

MINUTES

TITLE: Environment & Planning Subcommittee - Commissioner Hearing
DATE: Friday, 24 September and Thursday, 7 October 2010
TIME: 10.00 am
VENUE: Tasman Council Chamber, 189 Queen Street, Richmond.

COMMISSIONERS: Cr S G Bryant (Chair), Mr D J Ogilvie

IN ATTENDANCE: Consent Planner (L Davidson), Resource Consents Manager (P Doole), Executive Assistant (V M Gribble)

1. P EGDEN AND J LOUGHNAN, TORRENT BAY (BEACH) ROAD, TORRENT BAY - APPLICATION No. RM060053

The application sought to construct a detached building to be used for residential purposes in conjunction with an existing dwelling that is located in a coastal environment area as defined by the Tasman Resource Management Plan.

The application site is located at 14 Torrent Bay (Beach) Road, Torrent Bay, being legally described as Lot 5 DP 1612 contained in Certificate of Title NL81/31.

The Commissioners proceeded to hear the application, presentation of submissions and staff reports as detailed in the following report and decision.

2. P EGDEN AND J LOUGHNAN, TORRENT BAY (BEACH) ROAD, TORRENT BAY - APPLICATION No. RM060053

THAT pursuant to Section 104C of the Resource Management Act, the Commissioners GRANTS consent to P Egden and J Loughnan as detailed in the following report and decision.

TASMAN DISTRICT COUNCIL

Report and Decision of the Tasman District Council through Commissioners

Meeting held in Richmond on Friday, 24 September and Thursday, 7 October 2010

Site visit undertaken on Wednesday, 22 September 2010

Hearing closed on Thursday, 7 October 2010

A Hearings Panel ("the panel") of the Tasman District Council ("the Council") was convened to hear the resource consent application lodged by **P G Egden and J B Loughnan** ("the applicants"), to construct an accessory building for residential purposes in conjunction with an existing dwelling on Lot 5 DP 1612 at Torrent Bay. The application, made in accordance with the Resource Management Act 1991 ("the Act"), was lodged with the Council and referenced as RM060053.

HEARING PANEL: Cr Stuart Bryant, Chairperson
Mr David Ogilvie

APPLICANT: Mr Martin Bell (Counsel)
Mr Tim Douglas-Clifford (Applicants' representative)
Mr Gary Rae (Consultant Planner)

CONSENT AUTHORITY: **Tasman District Council**
Mr Laurie Davidson (Consent Planner, Land)

SUBMITTERS: Ms Camilla Owen (Counsel)
Mr Stuart Allan (Submitter)
Mr Tony Quickfall (Consultant Planner)

IN ATTENDANCE: Mr Phil Doole (Resource Consents Manager) - Assisting the
Hearing Panel
Mrs Valerie Gribble and Ms Tara Cater (Committee
Secretaries)

1. SUMMARY

The Hearing Commissioners have **GRANTED** resource consent subject to conditions to construct an accessory building for residential purposes in conjunction with an existing dwelling on Lot 5 DP 1612 at Torrent Bay.

2. DESCRIPTION OF THE PROPOSED ACTIVITY

The application as lodged in January 2006 was for an extension to the existing dwelling on Lot 5 DP 1612 at Torrent Bay. Having regard to the relevant rules and definitions in the Tasman Resource Management Plan (TRMP), Council staff considered the proposal to be a detached building (that is, an accessory building), rather than an extension to the dwelling, and the application for resource consent has been limited notified on that basis.

Torrent Bay is a small coastal settlement consisting of 50 or so residential properties that is an enclave within the Abel Tasman National Park. The settlement has a sea frontage and is largely confined to the coastal margin, with a relatively steep hillside to the west and north of the area. Some houses have been constructed on the more elevated land, but the majority of the settlement is on flat land adjoining the foreshore.

A range of residential development has taken place in the settlement, ranging from small "baches" to substantial contemporary holiday homes. There is a legal road around the shoreline and two other legal roads through the settlement (Manuka and Lagoon Streets). They provide access by foot and 4-wheel motorbike. Access to Torrent Bay is provided by water taxi from Kaiteriteri or Marahau, or by foot through the Abel Tasman National Park.

The subject site is one of a row of 14 residential size allotments running north-south along the beachfront at Torrent Bay. Most of those properties have a dwelling sited at their eastern (beach) end. There is a second row of allotments further inland, separated from the first row by Lagoon Street and a right-of way (ROW).

The subject site has an area of 890 m². There is an existing dwelling on the eastern (beach) end, with 89 m² floor area and a sloping roof that varies in height between 3 and 4 metres above ground level. There is a small narrow watercourse flowing across the middle of the site. The proposed additional building is to be located at the western end of the site, across the watercourse and 14.5 metres distance from the existing dwelling. The two buildings are to be linked by a boardwalk. The new building is to have 135 m² floor area, and a maximum height of 5.4 metres above ground level. The western side of the proposed building will be approximately 4 metres in height up to the guttering.

The proposed building will protrude through the “daylight admission angle” as defined in the TRMP that applies along the southern boundary of the site. The applicants have obtained the written approval of the owners of the adjoining Lot 6 DP1612 for this non-compliance.

There is a current consent RM070241 to discharge treated domestic waste water to land at the site, which anticipates the combined volumes of waste water that will be generated by use of the existing dwelling and the proposed building.

According to the application, the proposed building is to be placed with a 3 metre setback from the rear (west) boundary of the site. That boundary adjoins a 4.5 metre wide ROW providing access from Lagoon Street for two residential properties to the west and northwest.

Across the ROW at the rear is Lot 3 DP 8370 (the “Allan property”), which contains two attached dwelling units, one of which is directly opposite the subject site, and the other is offset to the south west. The front wall of the closest unit is located 3.1 metres from the ROW boundary, 7.68 metres from the rear boundary of Lot 5, and 10.68 metres from the western side of the proposed building.

The proposed building area has been cleared of standing vegetation. Recently a wooden paling fence has been erected on the subject site and the adjoining Lot 6 DP 1612, along their rear boundary with the ROW.

3. TASMAN RESOURCE MANAGEMENT PLAN (“TRMP”) ZONING, AREAS AND RULE(S) AFFECTED

Zoning: Residential
Areas: Coastal Environment Area,
Land Disturbance Area 2
Special Domestic Wastewater Disposal Area

The proposed activity requires resource consent in terms of the following TRMP rules:

- 18.11.3.1 Construction of a new building in the Coastal Environment Area (Controlled Activity)
- 17.1.3.1(n) Encroaching the daylight angle on the southern boundary (Restricted Discretionary Activity)
- 17.1.3.1(q) Exceeding the 3.6 metre height restriction for an accessory building in a residential zone (Restricted Discretionary Activity)

- 17.1.3.1(w) Encroaching the 3 metre setback from the top of the bank of a river with a bed less than 1.5 metres in width (Restricted Discretionary Activity)

Accordingly, the application is for a Restricted Discretionary Activity under the TRMP which must be assessed in terms of the matters of control and discretion listed in Rules 18.11.3.1 and 17.1.3.4 respectively. Altogether there are 57 matters listed in those two rules, and we address their varying relevancies later in this decision.

We are using the current numbering of the TRMP rules, rather than those that applied when the application was first lodged, because (i) it is more convenient to refer to the current version of the Plan and (ii) we understand that there have not been any material changes to the provisions of the relevant rules since January 2006 that would pertain to the application we are considering. The second point is supported by the comparative table on page 10 in Mr Quickfall's statement of evidence.

4. HIGH COURT DIRECTIONS

When this application was lodged in 2006 the proposed building was treated by Council staff as being a second dwelling. The application was processed on the non-notified track with a decision granting consent being made in March 2006. That decision was later challenged by Mr Allan, the owner of Lot 3 DP 8370 at the rear of the subject site who claimed that he should have been identified as being potentially affected to enable him to participate in the process. A Judicial Review was carried out by the High Court and a decision issued on 11 March 2010 (CIV-2008-442-275). The High Court found that the Council had erred by not identifying the plaintiff (ie, the Allan property) as being potentially affected and the consent was set aside. The Court directed the Council to serve notice on the owner of Lot 3 DP 8370, and to reconsider the application afresh.

5. NOTIFICATION AND SUBMISSION RECEIVED

As directed by the High Court, the application was limited notified on 4 June 2010 to the owner of Lot 3 DP 3870, being Torrent Bay Investments Limited which is wholly owned by Stuart Ross Allan. Council received a submission from Mr Allan on 29 June 2010.

Mr Allan's concerns relate to loss of privacy and outlook, noise, increased density of development and loss of the amenity and character that his property currently enjoys. He also stated that in his view that the proposed building is a second dwelling that does not comply with various rules in the TRMP.

6. PROCEDURAL MATTERS

During the hearing, Ms Owen, Counsel for the submitter, asserted that the application before us "**must** be treated as [being for] a second dwelling" (her emphasis), rather than for an accessory building or an extension to the existing dwelling; because that is what Council had previously determined the proposed building to be, and that was the position adopted by everyone who took part in the High Court proceedings. Ms Owen also suggested that there would be an issue of precedent throughout the Tasman District if the proposed building was regarded as being an accessory building.

In his right of reply Counsel for the applicant, Mr Bell, emphasised that the definition of “dwelling” in the TRMP had not changed since 2006, but its interpretation by Council had changed since then. He referred to the High Court Affidavits sworn by Council staff in 2008 which clearly state that the proposed building would not have been deemed to be a dwelling at that time. The Council’s reporting officer, Mr Davidson, also confirmed during the hearing that Council staff are using a different interpretation from that used in early 2006. Mr Bell also emphasised the High Court’s direction to consider the application “afresh”.

Our view is that we have been directed to consider the application afresh, and there is no restriction on us re-visiting the definition of the proposed building in terms of the TRMP provisions. It is clear from Mr Davidson’s comment that Council staff (acting with delegated authority) have been for some time applying a changed interpretation of the “dwelling” definition in the TRMP to a range of building proposals on a case by case basis. Therefore we see no problems regarding precedent. We will address the question of what the proposed building is, later. The point we make here is that we do not accept that our role is fettered in the way that Ms Owen implied.

Also with regard to considering the application afresh, we record that Mr Davidson was not involved in the original processing of the application in 2006. Mr Davidson’s role has been to assess and report on the proposed activity independently of the earlier assessment by Council staff. In his opening submissions Mr Bell said that he found it surprising that specific findings of the High Court judge as to the scale of some effects were not referred to in Mr Davidson’s report. We think that was entirely appropriate because Mr Davidson’s brief was to make his own assessment based on his own site visit and appraisal of the relevant issues.

7. EVIDENCE HEARD

We heard evidence from the applicant, the submitter, expert witnesses, and the Council’s reporting officer. The following is a summary of the evidence presented:

7.1 Applicant’s Evidence

Mr Martin Bell (Counsel)

Mr Bell presented extensive submissions that addressed the following matters relating to the proposed building:

- Reasons for defining the proposed building as an accessory building, rather than a second dwelling on the site;
- Analysis of the status of the proposed building in terms of the TRMP rules, concluding that it is a restricted discretionary activity;
- Analysis of TRMP objectives and policies, concluding that the proposed building is not contrary to the relevant policies taking account of the existing character of development at Torrent Bay;
- Acknowledgement that the “permitted baseline” approach does not apply, but the level of compliance with the permitted activity conditions and standards for the residential zone, and with the controlled activity standards for the coastal

environment area is of considerable relevance for comparison purposes when assessing the actual effects of the proposed building;

- Appraisal of the relevant matters of discretion in the TRMP rules in terms of the effects of the proposed building on the Allan property, particularly with regard to privacy and outlook, noise, and the character and density of residential activity;
- Discussion of possible precedent effects;
- Rejection of the Reporting Officer's recommended condition that would require a 6 metre setback from the rear boundary; with an offer by the applicant to move the building 1 metre further from that boundary so that it would be set back 4 metres from the rear boundary, rather than 3 metres.

Mr Bell concluded by stating that the applicants want to build an accessory building at the back of their site which is split in two by a small watercourse. Taking into account the close residential development already in existence at Torrent Bay and the sympathetic design and orientation of the new building, the effects on the Allan property would be no more than minor.

Mr Tim Douglas-Clifford (Applicant representative)

Mr Douglas-Clifford presented a statement of evidence with photographs of the site and wider Torrent Bay settlement attached. He stated that the stream channel had been hand dug in the 1960s to divert water around the area where the current dwelling was built.

Mr Douglas-Clifford described the clearance of bush from the subject site in preparation for the building work, in terms of the outlook from the Allan property. With regard to loss of privacy, he said that the proposed building was oriented away from the Allan property, and that the presence of two units on that property would have the biggest effect on privacy. Regarding noise, he said that the addition of the proposed accommodation would cause no more noise than what currently exists when holiday places are rented or used by families. He also pointed out that the ROW running between the two properties serves other residential properties so it is not a noiseless environment.

Mr Douglas-Clifford provided lists of properties at Torrent Bay that have a large house or two houses on them, and photographs showing how close some of the houses are to one another. He did not accept that the proposed building was out of keeping with the current character of Torrent Bay.

Mr Douglas-Clifford referred to the current alignment of the watercourse across the subject site and explained what the consequences would be for re-aligning it if the proposed building had to be setback a further 3 metres from the rear boundary. A setback of 4 metres could be achieved without re-aligning the watercourse, but would result in one corner of the proposed building being 0.5 metres from the channel (or stream bank).

Mr Gary Rae (Consultant Planner)

Mr Rae addressed the definitions of "dwelling", "sleepout" and "accessory building" in the TRMP in terms of the proposed building. His opinion was that it is an accessory building, to be used as a large family sleepout ancillary to the existing dwelling.

However he had assessed the proposal in terms of both definitions - as an accessory building, and as a separate dwelling.

Mr Rae referred to provisions of the NZ Coastal Policy Statement, stating his opinion that the proposal is, in principle, consistent with those provisions.

Mr Rae assessed the status of the proposed building in terms of the relevant TRMP rules, and he addressed the TRMP objectives and policies relating to site amenity effects, urban environment effects, and the margins of rivers and the coast. His opinion was that the proposed development in the residential zone at Torrent Bay is not contrary to the relevant TRMP provisions.

Mr Rae then addressed the matters of discretion in Rules 17.1.3.4. He referred to the High Court finding that some matters did not apply to the Allan property because it is not an adjoining site. He considered that the main potential effects on the Allan property are loss of outlook, and loss of privacy and amenity. He referred to the reasons stated in the TRMP for the building setback height rules, acknowledging that those rules are specifically designed to control the dominance of buildings on the outlook of adjoining sites, whilst allowing reasonable development potential. He assessed the potential effects on the Allan property and concluded that they would be no more than minor.

7.2 Submitter's Evidence

Ms Camilla Owen (Counsel)

Ms Owen presented submissions that addressed the following matters relating to the proposed building:

- Reasons for defining the proposed building as a separate dwelling, rather than an accessory building;
- Reasons for finding the small watercourse that crosses the subject site to be a modified watercourse (river), rather than an artificial watercourse (drain);
- Problems with Mr Davidson's recommended condition that the proposed building be setback 6 metres, as that would require a separate consent for re-alignment of the modified watercourse;
- Discussion of amenity values as defined in the Act, in the context of the amenity and character of Torrent Bay, including the bush and views, and concluding that the proposal will not maintain and enhance those amenity values or the quality of the environment.

Ms Owen provided us with full copies of the High Court decision.

Mr Stuart Allan (Submitter)

Mr Allan presented a statement of evidence with photographs of the site and wider Torrent Bay settlement attached, also a surveyor's plan of the building positions relative to boundaries. Referring to photographs of the two 2-storey attached units on his property, he indicated that the roof height of the proposed building at 5.4 metres would effectively block the view from the windows on the upper storey.

Mr Allan stated that based on his observations he considered that the small stream is a modified natural watercourse which has its source on the hill slope behind the settlement, rather than it being a drain.

Mr Allan referred to the proposed building as a separate dwelling and expressed his concerns that the character of the area will be changed - his amenity will change from a few dwellings spaced well apart and fitting into the environment to one which he cannot screen, cannot avoid and which will obscure the view from his house and property. The new fence does not fit with the character of Torrent Bay and the proposed building will be almost triple the height of the fence, which indicates how large and looming it will be compared to what is there now.

In response to our questions, Mr Allan said that plantings in the setback between the proposed building and the boundary would help screen the building but that it would still dominate the area. He also confirmed that the view from the units would be altered. He said that lowering the roofline of the proposed building would not help. He said that an extension to the existing bach would be more acceptable.

Mr Tony Quickfall (Consultant Planner)

Mr Quickfall presented a statement of evidence with photographs of the site and adjacent area at the rear including the submitter's property. He showed the situation both before and after the boundary fence was erected to demonstrate the effect on amenity values arising from built form.

Mr Quickfall stated that the proposed building will be a dwelling because, in his opinion, it will almost certainly function as a self-contained unit with the addition of portable cooking facilities. He provided his assessment as to why the proposed building should not be defined as an accessory building. He questioned the status of the proposed walkway with regard to site coverage. He also stated his opinion that the stream is a modified watercourse.

Mr Quickfall referred to objectives and policies in Chapters 5 and 6 of the TRMP from which he drew four themes: (i) retain residential amenity; (ii) maintain or enhance the distinctive characteristics that represent the Torrent Bay residential enclave; (iii) avoid, remedy or mitigate adverse effects on residential areas containing special amenity or character; and (iv) avoid, remedy or mitigate adverse effects from the use of land, specifically including buildings, on the special character of Torrent Bay. He considered that the effects of the proposal on Torrent Bay's special character cannot be adequately mitigated, and the proposal is contrary to some of the TRMP objectives and policies.

Mr Quickfall suggested that the ROW between the applicants' and submitter's properties falls within the definition of a road, and therefore the two properties should be regarded as "adjoining" for the purposes of the TRMP. He then addressed the matters of discretion in Rules 17.1.3.4 and 18.11.3.1 relating to minimum site areas, setbacks, building design and appearance, privacy and the coastal environment. He also considered matters in Part 2 of the Act and provisions of the NZ Coastal Policy Statement. He concluded that the effects of the proposal will be more than minor and cannot be mitigated.

Mr Quickfall suggested two alternatives as to how the applicants could achieve additional accommodation capacity on their site - by building sleepouts (to the permitted activity standards), and/or by extending the existing dwelling. If consent were to be granted to the proposed accessory building, he recommended that an additional condition be imposed that would prevent rental use.

7.3 Council's Reporting Officer's Report and Evidence

Mr Laurie Davidson (Consent Planner, Land)

Mr Davidson's report was taken as read. In his report, Mr Davidson had identified the key issues as being: the permitted baseline, the definition of a dwelling, the amenity of the Torrent Bay residential area, and potential adverse effects on nearby properties. He had also considered other ways that additional accommodation could be provided on the site as controlled activities, and possible re-siting of the proposed building. He recommended granting consent subject to some conditions.

With regard to the definition of the proposed building, he stated that the definition of dwelling in the TRMP has not changed since January 2006 - what has changed is the way Council interprets the definition when applying it to a range of building types and forms. He emphasised that the application was **not** for a second dwelling. He said that the new building could not be a principal dwelling because it was not fully self-contained. His view that it was an accessory building had not changed. Adding a kitchen or independent cooking facilities to the building would require another resource consent to have two dwellings on the property.

Mr Davidson acknowledged that the original survey plan of the Torrent Bay settlement dated June 1926 shows a watercourse on an alignment close to what is there today; therefore he accepted that it is most likely to be a modified watercourse. He suggested that re-alignment may be able to be done in terms of permitted activity rule 36.4.2 in the TRMP. He did not accept Mr Quickfall's suggestion that the ROW could be regarded as a road in terms of the definition of "adjoining" sites. There is no cover proposed for the walkway, therefore he had not counted it as part of the building site coverage.

Mr Davison supported the concept of landscape planting in the setback between the proposed building and the western boundary of the site. Regarding possible re-alignment of the watercourse, he said that the aim should be to get a reasonable buffer between the western boundary and the building.

7.4 Applicants' Right of Reply

On 6 October Mr Bell provided us with an extensive written response to matters raised during the hearing. He traversed several matters relating to the High Court review and the definition of the proposed building that had been raised by Ms Owen. He accepted that the small stream should be regarded as a modified watercourse and pointed out several issues that would have to be addressed if re-alignment was to be contemplated.

In reply to Mr Allan's evidence, Mr Bell referred to the fence and building design details, and the existence of the two units on the Allan property, as matters that have bearing on the extent of effects on that property.

In reply to Mr Quickfall's evidence, Mr Bell questioned his assessment of the proposed building being a dwelling because it is not intended to function as a self-contained unit. Mr Bell also questioned aspects of Mr Quickfall's evidence regarding the objectives and policies in the TRMP, and his conclusions regarding adverse effects on the Allan property without assessing the character and amenity of the immediately surrounding area including Mr Allan's two units. Regarding conditions, Mr Bell stated that the applicants would accept a condition requiring landscape planting on the western side of the proposed building.

8. PRINCIPAL ISSUES AND OUR MAIN FINDINGS

The principal issues in contention or to be addressed, and our main findings on those issues are:

a) Is the watercourse flowing across Lot 5 DP 1912 a river?

Based on what was presented to us during the hearing and in the right of reply, we understand that all parties now agree that the watercourse should be deemed to be a river as defined in the Act - it being a modified watercourse, rather than an artificial watercourse or drain. We also accept that view, and find accordingly. The consequence of that is that any further modification or disturbance of the watercourse is now subject to Section 13 of the Act and Part IV of the TRMP, specifically the rules in Chapter 28. Our understanding is that re-aligning the watercourse would be a discretionary activity requiring resource consent per Rule 28.1.8.1 in the TRMP (Rule 36.4.2 mentioned by Mr Davidson concerns discharge of stormwater, so it would not apply to modifications to the watercourse).

b) Is the proposed building a dwelling, or an accessory building?

As we have summarised above, we heard extensive arguments for and against the proposed building being defined as a dwelling. The TRMP provides definitions for a range of residential building types: dwelling, sleepout, accessory building and principal building. Our view is that the proposed building is **not** a dwelling because it is not a self-contained housekeeping unit as described by the TRMP definition. Nor is it a sleepout, which the TRMP definition confines to one bedroom of restricted floor area.

Consideration of the accessory building definition leads us to the definition of principal building - "*a building, buildings or part of a building accommodating the activity for which the site is primarily used*". There was no question that the site is to be used primarily for residential activity, and it is also clear that the existing "bach" on the site fits the TRMP definition of a dwelling, being a single self contained housekeeping unit. While it might be unusual for an accessory accommodation building to have a larger floor area than the principal building, we do not see that situation as being excluded from the definition of accessory building. We consider that the proposed building will be "*incidental to, and coexistent with*" the use of the existing dwelling on the site. We are satisfied that there will effectively be one self-contained housekeeping unit on the site, albeit with a detached four-bedroom accommodation wing. Therefore, we find that the proposed building is an accessory building for residential use.

c) Should Lot 5 DP 1612 and Lot 3 DP be regarded as adjoining sites?

Mr Quickfall encouraged us to regard the two sites as adjoining because they are separated only by a ROW, which he suggested is similar to a “road” as referred to in the TRMP definition of adjoining land. We acknowledge Mr Quickfall’s point. However, while we have been directed by the High Court decision to consider the proposal afresh, on this specific matter we consider that we must adhere to the finding in that decision (at paragraph 48), that the two sites are not adjoining sites because they are separated by the other two strips of land comprising the ROW.

d) What are the relevant matters of control and discretion that we need to consider?

All parties agreed that the application is to be assessed in terms of TRMP Rules 17.1.3.4 (residential zone, restricted discretionary activity) and 18.11.3.1 (coastal environment area, controlled activity). There are 52 matters of discretion listed in Rule 17.1.3.4. Taking account of the three matters of non-compliance (as listed in Section 3 above), the evidence we heard on the various matters of discretion, our finding that the proposed building is an accessory building, and the High Court finding with regard to adjoining sites, we find that there are 16 relevant matters of discretion that we have to consider, those being (17) setbacks from rivers; (18)-(21) and (23-26) height; (27)-(29) building design and appearance; and (33) privacy.

In their evidence both Mr Rae and Mr Quickfall also addressed matters of discretion (1), (3) and (7) relating to residential site density on the basis that we might find that the proposed building would be a separate (second) dwelling on the site. That was not our finding.

There are also five matters of control in Rule 18.11.3.1. As there is no design guide applicable to Torrent Bay and natural hazards were not raised as being an issue, we find that it is only the first matter of control (1) that is relevant to the proposal before us. As the site is within a residential zone, the control we have is strictly limited to aspects of the design and appearance of the building - those being materials, landscaping and colour, having regard to effects on (a) natural features; (b) landscape and seascape values; (c) significant natural values; and (d) the nature of any existing development. This subject matter is also addressed by the matters of discretion (27) and (29) in rule 17.1.3.4.

e) What weight should we give to the permitted activity and controlled activity standards?

We heard that there is “*strictly no permitted baseline*” relating to the proposed building, because the TRMP rules for the coastal environment area require resource consents to be obtained for most building activity. As Mr Davidson stated in his report, there is an exception in Permitted Activity Rule 18.11.2.1 for the extension of existing buildings if (i) the ground floor area is not increased by more than 50%; (ii) the set back to mean high water springs is not reduced; and (iii) the existing building height is not increased. This rule allows for some building activity as of right at Torrent Bay, provided that it does not contravene other land use rules. However, we did not hear any specific evidence on the

relevance or applicability of this rule in terms of a potential permitted baseline for the current proposal, so we have disregarded that possibility.

Mr Bell advocated that it would be appropriate to compare the proposed building with other alternative building scenarios that would be controlled activities, and therefore would have to be granted consent albeit with conditions if necessary relating to materials, landscaping and/or colour per Rule 18.11.3.1, as discussed above. We agree with Mr Bell to the extent that we think it is valid in this case to use those standards **as a guide** to assessing adverse effects. That is because the matters of control are very confined - they cannot influence the bulk and location of buildings, and they have to be dealt with on a non-notified basis.

Ms Owen took issue with Mr Bell's statements that the proposal "mostly complies" with the permitted activity and controlled activity standards, and we accept her point in that the adverse effects of just one item of non-compliance could well be significant. Defined as an accessory building, at 5.4 metres the maximum roofline height of the proposed building will exceed the permitted activity standard by 50%, that being 1.8 metres. The applicants could have proposed to remove their existing bach and build a new principal dwelling up to 6.5 metres height at the rear of their site (or swap the roles of the two buildings). We think it is valid for us to compare and take into account the effects of what they could do without Mr Allan having any say in the matter, with what they propose to do.

f) Effects of encroachment into the setback from the watercourse?

The proposed building will be either 1.5 metres or 0.5 metres from the bank of the watercourse, depending if it is shifted further back from the rear boundary of the site. In either case we have considered the likely effects in terms of Matter (17) in Rule 17.1.3.4. Based on the evidence presented and our own observations during our site visit, we find that there are no issues with the encroachment into the 3 metre setback area, provided the building work is done carefully without affecting the stream channel and banks, and water quality.

g) Effects of increased height of the proposed accessory building?

Matters (18)-(21), (23)-(26) and (27) of Rule 17.1.3.4 are relevant, as we found in (d) above. We understand that Mr Allan is concerned that the proposed building will be large and dominant, and will significantly change the outlook, views and character of the area in front of his units that he has enjoyed for the past 10 years. Clearance of vegetation on Lot 5 and the erection of the fence along the rear boundary of Lots 5 and 6 have already changed the character of the area. In accepting that the proposed building would cause further change, we also have to be mindful that the changes that have happened on Lot 5 have been permitted activities (except possibly that portions of the paling fence may be over the permitted height of 1.8 metres above ground level at the boundary).

Regarding the bulk and dominance of the proposed building, we take into account that a building with a 3.6 metre high wall could be placed along the rear of Lot 5 provided it was set back 1.5 metres from the boundary. The back wall of the proposed building is 4.0 metres high (at the gutter), to be set back 3 metres (or 4 metres as offered by the applicants). The highest point of the

roof will be 5.4 metres high, about 7.5 (or 8.5) metres from the boundary as determined from the site plans. It would be possible for a dwelling to be built with a 6.5 metre high roofline at a similar distance from the boundary, as a controlled activity.

We have considered the relevant matters in Rule 17.1.3.4 and the evidence presented to us about the character and amenity values of the Torrent Bay settlement, particularly Mr Allan's comments which we can relate to our own observations during our site visit. We accept that the proposed building will impact on his outlook and views, even if landscape planting is established in the setback. However, we are also mindful that his outlook and views have been enhanced recently with the clearance of vegetation on Lot 5, so to some extent the suggested 4 metre tall landscape planting will be similar to what was there before. Mr Allan has been able to enjoy an outlook onto Lot 5 that he had no guarantee of keeping.

Regarding the proposed building obscuring views from the upper storey of Mr Allan's units, we asked him if lowering the roofline would reduce the effects, but he said no.

During our site visit we also saw first-hand the other recent residential developments within the Torrent Bay settlement, some of which are close to adjoining properties and buildings as allowed by the TRMP rules. The current proposal is similar to those.

Weighing up all of these matters we find that the proposed building will have adverse effects on the outlook and amenity of the Allan property, but those effects could largely occur as a result of other realistic building options on Lot 5 that could happen without Mr Allan's input; therefore we do not consider that any resulting adverse effects will be significant.

h) Effects on privacy?

As has been said, the applicants could place a 3.6 metre accessory building (or buildings) close to their rear boundary. Having considered the design detail of the rear portion of the proposed building, and the suggested landscape planting in the setback area, we are satisfied that any privacy effects on the Allan property will be less than minor.

i) Effects on coastal character?

The proposed building site is behind the first row of buildings along the beachfront at Torrent Bay, and will not in any way dominate the coastline. We therefore find that any effects on coastal character will be minimal, and we endorse Mr Davidson's proposed condition relating to building colours.

j) Effects on Lot 6 DP 1612

We are aware that the owners of Lot 6 DP 1612 have given their written approval to the building and site plans lodged with the application. We have considered whether the offer from the applicants to shift the proposed building 1 metre eastwards would invalidate that written approval which accepts a

protrusion through the daylight angle. We find that the change in effects resulting from shifting the building will be *de minimus*.

9. RELEVANT STATUTORY PROVISIONS

9.1 Policy Statements and Plan Provisions

In considering this application, we have had regard to the matters outlined in Section 104 of the Act. In particular, we have had regard to the relevant provisions of the following planning documents as set out in the evidence presented to us:

- a) the New Zealand Coastal Policy Statement;
- b) Tasman Regional Policy Statement (TRPS); and
- c) the Tasman Resource Management Plan (TRMP).

We accept and adopt, pursuant to Section 113(3) of the Act, Appendix 1 of Mr Davidson's report, paragraphs 67, 68, and 73 of Mr Rae's evidence, and paragraph 41 of Mr Quickfall's evidence which taken together identify the relevant objectives and policies of the TRMP.

9.2 Part 2 Matters

In considering this application, we have taken into account the relevant principles outlined in Sections 6, 7 and 8 of the Act, as referred to us in submissions and evidence. We have also considered the overall purpose of the Act as set out in Section 5 of the Act.

10. DECISION

Pursuant to Section 104C of the Act, we **GRANT** consent, subject to conditions.

11. REASONS FOR THE DECISION

Effects on the Environment

We are satisfied that the adverse effects on the wider Torrent Bay coastal environment will be less than minor. We acknowledge that the proposed building may adversely affect the outlook and amenity of the Allan property specifically to a more than minor degree. However we consider that the resulting effects could largely occur as the result of other possible building options on the site which the TRMP does not control (other than materials, landscaping and colour). Therefore we do not consider that the resulting adverse effects on the Allan property are significant enough to warrant declining consent or imposing modifications to the proposed building. We do consider that the building should be shifted back to 4 metres from the rear boundary as offered by the applicant, and that landscape and screen planting be required in that setback area, in order to mitigate effects on amenity and outlook.

Objectives and Policies of the TRMP

We accept there are "special amenity values" at the Torrent Bay settlement that are recognised in the policies of the TRMP. However, the TRMP rules allow further built development to take place on individual sites. The rules place some overall control on development but they are clearly not intended to **preserve** the existing character

of the settlement. With reference to Rule 18.11.3.1, it is notable that the height limit on new buildings (6.5 metres) is less restrictive at Torrent Bay than in other coastal settlements. In that context we agree with Mr Davidson and Mr Rae that the proposal is not inconsistent with the objectives and policies.

New Zealand Coastal Policy Statement

We consider that this proposal is in accord with Policy 1.1.1 of the NZCPS being development where the natural character of the coast has already been compromised. This development will not further extend development into previously undeveloped areas, nor is it ribbon development. Rather it is a minor intensification in an already settled area.

Purpose and Principles of the Act

We consider that the proposal is consistent with the matter of national importance 6(a) being to preserve the natural character of the coastal environment. Adopting a broad overall judgement approach to the purpose of the Act, we are satisfied that the proposal is consistent with Part 2 and will achieve sustainable management of natural and physical resources as set out in Section 5 of the Act.

11. COMMENTARY ON CONDITIONS OF CONSENT


We have generally adopted Mr Davidson's recommended conditions, except that we have imposed a 4 (four) metre set back from the rear boundary of the site, rather than 6 metres; and we have imposed a landscape planting requirement in that set back area for the purposes of screening the proposed building from the west.

We have also added an advice note making it clear that cooking facilities are not to be installed in the accessory building authorised by this consent.

12. EXPIRY OF CONSENT

Pursuant to Section 123 of the Act, the land use consent has no expiry provided it is given effect to within the lapse period provided by the Act.

Issued this 28th day of October 2010



Councillor Stuart Bryant
Chair of Commissioner Panel



RESOURCE CONSENT

RESOURCE CONSENT NUMBER: RM060053

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

P G Egden and J B Loughnan
(hereinafter referred to as "the Consent Holder")

ACTIVITY AUTHORISED BY THIS CONSENT: To construct a detached residential building in a coastal environment area and residential zone exceeding the permitted height for an accessory building, protruding through the daylight angle from the south boundary of the site, and encroaching on the setback from a watercourse.

LOCATION DETAILS:

Address of property:	14 Torrent Bay (Beach) Road
Legal description:	Lot 5 DP 1612
Certificate of title:	NL81/31
Valuation number:	1931002400
Easting and Northing:	2514093E 6029095N

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

CONDITIONS

General Accordance

1. The proposed building on Lot 5 DP 1612, Block III Kaiteriteri Survey District (CT 81/31) shall, apart from the setback from the western boundary, be generally in accordance with the application submitted, as shown on the attached plans marked RM060053(A and B) dated 27 October 2010. Where there is any apparent conflict between the information provided with the application and any condition of this consent, the conditions shall prevail.

Siting

2. The building shall be set back 4 (four) metres from the western boundary of the site that adjoins Lot 1 DP 8370.

Exterior Colours

3. The exterior of the dwelling shall be finished in colours that are recessive and blend in with the immediate environment. The Consent Holder shall submit to the Council's

Environment & Planning Manager for approval prior to applying for building consent the following details of the colours proposed to be used on the walls and roof of the buildings:

- (a) the material to be used (eg, paint, Colorsteel);
- (b) the name and manufacturer of the product or paint;
- (c) the reflectance value of the colour;
- (d) the proposed finish (eg, matt, low-gloss, gloss); and
- (e) either the BS5252:1976 (British Standard Framework for Colour Co-ordination 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 ≤ 50%	That the roof colour is complementary with the rest of the building/s and is no greater a percentage than 15 per cent reflectance value.
Group B	B19 to B29 and reflectance value ≤ 50%	
Group C	C35 to C40, reflectance value ≤ 50%, and hue range 06-16	
Group D	D43 to D45, reflectance value ≤ 50%, and hue range 06-12.	
Group E	Excluded	
Finish	Matt or Low-gloss	Matt or Low-gloss

* Based on BS5252:1976 (British Standard Framework for Colour Co-ordination 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.

The Consent Holder should engage the services of a professional to ensure the exterior cladding and colour selection are compatible with the long-term durability of the building material in the subject environment and in accordance with the requirements under the Building Act 2004.

Daylight

4. The proposed building shall not encroach into the daylight over angle of 27 degrees on the southern boundary to any greater extent than shown on Plan RM060053(B) dated 27October 2010.

Floor Level and Building Height

5. The floor level of the building shall be not less than 500 millimetres above the existing ground level of the site; and the maximum height of the building shall not exceed 5.40 metres above the existing ground level of the site.

Landscape and Screen Planting

6. The consent holder shall establish and maintain adequate landscape planting to a height of at least 4 metres in the setback area required by Condition 2 to effectively screen the building when viewed from land to the west of the site. This screen planting must be established and achieving its purpose within three months of the building work being completed. Prior to planting, the consent holder shall supply a planting plan to the Council's Environment & Planning Manager for approval, and shall provide a copy of the approved plan to the owner of Lot 3 DP 8370 (being 29 Lagoon Street, Torrent Bay).

Stormwater Discharge

7. Onsite stormwater discharge shall be undertaken in accordance with the permitted standards for stormwater anticipated by the TRMP, otherwise a discharge permit shall be sought and obtained.

Wastewater Discharge

8. Wastewater treatment and disposal associated with use of the accessory building authorised by this consent shall be provided in accordance with discharge permit RM070241.

Iwi Monitor

9. The Consent Holder shall engage the services of a representative of Tiakina te Taiao to be present during any earthworks. The Consent Holder shall contact the Tiakina te Taiao at least ten working days prior to commencing any earthworks and advise it of the commencement date of the earthworks. In the event of Maori archaeological sites (eg, shell midden, hangi or ovens, garden soils, pit depressions, occupation evidence, burials, taonga) or koiwi (human remains) being uncovered, activities in the vicinity of the discovery shall cease. The Consent Holder shall then consult with the New Zealand Historic Places Trust's Central Regional Office (PO Box 19173 Wellington, phone (04) 801 5088, fax (04) 802 5180), and shall not recommence works in the area of the discovery.

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 Tasman Resource Management Plan Provisions

2. This resource consent only authorises the activity described above. Any matters or activities not referred to in this consent or covered by the conditions must either:
 1. comply with all the criteria of a relevant permitted activity rule in the Tasman Resource Management Plan (TRMP);
 2. be allowed by the Resource Management Act; or
 3. be authorised by a separate resource consent.

3. Specifically, temporary or permanent kitchen or cooking facilities (including but not limited to any type of microwave oven, range, stove, or sink) shall not be installed within the accessory building authorised by this consent.
4. Any re-alignment or disturbance of the watercourse crossing the site is likely to require separate resource consent.

Consent Holder

5. 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.

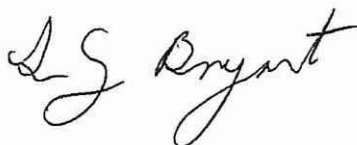
Cultural Heritage

6. In the event of Maori archaeological sites being uncovered, the Consent Holder may be required by the New Zealand Historic Places Trust to commission a professional archaeological assessment of the site and this report to be submitted prior to building consent for the dwelling being issued. This assessment is required to identify any archaeological sites in the area affected by the proposal and ways that the effects of the proposal can avoid, remedy or mitigate any adverse effects on known or unknown archaeological sites. The results of the consultation with the New Zealand Historic Places Trust shall also be submitted to Council’s Resource Consents Manager prior to any building consent being issued.

Interests Registered on Property Title

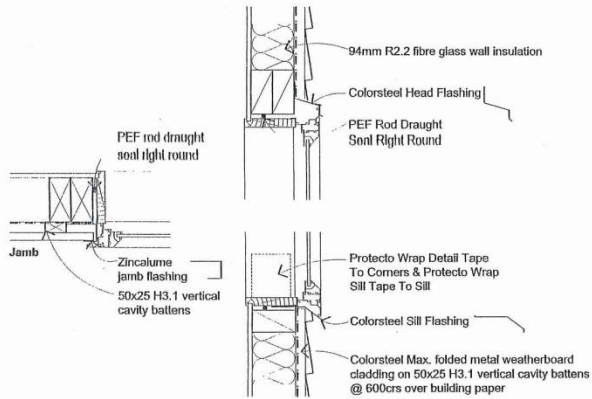
7. The Consent Holder should note that this resource consent does not override any registered interest on the property title.

Issued this 28th day of October 2010

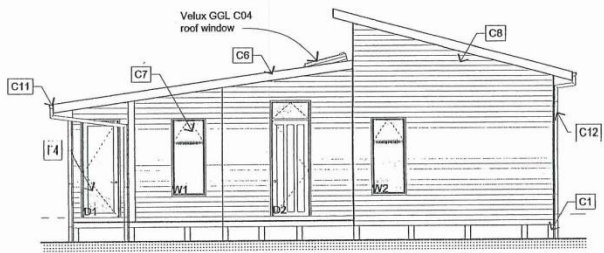


Councillor Stuart Bryant
Chair of Commissioner Panel

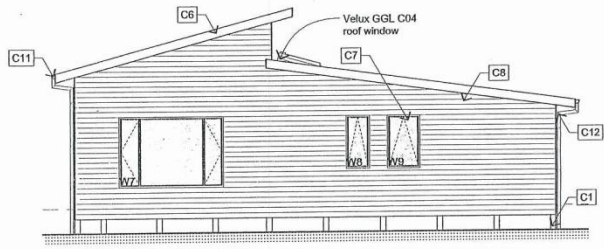
RM060053 Plan A



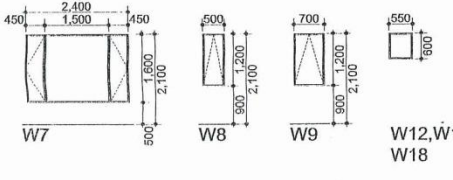
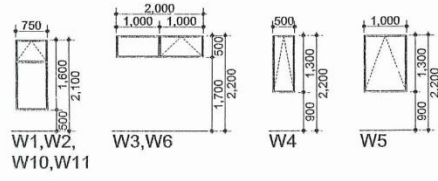
Detail C01
Scale 1:10



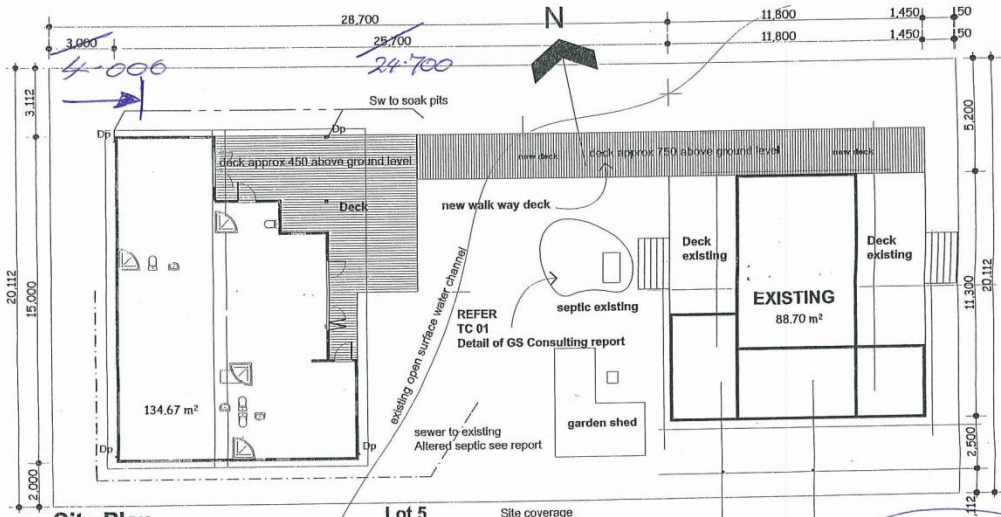
North Elevation
Scale 1:100



South Elevation
Scale 1:100



Louvers To Be Manufactured By Breezway



Site Plan
Scale 1:200

Lot 5
DP 1612
Area 890 M²

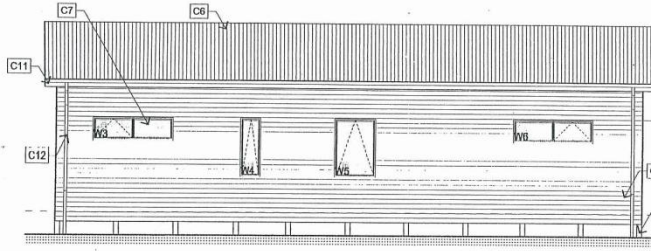
Site coverage
Existing 88.70M²
Proposed 134.67M²
Shed 15.00M²
=238.37M² / 809 = 29.46%

*RM 060053
PLAN "A"
27 Oct 2010*

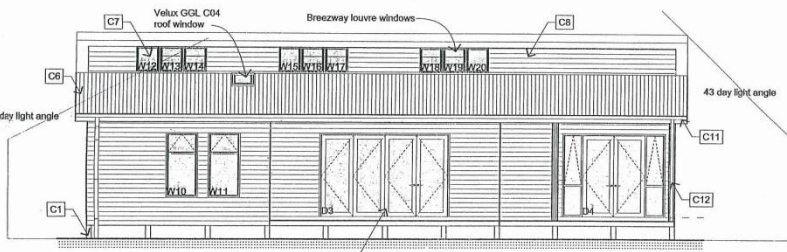
Proposed Bach-Douglas Clifford

Torrent Bay

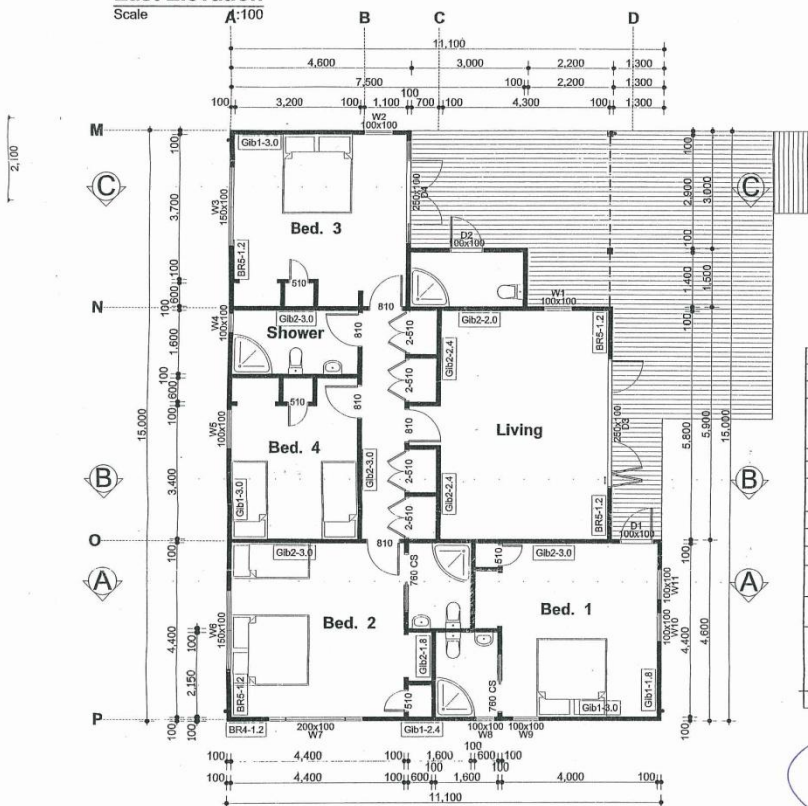
RM060053 Plan B



West Elevation
Scale 1:100



East Elevation
Scale 1:100



- C1** 125x125 H5 treated timber piles @ 1300crs set into 275x275x300 deep concrete footings.
- C2** 20mm Plyco particle board flooring on 100x50 H1.2 floor joists @ 450crs on 100x75 H1.2 bearers. 40mm Polystyrene Insulation & shade cloth stapled to underside of joists
- C3** 100x50 studs @ 600crs. External walls skew nailed @ 600crs, sheet brace strap 400mm long to one side of each opening trimmer stud. Load bearing walls 100x50 & 2-100x50 studs @ 600crs.
- C4** 13mm Gib screw fixed directly to underside of rafters.
- C5** 250x50 H1.2 treated timber rafters @ 600crs, 100x50 timber blocking @ 1800crs in between rafters. Fix rafters with 2/100x3.75 skewed nails & zed nail.
- C6** Colorsteel Max trirdek, roofing, self supporting B.P. on 75x50 purlins @ 800crs. Secure second purlin from top & bottom will two zed nails.
- C7** P.C. alloy windows, treated timber reveals, double glazed.
- C8** Colorsteel Max folded metal weather board on 50x25 H3.1 vertical cavity battens @ 600 over building paper. Tape building paper between battens with polypropylene tape.
- C9** 94mm fibre glass wall insulation R2.2.
- C10** 110mm fibre glass ceiling insulation R2.6.
- C11** Colorsteel fascia spouting on concealed brackets @ 900 crs.
- C12** Colorsteel round down pipes.
- C13** Hardiflex 4.75mm soffit lining.
- F1** 10mm Gib board level 4 finish.
- F2** 60mm customwood skirting.
- F3** Doors HC MDF for paint finish.
- F4** Glazed alloy doors to NZS 4223.
- F5** Timber panel entry door 810 in alloy frame.

FRAMING TREATMENT
Framing to all external walls to be H3.1 treated. Internal walls to be untreated kiln dried pinus radiata
NOTE: All exposed and sheltered fixings shall be Stainless Steel

BRACING LEGEND

BR1	Braceline one side min 2-4 horiz or vert
BR2	Braceline one side min 1-8 vert only
BR3	Braceline one side min 1-8 horiz only
BR4	Braceline one side min 0.9 6kN end stud fixing
BR5	Braceline one side min 1.2 6kN end stud fixing
BR6	Braceline one side min 1.2 6kN end stud fixing & 9.5mm gib other side
BR9	Braceline one side min 9.6 6kN end stud fixing
SP1	7mm Ply Min 900 6kN End Stud Fixing
SP2	7mm Ply Min 600 6kN End Stud Fixing
SP4	7mm Ply Min 450 6kN End Stud Fixing
SP20	7mm Ply Min 600 6kN End Stud Fixing & 9.5mm Gib Other Side
SP10	7mm Ply Min 900 6kN End Stud Fixing & 9.5mm Gib Other Side
SP140	7mm Ply Min 1000 6kN End Stud Fixing & 9.5mm Gib Other Side
GIB 1	Gib Bd. With Diagonal Brace min 2.400
GIB 2	Gib Bd. Both Faces With Diagonal Brace Min 1.800
GIB 0	Gib Bd. Both Faces With Min 2.400

RM 060053
PLAN "B"
27 October 2010
16/11/2005



GRANT MILES

ARCHITECTURAL DESIGN LTD.
MEMBER A.D.N.Z.

Contractor To Verify All Dimensions Before Commencing Work.

Russley Park
505 Wairakei Road
phone 03-3585 199
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File	Drawing
994	01
	Of 3

Date Confirmed:

Chair: