

MINUTES

TITLE: Environment & Planning Subcommittee
DATE: Monday, 17 March 2008
TIME: 9.30 am
VENUE: Council Chamber, 189 Queen Street, Richmond

PRESENT: Cr N Riley (Chair), Crs R G Currie and S J Borlase

IN ATTENDANCE: Principal Consents Planner (R Askew), Resource Consents Manager (R Lieffering), Consents Planner Golden Bay (L Davidson), Administration Officer (B D Moore)

1. R B CARR AND A J EMERSON, 59 TOTARA AVENUE, GOLDEN BAY – APPLICATION RM070991

1.1 Proposal

The applicant applied to erect a dwelling at 59 Totara Avenue, Pakawau on land described as Lot 13 Deposited Plan 6816 in CT NL3B/616. The site is zoned Rural 2 and located within the coastal environment area. The proposed building does not meet the proposed Tasman Resource Management Plan Rules in relation to bulk and location, as the dwelling is sited closer than 10 metres to the road boundary, closer than 5 metres to both of the internal boundaries and closer than 100 metres to the coast within the coastal environment area.

The Committee proceeded to hear the application, presentation of submissions and staff reports as detailed in the following report and decision.

The Committee reserved its decision.

RESOLUTION TO EXCLUDE THE PUBLIC

Moved Crs Riley / Borlase
EP08/03/23

THAT the public be excluded from the following parts of the proceedings of this meeting, namely:

R B Carr and A J Emerson

The general subject of the matter to be considered while the public is excluded, the reason for passing this resolution in relation to the matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for passing this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under Section 48(1) for the passing of this resolution
R B Carr and A J Emerson	Consideration of a planning application	A right of appeal lies to the Environment Court against the final decision of Council.

Moved Crs Borlase / Currie
EP08/03/24

THAT the open meeting be resumed and the business transacted during the time the public was excluded be adopted.

CARRIED

2. R B CARR AND A J EMERSON, 59 TOTARA AVENUE, GOLDEN BAY – APPLICATION RM070991

Moved Crs Riley / Borlase
EP08/03/25

THAT pursuant to Section 104B of the Resource Management Act, the Committee DECLINES consent to R Carr and A Emerson as detailed in the following report and decision.

CARRIED

Report and Decision of the Tasman District Council through its Hearings Committee

Meeting held in the Tasman Room, Richmond

on 17 March 2008, commencing at 9.30 am

A Hearings Committee (“the Committee”) of the Tasman District Council (“the Council”) was convened to hear the application lodged by **Richard Carr and Ailsa Emerson** (“the Applicant), to construct a new dwelling within 100 metres of Mean High Water Springs (MHWS) and to remove native woody vegetation including several totara (*Podocarpus totara*). The application, made in accordance with the Resource Management Act 1991 (“the Act”), was lodged with the Council and referenced as RM070991.

PRESENT:

Hearings Committee

Cr N Riley, Chairperson
Cr S Borlase
Cr G Currie

APPLICANT:

Mr R Carr and Ms A Emerson, the Applicant
Mr M Lile, Planning Consultant
Mr D Wallace, Architect
Mr T Carter, Landscape Architect
Ms C Owen, Legal Counsel (at reconvened hearing only)

- CONSENT AUTHORITY:** **Tasman District Council**
Mr L Davidson, Consent Planner Land Use
- SUBMITTERS:** Mr R Slade and Ms J Carr, Submitter
Mr N McFadden, Legal Counsel for above Submitter
Dr P Simpson, Botanical Witness for above Submitter
- IN ATTENDANCE:** Mr R Askew, Principal Resource Consents Adviser, Assisting the Committee (initial hearing only)
Mr J Butler, Principal Resource Consents Adviser, Assisting the Committee (reconvened hearing only)
Mr B Moore – Committee Secretary

1. DESCRIPTION OF THE PROPOSED ACTIVITY

The Applicants have sought to erect a replacement dwelling at 59 Totara Avenue, Pakawau, Golden Bay, on land described as Lot 13 DP 6816, being land comprised in Certificate of Title NL3B/616, and having a gross area of 810 square metres. The proposed dwelling is 168 square metres and has 86 square metres of decking. Therefore, building coverage, as it is defined in the Proposed Tasman Resource Management Plan (PTRMP), would be 20.7%. But with 86 square metres of decks (to provide an idea of the total minimum area of vegetation removal) the proposed coverage is 31.4%. The proposed house is single storied and fits beneath the 5 metre maximum building height for this location.

There is an existing smaller dwelling (the “existing bach”). If consent is granted for the new dwelling this existing bach would be removed.

The development is within the Coastal Environment Area and, as the proposed development is not on the footprint of the existing bach, it will necessitate the removal of woody indigenous vegetation (16 to 18 trees, being 24.6% to 27.7% of the total on the site).

The proposal also involves the installation of a package wastewater treatment system and associated drip irrigation pipes, and a small driveway.

2. PROPOSED TASMAN RESOURCE MANAGEMENT PLAN (“PTRMP”) ZONING, AREAS AND RULE(S) AFFECTED

According to the PTRMP the following apply to the subject property:

Zoning: Rural 2

Area(s): Coastal Environment Area

The proposed erection of replacement dwelling does not comply with Permitted Activity rule 17.5.4(f)(i) of the PTRMP and falls to be considered as a Restricted Discretionary Activity in accordance with Rule 17.5.6 of the Plan.

The erection of a building in the Coastal Environment Area (“the CEA”) within 100 metres of MHS and which is in the Rural 2 zone is not a Permitted Activity under Rule 18.14.2 of the PTRMP and falls to be considered as a Restricted Discretionary Activity pursuant to Rule 18.14.4 of the Plan.

The proposed removal of indigenous woody vegetation within the CEA is not a Permitted Activity under either Rule 17.5.9A or Rule 17.5.10 of the PTRMP and falls to be considered as a Discretionary Activity pursuant to Rule 17.5.9B of the Plan.

3. NOTIFICATION AND SUBMISSIONS RECEIVED

The application was limited notified on 6 December 2007 pursuant to Section 94 of the Act. One submission was received. The following is a summary of the written submission received and the main issues raised:

Submitter	Reasons	Decision
J Carr and R Slade	<p>The building as proposed with dispensations sought would 'close in' the submitter's site.</p> <p>Non-compliance with the 5.0 metre setback would adversely affect their open space, privacy and separation. That the 100 metre setback from Mean High Water Springs should be complied with as well as 10 metre setback from the road.</p> <p>Larger dwelling will result in increased traffic generation. Whilst the application proposes high level windows and vegetation retention there is no guarantee that such measure will be retained into the future.</p> <p>The proposal offends against the objectives and policies of the PTRMP and the principles of the Act and Part 2 in particular.</p>	<p>Decline</p> <p>The submitter wished to be heard</p>

4. PROCEDURAL MATTERS

A letter was received by the Committee from Mr and Mrs Besier that expressed their concerns that the development was not publicly notified and that the erection of the proposed dwelling would adversely affect the environment by removal of totara trees and that the owner should erect a dwelling more in-keeping with the property. The Committee were advised by the Council's Principal Resource Consents Adviser that the letter could not be regarded as a submission, and nor could the correspondents be considered submitters. But the Committee was advised that they could have regard to the content of the letter as "any other matter" pursuant to Section 104(1)(c) provided the Committee considered the letter to be relevant and reasonably necessary to determine the application.

At the conclusion of the public part of the hearing, the Committee carried out a second site inspection of the property and, as a consequence of that site inspection and the evidence presented at the hearing regarding the ecological values of the totara trees on the peninsula, sought further information from the Applicant under Section 41C(3). The information sought was for clearer identification of the trees that are to be removed under the proposal and a report from a "suitably qualified ecologist/biologist experienced in coastal indigenous forest flora and fauna that evaluates the 'significance' of the totara forest both in local, regional and national terms". Overall, the Committee sought a greater level of information regarding the impact of the proposed development on the Totara Avenue indigenous vegetation.

Following receipt of this information the hearing was reconvened. The Chair limited the scope of reconvened hearing to the new evidence that had been provided.

5. EVIDENCE HEARD

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

5.1 Applicant's Evidence

Mr M Lile, Resource Management Consultant for the applicant, tabled and read an introductory statement. He spoke about building set backs in the Rural 2 zone and the practical difficulty of achieving these requirements at Totara Avenue.

Mr H Carr read a statement as the applicant and that the architect of the proposed house was asked to produce a design that fitted sympathetically with the unique natural environment. This included the need to preserve privacy for neighbouring properties. Mr Carr said he believed that the proposal is sensitive to the environment and privacy aspects.

Mr D Wallace, Architect, presented and explained the design of the proposed dwelling on the subject site. He described the single story house that will fit within the 5 metre maximum building height with low pitched rooves sloping up to the north allowing northern light to penetrate the house from a high level. The house is 168 square metres with 86 square metres of decks and has three bedrooms and a garage is not provided. Rainwater storage tanks will be designed to fit under the deck areas of the house. The dwelling will be sited 3.6 metres from the southern boundary with a small bay window for the bathroom, 2.7 metres wide, coming to 2.6 metres of the boundary instead of the required 5 metres. The distance from the proposed lounge to the northern boundary will be 2.9 metres instead of the required 5 metres. The house would be about 10 metres from the boundary nearest the beach and about 6 metres from the boundary nearest Totara Avenue.

Mr Wallace provided computer generated photographic based illustrations to compare the existing bach with the proposed new dwelling. A site plan was provided to show the locations of the vegetation to be removed to construct the dwelling. The proposed building complies with the residential zone daylight angles. Outdoor living areas would be across the front and back of the house and incorporate the use of the decking.

Mr T Carter, Landscape Architect, tabled and read evidence on the potential effects of the proposed development on the important totara vegetation growing on the subject site and effects on neighbouring properties. He said that the applicant wished to develop the subject site in harmony with the existing vegetation patterns at Totara Avenue and in keeping with the existing low key residential character of the area. Mr Carter explained how the application will minimise the impact on the Totara Avenue forest and vegetation removal can be tidily controlled. Annexed to Mr Carter's evidence was a Vegetation Management Plan which would be implemented to control threats to the onsite vegetation. Mr Carter explained that this would include management during construction work and remedial work afterwards. Annexed to this evidence were photographs to illustrate the existing vegetation at Totara Avenue and on the subject site and neighbouring properties.

Mr Carter said that replacement vegetation should preferably be in the way of small plants from locally sourced and seeded stock.

Mr M Lile then tabled and read a statement of resource management evidence and provided a series of photographs taken from the shoreline adjacent to Totara Avenue. He referred to the rules of the PTRMP which provide for applications to be made and considered as restricted discretionary activities for the building set back rules from boundaries and the CEA.

Mr Lile explained how the design and location of the building will assist in the retention of the maximum amount of indigenous vegetation with only a minor effect on neighbouring properties. He noted that the submitters' own dwelling is also partly within the 15 metre side boundary setback, being 3.8 metres from the brush fence. Mr Lile explained how the residential zone rules are not as tough as the Rural 2 zone standards that apply to the subject site. He said that the Rural 2 zoning was applied to the subject area as a consequence of the historical Rural B zoning of the Golden Bay district scheme.

Mr Lile's evidence included an assessment of actual or potential effects especially in regard to the boundary and coastal setbacks and the effects of vegetation and tree removal. He also referred the hearing panel to his assessment of effects contained within the original application of 17 September 2007. Mr Lile also provided a statutory assessment of the proposal and concluded that he considered the proposal to be sustainable management of the land resource. He said that the proposal had been designed to fit comfortably and sensitively in the coastal and natural environment. He said it also respected the privacy and outlook of the property to the south. Mr Lile asked that conditions of consent refer to the revised plans referred to at the hearing.

Reconvened Hearing

Ms Owen presented the ecological report by Mr Overmars (the Overmars Report). For completeness and as the report was not available at the time of notification, a summary of the report is presented here.

The Overmars Report states:

"The stand has high representativeness value, and likely has some significance as a seasonal habitat for wildlife in the surrounding landscape. Because the less modified parts of the stand are at its southern end (including the Carr-Emerson property), the site shares the stand's representativeness value. The presence of residential dwellings throughout the stand seriously compromises its naturalness/intactness"

The report also states that the site has low value for diversity and pattern and that no threatened plant or animal species have been recorded. Overall, however, the report concludes that the stand is significant because of its high value on one criterion but cautions that, in terms of Section 6(c) of the Act a balanced assessment is required, having regard to all criteria.

Finally, the Report recommends a small adjustment to the building to allow the retention of trees 38 and 39 as well as a number of other minor amendments. In the recommendations, the report also makes the comment:

“In an ideal world [the most significant effects would be mitigated] by adopting a two-level house design, reducing the house size and/or shifting the house footprint to include the footprint of the existing bach. However my recommendations need to be relevant to the application under consideration”

Ms Owen, in a summary of the Overmars Report, agrees that the site is significant in terms of Section 6(c) of the Act. However, she stated that the Section requires a balanced assessment and that “protection” does not equate to preservation and that it generally means “keeping safe from injury or harm”. She reaffirmed the position that this does not mean preservation. Case law supports the stance that a reasonable rather than a strict assessment is needed.

Ms Owen pointed out a recommendation in the Overmars Report for a covenant to be placed on the remaining areas of forest and that this will provide for long term legal protection. She considers that this will achieve the aim of “keeping from harm” or “protecting” the forest.

5.2 Submitter’s Evidence

Evidence on behalf of Mr R Slade and Ms J Carr was tabled and read by solicitor Mr N McFadden. He referred to natural indigenous forest on the subject site and said that the application should have been publicly notified. He claimed that the application was deficient as there was no assessment of effects. He said that there is a complete forest sequence on this site with 17 trees to be removed. Mr McFadden said the house is not designed to fit neatly on the subject site and no application had been made to remove these trees. He said that the removal of the trees is a critical and interrelated process of constructing the dwelling. He also said that no application for consent was made for the reserve wastewater disposal area.

Mr McFadden said that an assessment of environmental effects needed to allow submitters to assess effects. He said that adverse effects are not known and submitters were unable to determine if the effects were minor. He referred to a letter received from Mrs Bezier of Totara Avenue. Mr McFadden said that his client’s referred in their submission to the objectives and policies of the PTRMP.

An Ecological Consultant, Dr P Simpson, of Golden Bay was called by Mr McFadden as an expert witness on behalf of the applicant. Dr Simpson said that the makeup of the vegetation on Totara Avenue peninsula includes totara trees and in this location is a rare and reasonably significant forest. He said that any further loss of this totara forest should be actively discouraged. He said that the central area of Totara Avenue peninsula contains the best vegetation.

Reconvened Hearing

Mr McFadden refers to a large number of occasions in the Overmars Report where Mr Overmars refers to the significance and importance of the forest, the “remarkably good condition” and that the Carr and Emerson property is a significant proportion of the core area of the totara stand.

He then drew attention to the contrast between those statements and the final recommendation of some minor adjustments to the house and the covenanting of the remaining forest. He stated that the report seems to be “not on ecological significance ... but rather how this house can be accommodated on the site”.

He then stated that the effects will be fourfold:

- a) trees will be lost on, or immediately beside the house site;
- b) the trees that are within the drip line may be potentially affected;
- c) there will be a far greater intensity of human intervention on the site; and
- d) regeneration will not occur.

Mr McFadden restated the question “How did Mr Overmars ever come to the conclusion he has?” when throughout the Report he stated that the forest has high representativeness, it adds to the habitat of wildlife, its not really big enough to be sustainably retained in the long-term (hundreds of years) even though the proposed dwelling is at the core of the forest.

He stated the challenge to the Applicant is how they develop the site without affecting this significant vegetation. In his summation the answer is that he can expect to have nothing more than a cottage he already has or a new one on the same footprint. Based on the comments of the Overmars Report and the comments of his witnesses, “to do otherwise would breach the imperatives of the Act”

Mr McFadden raised the concept of “stewardship” and stated that it means to take care of what we have and to not put it at risk. He considered it to be relevant to this case and that protection should be required.

Mr McFadden then called Dr K Lloyd who is a Senior Ecologist at Wildland Consultants Ltd. Dr Lloyd stated his (considerable) qualifications, expertise and experience in the field of ecology and botany.

Dr Lloyd stated that he “[does] not agree with Mr Overmars’ assessment overall and in particular his conclusion that the forest on the site is only important in terms of representativeness”

Dr Lloyd then presented his assessment of the forest with regard to it’s representativeness, diversity and pattern, rarity factors and/or special features, naturalness/intactness, size and shape, inherent ecological viability and sustainability, relationship between natural areas and other more modified areas, the site vulnerability and management requirements, and finally the forest’s significance in terms of Section 6(c) of the Act.

In terms of Section 6(c) of the Act, Dr Lloyd shows that the forest has a high level of significance at a local, regional and national level. Further he stated that indigenous dune vegetation has become nationally rare and, consequently, it is listed as a national priority for protection on private land by the Ministry for the Environment.

Dr Lloyd then addressed the adverse effects. He considered that the Overmars Report centres on effects on individual totara trees, rather than the forest ecosystem as a whole. Dr Lloyd points out that the Overmars Report does not assess the effects on the large totara tree located just within the boundary of 61 Totara Avenue (the submitters’ property). He says that the tree has a major root which extends towards the proposed bathroom. He implied that serious or terminal damage may occur to this tree also.

Dr Lloyd considered that the vegetation left after construction of the dwelling, decks, septic tank, pipes, water tanks and chip-seal car park would no longer be a good example of representative dune forest. The species diversity would be reduced and the large canopy gap would enhance weed invasion (as would disturbance around the construction site), natural regeneration would be diminished, and the site would become much less natural and intact. Dr Lloyd also raised the issue of laydown areas for construction materials and mechanical damage to tree trunks and roots which can cause fungal infections.

Finally, Dr Lloyd stated that no assessment of a potential cumulative effect has been made. Future similar development will remove parts of the core of the last pieces of relatively intact forest on the spit. He considered the covenant on the remaining less affected vegetation to be a case of the door being closed after the horse has bolted.

Overall, Dr Lloyd considered that the proposed development is remarkable in its almost complete disregard for the ecological values of the site, and that if it is constructed as proposed it will cause a significant adverse effect which will not be sufficiently mitigated by any of the proposals in the application.

Cr Borlase asked if Dr Lloyd considered the house could be better positioned. Dr Lloyd responded that it is currently to be positioned right in the middle of the principle area and it is unreasonably large in size.

There was some discussion about the regeneration of totara and Dr Lloyd commented that they generally won't reproduce under themselves and that they require a treefall or a gap of some sort.

When asked by Cr Borlase whether a covenant would be enough to protect, Dr Lloyd said that the presence of the house would be one of the major impacts through the creation of a large gap and the subsequent introduction of weeds.

Dr Simpson was then called.

Dr Simpson stated that the Overmars Report differs from his in that it focuses much more on the site, rather than the significance of the development and the forest on the spit as a whole. He did not agree that proceeding with the development and covenanting what is left constitutes "protection".

Dr Simpson then compared and contrasted his assessment of the forest and found that on all criteria his assessment was either high or moderate. He considered that the impact of the development is high. He too considered the potential for considerable cumulative effects to arise from the precedent set by granting consent to be high.

Finally Mr McFadden stated that the two witnesses had not met each other, spoken, nor seen each others' evidence before the hearing. They had reached the same conclusion independently.

5.3 Council's Reporting Officer's Report and Evidence

Consent Planner Golden Bay, Mr L Davidson, said that Totara Avenue is a unique sandspit containing residential sized allotments. Mr Davidson referred to the proposed reduced boundary separation distances for this single dwelling on the

residentially zoned site with one boundary adjacent to the sea coast and the other adjacent to Totara Avenue. He said he struggled with references to Totara Avenue area as being indigenous forest, as it is not an 80% canopy closure. He noted that the applicant had included in Section 18B of the assessment of effects contained with the original application of 17 September 2007, a reference to effects on indigenous vegetation and the need for this to be cleared for the footprint of the new house. He noted that the applicant no longer intended to provide a reserve wastewater disposal area.

Mr Davidson spoke to the proposed conditions of consent contained within his report. He suggested that Condition 5 regarding accessing car parking onsite could be changed to only require carriageway material to be provided to the property boundary only. Mr Davidson said that details of the proposed water tanks to be located under the decking would need to be provided at building consent stage and show how stormwater overflow would be distributed for irrigation purposes. Mr Davidson suggested that the screen on the eastern deck should be of a solid material but could be sandwiched between something more aesthetically acceptable. Mr Davidson endorsed the applicant's proposal to protect onsite vegetation during the construction process. He said this was a reasonable sized building and similar to those buildings on neighbouring properties. He expressed difficulty in assessing the effect of the reduced boundary separation distances.

Mr Davidson reminded the hearing panel that the subject site was not a Greenfield site as it has been developed for residential use and it is proposed to be redeveloped. Mr Davidson referred to the proposed condition of consent outlined in his report and acknowledged the additional landscaping condition that the applicant had produced at the hearing. In summary, Mr Davidson said that the effect of the proposal on neighbouring houses is minor and can be mitigated by conditions of consent, for the purposes of providing privacy and mitigation of effects.

Reconvened Hearing

Mr Davidson did not appear in the reconvened hearing but provided some written notes which provided some considerations for the Committee including minor amendments to the design of the house and facilities.

5.4 Applicant's Right of Reply

Mr Lile responded for the applicant and confirmed that the applicant had made an application to remove indigenous existing trees and vegetation. He referred and quoted some of the many references to this vegetation removal, as outlined in the applicant's assessment of environmental effects. He said that this work is within the area shown on the site plan lodged with the application. He confirmed that the area of the house is 186 square metres with 68 square metres of uncovered deck. This represented a 29% site coverage of the 57 Totara trees with over 100 millimetres diameter measured 1.4 metres above the ground, 16 of those trees are to be lost. He said that there would be no lawn in the frontage of the house and most of the Totara trees are in the front yard. He confirmed that the house size is similar to both adjacent neighbours.

He referred to Section 6.4 of the submission provided by Mr N McFadden on behalf of the submitters and said that these are the same objectives and policies as listed in the staff report. He said Policy 8.2.6 requires that applicants “avoid where practical” the removal of vegetation.

Mr Lile then referred to the reasonableness of the application. He said it is impossible to comply with the 100 metre setback from mean high water springs as the Totara Avenue sandspit is only 100 metres wide overall. He noted that both the existing bach on the subject site and the submitter’s dwelling, are closer than 5 metres from the site boundary. Mr Lile said that the existing bach is only 40 square metres in floor area and it is completely unreasonable to expect it to be retained for a dwelling.

Mr Lile said that he acknowledged Mr Simpson’s evidence and that the forest cover in and around the subject site is intact and its retention can be predominantly achieved.

Reconvened Hearing

Ms Owen confirmed that everybody considers the site is significant so there is no factual disagreement between experts. She stated that “protection” does not mean “no harm” it means “big picture protection”.

With regard to Mr McFadden’s consideration of stewardship, Ms Owen considered that the Act is not a “no-risk” statute and that it should be balancing. She stated that the question that needs to be answered is “does it amount to sustainable management?”

Ms Owen then raised the point that Mr McFadden’s statement that any dwelling should only go on the current site of the existing bach is in conflict with his original submission which claimed that the house was too close to the coast.

6. PRINCIPAL ISSUES

The principal issues that were in contention were:

- a) Section 6(c) of the Act states:

... all persons exercising functions and powers under [this Act] ... shall recognise and provide for the following matters of national importance:

- (c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*

Is the forest on the site an “area of significant indigenous vegetation” and/or an “area of significant habitat to indigenous fauna”? If so, would the proposed development and proposed mitigation be considered adequate protection under Section 6(c) of the Act?

- b) The Overmars Report provides an assessment of the values and importance of the totara forest. It also provides recommendations on amendments to the building. But does the Overmars Report provide a clear recommendation that, in the opinion of the writer, the proposal is consistent with the purpose and principles of the Act, and that the building should proceed?

- c) Would the removal of the vegetation cause a significant adverse effect on the environment? If yes, can these adverse effects be suitably avoided, remedied or mitigated?
- d) Is the size, shape, height and location of the proposed development, and the reduced setbacks of the proposed development, appropriate and will the proposed development result in adverse effects on the adjoining dwelling located at 61 Totara Avenue?
- e) Is the size, shape and positioning of the proposed development reasonable and appropriate in this Totara Avenue location?

7. MAIN FINDINGS OF FACT

The Committee considers that the following are the main facts relating to this application:

- a) The Committee is satisfied that the forest is indeed significant. All expert witnesses and counsels agreed on this point. However, the question of the degree of significance appears to be in dispute between expert witnesses. The Overmars Report states that the “representativeness” is high but that most other criteria are moderate or low. The two other expert witnesses criticise this by saying that the report looks too specifically at the subject site and does not look at the forest as a whole, of which this site is a core part. On the basis of this more integrated approach to forest ecology and ecosystem functioning, the Committee agrees that the significance of the forest is somewhat greater than that claimed by the Overmars Report.

The Committee agrees with the Ms Owen’s submission that protection does not necessitate preservation. The Committee is mindful of the case law quoted by Ms Owen (*Director General of Conservation v Wairoa District Council* [W081/2007]) but considers that the current application differs markedly in scale and character. The Committee considers that the small forest size means that any significant loss or damage to what has been described as the core of the forest may have a disproportionately large effect on its functioning and health. The Committee does not consider that removing a large and central section of the forest, along with the resulting adverse effects is sufficient protection.

- b) In the letter dated 20 March 2008, which requested further information under Section 41C(3) of the Act, The chosen expert (Mr Overmars) was asked to evaluate the significance of the totara forest in local, regional and national terms. He was also asked to:

“identify any actual and/or potential adverse effects (including a statement as to whether the adverse effects are more than minor and/or significant) on the ecology of the totara forest and provide recommendations on any ways to avoid, remedy or mitigate any adverse effects ... including any additional requirements regarding the draft Vegetation Management Plan prepared by Mr T Carter and volunteered by the Applicant as a condition of consent.”

Nowhere in the directions of that letter does it ask Mr Overmars to state whether, in his professional opinion, he believes the removal of part of the totara forest should actually occur. This is not necessarily a failing as this decision rests with the Committee. However, the letter does ask for “recommendations on any ways to avoid, remedy or mitigate any adverse effects” and does link these recommendations to the Vegetation Management Plan.

In light of these instructions, the Committee considers that the letter was worded so as to lead the expert to assume that the development was going to happen, and it asked for recommendations to avoid, remedy or mitigate adverse effects. It is the opinion of the Committee that Mr Overmars did diligently follow the instructions given to him, but that his recommendations were given in the context of avoiding, remedying or mitigating the adverse effects of the development. The Committee considers that Mr Overmars did not present a professional opinion on whether the removal of the section of this significant forest for the building should be allowed by the Committee.

Therefore, the Committee is mindful that the recommendations given by Mr Overmars need to be accepted with caution as his comments and assessments seem to be in conflict with those recommendations, and suggest that he may not have recommended that consent for the removal of the vegetation be granted.

- c) The Overmars Report and the expert witnesses at the hearing both stated that there would be significant adverse effects resulting from the proposed development. In particular:
 - i) the large gap in the canopy and the resulting weed growth acceleration;
 - ii) the damage to tree roots and trunks during the construction process around the house;
 - iii) the severance of many tree roots during the installation of water tanks under the decking, which will likely cause tree mortality in some cases; and
 - iv) the loss of a number of large trees as well as other biodiversity such as regenerating trees and orchids.

The proposed mitigation (a covenant over the remainder of the vegetation on the site and the formation of a care group) is helpful but only partially mitigates the permanent adverse effects.

- d) The new dwelling will be located much further back from the coastal frontage than the current dwelling and while the area of the dwelling is much greater than the existing dwelling much of the development involves timber decking. The development is not setting any new benchmark for reduced setbacks as existing properties and recent developments are commonly located within the yard setbacks and all properties are located within the 100 metres setback from Mean High Water Springs (MHWS). The evidence of Mr Carter was that vegetation along the southern boundary will not be disturbed and new screen planting is proposed to a maximum height of 3.0 metres. The evidence of Mr Wallace is that the building will achieve the daylight angle rule that would

apply if the land were zoned residential. The proposed dwelling will have no living court area along its southern boundary with 61 Totara Avenue, it will have high level windows for the bedrooms along its southern elevation. Recommended conditions by the Council's Reporting Officer was that a solid screen should be provided to the bedroom deck so as to ensure visual privacy between that deck and the adjoining property at 61 Totara Avenue.

- e) Totara Avenue has been developed as a relatively exclusive pocket coastal residential enclave. All of the sections have been developed to some degree and while some have attenuated their development to be harmonious limit their impact on the natural environment, there are some properties that have not chosen to do that. The Committee considers that, despite the Rural 2 zoning, Totara Avenue has been divided into residential style sections and that there is the expectation that a dwelling of some sort is anticipated. However, the Committee considers the proposed dwelling and curtilage to be unusually large for the setting. It is also considered that the significant adverse effects described in c) above arise, in part, from the large area of decking and the positioning of the house.

8. RELEVANT STATUTORY PROVISIONS

8.1 Policy Statements and Plan Provisions

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

- a) New Zealand Coastal Policy Statement
- b) Tasman Regional Policy Statement (TRPS); and
- c) the Proposed Tasman Resource Management Plan (PTRMP).

8.2 Part II Matters

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

9. DECISION

Pursuant to Section 104B of the Act, the Committee **DECLINES** consent.

10. REASONS FOR THE DECISION

The principle underlying reason for declining this consent is the effect that the proposed development will have on the totara forest of Totara Avenue. The Committee considers that the forest certainly has a high level of importance at a local level, but also likely has a moderate to high level of importance at a regional and national level. The Committee believes that the proposed development will not protect these values, particularly because of the size and position of the house as it takes up a reasonably large part of the relatively undisturbed and well functioning core of the forest. Given the evidence of the expert witnesses, the Committee considers that the scale of the loss of trees and understory may seriously compromise the forest's integrity through the impact of weeds on regeneration and

through the effect on robust ecosystem functioning. The Committee also considers, although to a lesser extent, that the forest is a significant area of habitat for indigenous fauna which will also be reduced by the level of impact of the development.

The proposed dwelling is considered to be too large and insensitively located. The dwelling cannot be considered a bach and as such does not fit in with the amenity of the area. The Committee also considers that the size of the house and its curtilage will cause unnecessary loss of vegetation. The Applicants should make more effort to reduce their impact by reducing the size and making more use of the area already compromised by the presence of the existing bach.

The Committee considers that the effects, in reality, will be greater than those predicted by the Applicant. Factors such as the potential damage to the very significant tree just over the boundary on 61 Totara Avenue and the mechanical effects of the building process are likely to increase the effects above the absolute minimum that were presented at the hearing.

The Committee does not believe that the volunteered mitigation conditions will adequately offset the adverse effects of the loss of vegetation. The site plan provided to the Committee shows that once the trees have been felled, the house has been built and a certain amount of damage has been done around the site as part of the building process, there will only be a relatively thin surrounding of trees on the property that will be covenanted. Therefore the covenant will provide little meaningful protection to the forest as a whole. In short, the cost-benefit of the development is not good enough to persuade the Committee that this proposal constitutes sustainable management of natural and physical resources.

The objectives and policies of the PTRMP that were considered most relevant in the Council Officer's report were principally focussed on amenity and landscape values. The Committee agrees that the stated objectives and policies are relevant but that through the course of the hearing the significance of the natural vegetation for its biological and ecological values has been illuminated. Therefore others have become relevant for consideration. In particular:

Objective 10.1A.0

Protection and enhancement of indigenous biological diversity and integrity of terrestrial, freshwater and coastal ecosystems, communities and species.

Policy 10.1A.1

To recognise and protect indigenous vegetation and habitats and individual trees which are of significant scientific, wildlife and botanical value assessed according to criteria in Schedules 10B and 10C.

Policy 10.1A.2

To safeguard the life-supporting capacity of the District's indigenous ecosystems, including significant natural areas, from the adverse effects of subdivision, use and development of land.

The Committee considers that the application, as it currently stands, is contrary to these important policies and objective.

Overall, it is not the intention of the Committee to signal that no development at all can occur. The Committee is mindful that dwellings are anticipated on the Totara Avenue sections and that further development shouldn't be disallowed. However, the sensitivity and high significance of the natural environment means that future development needs to be carefully scrutinised. The size, shape and location of this proposed development, as well as the particularly high significance and quality of the forest on and around 59 Totara Avenue means that the Committee believes that granting the development would not provide for the protection of significant indigenous vegetation as required by Section 6(c) and would not be sustainable management of the natural and physical resources of Totara Avenue and Golden Bay.

Issued this 11th day of July 2008

A handwritten signature in black ink, appearing to read 'N Riley', is written over a light grey rectangular background.

Cr N Riley
Chair of Hearings Committee

Date Confirmed:

Chair: