

STAFF REPORT

TO: Community Services Committee
FROM: Manager Property Services
DATE: 15 March 2011
SUBJECT: Baches on Legal Road or Esplanade Reserves Report – RCS11-03-09

PURPOSE

To provide the Council with information on baches occupying legal road or esplanade reserves.

BACKGROUND

Since the initial surveys were completed in New Zealand which provided for a road reserve or marginal strip along coastlines and rivers, persons have taken the opportunity of establishing hunting, fishing or recreation accommodations, usually as a weekend or holiday getaway. With the subdivision of coastal land and the vesting of esplanade reserves, the Council has inherited a number of structures that are now within esplanade reserves that have been created as a result of those subdivisions. The laws that apply to such areas do not provide for the ability of private persons to occupy baches on esplanade reserve land or legal road.

In the Tasman District Council area there are 12 known baches situated on legal road or esplanade reserve in addition to the baches on legal road at Ligar Bay. These occupations are covered by a licence agreement. The licence agreements vary slightly between legal road and esplanade reserve but generally provide that they are permitted at the pleasure of Council.

In 2004 the Council passed the following resolution in relation to buildings on esplanade reserve only:

**Moved Crs Henry/O'Regan
CS04/09/11**

THAT Council notify known occupiers of buildings on local purpose (esplanade) reserves:

That they will be granted rights to occupy the envelope only of the buildings situated on those reserves.

That any buildings which are considered to be unsafe or a health risk are to be removed forthwith either by the owner or by the Council at the owner's expense.

That the term of occupation be at the same date and terms as those on the legal road at Ligar Bay or the life of the main occupier whichever is the earliest.

That no further additions or improvements to the buildings are permitted other than a reasonable standard of maintenance.

That a market rental for the land based on the value of adjoining land be established.

That occupation is restricted to the immediate family of the "owner" with no rights of assignment, and then for a maximum of three weeks at any one time with a maximum of six months in any year.

CARRIED

This only applies to baches on esplanade reserve. An exception was made for the Gatward bach situated on esplanade reserve at Ligar Bay to allow for the bach to remain for the life of Mrs Gatward. This amendment was made in December 2008 and is specific to Mrs Gatward. There is no formal policy regarding baches on legal road.

COMMENT

Attachment 1 to this report identifies the baches that are recorded as being situated on esplanade reserve. In each circumstance the baches were erected on the land when it was in private ownership. Subsequent subdivisions have required the vesting of esplanade reserves which has in turn resulted in these baches becoming the responsibility of Council.

Attachment 2 identifies the baches that are situated on legal road. Five of these baches are located adjacent to rivers with the remaining three being located adjacent to the coastline. The attachment records those baches known to be on legal road but it is acknowledged that this may not be complete. Because of the network of unformed legal roads within the Tasman District Council area, it is simply not practical to formally identify every bach erected on unformed legal roads. However where they are identified they will be included in our database. There are numerous instances of buildings that encroach onto legal roads which are not addressed in this report. In such instances, the encroachment is subject to a licence at the pleasure of Council with condition that the licensee must also be the adjoining property owner.

There is a separate process which provides for private structures on, over or under legal roads for which an annual licence is payable. They are not being addressed in this report. The Council owns a forestry block in the Howard Valley on which several baches are located, which are subject to a lifetime licence. At the death of the licensee the improvements are required to be removed.

The baches on legal road vary in age, size and condition and inspection suggests that they are used as weekend retreats or holiday base. There is no evidence to suggest that they are being commercially tenanted. A bach on legal road at Stillwell Bay is accessible either through the National Park or by sea. Two baches at Honeymoon Bay are accessible either through private land or by sea. The others are situated adjacent to the Baton River, the Wangapeka River and the Motueka River situated between the formed legal road and the river.

Although it is not a formal policy, the practice relating to encroachments or improvements situated on legal road has been to tolerate them through goodwill agreements and usually be allowed to remain provided that any issues regarding the rights of access by the public are able to be dealt with relatively easily. Where structures clearly impede the rights of the public or complaints cannot readily be dealt with, these structures are generally required to be removed. Although not provided for by law, this practice is followed by most local authorities in New Zealand.

There are instances where coastal structures have been allowed to remain on legal road throughout New Zealand. Some of these have been identified as historic areas by the New Zealand Historic Places Trust and generally the baches will be transferred into public ownership (Council) when the licence is relinquished (either voluntarily or at the death of the licensee or upon termination). However, consideration also has to be given to the principle in relation to existing structures that they are a private use of public land and this should only be acceptable where the public interest (including protection of the environment) is best served. We have not identified any bach situated on legal road within the Tasman District Council boundaries that may be acknowledged as historically significant or have such historical importance that it should be protected or, that there is sufficient public support to do so. Because of the implied rights of access by the public over legal road, whether formed or unformed, it is not appropriate for the Council to establish a policy that allows private structures on legal road where this is not provided for under any enactment. A set of guidelines or principles may be acceptable and these should provide:

- Any licence to occupy a bach on legal road should be for the footprint of the building only.
- Personal occupation or development of surrounding areas is discouraged.
- Public access is not to be prevented and there is to be sufficient land available within the legal road corridor for the public to have continued access.
- Licence fees should be based on the market value of nearby or similar properties and include provision for the payment of a rates equivalent.

Licences to occupy are to be issued and provide for buildings to be maintained to a reasonable standard, licences may have a defined period but may be terminated upon notice (usually three months) from Council, a licence fee in lieu of a market rent assessed by a registered valuer is to be paid. Upon the termination of a licence all improvements are to be removed or at the Council's discretion may revert to the

Council. Licences may be assigned at the discretion of the Manager Property Services.

SIGNIFICANCE

The subject matter of this report is not regarded as significant under the Council's policy on significance.

AFFECTED PERSONS

The owners of the baches may be considered to be affected persons regarding any decision that the Council may make in relation to baches on esplanade reserve or legal road. However because of the implied rights of the public to access legal roads and esplanade reserves it is considered that they are only marginally more affected than the rights of the public. If the Council considered it was necessary to consult on any issue arising from this report, such consultation should be with the general public.

OPTIONS

Esplanade Reserves

The existing policy for the occupation of buildings on esplanade reserves has been in place since 2004. The restriction on occupancy "that occupation is restricted to the immediate family or the owner with no rights of assignment, and then for a maximum of three weeks at any one time with a maximum of six months in any year" is almost impossible to enforce. When this was resolved it was done so with the knowledge that at least one bach on esplanade reserve was being used as a permanent dwelling. A more simple amendment would be "that there will be no rights of assignment, no permanent occupation and the buildings are not to be commercially let." This would also assist in clarifying a fair market licence fee which has been an issue with the previous policy. Because baches occupying esplanade reserve within Tasman District Council are in areas frequented by the public on a regular basis the condition (with the exception of the Gatward bach) that they expire on 31 March 2014 is considered appropriate.

Alternatively the Committee may consider abolishing the policy or require the baches to be removed forthwith, or provide the owners of the structures with lifetime licences, or remove the requirement for the payment of a market licence fee, or any combination of the above. Because of the requirements of the Reserves Act 1977 and the nature of esplanade reserves, it is considered appropriate that the policy for buildings on esplanade reserve be revised as set out in attachment 3.

Legal Road

Guidelines on best practice are suggested for the occupation of baches on legal road. A policy allowing baches on legal road is discouraged because of the legal

position regarding the occupation of legal roads. Ignoring the occupation of baches on legal road is not recommended and while there is an option to require the baches to be removed forthwith, only two complaints have been recorded in the last 20 years (Ligar Bay baches excepted) regarding these baches which have both been satisfied. Therefore unless there are issues with the public rights to access the legal road corridor on which these improvements are situated, a set of guidelines to clarify occupancy rights is considered appropriate. Attachment 4 sets out the proposed guidelines.

RECOMMENDATION

- 1 THAT the Baches on Legal Road or Esplanade Reserves (Report RCS11-03-09) be received by the Community Services Committee.
- 2 THAT resolution CS04/09/11 be rescinded.
- 3 THAT the policy for structures on esplanade reserves as amended as set out in attachment 3 to Report RCS11-03-09 be approved.
- 4 THAT the guidelines for the occupation of baches on legal road as set out in attachment 4 to Report RCS11-03-09 be approved.

Jim Frater
Manager Property Services

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