

An informal submission on an application for Certificate of Existing Use Rights by fourteen unscheduled bach owners at Taylors Mistake that is to be decided by Commissioner Kirkpatrick on appointment by the Christchurch City Council – July 2011

Dear Mr Kirkpatrick,

1. Thank you for the invitation to meet with you last Wednesday on an informal basis regarding the Certificate of Existing Use Rights application by bach owners at Taylors Mistake.
2. At the meeting you expressed a desire to obtain additional information to assist in making that decision from persons that have an interest in the Application.
3. I am pleased to offer you the information I hold that may be of use, again on an informal basis. I provide this information without it being or becoming prejudicial to my proceedings currently before the Environment Court on an enforcement order against the same applicants as those of the Certificate sought from the council.
4. I understand that Mr Evatt, acting for the Applicants, has no objection to you seeking this information from me. I am of course happy that you share the information I give you with Mr Evatt.

Lawful Establishment:

5. From research that I have carried out over the years and particularly in 1993 at the Sumner Museum and National Archives I have not found any evidence that would support the alleged lawful establishment. I have not come across a signed permit that was issued by the Sumner Borough Council for any hut that was first erected at Taylors Mistake as is a requirement under condition 1 of the hut permit formally authorised by resolution of the Council in 1931.
6. I would expect that you would have received in the documents supplied by the Applicants a signed copy of the first permit that must have been issued by the council to each hut owner that allowed the huts to be erected and what is required to make the huts (baches) lawfully established pursuant to s10.(1)(a)(i) of the Resource Management Act 1991. The permits would be in the names as follows:

Bach 28:	G. Bonnington	in 1929
Bach 30:	Flockhart	in 1929
Bach 31:	Geo Haxell	in 1914
Bach 32:	Scevens	in 1914
Bach 33:	Withers	in 1914
Bach 47:	Dick & E. Lewis	in 1925
Bach: 48	Scott	in 1915
Bach: 49	Eade	in 1918
Bach: 51	Chiswell	in 1922
Bach: 52	Barbour	in 1924
Bach: 55	W Anderson	Date unknown. Destroyed by land slip; rebuilt by Dunlop in 1940
Bach: 56	Wood	in 1912
Bach: 57	E. Taylor	in 1924 . Destroyed by fire; rebuilt by J Hunter 1933
Bach: 58	AG Unwin	in 1926

7. I believe that the Applicants seem to be confusing the distinction of lawful occupation of the land during the term of the licences that were issued by the council with that of the huts as being lawfully established pursuant to s.10 (1)(a)(i). The question that needs to be answered is when did the adverse erection of the baches become lawfully established, if ever? And, what proof is there to support that allegation of being lawfully established?
8. The persons I have identified as the first owners of huts or cave dwellings were obtained from the records held at 1993 in the Sumner Museum.
9. From my research I found information that the annual licences that were issued are most likely invalid. The Council did not properly execute the licences by Order in Council at the time of their annual rollovers as appears to be a requirement to make a licence valid.
10. The only licences that were properly authorised by the council date to 22 June 1931 from the minute book, where it was resolved to issue licences subject to conditions.
11. This then throws doubts as to the lawfulness of any of the baches that were erected before 22 June 1931 under the permits that were supposedly issued during this preceding period and subsequently since 22 June 1931. There is evidence in the minute book of the Sumner Borough Council that some sort of permit was issued from 1910 onwards but not as to what and to whom and under what conditions these permits were issued. Ostensibly the permits were to be issued to ensure that the owners of the huts did not acquire a vested interest in the use of the land. By 1931 all the fourteen baches subject to this application had been established and most likely unlawfully without substantiated evidence to the contrary.
12. There is no entry in the minute book that a request was ever made by a hut owner to the council for a permit to erect a hut by any of the owners of the huts prior to 1931. Only two persons subsequently appear to have made such a request over the life of the Sumner Borough Council that was amalgamated into the Christchurch City Council in 1945.
13. In my opinion the structures were not lawfully established pursuant to s.10(1)(a)(i) prior to 1962 when the first district plan for Christchurch was promulgated as is alleged by the Applicant. I make this observation in that the owners who erected the structures had no interest or estate in the land they used or that they were entitled to that use as of right, nor do the present owners in the occupation of the structures have such interest.

Scale:

14. For the Applicants to claim that the current baches are similar in scale, character and intensity, or at least substantially so, I expect evidence to have been produced by the Applicants of building plans that must have been entered in the Council's records before the building permits could have been issued.
15. This information in my view is essential in order to verify and support the claim without any lingering doubt that the baches are similar to what they were at least from 1962 onwards.
16. This is particularly so where even minor changes in scale could create significant changes in character and avoid where possible argument over a subjective view.

17. Changes in scale are easier to identify even now from close examination of the current structures that are in place and with the help of photographic evidence dating back to identifiable time related events to determine an order in time by when these changes may have occurred.

18. Examination of each bach specifically would reveal that:

Bach 28. The bach was completely rebuilt in 1967 by the Bradley's in a completely different architectural style from its predecessor that was demolished by the Bradley's. A building permit was issued to support the date but does not describe accurately the work supposed to have been consented to. The change in architecture is a significant change in the character with its predecessor. There are no similarities. The footprint of the enclosed portion of the new structure might only have been increased marginally by 10%. Add to that however the much enlarged timber deck that accompanies the enclosed structure the increase in scale of the footprint has become significant. A site examination would suggest the new development has more than doubled in scale.

Bach 30. A timber deck was added to this bach about 1970 according to a building permit that was issued for the work. Mr Noel Chambers added substantial extensions to the enclosed footprint of the bach in the period from 1972 to 1977. The enclosed footprint of the bach was increased by what appears 68%. The construction of an even further enlarged timber deck increases the scale of the total footprint significantly. Site examination would suggest that it would be more than double in size. Besides the increase in scale the character of the original simple small rectangular structure has changed significantly in shape and roofline. No evidence of a permit for the extensions to the structure exists.

Bach 31. No changes detected.

Bach 32. A timber deck was added post 1962. The increase in footprint is 56%, about double the original.

Bach 33. A building permit was issued in 1977 to provide a balcony in front of the bach encroaching on the public footpath. It has effectively increased the footprint of the bach by 25 % and has affected the character of the surrounding amenity values.

Bach 47. No changes detected.

Bach 48. The footprint of this bach has doubled in size with the extension of the structure and enclosure of the courtyard in 1967/1968 according to a building permit that was issued for the work. The scale of the extension is readily measurable by site inspection and is significant in quantum. The character of the bach has also significantly altered from a simple four-sided structure to a doglegged outline and changed roof profile.

Bach 49. The footprint of this bach has more than doubled since 1967 including the construction of a large timber deck. The increase in scale is significant. The character of the original bach has also been significantly altered in shape, roofline and bulk. A building permits appears to have been obtained for the enclosed part of the extension but apparently not for the decks.

Bach 51. Substantial extensions to the footprint of the bach have occurred over time but no precise record when these may have take place.

Bach 52. Extensions to the rear of the bach have occurred in the past few years with the construction of ablution facilities. No evidence of a building permit. Increase in scale is in the order of 15%.

Bach 55. This bach has been substantially rebuilt in the late fifties or early sixties. No record of building permit is available to verify exact time of the rebuild. From photographic records and memory I would say the footprint of this bach has increased about threefold. Significant change in character has occurred in shape, form and scale and construction materials used.

Bach 56. Extended in 1968 by Hume. The footprint has doubled in scale. A significant change in character has occurred by shape, roofline and choice of construction materials and particular by the concrete blockwork for the ground floor portion of the extension is unsympathetic with the earlier construction materials used in the bach.

Bach 57. No significant changes detected.

Bach 58. Extension with lean-to at northern end of the bach was carried out post 1979. No building permit appears to have been issued. Scale has increased significantly by 62%.

Intensity:

19. The matter of changes in intensity I believe should be considered in a larger context than the individual bach. That is not to say that they may be ignored.
20. Mayor Denham in the minute book of the Sumner Borough Council at 21 October 1910 recorded that there were about a dozen huts in 1910. Saturation was reached by the end of the nineteen thirties with a count in excess of 70 baches. The present number is 45 largely because of the forceful removal of 19 baches located at the base of the cliff faces running from Boulder Bay to Giants Eye. This reduced number has not lessened the intensity of the remaining baches. In fact the intensity has increased by incremental creep in scale and rebuilds of individual baches. It would be difficult to argue that the intensity of the baches on the landscape and public spaces has not significantly increased even post 1962.

Use:

21. The increase in scale has allowed greater numbers of persons to have access to the baches and that would have intensified their use. A number of baches since 1995 have been used or are being used for residential occupation as distinct from the customary use at that time as holiday accommodation or fishermen shelter at the time of inception. Specifically:

Bach 28. This bach has and is used on a tenatable basis for residential purposes.

Bach 31. This bach is used for residential purposes and on a tenatable basis.

Bach 47. Has been used intermittently for residential purposes.

Bach 49. Has been used intermittently over extended periods for tenatable residential purposes.

Bach 51. Has been and is being used for residential purposes over many years on a continuous basis.

Bach 55. Has been used intermittently over extended periods for tenatable residential purposes.

Bach 56. Is being used for residential purposes.

Bach 57. Has and is used for residential purposes on a continuous basis by the same tenant spanning a dozen or so years.

Bach 58. Is being used periodically for residential occupation.

22. I trust this information is useful and whilst some of it is not substantiated to a level I wish it to be with suitable documentation as proof of evidence, I testify that from my local experience of 55 years and to the best of my knowledge and research that the information is correct. I believe that the information should be of sufficient concern so as to approach the allegations made by the Applicants to support their request for a certificate with caution. Of course the onus to disprove the veracity of my information rests with the Applicant.

Otto Snoep of 233 Taylors Mistake Road, Christchurch

Enclosures:

1. Transcript of the entries in the minute book of the Sumner Borough Council relating to the baches over the period 1883 to 1941.
2. Map of the history and location of the huts and baches and successive ownership reconstructed from information held in the Sumner Museum at 1993.
3. Marked up footprints of the baches showing extentions.