

Hearings Panel
(Proposal for Baches at Taylors Mistake and Bays)
OPEN MINUTES

Date: Monday 11 February 2019
Time: 9:30am
Venue: Council Chambers, Level 2, Civic Offices,
53 Hereford Street, Christchurch

Present

Chairperson	Councillor Sara Templeton
Members	Councillor David East
	Councillor Yani Johanson
	Councillor Anne Galloway
	Community Board Member Jake McLellan

22 February 2019

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The agenda was dealt with in the following order.

1. Apologies

Committee Resolved BLHP/2019/00002

Hearings Panel Decision

That the apology for lateness from Councillor East and for partial absence from Councillor Galloway be accepted.

Community Board Member McLellan/Councillor Johanson

Carried

2. Declarations of Interest

There were no declarations of interest recorded.

3. Taylors Mistake, Hobsons Bay and Boulder Bay Baches - Staff Report to Hearings Panel

The Hearings Panel received a staff presentation on the Proposal for Baches at Taylors Mistake and Bays, and on the results of the consultation undertaken on the Proposal.

The Hearings Panel refrained from deciding its recommendations to the Council until after it had heard from submitters, considered their views, and entered its deliberations phase at Item 6 below.

Staff Recommendations

That the Hearings Panel:

1. Receives the information within and attached to this report and considers the submissions received during the public consultation process on the proposal for baches at Taylors Mistake and bays.
2. Notes that the public consultation period was from 23 November 2018 to 14 January 2019, inclusive, and included three public drop-in sessions.
3. Notes that 171 submissions were received and that 35 submitters indicated a wish to be heard by the Hearings Panel.
4. Notes that the proposal for the future of the baches located on public road at Taylors Mistake, Hobsons Bay and Boulder Bay consulted on as the preferred option was that a 35-year licence, for the bach to stay and be used for holiday accommodation, is offered to owners of baches with heritage value (that is those that are scheduled within the District Plan and those which meet the heritage criteria). The exception is where there is a moderate to high risk from natural hazards that are not mitigated by the bach owner. Baches that are not offered a licence are demolished or, where possible, relocated to the new bach zone behind the 'Rotten Row' baches at Taylors Mistake (noting that new bach zone is limited to a total of 18 baches).
5. Giving due consideration to the submissions received decides its recommendations to the Council in respect of the proposal consulted on for the baches on public land at Taylors Mistake, Boulder Bay and Hobsons Bay.

6. Recommends to the Council that a road stopping process does not commence for the legal road.

4. Submissions Received on the Proposal for Baches at Taylors Mistake and Bays

The Hearings Panel received the submissions having read them ahead of the hearings.

Staff Recommendations

That the Hearings Panel:

1. Considers all submissions received, the enclosed staff report and other relevant considerations in its deliberations, before deciding its recommendation to the Council in respect of the proposal, which the Council may accept or reject;
2. Accepts the late written submissions from David Rogers, Otto Snoep, Paula Ashley Hodder, Kirsten Wyllie, and heard submission from William Fulton.
3. Notes that the Local Government Act 2002 requires, as one of the principles of consultation, that “the views presented to the local authority should be received by the local authority with an open mind and should be given by the local authority, in making a decision, due consideration” (section 82(1)(e)).

Committee Resolved BLHP/2019/00003

Hearings Panel Decision

That the Hearings Panel:

1. Accepts and considers all the submissions received, including the late written submissions from David Rogers, Otto Snoep, Paula Ashley Hodder, Kirsten Wyllie, and heard submission from William Fulton.

Community Board Member McLellan/Councillor Galloway

Carried

5. Hearing of Submissions

The Hearings Panel received presentations from the following submitters:

- Taylors Mistake Bach Holders Association (Brent Gilpin on behalf of)
- Evan and Beverley Rahurahu
- Dave Louw
- Raymond Rankin
- David Hill
- David Hill on behalf of Bruce Hill

The Hearings Panel adjourned at 10:28am and reconvened at 10:45am, receiving presentations from the following submitters:

- Jim Turpin
- Joanna Koster
- Joanna Koster on behalf of John East
- Peter Tasman Ross
- Janet Abbott

- Chris Abbott
- Chris and Janet Abbott on behalf of Maxwell Robertson
- Murray Jamieson
- Nathan Roberts
- Peter Allpress
- Chris Abbott on behalf of Ronald Vette
- Mike Davidson

The Hearings Panel adjourned at 11:43am (when Councillor Galloway left the meeting) and reconvened at 12:55pm (when Councillor East joined the meeting), receiving presentations from the following submitters:

- Pip Cheshire (by audio link)
- Taylor's Mistake Surf Life Saving Club (Adrian Mouldey on behalf of)
- Heritage New Zealand Pouhere Taonga (Millie Wood and Christine Whybrew on behalf of)
- Max Earnshaw
- Justine Ottey
- Melanda Slemint
- William Fulton
- Neil Charters
- Tom Evatt
- Tom Evatt on behalf of Paul Goldsmith

The Hearings Panel adjourned at 1:55pm to 9:30am on Monday, 18 February 2019 in Committee Room 1 on Level 2 of the Civic Offices at 53 Hereford Street.

The Hearings Panel reconvened at 9:38am on Monday, 18 February 2019 in Committee Room 1 with all members present.

6. Hearings Panel Consideration and Deliberation

The Hearings Panel considered the written and heard submissions received through the consultation and hearings process and proceeded to deliberate on the Proposal for Baches at Taylors Mistake and Bays.

The Hearings Panel had collated questions that arose for it the course of the hearing of submissions and considered the written answers to these and covering memo from Council Officers that were tabled (to be attached to the Hearings Panel report to Council). Council Officers provided verbal clarifications at the meeting to assist the Hearings Panel.

The Hearings Panel adjourned at 10:30am and reconvened at 10:45am.

The Hearings Panel adjourned at 12:17pm and reconvened at 12:55am.

The Hearings Panel adjourned at 2pm to 9:30am on Tuesday, 19 February 2019 in Committee Room 2 on Level 2 of the Civic Offices at 53 Hereford Street.

The Hearings Panel reconvened at 9:39am on Tuesday, 19 February 2019 in Committee Room 2 to continue deliberations with Councillor Johanson yet to join the meeting.

Resolution to Exclude the Public for Part of Deliberations

The Hearings Panel resolved at 9:45am that the public be excluded from part of their deliberations to follow. Reason for passing this resolution: good reason to withhold exists under section 7. Specific grounds under section 48(1) for the passing of this resolution: Section 48(1)(a)

Note: Section 48(4) of the Local Government Official Information and Meetings Act 1987 provides as follows: “(4) Every resolution to exclude the public shall be put at a time when the meeting is open to the public, and the text of that resolution (or copies thereof): (a) Shall be available to any member of the public who is present; and (b) Shall form part of the minutes of the local authority.”

This resolution is made in reliance on Section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the holding of the whole or relevant part of the proceedings of the meeting in public are as follows:

General subject of matter to be considered	Section	Subclause and reason under the Act	Plain English reason	When reports can be released
Part of deliberations on Proposal for Baches at Taylors Mistake and Bays	S7(2)(h), s7(2)(i)	Commercial activities, Conduct negotiations	To allow information presented to the hearings panel to be discussed without prejudicing subsequent negotiations and commercial activities.	Upon the Chief Executive being satisfied that there are no longer grounds for withholding the information under the Act.

Councillor East/Community Board Member McLellan

Carried

Councillor Johanson joined the meeting at 9:52am within its public excluded session.

The public were readmitted to the meeting at 10:19am and deliberations continued in open

Community Board Member McLellan left the meeting at 11:16am.

The Hearings Panel adjourned at 12pm to 9:30am on Friday, 22 February 2019 in Committee Room 1 on Level 2 of the Civic Offices at 53 Hereford Street.

The Hearings Panel reconvened at 9:39am on Friday, 22 February 2019 in Committee Room 1 with Community Board Member McLellan absent.

The Hearings Panel continued its deliberations, being now in receipt of a further memo from its Principal Geotechnical Advisor on geotechnical consideration for offering temporary licences to ‘moderate’ hazard baches, which was tabled (to be attached to the Hearings Panel report to Council). Council Officers continued to provide verbal clarifications at the meeting to assist the Hearings Panel.

**Hearings Panel Recommendation to the Council
Committee Resolved BLHP/2019/00004**

The Hearings Panel recommends that the Council:

1. Notes:
 - a. The public submissions received and heard on the proposal for baches on unformed legal road at Taylors Mistake, Boulder Bay and Hobsons Bay (the “baches”); and
 - b. The desire to enable retention of the baches of heritage value; and
 - c. The affected land is publicly owned legal road; and
 - d. The staff advice concerning the appropriateness of granting licences on legal road relative to the right of the public to access the legal road; and
 - e. The staff advice on natural hazards and mitigation; and
 - f. The grant of licences transfers an interest in public land to private individuals; and
 - g. That in the absence of appropriate licence terms, the grant of a licence for a structure on public land may significantly increase the market value of the licensees’ occupation of public land; and
 - h. Any new process for a further licensing term will require subsequent Council decision. There is no delegation to staff to surrender and grant new licences or issue any extension of licence term.; and
 - i. That under the Christchurch District Plan the total number of baches must not exceed 45 at any time.
2. Approves, in respect of baches currently assessed by the Council’s geotechnical experts as being subject to low risks from slope instability hazard, that a ground licence to occupy the unformed road be offered to the individual bach-owners as soon as practically possible following the date of this resolution.
3. Approves, in respect of baches where there is a moderate to high slope instability hazard present , being bach numbers 1, 2, 4, 8, 9, 10, 30, 31, 32, 62, 63, 64, 67 and 68, that a ground licence to occupy the unformed road be offered to the individual bach-owners as soon as practically possible following the date that the bach-owner affected satisfies the Council that the relevant natural hazards have been reassessed or mitigated in accordance with the following standards:
 - a. The risk is certified as being acceptable in the manner required by rule 5.6.1.2 of the District Plan; or
 - b. Hazard mitigation works are consented under the District Plan and implemented.
4. Approves in respect of the baches referred to in resolution 3, where such bach-owner intends to either seek certification of acceptability (i.e. refer resolution 3(a)) or to mitigate the natural hazards affecting their bach (i.e. refer resolution 3(b)), the grant of a temporary ground licence to occupy the unformed road on the following basis:
 - a. it be for a term expiring on that date being 2 years from the date this resolution is adopted by the Council (or such extended date as referred to in resolution 6); and
 - b. such licence to permit the location and maintenance of the bach on legal road pending completion of the mitigation works or reassessment; and

- c. no residential occupation be permitted in respect of baches where there is a high slope instability hazard present, being bach numbers 1, 2, 10, 31, 32, 62, 63, 64, 67 and 68; and
 - d. temporary residential holiday occupation on a casual (non-permanent) basis be permitted (that prohibits use as a principal place of residence) in respect of baches where there is a moderate slope instability hazard present, being bach numbers 4, 8, 9 and 30, subject to the further limitations that the bach:
 - i. may only be occupied for a maximum of 10 nights per annum; and
 - ii. may not be let; and
 - e. the applicable licence fee shall be nil; and
 - f. the other terms of resolution 7 not covered above to apply to such licences.
5. Approves, where the mitigation works referred to in resolution 4 involves Council-owned land, the grant of a licence to allow those mitigation works to be situated on that Council land subject to:
- a. where the affected land is legal road, the Council being satisfied that such works would not unreasonably interfere with the public's right to use the road; and
 - b. all other legal obligations being complied with; and
 - c. the Council being satisfied as a landowner (not as a regulator) that the proposed works are appropriate or acceptable; and
 - d. the term to be 35 years; and
 - e. the applicable licence fee to be nil; and
 - f. such other terms to apply as determined by the Chief Executive.
6. Resolves that the owners of baches 1, 2, 4, 8, 9, 10, 30, 31, 32, 62, 63, 64, 67 and 68, where there is a moderate to high slope instability hazard present, must satisfy the Council as landowner under resolution 3 within 2 years of the date this resolution is adopted by the Council (or such later date as the Chief Executive shall determine if the bach owner has made reasonable progress towards completing the mitigation work).
7. Resolves that the terms and conditions to apply to licences issued as a result of resolutions 2 or 3 above shall be as follows:
- a. Term – for a single fixed term of 35 years.
 - b. Permitted Use – temporary residential holiday occupation on a casual (non-permanent) basis, and not as a principal place of residence. Casual holiday letting for a maximum of 20 nights per annum is permitted.
 - c. Licence Area – the footprint only of the bach building and any deck or ancillary structure (excluding fences) existing as at 1 January 2019.
 - d. Licence Rent Formula – based on market rent as assessed by registered valuers TelferYoung (based on the principles specified in their report). This is a “gross” rent i.e. all inclusive, there are no other costs or outgoings that are recoverable in addition to the rent. Rents are to be reviewed 5 yearly to market as assessed by an independent registered valuer appointed by the Council.

- e. Transferable Ownership Rights – that the following controls on transferability of the licence shall apply:
 - i. That the Licensee (from time to time) may not transfer the licence to any person other than a member of the Licensee's family;
 - ii. That the written consent of the Council as licensor will be required to every transfer, such consent not to be unreasonably withheld;
 - iii. If the Licensee shall have no family, or no family who wish to accept a transfer of the licence, then the Licensee shall be required offer to surrender the licence to the Council. If the Council accepts such surrender then it will pay to the outgoing Licensee a sum equal to the replacement cost less depreciation of the bach and associated structures at the point in time of transfer as determined by a registered valuer appointed by the Council. No other sum shall be payable to the Licensee;
 - iv. For the purposes of this resolution:
 - (A) "family" means the licensee's-
 - (I) spouse or partner;
 - (II) children;
 - (III) grandchildren;
 - (IV) siblings; and
 - (V) if the Licensee at the commencement of the Licence is a trust, then any spouse, partner, child, grandchild or sibling of the person(s) who originally established the trust.
 - (B) "transfer" means - any transaction that has the intention or effect of transferring either the beneficial or legal ownership of the bach or the right to occupy the bach to a person other than the Licensee, including, but not limited to, any assignment or sublicense. "Transfer" does not include casual holiday letting in accordance with Resolution 7(b).
- f. Maintenance Obligations – that the licensee be required to maintain the bach, other structures and immediate surrounds in good condition, in keeping with the heritage values present and in compliance with the District Plan.
- g. Additions and Alterations – any additions and alterations must be in keeping with the heritage values present and will require Council consent as landowner in addition to the obtaining of any regulatory consents.
- h. Destruction or damage – where this occurs that causes the heritage values to be substantially lost or renders the bach to be uninhabitable the licence shall be automatically cancelled and the licensee shall remove the remains of the bach at the licensee's expense (if required by the Council).
- i. Public liability Insurance - The licence contains an obligation to hold public liability insurance policy for not less than \$2million on terms and conditions acceptable to the Council.
- j. Hazards –The licence to include the provisions recording:
 - i. the provision by the Council to the bach-owner of the available information relating to the natural hazards affecting their bach;

- ii. an acknowledgment by the bach-owner that they have entered into the licence having received that information and based on their own enquiries;
 - iii. to the maximum extent permitted by law, the bach-owner is not to be entitled to make any claims against the Council arising in respect of any matter relating to such natural hazards affecting their bach (including, but not limited to, the presence of such natural hazards or any damage or harm caused to the bach-owner's bach or other property by such natural hazards);
 - iv. allowing the Council to cancel the licence if the Council forms the view, acting reasonably, that the natural hazards affecting the bach discontinue at any time to be mitigated in accordance with the standards referred to in resolution 4 above or the risk increases.
 - k. Other standard provisions – such other standard provisions as the Chief Executive shall consider appropriate or necessary in their discretion.
8. Approves, where a licence referred to in resolution 3 or 4 (as applicable) is not granted or accepted, and the affected bach is of high heritage value, the grant of a ground licence to occupy the unformed legal road to such person, trust or entity as the Chief Executive shall approve on the following basis:
 - a. It be for a term of 35 years;
 - b. Permitted Use - such licence to permit the location, restoration and maintenance of the bach on legal road and the use of the bach for Museum purposes;
 - c. No residential or overnight occupation to be permitted;
 - d. The applicable licence fee to be nil; and
 - e. The other terms of resolution 7 not covered above shall apply to such licences, with the exception of 7(e) (with full uncontrolled transferability being applicable) and 7(g) (with no alterations or additions permitted).
9. Approves that the rent received from the licensing of the baches be managed as a special fund to provide for amenity, environmental and heritage enhancements in the local area including potential purchase of baches, a public toilet at Boulder Bay, track signage and interpretation boards, predator control and native plantings - staff to work through proposals to use the funds with the local Community Board and stakeholders.
10. Requests that staff investigate track signage in the area and opportunities for improvement of this, including for the high tide track to Hobsons Bay and the track in front of Rotten Row, as a matter of priority.
11. Delegates the Chief Executive authority to implement the above resolutions and to do all things necessary and take such steps as they shall consider appropriate in their discretion to give effect to the same, including entering into licences on behalf of the Council, with the exception of the matter referred to in resolution 5(c), which shall be referred to the Rockfall Protection Structures Committee of Council for decision.
12. Delegates and requests that the Chief Executive take enforcement action to require removal of any bach, and to bring an end to residential use of any bach, that is not authorised by a licence issued pursuant to the above resolutions.

Councillor Templeton/Councillor Galloway

Carried

Councillor East requested that his vote against resolutions 3, 4(c), 4(d), 4(d)(i) and 7(h) be recorded.

Councillor Johanson requested that his vote against resolutions 7(a) and 7(e) be recorded.

Meeting concluded at 11:39am on 22 February 2019.