

MINUTES

TITLE: Commissioner Hearing
DATE: Friday 9 December 2011
TIME: 1.00 pm
VENUE: Takaka Office, Tasman District Council, 78 Commercial Street, Takaka

PRESENT: Commissioner Dr Jeff Jones

IN ATTENDANCE: Consent Planner (L Davidson)
Executive Assistant (V M Gribble)

**1 APPLICATION NO RM110684 – DEPARTMENT OF CONSERVATION,
WAINUI FALLS ROAD, WAINUI BAY, GOLDEN BAY**

Application No RM110684 - Department of Conservation, Wainui Falls Road, Wainui Bay, Golden Bay

The application seeks to construct a public toilet facility with a 9000 litre containment tank at the Wainui Falls Road car park.

The application site is located at Wainui Falls Road, Wainui Bay, Golden Bay, being legally described as Legal Road.

The Commissioner proceeded to hear the application, presentation of submissions and staff reports as detailed in the following report and decision that was pursuant to Section 104B of the Act, to **GRANT** consent, subject to conditions

Report and Decision of the Tasman District Council through an independent Commissioner

Meeting held in the Meeting Room, Tasman District Council's Golden Bay Service Centre, Takaka on 9 December 2011
Site visit undertaken on 9 December 2011
Hearing closed on 9 December 2011

An Independent Hearing Commissioner ("the commissioner") was engaged on behalf of the Tasman District Council ("the Council") to hear an application lodged by **the Department of Conservation** ("the Applicant"), to construct a public toilet facility with a 9000 litre containment tank on road reserve at the Wainui Falls Road car park. The application, made in accordance with the Resource Management Act 1991 ("the Act"), was lodged with the Council and referenced as RM110684.

COMMISSIONER: Dr Jeff Jones

APPLICANT: Mr Steven Wynne-Jones
Mr Neil Murray

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

SUBMITTERS: Joe Bell
Adriarne Robertson
Kevin Lovell

IN ATTENDANCE: Ms Valerie Gribble (Secretary)

1. SUMMARY

The commissioner has **GRANTED** resource consents to construct a public toilet facility with a 9000 litre containment tank on road reserve at the Wainui Falls Road car park, subject to conditions.

2. DESCRIPTION OF THE PROPOSED ACTIVITY

The Department of Conservation (DoC), the applicant, wants to construct a fully accessible toilet that will include a 9000 litre containment tank, located in an area used for car parking for visitors to the Wainui Falls. The area is road reserve and DoC has reached an agreement with Council's Engineering Department to occupy part of the road reserve for that purpose.

The need for a toilet in this location has been identified due to the fouling of both the carpark and areas near the track to the Wainui Falls, from an increasing number of visitors to the Wainui Falls. This has resulted in a number of complaints to DoC.

The proposed facility is similar to other public toilets that are provided throughout the District, by the Tasman District Council or DoC. The nearest public toilet to the Wainui Falls area is at the entrance to the Abel Tasman National Park and DoC considers that that facility is too far away to be of any use for people visiting the Wainui Falls.

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

Zoning: The subject land is road reserve. Road reserve has the zoning of land abutting it, in this case a composite of Rural 1 and Rural 2 land with the zone boundary being the centreline of the road reserve.

The toilet is proposed to be located on the south eastern side of the road reserve thus the site has Rural 2 zoning.

Area: Land Disturbance Area 1.

The proposed activity falls into a category that the Tasman Resource Management Plan (TRMP) does not make specific provision for as usually the only buildings that are constructed on road reserve are parts of a public utility or temporary facilities associated with construction works for up to 12 months pursuant to rule 16.8.2.1 of the TRMP.

I accept that notwithstanding the fact that there is no rule to permit such a facility, the application can be considered under the provisions of the Resource Management Act 1991 and thus it should be treated as a Discretionary Activity under Section 87B of the Act.

4. NOTIFICATION AND SUBMISSIONS RECEIVED

4.1 Notification

The application was fully notified on 1 October 2011 and submissions closed on 31 October 2011

4.2 Submissions

Submissions in support

Submitter	Reasons	Heard?
James Robertson	Need for a toilet in this area, but prefers the site 386 metres to the south of the carpark.	No
Joe Bell	No reasons provided, but supports the provision of a toilet in this location.	Yes
John McKie	Need for a toilet with large numbers of visitors to the Wainui Falls.	No
Judith Hoch	Living locally she has seen the problem of fouling of the area and the need for a toilet.	No
Adriarne Robertson	Lives locally and mows the area that is used for parking. Has seen fouling of this area and supports a toilet in this location or further south as you enter the bush.	Yes
Michael Robertson and Sue King	Wainui Bay farmers who graze the adjoining land. Have seen fouling of the area and support the provision of a toilet in this location.	No

Submission in opposition

Submitter	Reasons	Heard?
Kevin Lovell	Questions the Department of Conservation's right to build on road reserve and believes it will become obsolete if carparking takes place further south from the current park. He considers the toilet will encourage overnight parking at this location.	Yes

The submitters' properties are shown in Appendix 1 attached to this decision.

5. PROCEDURAL MATTERS

There were no procedural matters that are not dealt with in Section 7, Principal Issues and my Main Findings, below.

6. EVIDENCE HEARD

I heard evidence from the applicant, expert witnesses, submitters, and the Council's reporting officer. The following is a summary of the evidence heard at the hearing.

6.1 Applicant's Evidence

Mr Neil Murray for the Applicant

Mr Wynne-Jones, Community Relations Officer, at DoC's Nelson Conservancy introduced the application and called Mr Neil Murray, DoC's Programme Manager Visitor Assets and Historic, at DoC's Golden Bay Office. Mr Murray outlined the application, detailed the reasons for the proposed toilet, why it should be located at the car park rather than anywhere else, and the level of support for it in the local community, including iwi.

He also commented on the issue of freedom camping at the car park and described what had been done to control it.

Mr Stephen Wynne-Jones for the Applicant

Mr Wynne-Jones, a resource management planner, resumed and dealt with the RMA aspects of the proposal including relevant aspects of the TRMP. This he did by reference to the pre-circulated Section 42A officer's report which he said he generally agreed with.

He specifically addressed the site ownership/occupation issues which had been raised in the written submission from Mr Lovell.

In conclusion, he noted that the proposal would have no discharges to either water or the land and that overall it would have only very minor adverse effect on the environment.

6.2 Submitters' Evidence

Ms Adriarne Robinson

Ms Robinson, a local resident, who maintains the property immediately adjacent to the proposed toilet site, described her experiences in doing so, having to deal with the unhealthy deposits of human faeces that she frequently encountered. She made abundantly clear her level of support for the proposal.

Mr Joe Bell

Mr Bell, a former chairman of the Golden Bay Community Board, spoke in support of the application. He said that while he would have no objection to the location of the toilet being shifted further along the track, he would be concerned if that relocation resulted in a loss of established plantings at the other proposed sites.

Mr Kevin Lovell

Mr Lovell, owner of land along both sides of the road reserve leading to the Wainui Falls Track, largely covered an apparently longstanding grievance that he has had with the Tasman District Council (TDC), over the legality of TDC staff entering into agreements with DoC for DoC's effective occupation of land on the road reserve for the proposed toilet. He produced copies of emails, letters and other documents detailing this issue. He also said that a site some 438 metres along the track would better cater for the track walkers than the proposed site.

He noted that the recent efforts to control free campers at the car park by the erection of a sign appeared to be effective.

6.3 Council's Reporting Officer's Report and Evidence

Mr Laurie Davidson (Takaka based Consents Officer)

Mr Davidson referred to his Section 42A report and its recommended conditions and requested that it be taken as read. He said that nothing that he had heard in the submissions presented, had suggested to him that he should change any part of it.

He said that structures were often constructed on road reserves to provide general community benefit and gave some examples. In answer to matters raised, he noted that the Community Board supported the proposal and that he was unaware of any proposals to increase the area available for parking at the car park.

In conclusion he noted that it was a moot point as to whether consent is necessary for the proposal, but in the circumstances TDC had adopted a conservative position, given its involvement as the "owner" of the road reserve. Thus the application was required and it was publicly notified.

6.4 Applicant's Right of Reply

Mr Wynne-Jones reiterated his comments concerning the irrelevance of land ownership issues to RMA decision makers. He said that the proposed condition relating to the provision of the "No Overnight Camping" sign was inappropriate as control of camping was a TDC responsibility on its road reserve.

In answer to a question, Mr Wynne-Jones advised that the cost of extending the road formation to facilitate the shifting of the car park to the alternative down track sites would involve significant expenditure, well out of proportion to the budgeted expenditure for the toilet at the existing car park.

7. PRINCIPAL ISSUES AND OUR MAIN FINDINGS

The principal issues that were in contention and my main findings on these issues are:

7.1 Use of road reserve for Purposes Other Than Rooding

I accept and, pursuant to Section 113(3) of the Act, adopt Mr Davidson's assessment of this matter as it is stated in Section 6.1 of his report.

7.2 The Need for Toilets for the Wainui Falls Walkway

There is clear evidence in both the application and the submissions from people living in Golden Bay that there is a problem with people using the area from the car park to the Wainui Falls walkway as a toilet area. I accept that this results in extra unpleasant work for both DoC and local people to maintain an acceptable level of public health, safety and amenity.

I also accept that it is not clear whether this problem is the result of people using the walkway or people electing to stay overnight in the parking area. It is probably fair to say both contribute. Given that both contribute and the number of visitors to the area is increasing, the applicant has rightfully decided to address the problem now as fouling will only get worse unless the issue is addressed.

Given that the nearest public toilets are either at the start of the Abel Tasman Track in Wainui Bay or at Tata Beach, I readily accept that the provision of a toilet at this point will be a useful public convenience for visitors to the area and will address a significant adverse environmental effect resulting from the use of the area by those visitors to the notable natural feature that is the Wainui Falls. I note that all submitters are in agreement with that point of view.

7.3 Alternative Locations for the Toilet

The question of alternative locations was raised, both in the application and by submitters. Section 11 of the application considers two alternative locations, one 386 metres and the other 438 metres to the south of the carpark on the track to the walkway. Both provide sufficient land for the facility and practical access to enable them to be serviced.

I heard evidence to the effect that most public toilets are provided in close proximity to parking areas and that even if there is signage to indicate the presence of facilities some distance away, they may not get used in every instance.

I note that in New Zealand, DoC are probably the public agency that have the most experience in the location and operation public toilets in remote areas so they are readily accessible, but sited sensitively in relation to the environment. I therefore accept DoC's contention that the proposed site is the most appropriate site to meet the current need.

I also accept that if the toilet was to be located on along the track on DoC land, then it could be constructed without the need for resource consent, but would not cater for all potential visitors to the track and/or car park.

7.4 The Amenity of the Wainui Falls Area

The RMA defines Amenity values as follows: *Amenity values means those natural or physical qualities and characteristics of an area that contribute to peoples appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.*

Clearly this is a matter that has to be carefully considered when making a decision on the provision of a toilet at the Wainui Falls car park. The area where it is to be located adjoins a residential sized property and is more generally surrounded by productive rural farmland that is used for grazing. Beyond this land is the Wainui Falls Track that follows the river to the falls through native bush. The amenity value of this land that is administered by the Department of Conservation is regarded as very high and on-going work is carried out to preserve this value.

Any fouling of both the car park and track edges has an adverse effect on this amenity and is a reasonable justification for some sort of facility to address this issue. A containment type toilet which has no discharge to the environment and has a proven record of being a suitable facility for visitors to areas similar to the subject site would seem to be an ideal solution.

The application sets out the detail of the proposed toilet. It is a standard design used by DoC with a footprint of approx 3.5 m² and a height of approx 2.7 metres, incorporating the use of timber materials and colours that generally blend with the natural environment. In this case it is also proposed to landscape both the sides and the rear of the toilet that will reduce the visual impact of the structure. There is also the opportunity to impose more specific conditions that will control the appearance of the building and the provision of landscaping to mitigate the impact of a building on land that is currently devoid of vegetation.

Chapter 5 of the TRMP contains the objectives and policies that relate to site amenity effects and sections 5.2 and 5.3 are particularly relevant in this case. Relevant objectives and policies are as follows:

Objective 5.2.2: Maintenance and enhancement of amenity values on site and within communities throughout the District.

Policy 5.2.3.4: To promote amenity through vegetation, landscaping, street and park furniture, and screening.

Objective 5.3.2: Maintenance and enhancement of the special visual and aesthetic character of localities.

Policy 5.3.3 To avoid remedy or mitigate the adverse effects of the location, design and appearance of buildings, signs and incompatible land uses in areas of significant natural or scenic, cultural, historic or other special amenity value.

I accept and, pursuant to Section 113(3) of the Act, adopt Mr Davidson's assessment of this matter as it is stated in Section 6.4 of his report and in particular his contention that *"the amenity of the Wainui Falls area is an issue that is very important in this case. The fouling of the area is particularly offensive to visitors to the area and creates a very unhealthy environment for both visitors and local residents. The proposed toilet is an attractive design and sensitive landscaping provides screening from neighbouring residences can help preserve the amenity of the area and provide a facility that is a valuable community asset."*

7.5 Objectives and Policies of the TRMP

In his report, Section 6.4, Mr Davidson assessed the relevant objectives and policies from the TRMP. I have discussed these above and accept and, pursuant to Section 113(3) of the Act, adopt Mr Shirley's assessment and findings on these objectives and policies.

7.6 Unauthorised Overnight Occupation

I heard evidence that the Tasman District has an on-going problem with unauthorised overnight occupation. While the use of certain Council areas is sanctioned for self contained vehicles to stay overnight, other freedom camping is not supported. The non self-contained vehicles and campers are responsible for fouling a number of areas throughout the District, forcing the Council to develop controls such as bylaws and a monitoring programme to discourage this activity. The carpark in this case is relatively remote and the inspection of these areas is very much a part time operation that is mostly confined to the summer holiday period.

I accept that while the provision of a toilet in this location may address the fouling of the area, it may also encourage additional overnight use of the area. It may be necessary to ensure that additional monitoring of the area is undertaken by enforcement officers to ensure this is kept under control.

However I accept that it is inappropriate to allow issues relating to freedom camping throughout the District to influence the decision of whether a toilet is appropriate for the Wainui Falls site. That some freedom campers' behaviour influences the need for the toilet is causative. It is not an effect from provision of the proposed toilet.

7.7 Other Matters

I also accept and, pursuant to Section 113(3) of the Act, adopt Mr Davidson's Section 6.6 where he discusses a recent interpretation of the rules relating to buildings in relation to road boundaries and the extent to which it should apply to buildings on road reserves.

8. RELEVANT STATUTORY PROVISIONS

8.1 Policy Statements and Plan Provisions

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

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

8.2 Part 2 Matters

In considering this application, I have taken into account the relevant principles outlined in Sections 6, 7 and 8 of the Act, as well as the overall purpose of the Act as presented in Section 5.

9. DECISION

Pursuant to Section 104B of the Act, I hereby **GRANT** consent, subject to conditions.

10. REASONS FOR THE DECISION

Effects on the Environment

The amenity of the local Wainui Falls area will be improved by the provision of the toilet and the location, design, finish and landscaping can be controlled by conditions to ensure that the toilet building does not have an adverse visual impact.

The overnight occupation that may occur at this location should not be seen as a reason to prevent the toilet being provided. The toilet will address a significant adverse environmental effect arising from such camping. Evidence is that current efforts to control this practice have been successful but it is however an issue that that enforcement officers need to monitor and control as necessary.

Overall, the provision of an accessible full containment toilet in the position applied for, subject to conditions will ensure that overall the amenity of the area is significantly enhanced from that which exists as present.

Purpose and Principles of the Act

Section 104 of the Act requires me to make a broad overall judgement as to how the merits of the application fit within the overall purpose of the Act as specified in Section 5.

At its core, this case requires the balancing of the minor effects on rural amenity by the provision of the toilet, against the positive effects of reducing, and on the evidence eliminating, significant adverse environmental effects from the lack of such a facility. Overall I am satisfied that the proposal is consistent with Part 2 and will achieve the purpose of sustainable management of natural and physical resources as set out in Section 5 of the Act.

11. COMMENTARY ON CONDITIONS OF CONSENT

The conditions are more or less as recommended in the Section 42A report, with the deletion of the condition requiring the "No Overnight Camping" sign. I accept that overnight camping at the car park is an issue for TDC and not DoC. However I note the spirit of cooperation which exists between TDC and DoC staff in managing this tourist attraction and see no reason why it will not continue and that each organisation will address matters within their respective terms of reference in

the interests of maintaining and indeed enhancing the public's enjoyment of the attraction.

12. LAPSING OF CONSENT(S)

Pursuant to Section 125(1) of the Act, resource consent, by default, will lapse in five years unless it is given effect to before then.

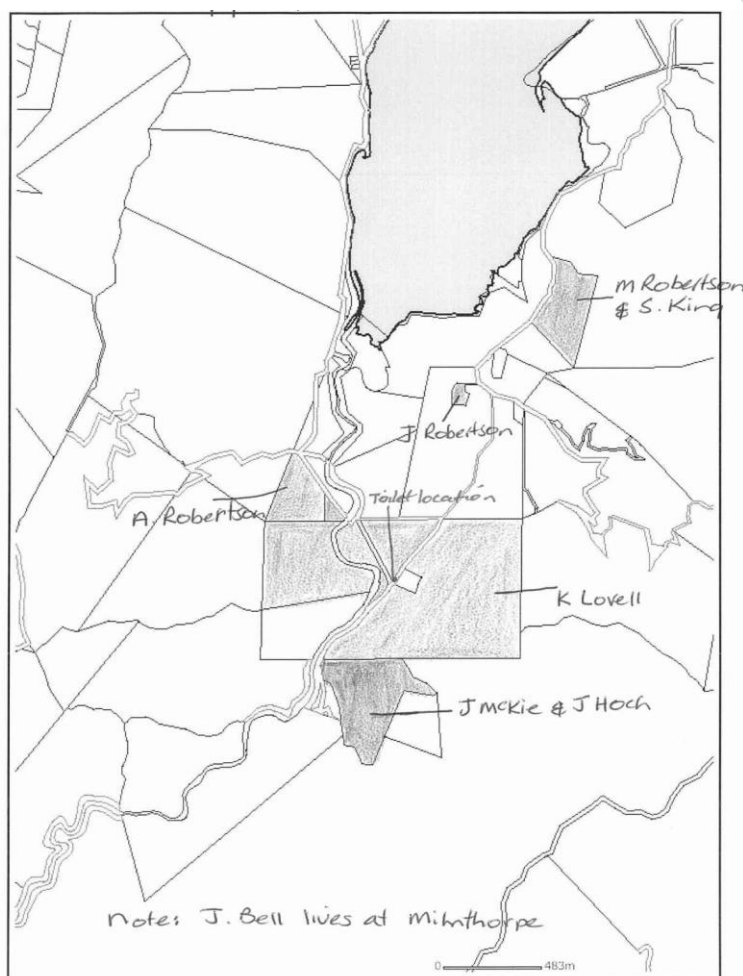
Issued this 15th day of December 2011



Dr Jeff Jones
Commissioner

APPENDIX 1

Plan showing location of submitters to the application



ExploreTasmanMap - SUBMITTERS

28/11/2011 DISCLAIMER:

This map is derived from ExploreTasman and has generally been compiled from data generated by and supplied to the Tasman DC. It has no legal status and is known to be incomplete. To ascertain the exact location of any item, Tasman DC advises that the customer arrange onsite verification. Tasman DC will not be liable for any damages or loss whatsoever suffered from the use of this information.

Cadastre sourced from Land Information New Zealand (LINZ) data. Crown Copyright reserved.

Rm 110684

RESOURCE CONSENT

RESOURCE CONSENT NUMBER: RM110684

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

The Department of Conservation
(hereinafter referred to as “the Consent Holder”)

ACTIVITY AUTHORISED BY THIS CONSENT:

The construction of a public toilet facility with a 9000 litre containment tank on road reserve at the end of Wainui Falls Road, Golden Bay.

LOCATION DETAILS:

Car park on road reserve at the end of the formed Wainui Falls Road, adjacent to Lot 1 DP 7096 as shown on Plan A annexed to this consent.

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

CONDITIONS

1. The proposed toilet facility shall be generally in accordance with the application submitted, as shown on the attached plans marked RM110684 dated 9 December 2011. Where there is any apparent conflict between the information provided with the application and any condition of this consent, the conditions shall prevail.
2. The building and screen shall be finished in recessive colours that blend with the natural environment. Prior to commencement of the project, the consent holder shall submit the details of the materials, colour and finish of the building and screen to the Consent Planner (Takaka) for approval.
3. The consent holder shall submit a landscape plan of the area surrounding the toilet to be approved by Council’s Reserves Manager prior to commencement of the project. The planting shall consist of vegetation to provide a screen at the rear and on each side. Plants shall be not less than 1 metre in height at the time of establishment which shall be the first planting season following grant of consent. The planting shall be maintained on an on-going basis and any vegetation that fails or is damaged shall be replaced in the following planting season.

4. The toilet shall be monitored and maintained by the consent holder in accordance with the details submitted with the application. Any waste removed from the toilet shall be disposed of at the Council's sewage treatment facility, subject to approval of Council's Engineering Department.
5. The toilet shall be a total containment facility with no discharge of any type.
6. Pursuant to Section 128(1)(a) and 128(1)(c) of the Resource Management Act 1991, the Consent Authority may review any conditions of the consent within 2 years from the date of issue of this consent and thereafter within one month of the anniversary of the date of this consent) for any of the following purposes:
 - a) to deal with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage; or
 - b) to deal with inaccuracies contained in the consent application that materially influenced the decision made on the application and are such that it is necessary to apply more appropriate conditions; or
 - c) to assess the appropriateness of imposed compliance standards, monitoring regimes and monitoring frequencies and to alter these accordingly.

ADVICE NOTES

1. Staff of the consent holder are expected to cooperate with Tasman District Council staff ensuring the maintenance of the existing and future signage, in close proximity to the toilet, prohibiting overnight staying in the car park.
2. This consent is issued pursuant to the Resource Management Act 1991 and the Tasman Resource Management Plan. It does not constitute building consent and if the project involves any form of building, consent should be sought pursuant to the Building Act 1991.
3. Monitoring of this resource consent will be undertaken by the Council, as provided for by Section 35 of the Act and a one-off fee has already been charged for this monitoring. Should monitoring costs exceed the initial fee, Council reserves the right to recover these additional costs from the Consent Holder. Costs can be minimised by consistently complying with conditions, thereby reducing the necessity and/or frequency of Council staff visits.
4. 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.
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

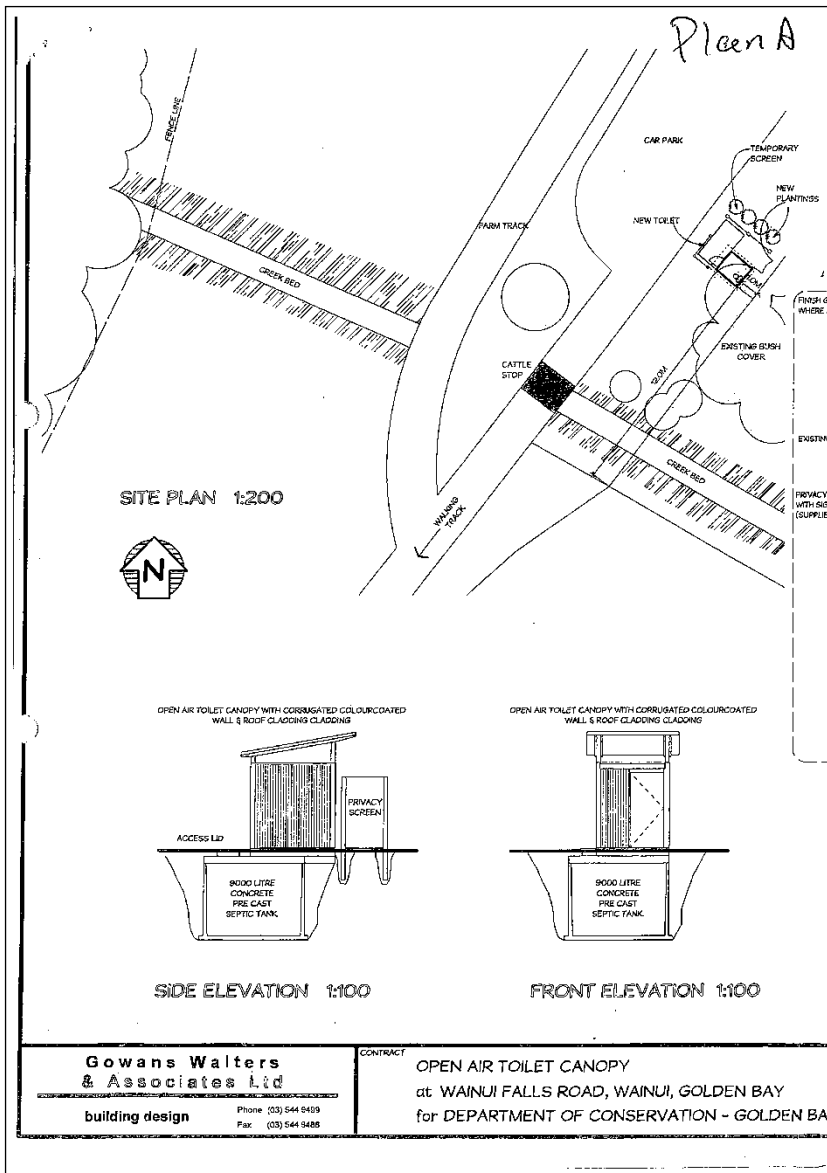
and occupiers of the subject land. Any new owners or occupiers should therefore familiarise themselves with the conditions of this consent, as there may be conditions that are required to be complied with on an ongoing basis.

Issued this 15th day of December 2011



Dr Jeff Jones
Commissioner

Plan A



Date Confirmed:

Chair: