

Report No:	REP11-12-03
File No:	RM110684
Report Date:	19 November 2011
<b>Decision Required</b>	

**Report to:** Commissioner Hearing

**Meeting Date:** 9 December 2011

**Subject:** Department of Conservation - Public Toilet, Wainui Falls Road

**Report Author:** Laurie Davidson - Consent Planner

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## 1. SUMMARY OF PROPOSAL

An application has been lodged by the Department of Conservation (DOC) to construct a fully accessible toilet that will include a 9000 litre containment tank, located in the 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 area for that purpose.

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

The facility is not unlike other public toilets that are provided throughout the District, with some provided by the Tasman District Council and others by DOC. The nearest public toilet to the Wainui Falls area is at the entrance to the Abel Tasman National Park and that facility is too far away to be of any use for people visiting the Wainui Falls.

There are other similar locations throughout New Zealand where public toilets are sited at popular scenic attractions that are well away from settled areas. The question is not perhaps so much about providing them, but rather how to make provision for them in a manner that is sensitive to the needs of the environment and neighbouring properties. More recently issues associated with freedom camping have also complicated the issue and in some cases lead to additional concerns such as security for remote properties and farms.

## 2. STATUS OF APPLICATION

**Zoning:** The area in question is road reserve and because road reserve adopts the zoning of land abutting it, it is a composite of Rural 1 and Rural 2 land.

The toilet is proposed to be located on the south eastern side of the road that adopts a 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.

Just because there is not a rule to permit such a facility, does not mean it cannot be considered under the provisions of the Resource Management Act 1991 and it is treated as a Discretionary Activity under Section 87b of the Act.

### 3. NOTIFICATION AND SUBMISSIONS

#### 3.1 Notification

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

#### 3.2 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 Dept 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

These parties' properties are shown in Appendix 1.

### 3.3 Comments on Submissions

Six of the submitters consider a toilet is needed for visitors to the Wainui Falls. The support is for the location that has been applied for, or for a location further south where the track enters native bush. The fouling of the carpark and the sides of the track to the Wainui Falls is an issue that does not appear to be in dispute and it would be difficult to resolve this issue without providing some sort of facility.

Mr Lovell has provided a submission that covers a range of matters, some of which are beyond the scope of this application. Some of the issues included in his submission are covered in more detail in the "Key Issues" part of this report, but the matters that relate to formation of the access track dating back to 1999 cannot be taken into account when this application is considered. Quite simply, this application is to construct a toilet on road reserve at the Wainui Falls carpark and any submission has to be directly related to that proposal. Matters that are historic and unrelated to the current proposal should not have any bearing on the current application.

## 4. STATUTORY CONSIDERATIONS

### Section 104

A decision on this application must be made under Section 104 of the Act. The matters for the Council to address are:

- Part 2 (Sections 5, 6, 7 and 8)
- Effects on the environment (positive and negative)
- Objectives and Policies of the TRMP
- Other matters

## 5. SECTIONS 6, 7 AND 8

### Matters of National Importance

- S.6(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development.
- S.6(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers.

### Other Matters

- S.7(b) the efficient use and development of natural and physical resources.
- S.7(c) the maintenance and enhancement of amenity values.
- S.7(f) maintenance and enhancement of the quality of the environment.

### 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). In this case, the Treaty of Waitangi has a minor relationship to the provision of toilets at this location.

## 6. KEY ISSUES

The key issues in this case are:

- Use of road reserve for purposes other than roading
- The need for toilet facilities in various parts of the District
- Alternative locations for a toilet
- The amenity of the Wainui Falls area
- Unauthorised overnight occupation
- Interpretation of the rules of the Tasman Resource Management Plan

### 6.1 Use of road reserve for Purposes Other Than Roding

The use of road reserve for a range of buildings and associated infrastructure occurs throughout the District and these facilities can include toilet blocks, transformers, telecommunication equipment, pumping stations, bus shelters and other like facilities. Up until recently these were treated as “public utilities” and providing the roading authority agreed with the use, they were not required to obtain planning consent. The TRMP provides a specific exclusion from the 10 metre road boundary setback for telecommunication and radio-communication facilities less than 10 square metres in area and less than 3 metres in height in rural areas (refer rules 17.5.3.1(i)(i) and 17.6.3.1(j)(i)). It also applies in urban zones. They must also meet all the relevant Area rules that apply to any particular site.

This issue is discussed further under Section 6.5 relating to the interpretation of the TRMP rules, but it is fair to say Council’s Engineering Department is responsible for the roading network and providing they, as land manager approve a use, they can grant consent for buildings to be constructed on road reserve. In this case Council’s Transport Manager has given approval pursuant to delegated authority for the toilet to be located in the position applied for. That approval is still subject to the provisions of the TRMP being met.

The Wainui Falls Road from its intersection with Abel Tasman Drive to the carpark is classified as an “access place” under the TRMP roading hierarchy. This is the lowest status in the roading hierarchy and is in that category because it is a no exit road that only serves a few properties. The most recent traffic count for this road was carried out on 30 January 2010 and the vehicle count was 147 at a point 47 metres from the intersection with Abel Tasman Drive. Maintenance of the road is carried out on an “as required” basis and that is mainly grading work.

The presence of a toilet at this location is not expected to generate additional traffic on the road or reduce the car parking sufficiently to generate parking problems. Vehicle numbers may continue to increase in line generally with increased tourist numbers, but there is land that is not currently utilised that can be developed further for parking, if required.

The TRMP objectives and policies for roading do not have a direct relationship with the use of road reserve for alternative uses and while there is some relationship with those more aligned to amenity, they are better dealt with under Section 6.4.

There is some relationship with Section 6(d) of the RMA as the provision of toilets in this location enhances the opportunity to utilise the access along the Wainui River. In a more specific vein, Sections 7(b,c and f) are relevant to this situation as the provision of a toilet in this location is an efficient use of that resource and the toilets will directly maintain and enhance the amenity value and quality of the environment in this area.

Overall the use of a portion of road reserve in this location is an efficient and practical use of land under the control of Council to provide a public utility that appears to be needed to preserve the quality of the environment.

## **6.2 The Need for Toilets for the Wainui Falls Walkway**

Both the application lodged by the Department of Conservation and the submissions from people living in Golden Bay indicate there is a problem with people using the area from the carpark to the Wainui Falls walkway as a toilet area. This results for extra unpleasant work by both DOC and local people to maintain an acceptable level of public health, safety and amenity.

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. The number of visitors to the area is increasing and the problem of 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, the provision of a toilet at this point is a useful public convenience for visitors to the area. All submitters are in agreement with that point of view.

## **6.3 Alternative Locations for the Toilet**

The question of alternative locations has been raised, both in the application lodged by DOC 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.

While direct comparisons can draw the wrong conclusions, it would appear most public toilets are provided in close proximity to parking areas and even if there is signage to indicate the presence of facilities some distance away, they may not get used in every instance.

In New Zealand, DOC are probably the public agency that have the most experience in how to locate public toilets at places like the Wainui Falls so they are readily accessible, but sited sensitively in relation to the environment. They have considered options, including the ones suggested by the submitters and no doubt they will elaborate on the assessment of these at the hearing. However, in terms of the RMA the general principle for me as the reporting planner that I have focussed on is what is being applied for and it is only appropriate to consider alternative locations if this application is to be declined. In that instance a Commissioner can, after hearing all the evidence decline this application and confirm if the toilet is located on DOC land, it can be constructed without the need for resource consent.

## 6.4 The Amenity of the Wainui Falls Area

Amenity values is defined in the RMA as: *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 carpark. 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 carpark and track edges has an adverse effect on the amenity of the area and is a reasonable justification for some sort of facility to address this issue. A containment type toilet has no discharge to the environment and has a proven record of being a suitable facility for visitors to the area.

The toilet is a standard design used by DOC with a footprint of approx 3.5 m<sup>2</sup> 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 consider 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.

## 6.5 Unauthorised Overnight Occupation

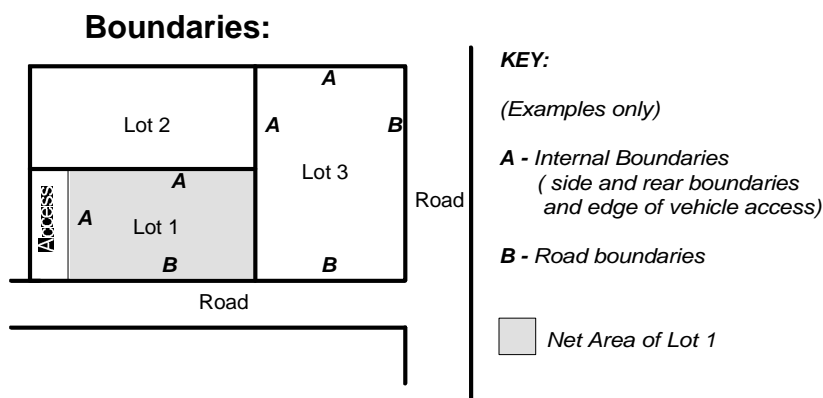
The Tasman District has an on-going problem with unauthorised overnight occupation. While the use of certain Council areas is sanctioned for self contained vehicles to stay overnight, other freedom camping is not supported. The non self-contained vehicles and campers are responsible for fouling a number 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.

While the provision of a toilet in this location may assist with the fouling of the area, it may also encourage additional overnight use of the area. It is appropriate to ask that additional monitoring of the area is also undertaken by enforcement officers to ensure this is kept under control.

I do not consider it is appropriate to influence the decision whether a toilet is appropriate for the Wainui Falls site by trying to avoid problems with people freedom camping throughout the District. The issues are quite separate and both problems need to be addressed if the issue is to be resolved.

## 6.6 Interpretation of the TRMP Rules that apply to constructing a toilet on road reserve

As mentioned earlier in this report, there has been a more recent interpretation of the rules relating to buildings requiring them to be set back 10 metres from a road boundary (Rule 17.6.3.1(j)). Where the debate arises, is whether that applies to buildings on road reserve or on private land. That interpretation appears to be supported by the TRMP diagram to show where boundaries actually are.



I consider the rules in relation to siting apply to land held in a certificate of title and that interpretation is formulated on the following basis:

The definitions of the relevant sections of the TRMP are as follows:

### **Boundary** - means

*any boundary of the net area of a site and includes any road boundary, side or internal boundary.*

**Site** - means:

- (a) *an area of land which is the smaller land area of either:*
  - (i) *the land comprised in a single allotment in a single certificate of title; or*
  - (ii) *the land comprised in a single allotment or balance area on an approved survey plan of subdivision for which a separate certificate of title could be issued without further consent of the Council; or*
- (b) *an area of land comprising two or more adjoining lots held together in one certificate of title in such a way that the lots cannot be dealt with separately without prior consent of the Council; or*
- (c) *an area of land comprising two or more adjoining lots held in two or more certificates of title where such titles are:*
  - (i) *subject to a condition imposed under Section 37 of the Building Act or Section 643 of the Local Government Act 1974; or*
  - (ii) *held together in such a way that they cannot be dealt with separately without the prior consent of the Council;*

**Setback** - means

*the distance between a building and the boundary of its site or other specified feature, such as mean high water springs.*

I consider the rules in the TRMP in relation to siting buildings apply to “sites” (land essentially in a Certificate of Title) and the road boundary is that boundary between the allotment and the road reserve. Therefore the 10 metre setback would site a building not less than 10 metres from the road boundary on private land in a Rural 2 Zone.

Because there are two interpretations demonstrated here and past experience of having a declaration from the courts on the correct interpretation is very a very expensive exercise, Council staff have adopted a pragmatic and conservative stance in this case and required DOC to apply for resource consent to site the building on road reserve. In this way the cost remains more in keeping with the nature of the project, while the focus remains on the actual merits of the proposal in terms of its actual and potential environmental effects.

In a similar vein, because the permitted activity rule for land use in the Road Area rule 18.8.2.1 states:

*Any land use is a permitted activity that may be undertaken without a resource consent, if it complies with the following conditions:*

- (b) *The activity does not prevent or hinder the construction, reconstruction, maintenance or use of the road.*

Because the construction of a toilet on the road reserve area would prevent or hinder the construction, reconstruction or use of a new road, the activity would become a discretionary activity under Section 87b of the RMA and would require resource consent



## 7. SUMMARY OF KEY ISSUES

The application by DOC to construct a toilet at the Wainui Falls carpark has originated through a problem of the area being fouled by visitors to the area and the lack of a toilet. While there is some question whether it could be created by either overnight occupation or day visitors, there has been a clear need for some sort of toilet in this location. Two alternative sites have been considered and DOC prefers the carpark location as it is immediately available to visitors

The use of road reserve to construct the building is not unusual in terms of the Tasman District and a range of buildings are located in similar positions. Council's Engineering Department has given approval for the building to be located in the carpark, pursuant to delegated authority .

I consider 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 the 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 and that issue is a matter that enforcement officers need to pursue.

Overall, I support the provision of an accessible full containment toilet in the position applied for, subject to some conditions that are intended to preserve the amenity of the area.

## 8. SECTION 5 AND RECOMMENDATION

As a planner weighing up all of the relevant considerations in terms of Section 5 of the Act, I consider that a grant of consent **would** promote the sustainable management of natural and physical resources and, on balance, I **RECOMMEND** that the application be **GRANTED**, subject to conditions.

## 9. CONDITIONS

If consent is granted to this application, I recommend the following conditions are imposed:

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. The consent holder shall maintain the existing sign in close proximity to the toilet restricting overnight staying in the carpark.
7. That 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**

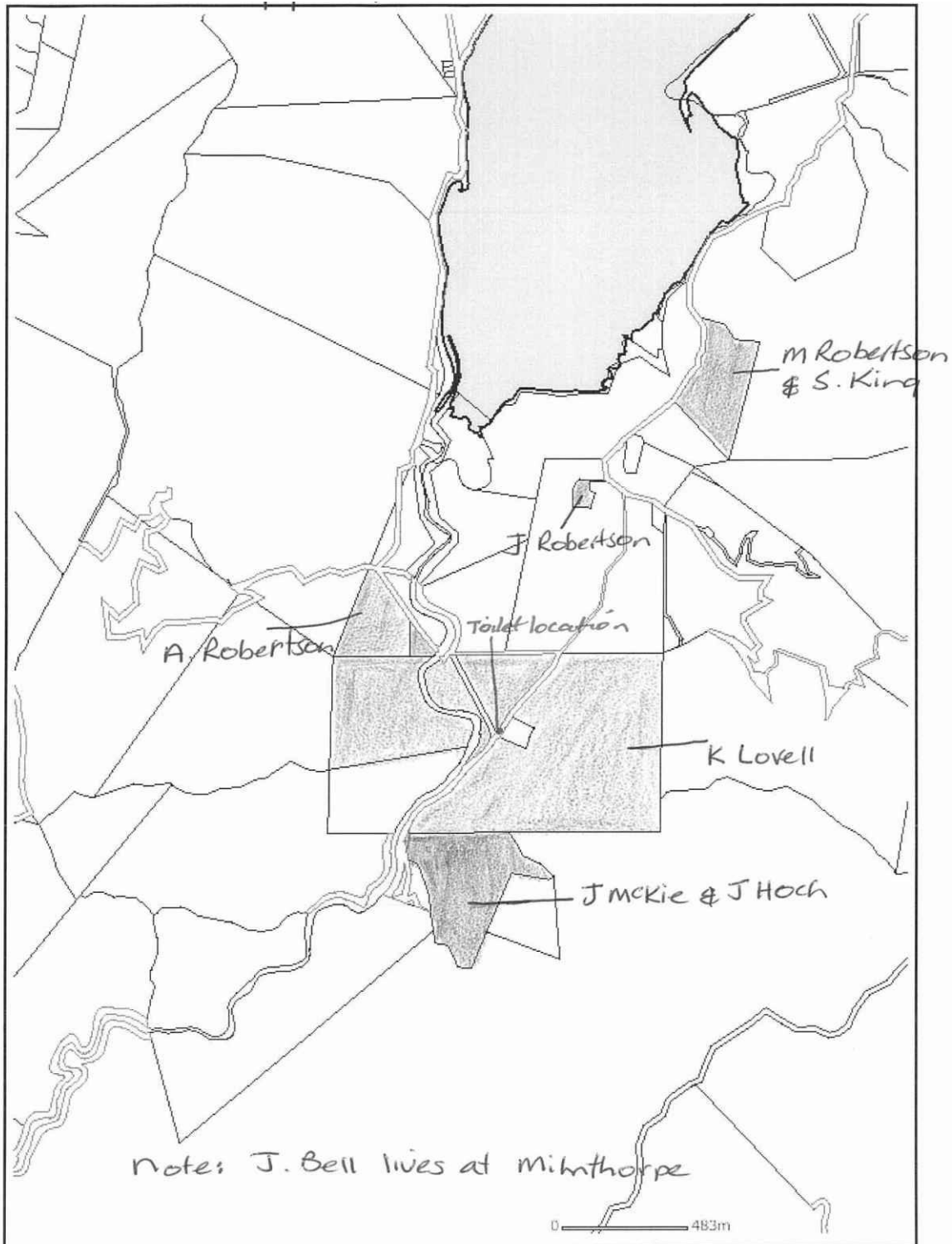
1. This consent is issued pursuant to the Resource Management Act 1991 and the Tasman Resource Management Plan. It does not constitute building consent and if the project involves any form of building, consent should be sought pursuant to the Building Act 1991.
2. Monitoring of this resource consent 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.

3. 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.
4. 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.



Laurie Davidson  
**Consent Planner - Land**

**APPENDIX A**  
**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.

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