residential, Rural Residential or Rural 3 zone, where the setback is 5 metres;

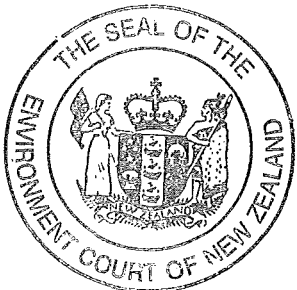
17.5.3.2 Controlled Activities (~~Building Construction, or Alteration, or Use~~)

~~Construction, or alteration, or use~~ of a building that does not comply with the conditions of rule 17.5.3.1 is a controlled activity, if it complies with the following conditions:

...

(e) ~~Any Dwellings dwelling and or~~ habitable buildings are is set back at least:

- (i) 30 metres from any internal boundary, except where:
- the activity is an alteration to a dwelling, and the setback to the boundary is not thereby reduced; or and except where
 - the boundary is to the Residential, Rural Residential or Rural 3 zone where the setback is 5 metres; or
 - the internal boundary adjoins any site that was approved by subdivision consent on or before 30 January 2016 and is less than 2500 square metres, where the setback is 5 metres;



17.5.3.3 Restricted Discretionary Activities (Building Construction or Alteration)

...

A resource consent is required. Consent may be refused or conditions imposed, only in respect of the following matters to which Council has restricted its discretion:

...

(3A) Where a proposed building location cannot comply with the 30m setback rule due to the shape of the site, the potential to mitigate the effects from any reduced setbacks for habitable buildings through measures such as building location, orientation, design, fencing or screening, and clustering of residential activities.

17.5.20 Principal Reasons for Rules

...

Setback

Setback from roads will promote road safety and help maintain rural open space. It will also separate dwellings from the adverse effects of road use, such as dust, noise and vibration. Separation between buildings on adjoining sites maintains open space and privacy and minimises shading of neighbouring properties.

The 30 metre setback requirement for habitable buildings has been imposed primarily to manage cross-boundary effects, limit impacts on the productive potential of adjoining sites, and minimise impacts on rural character and amenity.

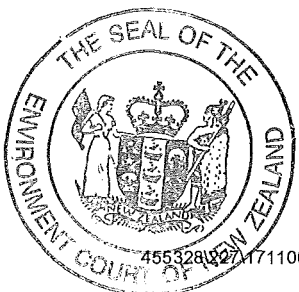
Tasman District has a legacy of small rural sites in the Rural 1 zone that may be constrained in meeting the 30 metre internal boundary setback standard for habitable buildings due to the shape of the site. In these cases, the mitigation of the effects identified in the preceding paragraph from a reduced internal boundary setback may be achievable through measures such as building location, orientation, design, fencing or screening, as well as clustering of residential activities.

Rules for setbacks to legacy sites below 2500m² recognise that the majority of these sites are already built on and used for residential activities; and there is very limited productive opportunity of these small sites. Risks of reverse



sensitivity complaints or loss of rural amenity are less likely to arise on sites where residential activities are clustered with other residential activities.

The setbacks for dwellings from quarry activities ensures that the potential adverse effects of present and future quarries on nearby dwellings are avoided, remedied or mitigated, and that any potential reverse sensitivity (for example, where future residents may try to limit quarry activities) is addressed.



Rural 2 Zone

17.6.3.1 Permitted Activities (Building Construction, or Alteration, or Use)

Construction, or alteration, or use of a building is a permitted activity that may be undertaken without a resource consent, if it complies with the following conditions:

...

- (j) Buildings are set back at least:
- (i) 10 metres from road boundaries ~~except as provided for under condition (ma) and, except as provided for under condition (ma) or condition (n),~~ 5 metres from internal boundaries (subject, in the case of artificial shelter, to condition 17.6.4.1(b)), except that telecommunication and radio-communication facilities less than 10 square metres in area and less than 3 metres in height are exempt from this requirement;

...

(n) ~~Any Dwellings dwelling and or habitable buildings are~~ is set back at least:

- (i) 30 metres from any internal boundary, except where:
- the activity is an alteration to a dwelling, and the setback to the boundary is not thereby reduced; ~~or and except where~~
 - the boundary is to the Residential, Rural Residential or Rural 3 zone where the setback is 5 metres; or
 - the internal boundary adjoins any site that was approved by subdivision consent on or before 30 January 2016 and is less than 2500 square metres, where the setback is 5 metres;

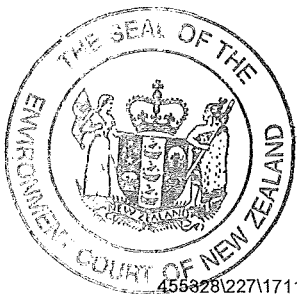
17.6.3.2 Controlled Activities (Building Construction, or Alteration, or Use –General)

...

A resource consent is required and may include conditions on the following matters over which the Council has reserved control:

...

- (3A) Where a proposed building location cannot comply with the 30m setback rule due to the shape of the site, the potential to mitigate the effects from any reduced setbacks for habitable buildings through



measures such as building location, orientation, design, fencing or screening, and clustering of residential activities.

17.6.20 Principal Reasons for Rules

...

Setback

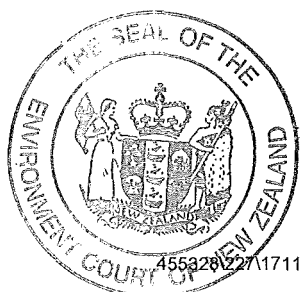
Setback from roads will promote road safety and help maintain rural open space. It will also separate dwellings from the adverse effects of road use, such as dust, noise and vibration. Separation between buildings on adjoining sites maintains open space and privacy and minimises shading of neighbouring properties.

The 30 metre setback requirement for habitable buildings has been imposed primarily to manage cross-boundary effects, limit impacts on the productive potential of adjoining sites, and minimise impacts on rural character and amenity.

Tasman District has a legacy of small rural sites in the Rural 2 zone that may be constrained in meeting the 30 metre internal boundary setback standard for habitable buildings due to the shape of the site. In these cases, the mitigation of the effects identified in the preceding paragraph from a reduced internal boundary setback may be achievable through measures such as building location, orientation, design, fencing or screening, as well as clustering of residential activities.

Rules for setbacks to legacy sites below 2500m² recognise that the majority of these sites are already built on and used for residential activities; and there is very limited productive opportunity of these small sites. Risks of reverse sensitivity complaints or loss of rural amenity are less likely to arise on sites where residential activities are clustered with other residential activities.

The setbacks for dwellings from quarry activities ensures that the potential adverse effects of present and future quarries on nearby dwellings are avoided, remedied or mitigated, and that any potential reverse sensitivity (for example, where future residents may try to limit quarry activities) is addressed.



Rural 3 Zone

17.7.3.1 Permitted Activities (Building Construction, ~~or~~ Alteration, or Use)

Construction, ~~or~~ alteration, or use of a building is a permitted activity that may be undertaken without a resource consent, if it complies with the following conditions:

...

- (f) Buildings are set back at least:
- (i) 10 metres from road boundaries and 5 metres from internal boundaries (~~except where condition (ga) applies and~~ subject, in the case of artificial shelter, to condition 17.7.4.1(b)), and except that telecommunication and radio-communication facilities less than 10 square metres in area and less than 3 metres in height are exempt from this requirement;

...

- (ga) ~~Any H-habitable buildings are~~ is set back at least:
- (i) 30 metres from any internal boundary where that boundary is to the Rural 1 or Rural 2 Zone, except where:
- the activity is an alteration to a dwelling and the existing setback to the boundary is not thereby reduced; or
 - for a habitable building on a site located in a subdivision that the site of the building was approved by subdivision consented on or before 30 January 2016, where the setback is 5 metres; and except where the activity is an alteration to a dwelling and the existing setback to the boundary is not thereby reduced;

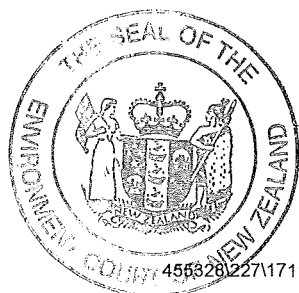
...

17.7.3.2 Controlled Activities (Building Construction, ~~or~~ Alteration, or Use)

Construction, ~~or~~ alteration, or use of a building that does not comply with the conditions of rule 17.7.3.1 is a controlled activity, if it complies with the following conditions:

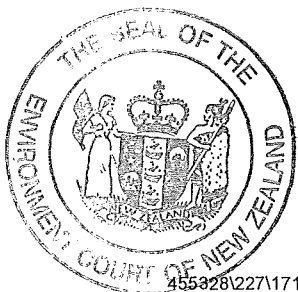
...

- (f) ~~Any D-dwellings and or~~ habitable buildings are is set back at least:



(i) 30 metres from any internal boundary, where that boundary is to a Rural 1 or Rural 2 Zone, except where:

- the activity is an alteration to a dwelling and the existing setback to the boundary is not thereby reduced; or
- the site of the building was approved by subdivision consent on or before 30 January 2016, where the setback is 5 metres for a habitable building on a site located in a subdivision that was consented before 30 January 2016 where the setback is 5 metres;



Rural Residential Zone

17.8.3.1 Permitted Activities (Building Construction, or Alteration, or Use)

Construction, or alteration, or use of a building is a permitted activity that may be undertaken without a resource consent, if it complies with the following conditions:

...

(g) Buildings are set back at least:

- (i) 10 metres from road boundaries and 5 metres from internal boundaries (except where condition (h)(i) applies and subject, in the case of artificial shelter, to condition 17.8.2.1(f)), and except that telecommunication and radio-communication facilities less than 10 square metres in area and less than 3 metres in height are exempt from this requirement;

...

(h) Any Dwelling and or habitable building is set back at least:

- (i) 30 metres from an internal boundary where that boundary is to the Rural 1, Rural 2 or Rural 3 Zone, except where:
 - (a) the activity is an alteration to a dwelling and the existing setback to the boundary is not thereby reduced; or
 - (b) the site of the building was approved by subdivision on or before 30 January 2016, where the setback is 5 metres.

