

26. TAYLORS MISTAKE AND BOULDER BAY BACHES

General Manager responsible:	General Manager, Regulation and Democracy Services, DDI 941-8462
Officer responsible:	Legal Services Unit Manager
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PURPOSE OF REPORT

1. The purpose of this report is to seek a decision on the future of the baches at Taylors Mistake and Boulder Bay.

EXECUTIVE SUMMARY

2. At its meeting on 22 April 2010 the Council considered a report from the chairperson of the Hagley/Ferrymead Community Board. A copy of the report is attached (**Attachment 1**).
3. The Board's recommendation was that the Council:
 - (a) Request the Taylors Mistake Association to:
 - (i) prepare a planting concept plan for the TMB zone to the satisfaction of the Council
 - (ii) issue the fee simple and lease hold titles in the TMB zone in accordance with the provisions in the City Plan:
 - (iii) transfer the land contained in the CT35B/158 and that land contained in CT35B/160 to the east and south of the TMB zone up to and in line with the edge of the western boundary of the TMB zone to the Council for no further consideration, to be vested in the Council as recreation reserve under the Reserves Act 1977.
 - (iv) confirm the Association's undertaking on behalf of affected bach owners that immediately upon fulfilment of the conditions in (a)(i) to (iii) above, all unscheduled baches will be removed.
 - (b) Authorise the General Manager, Corporate Services to negotiate and to enter into licences to occupy with the owners of the baches scheduled to remain at Taylors Mistake and Boulder Bay, recognising the Council's responsibility to consult with Ngāi Tahu. If agreement cannot be reached with bach owners on suitable terms and conditions then the matter is to be reported back to the Community Board and the Council for a further decision.
 - (c) Note that the Council's decision to grant licences in respect of baches at Taylors Mistake and Boulders Bay is not an indication that such licences will automatically be granted in other situations where unauthorised structures have been built on land vested in the Council as legal road.
4. After debating the matter the Council resolved instead that:
 - (a) All baches be retained whilst
 - (b) Council staff report back on planning procedures to effect (a).
5. Since that meeting the Chief Executive has received a letter from solicitors acting for Save the Bay Limited, a party to the Environment Court proceedings that dealt with the bach issue in 2002-2003. The company has requested the Council to immediately take steps to remove the unscheduled baches to ensure compliance with the City Plan. The letter states that an application for enforcement orders in the Environment Court will be filed if a satisfactory response is not received.

6. Included in this report is information about planning procedures in response to the Council's resolution of 22 April 2010.
7. Staff believe that the Council now has sufficient information for it to make a decision in this matter. It is recommended that the Council resolve that immediate steps be taken to ensure compliance with the City Plan. Authority is also sought for staff to negotiate with bach owners licences to occupy the land on which the baches scheduled to remain are situated.

PLANNING PROCEDURES TO EFFECT THE RETENTION OF ALL BACHES AT TAYLORS MISTAKE, (INCLUDING HOBSONS BAY) AND BOULDER BAY

8. There are four parts to a consideration of the procedures available to the Council. These are:
 - (a) The plan change process undertaken by the Council from 1993 to 2003.
 - (b) The practical effect of a plan change.
 - (c) The need to balance competing interests; and
 - (d) Statutory requirements.
9. If the Council wishes to start a plan change investigation, the steps are:
 - (a) A resolution that officers are to prepare advice to the Council on the appropriateness of that Plan Change.
 - (b) Providing that advice would be likely to require workshops and a report that addresses all of the matters that were considered by the Environment Court in 2003. The officers preparing that report would be required to identify what changes have occurred which would justify the Council taking an approach which departs from that identified by the Court, the Council and the Taylors Mistake Association as being appropriate in 2003.
 - (c) An assessment of the appropriateness of recommending the Plan Change.
 - (d) If the Council then resolved to prepare a Plan Change, officers would draft a proposed Plan Change to be further reported back to the Council.
 - (e) Consultation would be required on the proposed Plan Change.
 - (f) The draft Plan Change and consultation report would be put before the Council for a decision on notification.
 - (g) The proposed Plan Change would be notified for submissions. Enforcement action seeking their removal would be ineffective after that date. Following the close of submissions, a summary of submissions will be notified and further submissions invited.
 - (h) A hearing would be held.
 - (i) Any appeals to the Environment Court would be lodged following the decision on submissions.
 - (j) The Environment Court would then decide on the appropriate provisions for the City Plan, as constrained by the scope of the Plan Change notified, and the submissions on which parties have appealed.
10. The possible result and implications of the Council taking this approach are:
 - (a) The process is likely to take about 3-4 years before conclusion in the Environment Court, and could cost the Council \$300-\$400,000.

- (b) The Court's decision following that process may be:
 - (i) To affirm the current provisions of the City Plan; or
 - (ii) That the City Plan is changed to permit all baches to remain.
 - (c) Anyone is entitled to ask the Council to accept a private Plan Change request. This could happen whilst the Council is preparing its own proposed Plan Change. There may be a concern by people opposed to the presence of the baches that the Council is preparing its own Plan Change for their retention. However the Council has the ability to reject a private plan request.
 - (d) The rules for retention of the baches in the proposed Plan Change would have legal effect from the date of notification because they are for protection of historic heritage. There could be no enforcement action taken by others past that date.
 - (e) Any person could take enforcement action seeking removal of the prohibited baches before the public notification of the proposed Plan Change.
11. Assessing the appropriateness of a plan change would involve the weighing up of a large number of considerations. These are the same matters that were assessed by the Environment Court in 2003. The Court considered these under the broad topics of:
- (a) The existing environment/ natural character.
 - (b) Heritage and cultural values.
 - (c) Public access.
 - (d) Visual amenity.
 - (e) The quality of the environment.
 - (f) Competing uses (including the interests of the bach owners, and the penguin parade in Boulder Bay).
 - (g) Health and safety, including rockfall, storm event or sea rise, sewage and hygiene, and building and structural issues.
12. The Court also assessed and weighed up the objectives and policies throughout the City Plan, including:
- (a) The objective and policies for the Natural Environment. These encompass natural features and habitats, natural hazards, the coastal environment, and the promotion of recreation activities in the natural environment.
 - (b) The overall identity of the City, with elements of form, amenity and heritage to be maintained and enhanced.
 - (c) Peripheral urban development avoiding, remedying or mitigating adverse impacts on water, amenity values and natural resources;
 - (d) Open space and recreation.
13. Seeking the retention of all baches would require reconsideration of all of those factors and interests.

14. Finally, any plan change can be made only if it meets the statutory tests in the Resource Management Act. These include:
 - (a) A plan change should accord with and assist the Council to carry out its functions and to achieve the purpose of the Act, such as:
 - (i) The establishment, implementation and review of objectives, policies and methods to achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources of the Council's district;
 - (ii) The control of any actual or potential effects of the use, development or protection of land;
15. When preparing a plan change the Council must:
 - (a) Give effect to any national policy statement.
 - (b) Give effect to any regional policy statement.
 - (c) Have regard to:
 - (i) Any relevant management plans and strategies under other Acts.
 - (ii) Any relevant entry in the historic places register.
 - (d) Take into account any relevant planning document recognised by an iwi authority.
16. Each proposed objective in a plan change is to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act.
17. Each proposed policy or rule is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives of the City Plan, taking into account:
 - (a) Benefits and costs.
 - (b) The risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the proposed policy or rule.
18. The Council must have regard to the actual or potential effect of activities on the environment.

BACKGROUND

19. At its meeting on 22 April 2010 the Council considered a report on the baches at Taylors Mistake (including those at Hobsons Bay) and Boulder Bay. The baches are situated on land vested in the Council as legal road.
20. Staff referred to the Environment Court's decision in respect of the baches in 2003 and the current provisions of the City Plan that were inserted as a result of that decision. The Court made the following points:
 - (a) Scheduling of baches is an appropriate method to adopt;
 - (b) Any provision that would enable 14 of the baches to be removed would have significant benefits to the public because these baches occupy what the court regarded as critical areas of Taylors Mistake;
 - (c) The baches scheduled to remain do not interfere with public access to any noticeable degree and they do not detract at all from the visual amenity. It concluded that scheduling provided for the heritage values of the baches and for the enhancement that the baches bring to the quality of the environment.
 - (d) The TMB zone is appropriate.
 - (e) The correct balance has been achieved between the significant number of issues that need to be addressed in both evaluating the scheduling of baches and the creation of the TMB zone.
21. The Environment Court received and considered the provisions to be included in the City Plan. These were consented to by all parties and the Court ordered them to be included in the Plan. It was also noted in the staff report that any decision made not to give effect to the City Plan would require the Council to initiate a plan change. Information on planning procedures to achieve this is contained in this report.
22. Section 76(2) of the Resource Management Act 1991 states that City Plan rules have the force and effect of Regulations under that Act. The Plan makes the presence of the unscheduled baches a prohibited activity. Staff have advised that it is open to any person to apply to the Environment Court for an enforcement order under the Resource Management Act requiring the removal of the baches on the ground that their presence breaches rules in the City Plan. Potentially the Council could be served with an enforcement order in its capacity as the land owner permitting the continued presence of the baches. The Council would be required to cease permitting the occupation.
23. That is the position that has now been reached. Save the Bay Ltd, through its solicitors, has indicated that it will file an application for enforcement orders in the Environment Court if the unscheduled baches are not removed. If the Council's decision in the matter means that the Council intends to comply with the provisions in the City Plan the bach owners should be requested to take steps required to create the TMB zone without delay. This will result in the removal of unscheduled baches in accordance with the undertaking given by the Taylors Mistake Association to the Environment Court in 2003.
24. It is also suggested that at the same time staff are authorised to negotiate with bach owners licences to occupy the land on which the baches scheduled to remain are situated.

STAFF RECOMMENDATION

(There are two parts to the recommendation.)

Firstly, that the Council resolves to:

- (a) Receive the information about planning procedures contained in the staff report.
- (b) Confirm that it give effect to the Environment Court 2003 decision regarding the baches which is now incorporated into the City Plan.
- (c) Request the Taylors Mistake Association to take immediate steps to:
 - (i) Prepare a planting concept plan for the TMB zone to the satisfaction of the Council.
 - (ii) Issue the fee simple and leasehold titles in the TMB zone in accordance with the provisions in the City Plan.
 - (iii) Transfer the land contained in CT35B/158 and that land contained in CT35B/160 to the east and south of the TMB zone up to and in line with the edge of the western boundary of the TMB zone to the Council for no further consideration, to be vested in the Council as recreation reserve under the Reserves Act 1977.
 - (iv) Confirm the Association's undertaking on behalf of affected bach owners that immediately upon fulfilment of the conditions in (a)(i) to (iii) above, all unscheduled baches will be removed.

Secondly, that the Council also resolves to:

- (d) Authorise the Chief Executive to negotiate and to enter into licences to occupy with the owners of the baches scheduled to remain at Taylors Mistake and Boulder Bay on such terms and conditions as he considers appropriate.
- (e) Note that the Council's decision to grant licences in respect of baches at Taylors Mistake and Boulders Bay is not an indication that such licences will automatically be granted in other situations where unauthorised structures have been built on land vested in the Council as legal road.