

# STAFF REPORT

**TO:** Chair and Members, Engineering Services Committee

**FROM:** Manager Property Services

**DATE:** 17 January 2011

**FILE NO:** 11728

**SUBJECT:** **Ligar Bay Baches on Legal Road – RESC11-02-07-DEC**  
Report prepared for meeting of 3 February 2010

---

## 1 PURPOSE

- 1.1 To consider a request from the licensees of baches situated on legal road at Ligar Bay to extend their licences upon expiry of the licence agreements on 31 March 2014.

## 2 BACKGROUND

- 2.1 The part of Abel Tasman Drive that passes through Ligar Bay was acquired for road under the Land Act 1924 on survey office plans 7766 and 8300. SO 8300 records a house within the balance area of land that was taken for road but does not record any improvements on the land acquired for road.
- 2.2 Plan SO 8300 was approved as to survey in 1925 and the vesting of the land would have occurred shortly afterwards. The area vested as road through Ligar Bay extended to mean high water springs, or the equivalent at that time, and in places was over 40 metres wide.
- 2.3 Attachment 1 shows the part of SO 8300 that passes through Ligar Bay.
- 2.4 There are no readily available records that show when dwellings were built on legal road at Ligar Bay. We have not searched the archives at the Takaka Service Centre and do not consider that necessary for this report. The earliest records we accessed show that agreements were entered into by the Takaka County Council in 1956 to record the occupation of part of this land for bach sites. Some of the baches appear to be older than this and may well predate World War II.
- 2.5 In 1989 the Golden Bay County Council agreed to issue licences for the eight baches situated on the legal road at Ligar Bay. The term of the licences was 25 years expiring on 31 March 2014. The licences provided that the annual rental would be the equivalent of twice the annual rates of adjacent residential properties in Ligar Bay but in 1993 this was reduced to 120%. This is the only occupation fee payable as the baches are not able to be separately rated. The licence agreements are a fairly simple document and appear to relate only to the footprint of the baches which have been erected on the land. However, the actual occupation extends beyond the

footprint of the baches with gardens, fences and other improvements having been erected.

- 2.6 Since the licences were issued in 1989, some have changed hands and some have had other family members included as licensees. With the knowledge that the licences were to expire in 2014, these transactions were not considered an issue. While the licences did not provide for assignment, they did not prohibit it either but any assignment would be at Council's sole discretion.
- 2.7 In 2007 an approach was made from the Ligar Bay Homeowners Association which represented the homeowners on the legal road at Ligar Bay requesting the opportunity to meet and discuss options for extending the licences upon their expiry. Subsequent to a meeting with representatives from the bach owners, a further letter was received from the Ligar Bay Homeowners Association again seeking to extend their licences. This letter followed a meeting with the homeowners held in February 2008 at which it was explained that if the Council was to consider extending the licences, consultation with the community would have to occur and the Golden Bay Community Board would be required to establish a firm position. The Golden Bay Community Board facilitated a meeting in the Pohara Hall on 23 June 2009. Their report and recommendations, dated 23 February 2010 is attached to this report (Attachment 2). This report recommends granting a triennial licence with renewals subject to certain conditions being satisfied.
- 2.8 Since then, many submissions have been received, mostly from within the general vicinity of Ligar Bay expressing opinions both for and against the extension of the licences. Many of the submissions are quite detailed and some have included photographs or powerpoint presentations. Copies the submissions received at this office are not attached to this report (due to the sheer volume of information) but can be made available to members on request.

### **3 DISCUSSION**

- 3.1 The baches are erected on legal road. Because of the nature of legal road it is not possible to provide any security of tenure for the land that is currently being occupied. There is an implied right for the public to "pass and repass" on legal road. The Council has the ability to determine how this may occur and may restrict access under certain circumstances. There are instances of private improvements erected on legal road elsewhere in Tasman District and most territorial authorities in New Zealand have issues with encroachments, partly or wholly, onto legal road. Although there is no formal policy, the accepted practise has been to tolerate them at the pleasure of the Council provided that they do not unduly interfere with the rights of the public to use the land and do not create additional work for Council staff through dealing with complaints or licence compliance issues. The term "bach" previously implied a rustic New Zealand holiday cottage used for family holidays. More recently the term "bach" has been extended to include more luxurious dwellings as well.
- 3.2 The Ligar Bay baches have a mixed use. They include persons using them as permanent dwellings, baches seemingly held as an investment and let as residential tenancies and possibly some used as a holiday or weekend getaway by the owners. Spaces around the baches have become personalised to the extent that the land around the baches appears to be privately owned to all intents and purposes.

- 3.3 There has been considerable residential subdivision in Ligar Bay since 1989. While some of the homeowners in this residential area are content for the baches to continue to occupy part of the legal road at Ligar Bay, others are not. From a legal perspective it is difficult to establish grounds which would support the continued occupation of Ligar Bay by these baches. However, despite the legal position, baches have been allowed to remain on legal road with the blessing of councils in some similar situations around New Zealand. While this does not mean that the occupation of baches on legal road can be legally sanctioned, it has been tolerated.
- 3.4 Some of the submissions received on this subject comment on rubbish and material which appears to have been abandoned by bach owners, the development of the land surrounding the baches to discourage use by the public, the construction of new improvements or additions and inadequate sewage disposal with potential contamination of the surrounding area.
- 3.5 Several years ago Abel Tasman Drive, where it passes through Ligar Bay, was widened which resulted in the formed road moving quite close to some of the baches. Those bach owners that were affected by the works cooperated to ensure that their improvements did not affect the roading improvements. Consideration was given (in accordance with the licences) to serving notice for the bach owners to quit but with the knowledge that the licences expired on 31 March 2014 it was agreed that they could remain. There is a potential issue nevertheless with the proximity of some of the baches to the carriageway.
- 3.6 The bach owners have engaged a lawyer to represent their interests. They have requested and been supplied with a copy of the Golden Bay Community Board report. They have requested that they be given an opportunity to address the Council before any decision is made on whether the baches can remain and if so on what terms. A copy of this report will be provided to the lawyer representing the bach owners with a suggestion that he or they may wish to appear at the public forum of the meeting at which this report is to be considered should they so desire. Other submitters have also expressed an interest in being present at the Council meeting when this matter is considered.
- 3.7 The Golden Bay Community Board report has recommended that the baches could remain under certain conditions and if these were not agreed to, that they be removed. While this addresses the desires of the bach owners, it does not address the concerns of other submitters.

## **4 SIGNIFICANCE**

- 4.1 The subject matter of this report is not regarded as significant under the Tasman District Council's policy on significance. However, it is expected that regardless of the decision that the Council makes, it will receive publicity.

## **5 AFFECTED PERSONS**

- 5.1 The bach owners all claim to be affected persons regarding the decisions made in respect of this report and numerous submitters will also claim to be affected persons

regarding their rights to use the legal road at Ligar Bay. The bach owners have sought the opportunity to express their opinion on the renewal of the licences past 31 March 2014, a public meeting has been held by the Golden Bay Community Board and since then numerous submissions and enquiries have been received by members of the public. It is considered that the Council has consulted sufficiently on this topic and received sufficient feedback to enable it to make a decision on whether or not to grant new licences on the termination of the existing licences.

## **6 OPTIONS**

- 6.1 In accordance with the provisions of the licences, confirm that the licences will terminate on 31 March 2014 and require the removal of the improvements within a reasonable time thereafter.
- 6.2 Agree to issue new licences either at the pleasure of Council or for a period of up to say 20 years for some or all of the baches.
- 6.3 Agree to issue lifetime licences for some or all of the baches.
- 6.4 Agree to publicly notify road stopping proposals for some or all of the baches thus bringing them into the land titles system.

## **7 ASSESSMENT OF OPTIONS**

- 7.1 If the Council chooses to confirm the termination of the licences on 31 March 2014 and require the removal of the improvements within a certain timeframe, it would be appropriate to engage the community in proposals to develop the area for passive recreation. Numerous suggestions had already been received regarding how the area may be developed should the baches be removed.
- 7.2 If the Council is of the opinion that new licences could be issued for some or all of the baches several matters would require further consideration which would be the subject of a further report. These include the amount or method of rental assessment which should be on a market basis, the actual area to be licensed, the personalised space around the baches, the proximity of some baches to the formed road, sanitation and water quality issues, conditions of occupancy including whether or not they may be used as a permanent dwelling. It is expected that a market rental for the footprint of the dwellings would be in the vicinity of \$15,000 per annum. Any new licence would still require early termination at Council's option.
- 7.3 The issue of a new licence for some or all of the baches for the lifetime of a licensee would also require consideration of the issues referred to in 2 above. However, if a lifetime licence is to be issued, Council needs to be quite clear in who the licence could be issued to and whether or not there can be any assignment. Generally there is no assignment with a lifetime licence and it is in the name of one person only. Because of the potential for this to be exploited by someone claiming a younger family person as the nominated licensee the Council would need to ensure that whoever was nominated was not only occupying the property but also responsible for it. We would also need to ensure that the properties were not on let.

7.4 While it would be possible to publicly notify the stopping of part of the road where some or all of the baches are located and bring them under the land title system, it is unlikely that such an application would be successful. The Council's Engineering Standards place minimum width requirements on legal roads and the residual width of the road after the footprint of the baches have been removed would compromise those standards. The process would require that any objections are heard by the Environment Court and it is the opinion of the writer that this would be a costly and unsuccessful exercise as far as freeholding the land under which the baches are situated goes. Any part of the road to be stopped that lies within 20 metres of mean high water springs is required to vest as esplanade reserve and the rules regarding esplanade reserves do not provide for dwellings.

## **8 CONCLUSION**

8.1 Eight baches are situated on legal road in Ligar Bay. They occupy the footprint of the building under licence to the Council. The licences expire on 31 March 2014 and do not provide for any right of renewal. While the law does not provide for dwellings to occupy legal road, there are instances of dwellings or baches on legal road throughout New Zealand and many have been allowed to remain provided that they do not unduly interfere with the rights of the public to occupy those areas. The bach owners have been aware since 1989 or when they purchased their baches (in the case of those that were assigned subsequent to 1989) that their licences were to expire in 2014 and that they would be required to vacate at that time. The bach owners have sought the issue of new licences from 2014 and have requested the right to address Council on this. Numerous submissions have been received regarding the baches and the area of legal road that is occupied.

8.2 The options and the assessment of options set out within this report provide Council with a range of choices. If the Council considers that new licences should be granted for either a limited or lifetime term, a further report should be requested to address many of the issues raised in this report and clarifying conditions of occupancy.

8.3 Because of the legal position regarding the continued occupation of legal roads by dwellings and the implied rights of access by the public, it is considered most likely that a decision by the Council to issue new licences will be contested by those not satisfied with that decision and, that such a position may be difficult to legally defend. On that basis the recommendation is that the Council confirm the expiry of the licences of 31 March 2014.

## **9 RECOMMENDATION**

**9.1 THAT the report RESC-11-02-07 of the Manager Property Services dated 17 January 2011 regarding the baches at Ligar Bay be received, and**

**9.2 THAT the Tasman District Council confirms the expiry of the licences to occupy legal road at Ligar Bay on 31 March 2014 as noted in the report RESC-11-02-07.**

Jim Frater  
**Manager Property Services**