

STAFF REPORT

TO: Environment & Planning Subcommittee

FROM: Laurie Davidson - Consent Planner

REFERENCE: RM090404

SUBJECT: **J KEMP - REPORT REP10-10-13** - Report prepared for hearing of 11 October 2010

1. SUMMARY OF PROPOSAL

The application lodged by Ms J Kemp seeks land use consent to authorise three buildings as dwellings on the property in Rocklands Road and to have two sleepouts that are more than 20 metres from the primary dwelling. The buildings are existing and this application seeks retrospective consent for them as they were existing at the time the property was purchased, although in a different form. It appears unauthorised work was carried out by the previous owner and by the applicants since purchase.

Special Note: Following setting a formal hearing date, the applicant has provided additional information in the form of a letter from Staig and Smith dated 23 September with attachments. The attachments include a report on the drainage systems provided for the site and reports by ASAP Building Inspections Ltd relating to the sewing and honeymoon sleepouts and the Gingerbread Cottage. These are now included with the information to be sent out with the notification of the hearing and this report. As a result of the building inspection carried out, the applicant has withdrawn the request to use the “Honeymoon Cottage” as a sleepout and it will revert to a non-habitable accessory building (a reading retreat).

1.2 Site Description / Location

The applicant’s land is a parcel of land zoned Rural Residential that is some 1.4812 hectares in area and adjoins the Grove Scenic Reserve at Clifton. The property has a number of limestone outcrops and a variety of well established vegetation on the site.

The main house on the property is a substantial building with an attached wing that was added in 2001. This provides additional bedrooms, ablutions and a living area that provides a degree of independence, but remains as part of the dwelling. There is a building known as the “Gingerbread Cottage” which was consented as serviced sleepout, but appears to be used as an independent residential unit. This matter is addressed further in this report. There is also another building that is known as the “Hex Cottage” that was consented as a studio for an artist and was converted to enable it to be used for accommodation without the required consent. The

“sleepouts” were accessory buildings that have been upgraded to enable them to be used for habitable purposes and this work was also undertaken without the required consent.

The Rocklands Road area is a rural residential area stretching from the flats of Clifton to some reasonably elevated land that is part of the Pikiiruna Ranges on the eastern side of the Takaka Valley. The area is characterised by a range of lifestyle properties that vary in size from as small as 1.3 hectares to over 17 hectares with a variety of topography. The area has a microclimate that allows a variety of subtropical species to be grown.

The area has no services as such, other than a local water scheme that is sourced from the land to the east of the area. Houses in this area depend on septic tanks to treat domestic waste water. The existence of karst formation in this area makes this aspect important.

1.3 Background to the Application

The situation with this application has some elements of complexity that does not present a straight forward application to use Rural Residential land for multiple residential uses. The buildings are in place and the application seeks consent to allow them to remain and be used for rental accommodation. The status of each of the buildings to be used needs to be considered both individually and as a total package and this is addressed in more detail within this report.

To clarify the situation, the current application needs to consider what is consented and existing that complies with Tasman Resource Management Plan (TRMP) rules, what work has been carried out other than in accordance with TRMP rules and finally what the resulting effects of allowing such a development has on the character and amenity of the Rocklands Road Area.

The application that has been submitted contains some information that needs to be corrected when considering this application.

Firstly, it states “the site currently has approval for two dwellings”. It does not have approval for two dwellings, it has approval for a dwelling that includes a wing attached by a deck and a second residential building (sleepout with facilities).

Secondly it states “It is proposed that a third building located on the site be consented to be a self contained unit. The unit has building consent to install a kitchen facility, which makes the building self contained.” An application was lodged for building consent to install a kitchen but it was not issued. BC060749 is on the current status TDC record as “Further information requested”. There is also a resource consent restriction certificate issued for that application.

Some of the unauthorised work has been undertaken by the previous property owners and some has been undertaken by the current owners. There is also a process that will need to be followed under the Building Act 2004 to enable the unauthorised work to be accepted after appropriate inspection and certification by an approved person. Council’s Compliance Section have had an involvement with the property and issued an Abatement Notice in 2005 that required the owners to decommission the Hex and Gingerbread cottages so they were no longer stand

alone dwellings and to cease providing tourist accommodation for more than four people. A copy of that notice is attached to this report as Appendix 2. Since that time, the owners have advertised rental accommodation that I believe has also been followed up by a Compliance Officer.

The history of the various buildings is set out in detail under the “Key Issues” section of this report.

1.4. Legal Description and Plan Attributes

The application site is legally described as Part Section 285, District of Takaka, Block VII and XI, Waitapu Survey District, being all of the land in Certificate of Title NL 6B/958 comprising a total area of 1.4812 Hectares.

1.5 Status of Application

Zoning: Rural Residential
Areas: Land Disturbance Area 1

The proposed activity breaches the following rules of the Tasman Resource Management Plan (TRMP).

17.8.3.1(b) Construction of more than one dwelling (Permitted Activities)

17.8.3.2(a) Construction of more than two dwellings (Restricted Discretionary Activities)

Accordingly, the proposal is a Discretionary Activity under the TRMP.

2. SUBMISSIONS

2.1 Notification

As the adverse effects on the environment were considered to be potentially more than minor, but limited in their extent of effect, the application was processed as a limited notified application. The application was not fully notified as it was considered the effects of this proposal were limited to those properties that were in close proximity to the site.

The application was limited notified on 18 March 2010 and submissions closed on 19 April 2010. Three submissions were received, two opposing the application and one supporting it. The two submitters in opposition have asked to be heard.

2.2 Submissions

2.2.1 S and J Snelgrove

Susan and John Snelgrove are Rocklands Road residents that live opposite the Kemp property and they have lodged a submission opposing the proposal. They consider the proposal contravenes the RMA, is not consistent with the policies, objectives and rules of the TRMP and that the application is factually incorrect and lacks essential information. They do not support the concept of gaining retrospective consent for work that was carried out without the required consents and consider

granting consent would undermine the public's confidence in consistent Plan administration. The Snelgroves have consent for a second dwelling on their property that was granted in 1999.

They have asked that the application is declined and they wish to be heard in support of their submission.

Comment:

The Snelgrove's submission points out some of the shortcomings in the current application and their concerns are understandable. While the applicant has taken a path to establish additional accommodation on the property that is not in accordance with the provisions of the RMA or the TRMP, there is nothing inherently wrong with making an application to gain retrospective approval for three dwellings on the property. In saying that, Council has to be very cautious with such applications, as the path chosen by the applicant does not give a great deal of confidence in consistent Plan administration. What is very important in a case such as this one, is what effect the authorisation of three dwellings on a 1.48 hectare Rural residential property will have. The Key Issues part of this report looks at those aspects more carefully.

2.2.2 Sarll Family Trust

David and Ann Sarll are Rocklands Road residents that adjoin the applicant's land to the south east and they have also lodged a submission opposing the application. They have two primary concerns relating to the proposal lodged by Ms Kemp. They consider granting consent will alter the rural residential character of this part of Rocklands Road and that the increased value of the property will have a flow on effect to other properties in the area. They have selected some of the policies from the TRMP that they consider are at odds with the applicant's proposal. These relate to the use of rural land and landscape values. They state they regret giving approval for the "Gingerbread Cottage" when the previous owners approached them for written approval and they now object to the location of the building and the dominant effect it has on their property. They have a further concern that if the Hex Cottage is granted consent as a dwelling, it will lead to potential subdivision.

They have asked that the application is declined and they wish to be heard in support of their submission.

Comment:

It appears the previous owner of the property may have coerced the Sarlls into providing written approval for the Gingerbread Cottage and that the building may be different to what they were lead to believe. That situation is unfortunate but at the time that application was made, the three adjoining neighbours signed written approval forms and also signed the site plan. The written approval form says that they acknowledge they have seen a copy of the application and the assessment of environmental effects. The plan on the application shows a two storey building that is 25 square metres in area and 7 metres high. The proposal was clearly a Discretionary Activity under TRMP Rules. This matter is covered further within this report. The Sarll's concerns relating to the amenity of the local area are quite

understandable and the intensification of residential accommodation in rural residential areas is not a concept that the TRMP has a great deal of support for.

2.2.3 A R and R M MacGibbon

Mr and Mrs MacGibbon are Christchurch residents that have a holiday home on the eastern side of Rocklands Road and they have lodged a submission that supports the Kemp application. Their submission is not detailed and they merely state they think the application is a good idea. They have two dwellings on this property, the building they use as their dwelling being approved in 1990

Comment:

The MacGibbon's submission is brief but to the point and does not require any additional comment.

3. STATUTORY CONSIDERATIONS

The assessment for this application is undertaken in accordance with the provisions of the Resource Management Act 1991 (the Act). The sections that are relevant to this application are as follows:

Section 5

The purpose of the Act is to promote the sustainable management of natural and physical resources. Sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while -

- a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- b) safeguarding the life supporting capacity of air, water, soil and eco systems; and
- c) avoiding, remedying or mitigating any adverse effect of activities on the environment.

Section 104

When considering applications for resource consent, and any submissions that have been made, the following matters under Section 104(1) in addition to the matters set out in Section 7 of the Act must be considered. Primacy is given to Part 2 of the Act, "the purpose and principles of sustainable management of natural and physical resources". Therefore, the decision should be based, subject to Part II of the Act, on:

- "a) any actual or potential effects on the environment of allowing the activity; and
- b) any relevant provisions of:-
 - (i) a national policy statement;
 - (ii) a regional policy statement or proposed regional policy statement;

- (iii) a plan or proposed plan; and
- c) any other matters the consent authority considers relevant and reasonably necessary to determine the application.”

Having considered these matters the application may be declined or granted, with conditions imposed if necessary, pursuant to Section 108 of the Act.

The application is a Discretionary Activity in a Rural Residential Zone. As a Discretionary activity the Council must consider the application pursuant to Section 104(B) of the Act.

After considering an application for a resource consent for a Discretionary Activity, a consent authority -

- (a) may grant or refuse the application; and
- (b) if it grants the application, may impose conditions under section 108.

Sections 6, 7 and 8

The following matters are relevant to this application:

Section 6 of the Act provides for matters of national importance. In this case those matters are not considered relevant to the current application.

Section 7 of the Act sets out the other matters that any person exercising powers and functions must have regard to in relation to managing the use, development and protection of natural and physical resources. Matters that are relevant to this application are as follows:

- S7(b) the efficient use and development of natural and physical resources;
- S7(c) the maintenance and enhancement of amenity values;
- S7(f) maintenance and enhancement of the quality of the environment;
- S7(g) any finite characteristics of natural and physical resources.

These other matters have direct relevance and in particular those relating to amenity values and the quality of the environment. These are reflected in the policies and objectives in the TRMP and other planning instruments.

Section 8 of the Act relates to the Treaty of Waitangi. In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

4. POLICY STATEMENTS

The application was assessed against the relevant policy statements.

4.1 National Policy Statements

There are no relevant national policy issues that apply in this case.

4.2 Tasman Regional Policy Statement

The Tasman District Council has prepared a Regional Policy Statement in accordance with the provisions of the Resource Management Act and this became fully operative in July 2001. The Regional Policy Statement seeks to achieve the sustainable management of land and coastal environment resources. Objectives and policies of the Policy Statement clearly articulate the importance of protecting land resources from inappropriate land use and development. The Statement takes national policies and refines and reflects them through to the local area, making them appropriate to the Tasman District. Council is required to have regard to the Regional Policy Statement as an overview of resource management issues.

Because the Tasman Resource Management Plan was developed to be consistent with the Regional Policy Statement, it is considered that an assessment under the Plan will satisfy an assessment against Policy Statement principles.

4.4 Tasman Resource Management Plan

Objectives and Policies

The most relevant Objectives and Policies are contained in:

- Chapter 5 Site Amenity Effects
- Chapter 7 Rural Environment Effects
- Chapter 9 Landscape

These chapters establish Council's key objectives to ensure land uses do not adversely affect the local character, including landscape values and to provide opportunities for a range of activities in rural residential areas.

Rules of the TRMP

The most relevant Rules which follow from these imperatives are contained in:

Chapter 17.8 Rural Residential Zone Rules

Details of the assessment of the proposed activity in terms of these matters are addressed through the assessment of key issues and consideration of the relevant policies and objectives.

5. KEY ISSUES

After considering the application, the submission received, the provisions of the Resource Management Act, and the provisions of the TRMP, the key issues that I believe are relevant to this application are as follows:

The key issues are:

- The permitted baseline;
- The evolution of the current buildings on the site;
- The amenity and character of the Rocklands Road Rural Residential area;
- Potential adverse effects for nearby properties;

- Waste water disposal.

5.1 Permitted Baseline

The permitted baseline is comprised of the existing environment and what is permitted as of right under the Plan. In some instances it can also include what is authorised under a current but yet to be implemented resource consent.

The effects of permitted activities are considered on a case-by-case basis and Councils may, rather than must, consider the adverse effects of activities on the environment if a plan permits an activity with those effects. Section 104(2) of the RMA states that - *“When forming an opinion for the purposes of subsection (1)(a) a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect”* . As such, this enables a consent authority the ability to disregard adverse effects of activities that the Plan permits, if it so wishes. The permitted base line will not be given priority over consideration of all of the effects of an activity and the Plan in its entirety.

In this instance, the site is zoned Rural Residential and the TRMP permits one dwelling per site as a Permitted Activity. In this case there are three dwellings proposed, taking the proposal well outside the bounds of the permitted baseline

Based on this assessment, it is concluded that in this case the concept of the permitted baseline does not apply.

5.2 The evolution of the buildings currently on the site

As this application is seeking retrospective consent for existing buildings that are to be used for residential accommodation. There are three self contained residential units and a sleepout that does not contain any facilities that is situated more than 20 metres from the main dwelling. The sleepout building referred to as the Honeymoon Cottage has now been withdrawn from the application.

From the records Council holds, main dwelling was granted a building permit in 1989 and the records show there had been consents issued for a garage, garage / workshop and firewood shed prior to that time. This building is now the principal dwelling on the property.

In 2000, building consent was granted to relocate a building from Richmond and the application refers to this as an art studio. The building plan for this shows the installation of a toilet and shower, but no other indication of kitchen or cooking facilities. A code of compliance was issued for this in February 2003. It would appear the kitchen facilities were subsequently installed in this building without the consent being issued and this becomes unauthorised works under the Building Act and a breach of the TRMP because it becomes a second dwelling.

Also in 2000, an application was lodged to construct a garage within 5 metres of the boundary of the property and to construct a building described in the application as a “sleepout (residential dwelling)”. The application contained the written approval of three adjoining neighbours (Sarll, Heese and Simpson) and Council processed this as a non notified application. The description used in that consent was “a second residential building (sleepout with facilities)” as the building did not comply with the

strict interpretation of a sleepout at that time for a number of reasons. The plan showed the building had a shower, toilet, hand basin and what appeared to be a sink in a bench. There was no indication of any cooking facilities on the plans submitted. The building was not treated as a self contained dwelling and the applicant was not charged a development contribution.

In 2001, the then owners applied for resource consent to relocate a small cottage on to the property to be incorporated into the existing dwelling. In this instance, the resource consent authorised a “second dwelling” and this was treated as a discretionary activity as while it was incorporated into the existing dwelling, it was slightly more than the 60 square metres permitted by the TRMP. This application was processed as a non notified application and it had the written approval of the Department of Conservation, Sarll and Simpson. A condition was imposed at that time requiring the payment of a development contribution for this relocated dwelling. When the building consent was lodged, the plans were amended to remove the kitchen and it became an extension to the existing dwelling containing two bedrooms, ablutions, a living area and a study. The building was attached by a deck and it remains in that form today as a complying addition to the house.

The property was purchased by Ms Kemp in 2003 and she developed a visitor accommodation facility catering for up to 12 guests in the buildings on the site. The application records the numbers were usually less than this, but it was clear the property was offering tourist accommodation that was beyond the scale permitted as a home occupation under the TRMP. After Council received a complaint about the unauthorised tourist accommodation on the site, the property was visited by a Compliance Officer and an Abatement Notice was issued in 2005. I understand the tourist accommodation business has ceased and the current application is seeking consent for long term rental accommodation for two residential units and to cater for up to four guests as short term visitor accommodation in the house and west wing under the TRMP home occupation rules.

It can be seen from the above information the development on this property has taken place in a manner that resulted in cumulative residential growth, including some unauthorised work that created self contained units.

5.3 The amenity of the Rocklands Road rural residential area

The issues associated with amenity relating to this application are considered to be an important issue to deal with. Rocklands Road is an area located on the lower slopes of the Pikikiruna Range on the eastern side of the Takaka Valley. The area has allotments that vary in size and the applicant’s land is one of the smaller titles in this area. Rocklands Road contains lifestyle properties where the topography is such that the houses are well separated and enjoy the privacy and amenity of the area. The area is well vegetated with a variety of species which also provides screening between each house site.

In the case of the applicant’s property, it is relatively flat and contains a number of karst rock outcrops. There is also a range of vegetation that adds to the general amenity of the immediate area. This helps soften the visual appearance of a number of buildings on the property when viewed from the road and from adjoining properties.

It is fair to say a rural residential area such as Rocklands Road would not normally be expected to have three dwellings constructed on one property and this can have some effect on the amenity of the local area. In this case the buildings are already constructed and it is more the use of them that is in question. It is also appropriate to note there are other instances of properties with second dwellings on them in this area.

The main dwelling with the west wing extension fits within the Permitted Activity status for the site and accordingly meets the permitted baseline. The "Gingerbread Cottage" has been granted consent as a discretionary sleepout and the building is a consented structure as such. It is not authorised as a stand alone dwelling and there are some differences between the two uses, even if they are seen as subtle. In a similar vein, the "Hex Cottage" is a consented structure as a studio but not as a dwelling.

It is therefore appropriate to consider the amenity of that part of Rocklands Road and whether granting consent to the existing buildings to enable them to be used as dwellings and a sleepout that is more than 20 metres from the dwelling, will have any effect on the amenity and character of that part of Rocklands Road. There is a reasonable expectation that the amenity the area will be preserved and the Committee need to be satisfied this will not be compromised if they consider granting consent to the application.

In this case I consider the buildings have a greater potential to affect amenity values through an increased number of self contained residential units than the use that they had previously been consented for. I also however consider the effects of the proposed use will be different for dwellings than for the uses that have already been approved for the site. That also applies to the tourist accommodation use that was previously being undertaken on the site before it was curtailed.

"Amenity Values" means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes. (RMA definition). In this case the amenity values associated with the area are a very relevant matter to be considered.

Relevant objectives and policies from the TRMP are considered as follows:

Chapter 5: Site Amenity Effects

The following extracts from the introduction, principal reasons and explanations for Chapter 5 are considered relevant:

"Land use frequently has effects which cross property boundaries. Those effects may add to or detract from the use and enjoyment of neighbouring properties. They may also affect natural resource values, such as air and water quality, or in some cases views or local character.

The health and safety of people, communities and property is a significant part of site amenity, both within the site and between sites. Contaminants, including noise, and fire, hazardous substances and natural hazards, are factors in maintaining or enhancing amenity values.

Adverse cross-boundary effects are commonly noise, dust, vibration, odour, contamination, shading and electrical interference. Amenity values such as privacy, outlook, views, landscape, character and spaciousness may also be affected”.

The following Objectives and Policies are considered relevant to the preservation of the amenity of the Rocklands Road area;

Objective 5.1.2 Avoidance, remedying or mitigation of adverse effects from the use of land and enjoyment of other land on the qualities of the natural and physical resources.

Policy 5.1.3.9 To avoid, remedy or mitigate effects of:

noise and vibration;
buildings and structures;

beyond the boundaries of the site generating the effect. (*Edited*)

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

Policy 5.2.3.1 To maintain privacy in residential properties and for rural dwelling sites.

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

Policy 5.3.3.3 To avoid, remedy or mitigate the adverse effects of the location, design and appearance of buildings and incompatible land uses in areas of significant natural or scenic, cultural, historic or other special amenity value.

While it is considered that under Section 6 there are no matters of national importance relevant to this application, Section 7 of the Act provides for the following “Other Matters” to have particular regard to:

- The efficient use and development of natural and physical resources;
- The maintenance and enhancement of amenity values;
- Maintenance and enhancement of the quality of the environment;
- Any finite characteristics of natural and physical resources.

Comments:

The objectives and policies from Chapter 5 of the TRMP confirm the need to protect amenity values. In this case, the rural residential and amenity values need to be safeguarded from adverse environmental effects that may result from the increased residential activity.

The relevant TRMP objectives and policies allow development of residential accommodation to be assessed on their merits within the Rural Residential zone. If the adverse environmental effects of amenity, noise and visual effects can be

appropriately avoided or mitigated then the activities may not be contrary to the objectives and policies.

In this case I consider the actual buildings will not have any visual effect on the amenity of the area as they are already established and this will not change. There are however some other effects that can arise from the change of use and these are discussed further.

5.4 Potential adverse effects for nearby properties.

It is accepted that any change to the permitted baseline for a rural residential area has the potential to have some effect on other properties in the area. How significant these effects are is a matter that has to be considered given the scale of the proposed use and whether those effects can be avoided, remedied or mitigated if they are considered to be adverse.

In this instance the change from the consented uses is the matter to be considered and what effects those changes are likely to be.

Probably the most significant effect that is likely to arise from three dwellings on the site is the potential traffic effect. In assessing traffic flows associated with a residential use, a figure of ten vehicle movements per day is expected from each residential use. In this case, if consent was granted the vehicle movements could increase from ten to thirty movements per day. That is considered to be a significant change and the effect could be considered to be an adverse one.

Other effects that may arise from increased residential activity can be noise from both domestic and recreational activities, visual effects, on site parking and waste water disposal.

The potential noise, visual and parking effects are likely to be minor in this instance as the location of any dwellings on nearby properties are significant distances (more than 100 metres) from the three residential buildings on the applicant's property. The distance in conjunction with existing vegetation on the applicants property are mitigating factors that need to be taken into account when assessing the application. It may also be appropriate to consider additional landscaping on the northern side of the Hex Cottage to mitigate the visual effect of that building when viewed from Rocklands Road if consent is to be granted.

It is also appropriate to consider any potential adverse effects from wastewater disposal in relation to the increased residential occupancy on the applicant's land. In this case there are two wastewater disposal systems installed, one to cater for the dwelling/west wing extension and the Gingerbread Cottage and another for the Hex Cottage. These have been inspected by Kevin Winter, a local plumber and drainlayer who has provided a brief report that has recently been submitted by the applicant's planner. He has provided a very brief report that does not really assess the effectiveness of the two systems installed, nor the extent of one of the disposal fields. Given the presence of the karst formations on the property, I consider this is an important factor to consider and it may be appropriate to obtain a more detailed investigation about these systems and whether they need to be upgraded if consent is to be considered. The difference between full time rental accommodation and

seasonal tourist accommodation that would take place over the summer months is significant in my opinion.

6. OTHER MATTERS TO CONSIDER

6.1 Resource Management process for activities beyond permitted uses

The situation in relation to the Kemp property in Rocklands Road is not a straight forward matter to deal with and it has evolved through a series of applications for both resource consent and building consent by the previous owner. It would appear the buildings may have been used for purposes other than what had been authorised following the granting of those applications. In addition to those applications, there has been unauthorised work undertaken to convert two of the buildings to self contained residential units. The result of that process is a rather messy situation that is not simple to rectify.

The application lodged contains inaccurate information relating to what has been approved for the site and it is important to consider what work has been authorised as opposed to the unauthorised work.

If consent is granted to an application such as this one, a message is conveyed that it is acceptable to undertake unauthorised work and simply ask Council to endorse that by granting retrospective consent. I do not support such an approach and consider it undermines the whole process of resource management.

It is also fair to consider what the effect of granting this application would be in comparison to what has been authorised by consent. It is clear the Hex Cottage was approved on the basis that the previous owner was an artist and the provision of a dedicated studio was a reasonable request at that time. In a similar vein, the provision of on site accommodation for members of the extended family was not unreasonable. To now use both those buildings as rental accommodation does, in my opinion, constitute a significant change to the authorised uses. Three dwellings on a rural residential property of 1.48 hectares can result in a significant change of character for a rural residential zone.

Authorising three dwellings on the subject property also has the potential to lead to a request for subdivision of the allotment, claiming granting such an application would have no more material effect than what exists with the three dwellings that have been approved on the site. While a covenant can be placed on a title to avoid using the presence of multiple dwellings on a title as a reason for subdivision, it does not necessarily prevent this taking place.

The TRMP recognises two areas under the “Principal reasons for the Rules” (17.8.20) that have some relevance to this application.

Under “Building Coverage” the following statement is made: The Rural Residential Zones are areas which are primarily intended for residential purposes but where site sizes are large enough to provide for a range of rural activities, and also to retain the rural character of the zone, with a significant part of each site being maintained as open space.

Also under “Second Dwellings” The plan states: Second dwellings can alter the character of existing zones and reduce the amenity level. They can also result in pressure for subdivision, especially where the second dwelling is permanent.

The TRMP recognises there are some instances where a second dwelling can be appropriate in a Rural Residential Zone and provision is made to consider these as Restricted Discretionary Activities. To go beyond that to three dwellings, becomes fully discretionary.

7. SUMMARY OF ISSUES AND CONCLUSION

The application that has been lodged by Ms J Kemp is an application seeking consent for three dwellings on the site, and for a sleepout that is 23 metres from the principal dwelling on the site. Council has authorised a number of resource and building consents for the property and there is currently approval for:

- A dwelling with an attached wing that contains bedrooms, a living area and ablutions.
- A second residential building (sleepout with facilities). This is known as the “Gingerbread Cottage”.
- A studio that contains a shower and toilet. This is known as the “Hex Cottage”.

The application lodged infers Council has consented to the Gingerbread Cottage as a dwelling and that building consent has been issued to install a kitchen in the Hex Cottage. This is not the case and the above status for the buildings applies. It does however appear, unauthorised work has been undertaken to make both the Hex Cottage and the Gingerbread Cottage self contained residential units by installing cooking/kitchen facilities.

The applicant has previously operated the property as tourist accommodation without the necessary consents in place and an Abatement Notice was issued in 2005 requiring that activity to cease. The applicant has complied with that directive.

The property is located in the Rural Residential Zone near the start of Rocklands Road and is 1.4812 hectares in area. It is an attractive location that contains a number of Karst outcrops and is well vegetated with a variety of both exotic and indigenous vegetation. The area has a microclimate that enables a range of subtropical species to be grown. The area also has a special character and amenity that has to be carefully considered when this application is evaluated. Granting consent to three dwellings in this location has the potential to change the character and amenity of the local area and that is a key issue when considering this application.

Council processed this application as a limited notified application and it has attracted two submissions in opposition and one in support. The submitters are two permanent local residents and a Christchurch resident who has a holiday home in Golden Bay. Both submitters in opposition have asked to be heard when the matter is considered.

There are a number of properties in the Rocklands Road area that have second dwellings on them but I am not aware of any that have three dwellings on one title. A similar approach in this case may be a viable option but that matter has not surfaced as an option to date.

Overall, I consider granting consent to this application can have effects that can be seen as more than minor and more importantly, I believe it sends the wrong message to the general public in relation to the process to follow under the RMA and the TRMP. I believe consistent Plan administration is a very important aspect to consider when making a decision on this application. On that basis I cannot find sufficient grounds to support this application in its current form.

8. SECTION 5 RMA AND RECOMMENDATION

In terms of Section 5 of the Act, I do not believe there are grounds to consider granting consent in this case and I do not consider it can be seen as the sustainable management of natural and physical resources. I also do not consider the purpose of the Act can be seen to have been met in this case. In making that judgement, regard has been had to the relevant parts of Section 7, and in particular Section 7 (c), the maintenance and enhancement of amenity values.

Therefore, I recommend that the application be **DECLINED**.



Laurie Davidson
Consents Planner (Land)

Chapter 5 - Site Amenity Policies

- 5.1.3.1 To ensure that any adverse effects of subdivision and development on site amenity, natural and built heritage and landscape values, and contamination and natural hazard risks are avoided, remedied, or mitigated.
- 5.1.3.4 To limit the intensity of development where wastewater reticulation and treatment are not available.
- 5.1.3.5 To ensure that the characteristics, including size, soil type and topography of each lot of any proposed subdivision or built development are suitable for sustainable on-site treatment of domestic waste in unreticulated areas, particularly in areas where higher risks of adverse effects from on-site disposal of domestic wastewater exist.
- 5.1.3.9 To avoid, remedy, or mitigate effects of:
- (a) noise and vibration;
 - (b) dust and other particulate emissions;
 - (c) contaminant discharges;
 - (d) odour and fumes;
 - (e) glare;
 - (f) electrical interference;
 - (g) vehicles;
 - (h) buildings and structures;
 - (i) temporary activities;
- beyond the boundaries of the site generating the effect.
- 5.2.3.1 To maintain privacy in residential properties, and for rural dwelling sites.
- 5.2.3.6 To maintain and enhance natural and heritage features on individual sites.
- 5.2.3.7 To enable a variety of housing types in residential and rural areas.
- 5.2.3.8 To avoid, remedy or mitigate the adverse effects of traffic on the amenity of residential, commercial and rural areas.
- 5.3.3.2 To maintain the open space value of rural areas.
- 5.3.3.3 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.
- 5.4.3.1 To enable a variety of housing types, recognising different population growth characteristics, age, family and financial circumstances and the physical mobility of, or care required by, residents.

Chapter 7 - Rural Environment Policies

- 7.2.3.1 To enable activities which are not dependent on soil productivity to be located on land which is not of high productive value.
- 7.2.3.2 To enable sites in specific locations to be used primarily for rural industrial, tourist services or rural residential purposes (including communal living and papakainga) with any farming or other rural activity being ancillary, having regard to:
- (a) the productive and versatile values of the land;
 - (b) natural hazards;
 - (c) outstanding natural features and landscapes, and the coastal environment;
 - (d) cross-boundary effects, including any actual and potential adverse effects of existing activities on such future activities;
 - (e) servicing availability;
 - (f) the availability of specific productive natural resources, such as aggregates or other mineral sources;
 - (g) transport access and effects;
 - (h) potential for cumulative adverse effects from further land fragmentation;
 - (i) maintaining variety of lot size;
 - (j) efficient use of the rural land resource;
 - (k) cultural relationship of Māori to their land.
- 7.4.3.3 To provide for the maintenance and enhancement of local rural character, including such attributes as openness, greenness, productive activity, absence of signs, and separation, style and scale of structures.
- 7.4.3.5 To exclude from rural-residential areas, uses or activities which would have adverse effects on rural-residential activities, health or amenity values, where those effects cannot be avoided, remedied or mitigated.

Abatement Notice
Section 324 of the Resource Management Act 1991

Reference: AN0211

To Golden Bay Grove Retreat
Attention Jocelyn Kemp
20 Rocklands Road
Clifton
Golden Bay 7183

1. The Tasman District Council gives notice that you must:

Decommission the two structures on your property which are advertised as being fully self contained, namely the "Hex Cottage" and the "Gingerbread Cottage" so that they do not fit the definition of "Dwelling" as contained within the Tasman Resource Management Plan, and

Cease the use of any accommodation unit which is more than 20 metres from the principal dwelling on the property, and

Restrict the number of visitors accommodated on the property at any one time to not more than four, and

Comply in all respects with the Rural Residential Zone permitted activity rules contained within the Tasman Resource Management Plan. Those rules have previously been supplied to you, but can be accessed by visiting the Tasman District Council web site, or any office of the Tasman District Council.

2. Location in respect of which the abatement notice applies:

20 Rocklands Road, Takaka

3. The date and time by which you must comply with this abatement notice is:

30 June 2009

4. This notice is issued under:

Section 322(1) (a) of the Resource Management Act 1991

5. The reasons for this notice are:

On 27 May 2005 you were served with an abatement notice requiring you to cease the visitor accommodation trading as The Grove until such time as you were properly authorised to operate such an activity. The reasons stated in that notice were that

you were operating a commercial activity which did not comply with provisions of the Resource Management Act, in that the activity required Resource Consent.

You were also advised that some structures pertinent to the commercial operation did not comply with provisions of the Tasman Resource Management Plan because they constituted second or subsequent dwellings on the property, or they did not comply with permitted activity rules relating to sleep-outs because of their distance from the principle dwelling.

You subsequently applied for Resource Consent for that activity and the abatement notice was placed on hold pending the outcome of that application.

A request was made of you on 24 April 2006 to supply further information to enable that consent application to be processed. To date that request for further information has not been adequately responded to and the application is now deemed to be incomplete.

You continue to advertise your property as available for visitor accommodation with the ability to host up to twelve guests in two fully self contained units; as well as a further two units which appear to operate as "sleep-outs" in that they do not have cooking facilities; as well as in the principle dwelling.

Affected rules within the Tasman Resource Management Plan include but may not be restricted to rules 17.8.3.1(b); 17.8.3.1(e); 17.8.4.1(k) and 17.8.4.1(l).

I consider that three and a half years since the service of that original Abatement Notice should have been more than adequate time in which to obtain resource consent, but that there might now be a question over Councils ability to take further action in respect to your failure to comply with the requirements of that notice.

- 6. The further conditions imposed by this notice are:**
- 7. You have the right of appeal to the Environment Court against the whole or any part of this notice by lodging a notice of appeal with the Court in Wellington, in accordance with Section 325 of the Resource Management Act 1991, within 15 working days of the date of service of this abatement notice on you.**

- 8. The name of the enforcement officer serving this notice is:**

Warren Galbraith

- 9. The authority under which the enforcement officer is acting is:**

Section 322 of the Resource Management Act 1991 and a warrant of authority pursuant to section 38 of the Resource Management Act 1991 issued by Tasman District Council.

- 10. The name and address of the local authority whose enforcement officer served this notice is:**

Tasman District Council, Private Bag 4, 189 Queen Street, Richmond

11. **Note: if you do not comply with this notice, you may be liable to prosecution or infringement fine under section 338 of the Resource Management Act 1991. If you appeal the abatement notice you may also apply to an Environment Judge for a stay of this notice pending the Environment Court's decision on the appeal. An appeal against this abatement notice does not operate as a stay of the notice unless a stay is granted by an Environment Judge under section 325(3D) of the Resource Management Act 1991. An application for a stay must be in the prescribed form and must:**
- a) **State the reasons why you consider it is unreasonable for you to comply with the abatement notice; and**
 - b) **State the likely effect on the environment if the stay is granted; and**
 - c) **Be lodged with the Environment Court and served immediately on the Tasman District Council.**
12. **You also have the right to apply in writing to the Tasman District Council to change or cancel this notice in accordance with section 325A of the Resource Management Act 1991.**

[Signature of enforcement officer]

2 June 2009.