



## STAFF REPORT

**TO:** Environment & Planning Subcommittee

**FROM:** Laurie Davidson - Consent Planner

**REFERENCE:** RM060053

**SUBJECT:** **ADDITION TO DWELLING, P EGDEN AND J LOUGHAN - TORRENT BAY REPORT REP10/09/11** - Report prepared for hearing of 24 September 2010

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### 1. SUMMARY OF PROPOSAL

The application lodged by P Egden and J Loughan seeks land use consent to construct a detached building that is intended to be used for residential purposes in conjunction with an existing dwelling located in the Torrent Bay settlement that is located within the Abel Tasman National Park. The building will be connected to the existing dwelling with a walkway deck and the building will not be self contained in that it does not include a kitchen.

#### 1.2 Site Description/Location

Torrent Bay is a unique coastal settlement that consists of approximately 50 residential properties that are surrounded by the Abel Tasman National Park. The area has a sea frontage to Tasman Bay and includes an estuary on northern and southern side of the settlement. The settlement is largely confined to the coastal margin with a relatively steep hillside to the west and north of the area. Some houses have been constructed on the more elevated land, but the majority of the settlement adjoins the foreshore. A range of development has taken place in the settlement, ranging from small “baches” to substantial up to date holiday homes. The area has two pieces of legal road (Manuka and Lagoon Streets) but these are not formed and are used purely as a walkway for access by foot and 4 wheel motorbike. Generally access is provided by water taxi from Kaiteriteri or Marahau and the Abel Tasman Track passes through the settlement.

The applicant's site is a parcel of land zoned Residential that is 890 square metres in area and is located on the beach front near the northern end of the settlement. The site contains a range of vegetation including native and exotic plants. The vegetation in front of the existing dwelling is trimmed to provide a sea view to the east and the foreshore in front of the beach front properties has had coast care planting undertaken to preserve the foreshore. Access to the various properties is very informal and the area has an atmosphere that is really unparalleled other than a similar sort of settlement at nearby Awaroa.

The area has no services as such, other than a local water scheme that is sourced from the land to the west of the settlement. There are no power or phone services provided and the houses depend on septic tanks for waste water disposal.

It is fair to say the area has a unique character and I consider that is an important aspect to consider when resource consent for a Restricted Discretionary Activity is considered at Torrent Bay. While there are opportunities to build up to 6.5 metres in height in this area, many of the houses are relatively small single storey structures that are located in areas with established vegetation that softens the impact of them.

### **1.3 Background to the Application**

An application was lodged with Council in 2006 to construct an addition to the existing dwelling on the site that was treated as a second dwelling in the Coastal Environment and Special Domestic Wastewater Disposal Area. The application was processed as a non notified application and the decision issued in March 2006. That decision was challenged by an adjoining neighbour who claimed Council had acted illegally by processing the application as a non notified application and that they should have been notified to enable them to participate in the process. A Judicial Review was filed with the High Court and the matter came before Justice J Williams who issued a decision on 11 March 2010. The court found the Council had acted in error by processing the application as a non notified application and the consent was set aside. The Justice issued a directive that if the application was to proceed, Council would have to process the application as at least a limited notified application to enable the adjoining neighbour to participate in the process.

Council has followed Justice Williams' directive and has served a copy of the application on the adjoining neighbour (S Allan) and the matter is being reconsidered as a limited notified application. On that basis, the application is to be considered afresh and the previous decision should not be a factor when the matter is addressed by the Committee.

### **1.4. Legal Description and Plan Attributes**

The application site is legally described as Lot 5, Deposited Plan 1612, Block III, Kaiteriteri Survey District, being all of the land in Certificate of Title NL 81/31 comprising a total area of 890 square metres.

### **1.5 Status of Application**

Zoning: Residential  
Areas: Coastal Environment Area  
Land Disturbance Area 2  
Special Domestic Wastewater Disposal Area

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

- 18.11.2.1 Construction of a new building in the Coastal Environment Area (Controlled Activity)
- 17.1.3.1(q) Exceeding the height restriction for an accessory building (Restricted Discretionary Activity)
- 17.1.3.1(n) Encroaching the 27 degree daylight angle on the southern boundary. (Restricted Discretionary Activity)

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

Note: There has been some question regarding the building's setback from the watercourse running through the property which is open to an interpretation that it is technically a "river".

This watercourse is better described as a man made ditch as it is only approximately 450 mm wide where it runs between the existing dwelling and the proposed building.

After analysing the definitions of River, Modified Watercourse and Drainage Water staff have come to the conclusion that the channel is best defined as a drainage ditch. These definitions are included below. Additionally there is no sign of a stream or river marked on the 1:50,000 series topographical maps.

**River** – means a continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse; but does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal).

**Modified Watercourse** - means a river or stream that may have been subject to works or modifications for a variety of purposes and is or has one or more of the following features:

- (a) part of a river, stream or creek that has been channelled or diverted;
- (b) part of a wetland or swamp through which water has been channelled or diverted to flow either permanently or intermittently and which connects with other naturally occurring bodies of water;
- (c) a watercourse that has a natural headwater of either a channel or spring and generally follows the path of a historic river or stream or defined drainage channel that functions naturally by providing a connection between surface water and groundwater, and is capable of providing habitat for flora and fauna.

**Drainage Water** – means any fresh water that as a result of percolation through the ground is collected by any drainage channel before discharge.

Part IV of the TRMP controls Bed Disturbance, S13 of the RMA. The following are two paragraphs from Chapter 28 Principle reasons for rule 28.1.20

*Maintenance of drainage functions of farm drainage canals (or ditches) and some modified watercourses can be important for maintaining land drainage and farm productivity. Even though some of these ditches are not rivers for the purposes of Part IV, they can support aquatic ecosystems, habitats and areas of significant vegetation, and drain maintenance can impact on receiving water quality. Adverse effects of farm drain maintenance can be mitigated through the adoption of best management practices. Council will prepare information about best practices to minimise adverse effects associated with drainage maintenance.*

*A combination of land, channel margin and instream management practices can be required to properly address a drainage issue. Best management practice can help identify measures to reduce the frequency of bed disturbances to maintain drainage. The removal of aquatic weeds and plants and sediment from rivers, streams, modified watercourses and lakes is therefore a permitted activity subject to conditions. Other measures to minimise adverse effects will be promoted through good practice guides for drainage management activities.*

The permitted activity 36.4.2 deals with the discharge or diversion of stormwater or drainage water. Any works will need to meet the permitted activity conditions within this rule or the works will require a resource consent. Rule 36.4.2 authorises the diversion of stormwater or drainage water in a Residential Zone such as this area at Torrent Bay. Accordingly, it is my opinion the setback rule does not apply in this case.

## **2. SUBMISSIONS**

### **2.1 Notification**

As the adverse effects on the environment were considered to be 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 of a limited nature and only properties that were in close proximity to the site had any potential to be affected.

The option to process the application was made after careful consideration of the provisions of the Resource Management Act 1991 and the decision of Justice Williams in relation to the Judicial Review that was undertaken. After consultation with the Resource Consents Manager, it was confirmed the only property that was affected was the duplex property at the rear of the applicant's site owned by Torrent Bay Investments Limited.

The application was limited notified on 4 June 2010 and submissions closed on 5 July 2010. A submission from Mr S Allan was received on 29 June 2010.

### **2.2 Submissions**

Following limited notification of the application, a submission was received from Mr S Allan. He is an owner of the property that contains two residential units to the west of the applicants land and was the party that sought judicial review of the decision made to process the initial application as a non notified application.

His concerns relate to privacy, outlook, noise and loss of amenity that he currently enjoys. He also is of a view the proposal is a second dwelling that does not meet the requirements of the TRMP.

#### **Comment:**

Mr Allan's concerns are understandable given the current environment at Torrent Bay and the proposed building will result in a change from that. However, there is provision to erect additional buildings within the rules of the TRMP and these could potentially have a greater effect than the current proposal. The question of amenity is addressed further in this report and I consider this is a relevant matter to consider. In relation to outlook, the TRMP does not have any mechanism to preserve views and buildings can be erected that can have some impact on such views. The question of whether the building is a second dwelling is dealt with in more detail within the Key Issues section of this report.

### 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 New Zealand coastal policy statement;
  - (iii) a regional policy statement or proposed regional policy statement;
  - (iv) 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 Restricted Discretionary Activity in a Residential Zone. As a Restricted Discretionary activity the Council must consider the application pursuant to Section 104(C) of the Act.

After considering an application for a resource consent for a Restricted Discretionary Activity or Non-Complying 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 New Zealand Coastal Policy Statement**

The New Zealand Coastal Policy Statement (NZCPS) provides guidance to consent authorities in the management of the coastal environment.

The general policy direction of the NZCPS seeks:

- a) *To set national priorities for the preservation of the natural character of the coastal environment.*
- b) *To protect characteristics of the coastal environment of special value to the tangata whenua, in accordance with tikanga Maori.*
- c) *That adverse effects of use or development in the coastal environment should as far as practicable be avoided. Where complete avoidance is not practicable,*

*the adverse effects should be mitigated and provision made for remedying those effects, to the fullest extent practicable.*

The NZCPS policy particularly relevant to this application is

Policy 1.1.1 *“It is a national priority to preserve the natural character of the coastal environment by:*

*a) Encouraging appropriate subdivision, use or development in areas where the natural character has already been compromised and avoiding sprawling or sporadic subdivision, use or development in the coastal environment;*

*b) Taking into account the potential effects of subdivision, use, or development on the values relating to the natural character of the coastal environment, both within and outside the immediate location; and*

*c) Avoiding cumulative adverse of subdivision, use and development in the coastal environment.”*

### **4.3 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 8 Margins of Rivers, Lakes, Wetlands and the Coast
- Chapter 9 Landscape”
- Chapter 10 “Significant Natural Values and Historic Heritage

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

## **Rules of the TRMP**

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

Chapter 17.1 Residential Zone Rules”  
Chapter 18.11 Coastal Environment Area”  
Chapter 16.13 Cultural Heritage”

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.

### **Matters that are of Restricted Discretion**

Buildings that do not comply with the TRMP Permitted Activity rules (Rule 17.1.3.1) become Restricted Discretionary Activities. This restricts the matters that Council can impose conditions on and in this case there are a number that would apply in this case.

I consider the following matters have some relevance to this case:

- The extent to which the scale, design and appearance of the proposed buildings will be compatible with the locality.
- Any adverse effects on adjoining properties in terms of dominance by buildings, loss of privacy, access to sunlight and daylight, and loss of opportunities for views.
- The extent to which alternative practical locations are available for the building.
- The adverse effects of the building intrusion on the outlook and privacy of people on adjoining sites, including loss of access to daylight on adjoining sites.
- The extent to which the proposed building will be compatible with the appearance, layout and scale of other buildings and sites in the surrounding area, including the setback of existing buildings in the vicinity from boundaries, its external materials and colour.
- The ability to mitigate any adverse effects of the proposal on adjoining sites and the street scene, including by planting and landscaping.
- The extent to which the use of the proposed building will detract from the pleasantness or amenity of adjoining sites, in terms of noise, smell, dust, glare or vibration.
- The extent to which the proposed building will not adversely affect the character of the local environment, including the scale of other buildings in the surrounding area.
- The degree to which the proposed development will impact on the amenity and character of the area having regard to the scale, bulk, architectural style,



materials, colours and setback of buildings and, in particular, the extent to which the development can be viewed from adjoining sites and public places.

- The extent to which any adverse visual effect can be mitigated by altering the layout of buildings, storage areas, car parking, landscaped areas and vegetation.
- The extent to which building design and appearance will adversely affect the natural character of the coast.
- Adverse effects in terms of reduced privacy through being overlooked from, or being in close proximity to, neighbouring buildings, to an extent which is inconsistent with the surrounding environment.

By looking at these matters, it can be seen there could be opportunities to impose conditions to mitigate adverse effects, particularly in relation to the siting of the building and its impact on the character and amenity of the Torrent Bay area. The issues that are associated with the proposal as lodged are discussed further under the Key Issues Section of this report and if the Committee is of a mind to grant consent to the application, this part of the TRMP is particularly relevant to this application.

## 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 definition of a dwelling;
- The amenity of the Torrent Bay residential area;
- Potential adverse effects for nearby properties;

### 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.

Because the site is located in the Coastal Environment Area (CEA), the permitted baseline only enables an addition to an existing building where it does not exceed the area of the existing building by more than 50%, is no higher than the existing building and it does not reduce the setback to Mean High Water Springs. In this case the proposed building is not an extension so it does not meet that criteria and the proposal becomes a Restricted Discretionary Activity as it is over height for an accessory building and it encroaches the southern daylight angle.

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

There is further comment in relation to effects of controlled activity status buildings under Section 6.1 of this report that draws some comparisons with the permitted baseline.

## 5.2 The Definition of a Dwelling

This is an important matter that needs to be addressed as it affects the status of the application and other TRMP rules that apply to second dwellings, particularly in an area that is not provided with wastewater reticulation. It is also relevant to note that there has been considerable debate around this matter as it has been contested on a number of occasions in relation to development contributions. The previous “hardline” that existed when the initial application was considered in relation to the interpretation of what constitutes a dwelling has softened somewhat and the current interpretation requires a dwelling to be a self contained residential unit.

The TRMP defines “dwelling” as *“a building or part of a building for a single self contained housekeeping unit whether of one or more persons (where “single self contained housekeeping unit” means a single integrated set of sleeping, ablution and cooking facilities)”*.

Clearly a dwelling has to be totally self contained in relation to sleeping, ablutions (shower or bath, toilet and hand basin) and cooking facilities. In this case the building that is to be constructed contains four bedrooms, four sets of ablutions and a living area including a reasonably large deck. It does not however contain any form of cooking or kitchen facilities and there is no area shown that would appear to be able to be converted to provide these. In this case the building does not meet the definition of a dwelling.

One could argue the “effect” of the building could be the same as a dwelling but the same could be said of a many other buildings that exist throughout the Tasman District that have not been authorised as a self contained housekeeping unit. In this case I consider the building is an addition of an accessory building to the existing dwelling that provides sleeping and living facilities. It is attached to the existing dwelling by a deck but remains as an accessory building.

If an argument is put forward in relation to effect, then that issue should be addressed via the amenity issues associated with the building rather than whether it is a dwelling or not.

### 5.3 The Amenity of the Torrent Bay Residential Area

The issues associated with amenity relating to this application are considered to be the most important issue to deal with. Torrent Bay has a unique character that is not replicated in other parts of the Tasman District, other than nearby Awaroa. It is fair to say issues relating to building and the amenity of the Awaroa area create the same sort of response to applications for further development that the current application does.

In this case, the issues relating to amenity include the relationship of the proposed building with the surrounding environment and whether it has the potential to create adverse effects.

The surrounding properties in this case are holiday homes that are used to varying degrees and they are generally located on reasonable sized parcels of land so they can create their own area of development where they can enjoy the natural surroundings and the unique character of Torrent Bay. The area is unique in that it has no servicing infrastructure and the two areas of legal road are grassed walkways that the residents use for access. The definition of the property boundaries are in many cases unclear and access is very informal with areas of private land being used as well as the legal road and foreshore area. The area has a range of both exotic and native vegetation to varying degrees that provides elements of privacy and amenity for the properties. It is my assessment that the Torrent Bay area is unlike other urban areas in the District and it deserves special consideration of the inherent amenity values that it holds.

There is a reasonable expectation that this unique amenity will be preserved and the Committee need to be satisfied this will not be compromised if they consider granting consent to the application.

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 Torrent Bay area and the Coastal Environment Area at Torrent Bay.;

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.

"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 Torrent Bay residential area are a very relevant matter to be considered.

### **Comments:**

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

The relevant TRMP objectives and policies allow development of residential accommodation to be assessed on their merits within the 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 there are grounds to enable further development to take place on the properties at Torrent Bay, but they should be undertaken in such a way that they avoid creating adverse effects to nearby properties.

#### **5.4 Potential Adverse Effects For Nearby Properties.**

It is accepted that any change to an existing environment has the potential to have some effect on the property affected and other properties in the area. How significant these effects are is a matter that has to be considered given the scale of the proposed work, the materials used and the actual location of the building.

In this instance the building is located relatively close to the western boundary and it is a significant change from the current situation. That matter is also compounded by the duplex unit on the property to the west being located very close to the boundary of that site. That situation is mitigated to some extent by the existence of access strips that belong to the properties to the northwest.

It is accepted a building located in the position the applicant has chosen can have some impact on the duplex unit to the west of the site, but a building can be erected as close as 3 metres to the western boundary of the applicant's site and comply with the bulk and location requirements of the TRMP. If it was a single dwelling, it could be as high as 6.5 metres and have a very dominant effect on the property to the west. At 5.4 metres there is still some impact from a building that is also 15 metres in length.

Views and outlook are not protected under the rules of the TRMP, and this subject arises on many occasions when a new building or an alteration takes place and a view that someone may have enjoyed previously is affected. In this case, the building is sited in accordance with Plan rules and there is no simple remedy that will satisfy all parties. I have identified a mitigating measure that may assist in relation to the siting of the building that is addressed further under the Other Matters section that follows.

### **6. OTHER MATTERS TO CONSIDER**

#### **6.1 Opportunities to Provide Additional Accommodation on the Applicant's Property.**

When considering the current proposal, it is relevant to consider what can occur on a residential property at Torrent Bay that is essentially as of right. In saying that, apart from an extension to the existing dwelling, all new building is at the least, a Controlled Activity that requires resource consent. Controlled Activities can be processed as non notified applications that do not require the written consent of any neighbour and there are no affected parties as such. They cannot be declined, but conditions can be imposed.

In this case, an accessory building can be constructed that is not restricted in floor area, but has a height restriction of 3.6 metres. This could be a building that is even larger in area than the proposed building, but it is less than the 5.4 metres of the current proposal. This could be processed as a non notified application, i.e. a Controlled Activity.

If the property owner decided to remove the existing bach, a new dwelling that was 6.5 metres in height could also be constructed on the site and providing the drainage ditch running through the property was accommodated, the building could be up to 293.7 square metres in area. This would also be a Controlled Activity and could be processed as a non notified application.

The TRMP allows sleep outs to be constructed in residential zones, but there are some restrictions that apply. Each sleepout is restricted to 36 square metres in area and 3.6 metres in height. There is no restriction on the number of sleepouts that can be constructed, other than the total site coverage and the required setbacks. There is also a requirement to step them when they are less than 6 metres apart. These buildings could also be treated as Controlled Activities.

## **6.2 Consideration of Resiting the Building**

In considering the effects of the proposed building, it is appropriate to look at the opportunity to mitigate them and reduce the impact on any property that could be adversely affected. In this case there is the potential to locate the building closer to the existing dwelling, but this requires consideration of the drainage ditch running between the buildings.

As mentioned under the "Status of the Application" section of this report, I do not believe the drainage ditch is a natural feature and appears to be hand dug to confine water that flows overland from the hill side to the estuary to the north of the site. This was carrying flowing water at the time of my inspection but the flow was of a very minor nature. If it is accepted it is a drain rather than a river, alteration of its course can take place without the need for resource consent and it could become a design feature of the development.

If the drain was relocated toward existing dwelling, the proposed building could be moved to the east, further away from the western boundary. This could have a significant reduction in the effect on the property to the west and better integrate the new building into the existing buildings on the site. Increasing the setback from the western boundary to 6 metres would, in my opinion, be beneficial to all parties.

## **7. SUMMARY OF ISSUES AND CONCLUSION**

The application that has been lodged by PG Edgen and JB Loughnan is an application to erect a building that will be used in conjunction with the existing dwelling on the site, which is a small "bach" that has been on the site for quite a period of time. There is no record on Council's computer system that identifies when the bach was built.

This application is to be considered afresh following a judicial review of a decision that was made to issue resource consent for the proposal as a non notified application that did not consider the property to the west was an affected party. The

review identified the property was affected and set aside the consent and directed Council to reconsider the matter under the provisions of the RMA. Council proceeded to notify the application on a limited basis that the property to the west was affected and had the opportunity to make a submission on the application, which they proceeded to do.

The submission by Mr S Allan considered the proposal would adversely affect his property and in particular, the issues relating to privacy and outlook would be affected. The proposal would increase noise levels and affect the amenity they currently enjoy and the character of that part of Torrent Bay. He also considered the proposal was for a second dwelling rather than an extension or an accessory building for the applicants.

The question of whether the proposal is a second dwelling or an accessory building to be used in conjunction with the existing bach is an issue that is fundamental to the proposal as a second dwelling raises a number of other issues that are problematic. It is my opinion the proposal is not a second dwelling in that it does not contain any cooking or kitchen facilities that the definition of dwelling requires. The earlier interpretation that the building was a second dwelling was created through a "hard line" Council took at that time in response to development contributions. That interpretation has been clarified and a more specific interpretation is now used by staff processing resource consents.

The major issue identified for this application is general amenity of the Torrent Bay area and this could be affected by the proposal in its current form on a localised basis. It does appear however that with some changes to the proposal, including re routing the open drain that runs through the property, the proposed building could be located further from the western boundary and the affect on the adjoining property could be reduced. Locating the building closer to the existing bach will also help integrate the two buildings. I believe such a change could well provide a better solution than the current proposal and reduce the potential adverse affects to a point they may be able to be seen as minor. If the applicants are prepared to consider that approach, I am able to support the construction of the building as per plan but located 6 metres from the western boundary.

If consent is granted and the consent holder opts to carry out the diversion of the drainage channel, it is recommended they contact Council's Consent Coordinator (Natural Resources) to ensure the work is undertaken in accordance with best practice principles and the Permitted Activity rules of the TRMP.

## **8. SECTION 5 RMA AND RECOMMENDATION**

In terms of Section 5 of the Act, I believe there are grounds to consider granting consent in this case can be seen as the sustainable management of natural and physical resources, providing there are appropriate conditions imposed to avoid and mitigate any potential adverse effects. As such, 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 **APPROVED**, with conditions.

## 9. RECOMMENDED CONDITIONS AND ADVICE NOTES

If the Committee accepts my recommendation, the following conditions and advice notes are recommended:

### General Accordance

1. The proposed building on Lot 5 DP 1612, Block III Kaiteriteri Survey District (CT 81/31) shall, apart from the setback from the western boundary, be generally in accordance with the application submitted, as shown on the attached plans marked RM060053(A and B) dated (*Decision Date*). Where there is any apparent conflict between the information provided with the application and any condition of this consent, the conditions shall prevail.

### Siting

2. The building shall be sited no closer than 6 metres to the western boundary of the site that adjoins Lot 1 DP 8370.

### Exterior Colours

3. The exterior of the dwelling shall be finished in colours that are recessive and blend in with the immediate environment. The Consent Holder shall submit to the Council for approval prior to applying for building consent the following details of the colours proposed to be used on the walls and roof of the buildings:
  - (a) the material to be used (eg, paint, Colorsteel);
  - (b) the name and manufacturer of the product or paint;
  - (c) the reflectance value of the colour;
  - (d) the proposed finish (eg, matt, low-gloss, gloss); and
  - (e) either the BS5252:1976 (British Standard Framework for Colour Co-ordination for Building Purposes) descriptor code, or if this is not available, a sample colour chip.

The building shall be finished in colours that have been approved by the Council.

### Advice Note:

As a guide, the Council will generally approve colours that meet the following criteria:

Colour Group*	Walls	Roofs
Group A	A05 to A14 and reflectance value $\leq 50\%$	That the roof colour is complementary with the rest of the building/s and is no greater a percentage than 15 per cent reflectance value.
Group B	B19 to B29 and reflectance value $\leq 50\%$	
Group C	C35 to C40, reflectance value $\leq 50\%$ , and hue range 06-16	
Group D	D43 to D45, reflectance value $\leq 50\%$ , and hue range 06-12.	
Group E	Excluded	
<b>Finish</b>	Matt or Low-gloss	Matt or Low-gloss

\* Based on BS5252:1976 (British Standard Framework for Colour Co-ordination for Building Purposes). Where a BS5252 descriptor code is not available, the



Council will compare the sample colour chip provided with known BS5252 colours to assess appropriateness.

The Consent Holder should engage the services of a professional to ensure the exterior cladding and colour selection are compatible with the long-term durability of the building material in the subject environment and in accordance with the requirements under the Building Act 2004.

### **Daylight**

1. The proposed building shall not encroach into the daylight over angle of 27 degrees on the southern boundary to any greater extent than shown on Plan RM060053(B) dated (decision date).

### **Floor Level**

2. The floor level of the building shall be not less than 500 millimetres above the existing ground level of the site.

### **Drainage Channel**

3. The consent holder is authorised to re-route the drainage channel running across the property to enable the proposed building to be sited in accordance with Condition 2 of this consent.

### **Stormwater and Wastewater Discharge**

4. Onsite stormwater discharge shall be undertaken in accordance with the permitted standards for stormwater anticipated by the TRMP.

### **Iwi Monitor**

5. The Consent Holder shall engage the services of a representative of Ngati Rarua Atiawa Iwi Trust to be present during any earthworks. The Consent Holder shall contact the representative at least ten working days prior to commencing any earthworks and advise it of the commencement date of the earthworks. In the event of Maori archaeological sites (e.g. shell midden, hangi or ovens, garden soils, pit depressions, occupation evidence, burials, taonga) or koiwi (human remains) being uncovered, activities in the vicinity of the discovery shall cease. The Consent Holder shall then consult with the New Zealand Historic Places Trust's Central Regional Office (PO Box 19173 Wellington, phone (04) 801 5088, fax (04) 802 5180), and shall not recommence works in the area of the discovery.

## **ADVICE NOTES**

### **Council Regulations**

1. This is not a building consent and the Consent Holder shall meet the requirements of Council with regard to all Building and Health Bylaws, Regulations and Acts.

### **Other Tasman Resource Management Plan Provisions**

2. This resource consent only authorises the activity described above. Any matters or activities not referred to in this consent or associated resource consent RM100428 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.

### **Consent Holder**

3. 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.

### **Cultural Heritage**

4. In the event of Maori archaeological sites being uncovered, the Consent Holder may be required by the New Zealand Historic Places Trust to commission a professional archaeological assessment of the site and this report to be submitted prior to building consent for the dwelling being issued. This assessment is required to identify any archaeological sites in the area affected by the proposal and ways that the effects of the proposal can avoid, remedy or mitigate any adverse effects on known or unknown archaeological sites. The results of the consultation with the New Zealand Historic Places Trust shall also be submitted to Council’s Resource Consents Manager prior to any building consent being issued.

### **Interests Registered on Property Title**

5. The Consent Holder should note that this resource consent does not override any registered interest on the property title.



Laurie Davidson  
**Consent Planner (Land)**  
Golden Bay

## **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.
- 5.1.3.6 To limit the use of on-site domestic wastewater disposal systems in the Special Domestic Wastewater Disposal Areas (SDWDAs) where cumulative adverse effects including degraded receiving water quality, health risks, nuisance odours, and overland flows of wastewater are likely or have been identified because of increasing system density.
- 5.1.3.8(Proposed) Development must ensure that the effects of land use or subdivision activities on stormwater flows and contamination risks are appropriately managed so that the adverse environmental effects are no more than minor.
- 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.
- 5.1.3.12 To protect the natural character of coastal land from adverse effects of further subdivision, use or development, including effects on:
- (a) natural features and landscapes, such as headlands, cliffs and the margins of estuaries;
  - (b) habitats such as estuaries and wetlands;
  - (c) ecosystems, especially those including rare or endangered species or communities;
  - (d) natural processes, such as spit formation;
  - (e) water and air quality;
  - (i) having regard to the:
    - (i) rarity or representativeness;

- (ii) vulnerability or resilience;
  - (iii) coherence and intactness;
  - (iv) interdependence;
  - (v) scientific, cultural, historic or amenity value;
- of such features, landscapes, habitats, ecosystems, processes and values.

- 5.1.3.13 To avoid, remedy, or mitigate adverse effects of urban use and development on rural activities at the interface between urban and rural areas.
- 5.2.3.1 To maintain privacy in residential properties, and for rural dwelling sites.
- 5.2.3.2 To ensure adequate daylight and sunlight to residential properties, and 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.
- 5.3.3.3 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.
- 5.3.3.5 To maintain and enhance features which contribute to the identity and visual and aesthetic character of localities, including:
- (a) heritage sites and buildings;
  - (b) vegetation;
  - (c) significant landmarks and views.
- 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 8 - Margins of Rivers, Wetlands, and the Coast Policies**

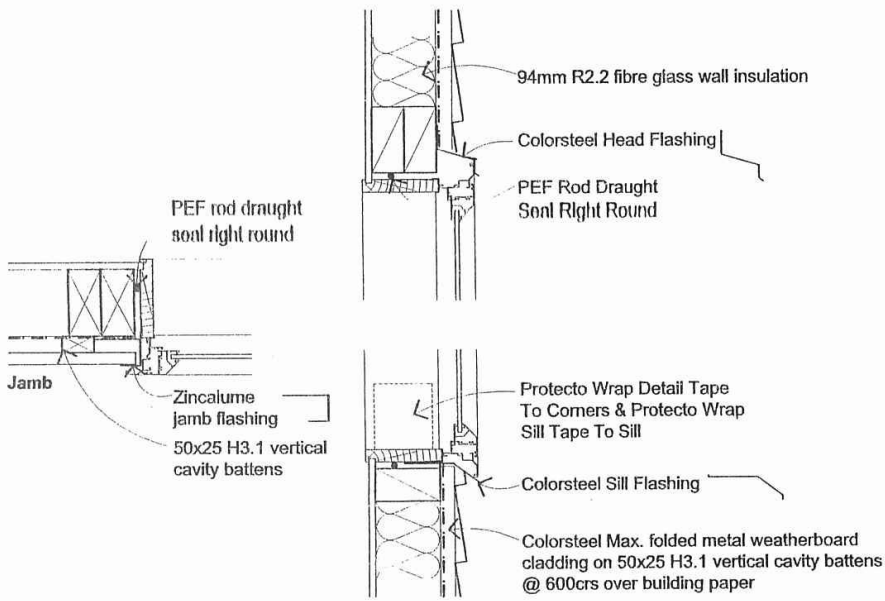
- 8.2.3.1 To maintain and enhance riparian vegetation, particularly indigenous vegetation, as an element of the natural character and functioning of lakes, rivers, the coast and their margins.
- 8.2.3.4(proposed) To avoid, remedy or mitigate adverse effects of buildings or land disturbance on the natural character, landscape character and amenity values of the margins of lakes, rivers, wetlands or the coast.
- 8.2.3.6 To adopt a cautious approach in decisions affecting the margins of lakes, rivers and wetlands, and the coastal environment, when there is uncertainty about the likely effects of an activity.

- 8.2.3.7 To ensure that the subdivision, use or development of land is managed in a way that avoids where practicable, and otherwise remedies or mitigates any adverse effects, including cumulative effects, on the natural character, landscape character and amenity values of the coastal environment and the margins of lakes, rivers and wetlands.
- 8.2.3.8 To preserve natural character of the coastal environment by avoiding sprawling or sporadic subdivision, use or development.
- 8.2.3.12 To enable the maintenance of physical resources for the well-being of the community, where those resources are located in riparian or coastal margins, subject to the avoidance, remedying or mitigation of adverse effects on the environment.
- 8.2.3.16 To manage the location and design of all future buildings in the coastal environment to ensure they do not adversely affect coastal landscapes or seascapes.
- 8.2.3.17 To pursue and encourage restoration and enhancement of coastal and riparian areas where natural character has been degraded by past human activities.
- 8.2.3.18 To avoid, remedy or mitigate adverse effects on natural coastal processes of the subdivision, use or development of land, taking account of sea-level rise.
- 8.2.3.21 To protect historic and cultural sites in riparian margins and the coastal environment.

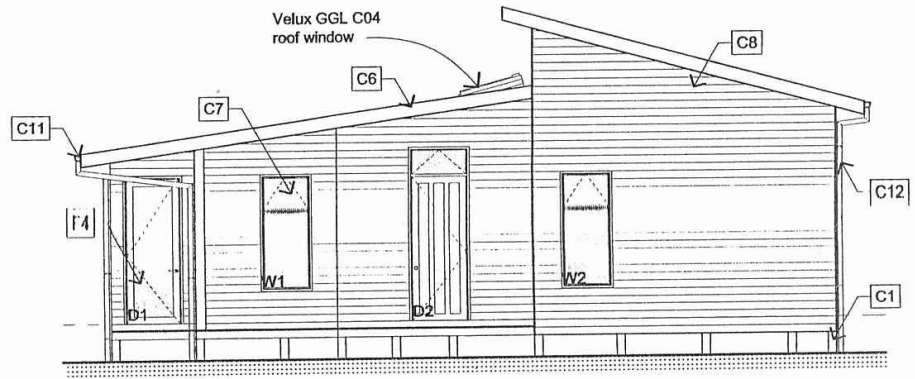
## **Chapter 9 - Landscape Policies**

- 9.1.3.1 To encourage broadscale land uses and land use changes such as plantation forestry and land disturbance to be managed in a way that avoids or mitigates the adverse effects on natural landform, surrounding natural features and on visual amenity values.
- 9.1.3.3 To ensure that structures do not adversely affect:
- (a) visual interfaces such as skylines, ridgelines and the shorelines of lakes, rivers and the sea;
  - (b) unity of landform, vegetation cover and views.
- 9.1.3.4 To discourage subdivision developments and activities which would significantly alter the visual character of land in outstanding landscapes (including adjoining Abel Tasman, Nelson Lakes and Kahurangi national parks).
- 9.1.3.5 To promote awareness and protection of landscape (including seascape) values.
- 9.1.3.6 To manage activities which may cause adverse visual impacts in the general rural area.

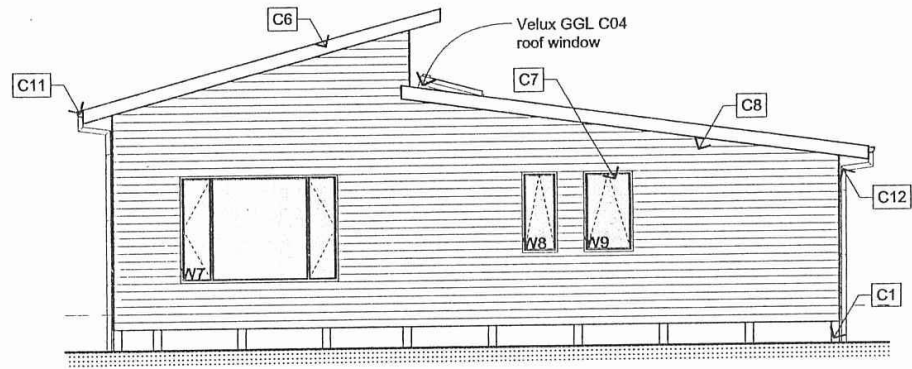
- 9.1.3.7(nyo) To ensure that land disturbance including vegetation removal and earthworks does not adversely affect landscape character and rural amenity value in the Coastal Environment Area in locations of public visibility, particularly where there are distinctive natural landforms.
- 9.2.3.1 (proposed) To integrate consideration of rural landscape values into any evaluation of proposals for more intensive subdivision and development than the Plan permits.
- 9.2.3.3 (proposed) To retain the rural characteristics of the landscape within rural areas.
- 9.2.3.4 (proposed) To encourage landscape enhancement and mitigation of changes through landscape analysis, subdivision design, planting proposals, careful siting of structures and other methods, throughout rural areas.
- 9.2.3.5 (proposed) To evaluate, and to avoid, remedy or mitigate cumulative adverse effects of development on landscape values within rural areas.



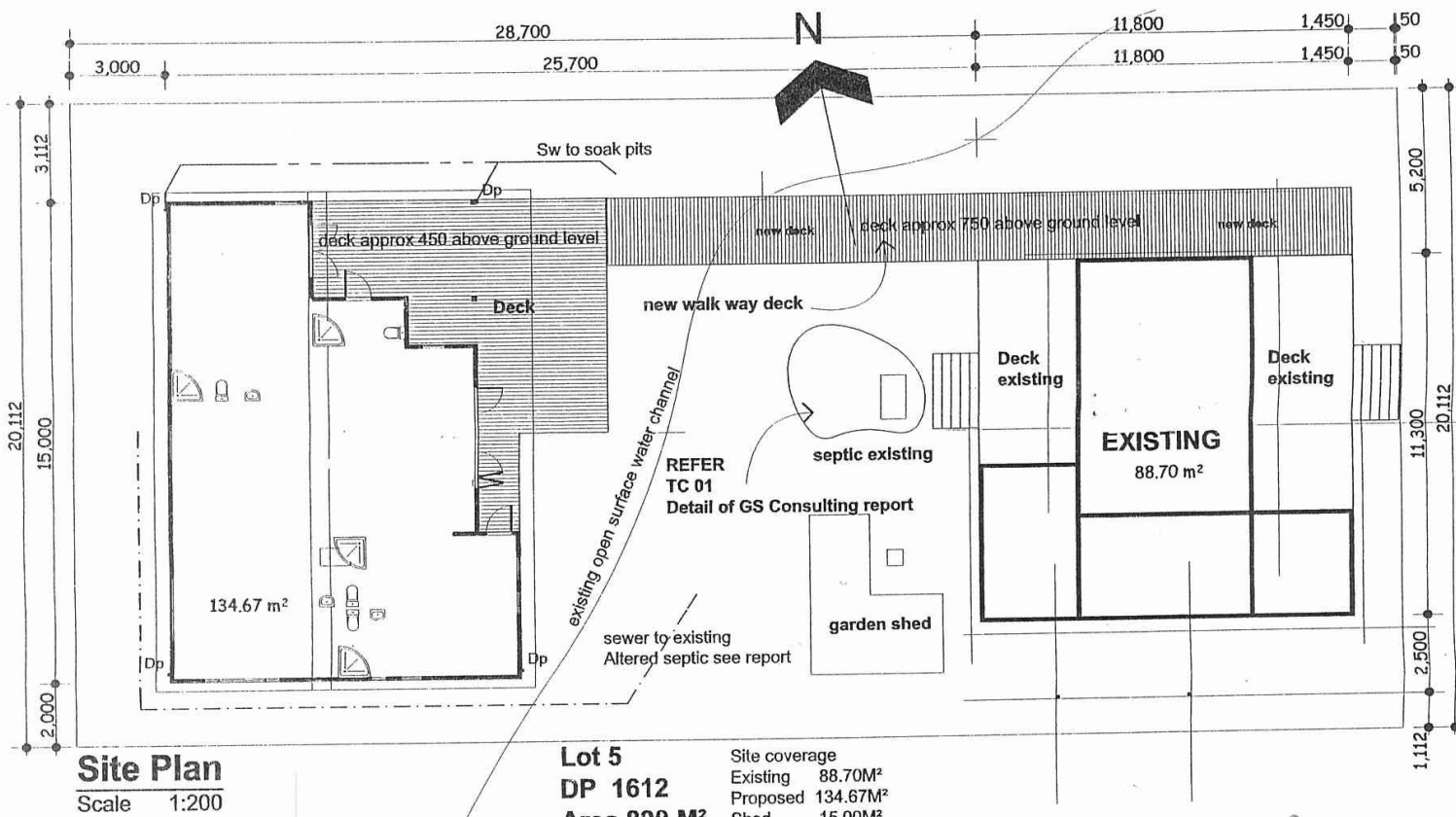
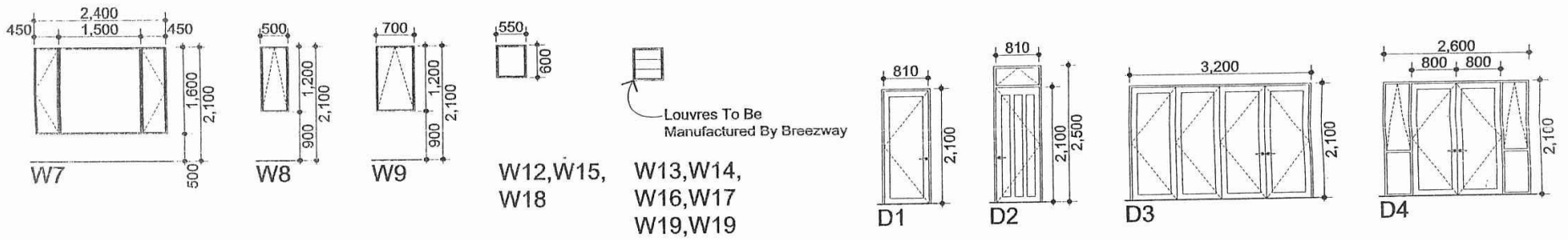
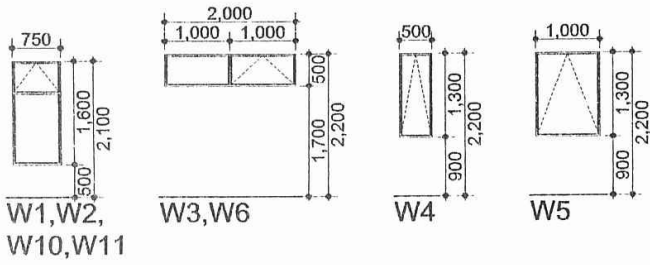
**Detail C01**  
Scale 1:10



**North Elevation**  
Scale 1:100



**South Elevation**  
Scale 1:100



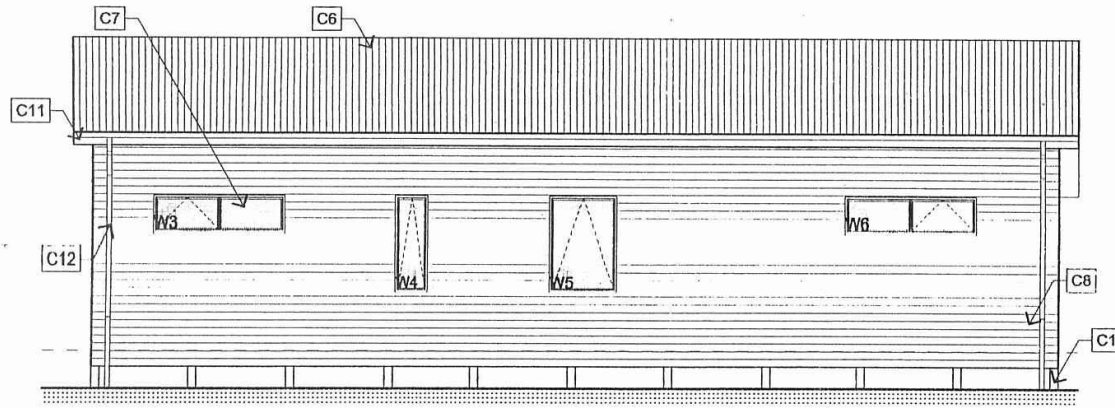
**Site Plan**  
Scale 1:200

**Lot 5  
DP 1612  
Area 890 M<sup>2</sup>**  
Site coverage  
Existing 88.70M<sup>2</sup>  
Proposed 134.67M<sup>2</sup>  
Shed 15.00M<sup>2</sup>  
=238.37M<sup>2</sup> / 809 = 29.46%

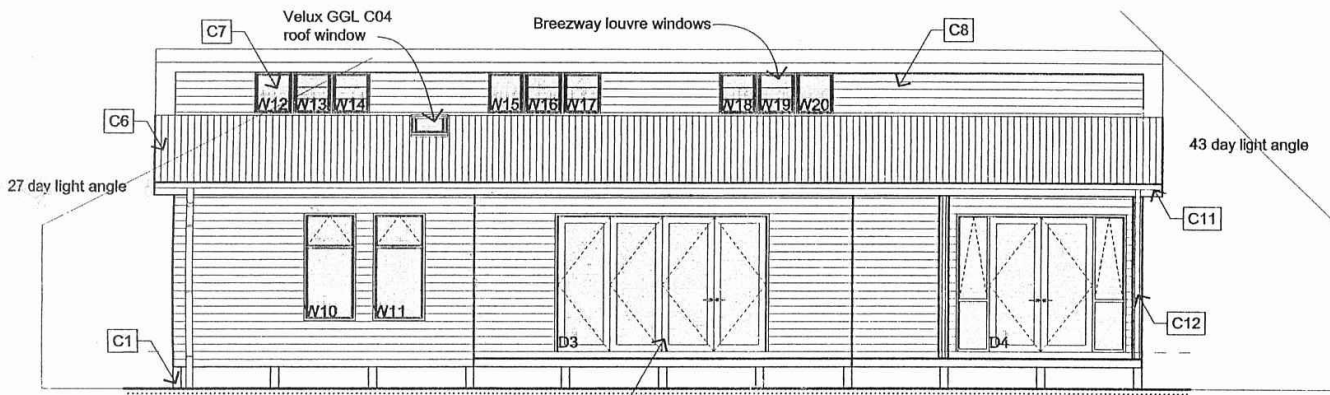
*RM 060053  
PLAN "A"*

# Proposed Bach-Douglas Clifford

Torrent Bay



**West Elevation**  
Scale 1:100



**East Elevation**  
Scale 1:100

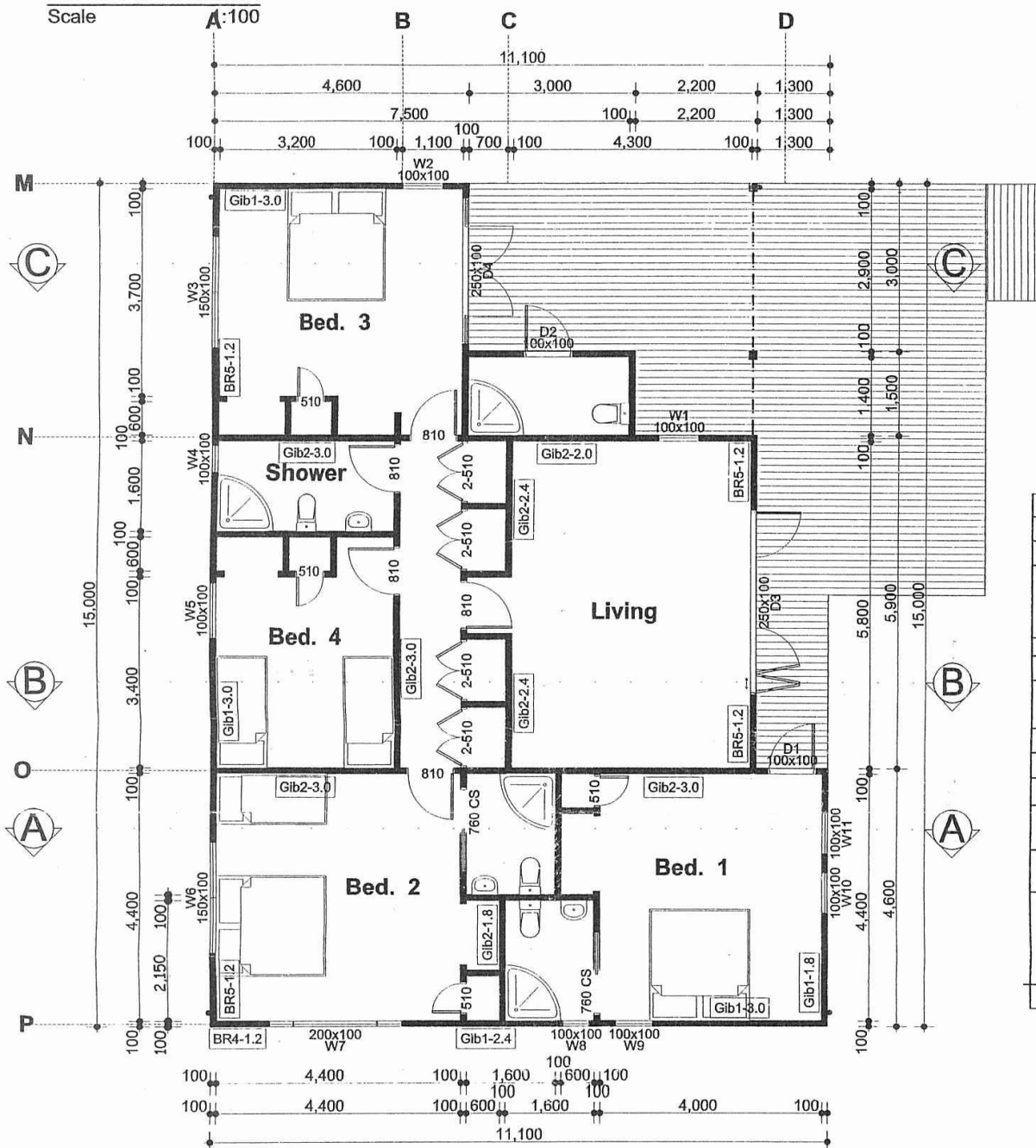
- C1** 125x125 H5 treated timber piles @ 1300crs set into 275x275x300 deep concrete footings.
- C2** 20mm Plyco particle board flooring on 100x50 H1.2 floor joists @ 450crs on 100x75 H1.2 bearers. 40mm Polystyrene Insulation & shade cloth stapled to underside of joists
- C3** 100x50 studs @ 600crs:- External walls skew nailed @ 600crs, sheet brace strap 400mm long to one side of each opening trimmer stud. Load bearing walls 100x50 & 2-100x50 studs @ 600crs.
- C4** 13mm Gib screw fixed directly to underside of rafters.
- C5** 250x50 H1.2 treated timber rafters @ 600crs, 100x50 timber blocking @ 1800crs in between rafters. Fix rafters with 2/100x3.75 skewed nails & zed nail.
- C6** Colorsteel Max trimdek roofing, self supporting B.P. on 75x50 purlins @ 800crs. Secure second purlin from top & bottom wit two zed nails.
- C7** P.C.alloy windows, treated timber reveals, double glazed.
- C8** Colorsteel Max folded metal weather board on 50x25 H3.1 vertical cavity battens @ 60 over building paper. Tape building paper between battens with polypropylene tape.
- C9** 94mm fibre glass wall insulation R2.2.
- C10** 110mm fibre glass ceiling insulation R2.6.
- C11** Colorsteel fascia spouting on concealed brackets @ 900 crs.
- C12** Colorsteel round down pipes.
- C13** Hardiflex 4.75mm soffit lining.
- F1** 10mm Gib board level 4 finish.
- F2** 60mm customwood skirting.
- F3** Doors HC MDF for paint finish.
- F4** Glazed alloy doors to NZS 4223.
- F5** Timber panel entry door 810 in alloy frame.

**FRAMING TREATMENT**  
Framing to all external walls to be H3.1 treated. Internal walls to be untreated kiln dried pinus radiata  
**NOTE: All exposed and sheltered fixings shall be Stainless Steel**

**BRACING LEGEND**

BR1	Braceline one side min 2.4 horz. or vert
BR2	Braceline one side min 1.8 vert. only
BR3	Braceline one side min 1.8 horz. only
BR4	Braceline one side min 0.9 6Kn end stud fixing
BR5	Braceline one side min 1.2 6Kn end stud fixing
BR6	Braceline one side min 1.2 6Kn end stud fixing & 9.5mm gib other side
BR9	Braceline one side min 0.6 6Kn end stud fixing
SP1	7mm Ply Min 900 6kn End Stud Fixing
SP2	7mm Ply Min 600 6kn End Stud Fixing
SP4	7mm Ply Min 450 6kn End Stud Fixing
SP2G	7mm Ply Min 600 6kn End Stud Fixing & 9.5mm Gib Other Side
SP1G	7mm Ply Min 900 6kn End Stud Fixing & 9.5mm Gib Other Side
SP11G	7mm Ply Min 1000 6kn End Stud Fixing & 9.5mm Gib Other Side
GIB 1	Gib Bd. With Diagonal Brace min 2.400
GIB 2	Gib Bd. Both Faces With Diagonal Brace Min 1.800
GIB 3	Gib Bd. Both Faces With Min 2.400

Rm 060053  
PLAN "B"



**GRANT MILES**

ARCHITECTURAL DESIGN LTD.  
MEMBER A.D.N.Z.

Contractor To Verify All Dimensions Before Commencing Work

Russley Park  
585 Wairakei Road  
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mobile 0274 362996

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File  
**994**

Drawing  
**01**  
Of 3

16/11/2005