

MINUTES

TITLE: Environment & Planning Subcommittee
DATE: Monday, 26 March 2007
TIME: 10.00 am
VENUE: Council Chamber, 78 Commercial Street, Takaka
PRESENT: Crs E M O'Regan (Chair), S J Borlase, N Riley

IN ATTENDANCE: Consents Manager (J Hodson), Consent Planner (L Davidson),
Minute Secretary (V M Gribble)

1. APPLICATION RM060827 – A J and J E DIXON, STATE HIGHWAY 60, ONEKAKA, GOLDEN BAY

1.1 Application

The application was made pursuant to Section 127 of the Resource Management Act to change Condition 7 of land use consent T2/9/92-26. Condition 7 currently restricts the sale of liquor to patrons drinking on site (an on-licence). This application seeks authorisation to sell liquor produced on site through an off licence.

The application site is located at State Highway 60, Onekaka, Golden Bay, being legally described as Lot 1 and Part Lot 2, DP 1683 (CT NL5B/798).

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

The Committee reserved its decision at 11.45 am.

RESOLUTION TO EXCLUDE THE PUBLIC

Moved Crs O'Regan / Riley
EP07/03/43

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

A J and J E Dixon

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

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

Moved Crs Borlase / Riley
EP07/03/44

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

CARRIED

2. APPLICATION RM060827 – A J and J E DIXON, STATE HIGHWAY 60, ONEKAKA, GOLDEN BAY

Moved Crs O'Regan / Riley
EP07/03/45

THAT pursuant to Section 104D of the Resource Management Act, the Committee DECLINES consent to A J and J E Dixon as detailed in the following report and decision.

CARRIED

Report and Decision of the Tasman District Council through its Hearings Committee
Meeting held in the Council Chamber, Takaka Service Centre
on Monday, 26 March 2007, commencing at 10.00 am

A Hearings Committee ("the Committee") of the Tasman District Council was convened to hear the application lodged by **A J and J E Dixon** relating to a request to change an existing condition of consent to allow for the sale of liquor through an off-licence. The application, made in accordance with the Resource Management Act 1991 ("the Act"), was lodged with the Tasman District Council and referenced as RM060827 and relates to an existing consent T2/9/92-26.

PRESENT: **Hearings Committee**
Cr O'Regan, Chairperson
Cr Borlase
Cr Riley

APPLICANT: Mr A Dixon and Mrs J Dixon

CONSENT AUTHORITY: **Tasman District Council**
Mr L Davidson- Consent Planner, Golden Bay

SUBMITTERS: Mr M Weir-on behalf of Transit New Zealand
Mr B Holland- Opus Consultants on behalf of Transit New Zealand

IN ATTENDANCE: Ms J Hodson , Manager Consents- Assisting the Committee
Mrs V Gribble- Committee Secretary

1. DESCRIPTION OF THE PROPOSED ACTIVITY

The application lodged by A J and J E Dixon requests Council to review Condition 7 of the land use consent that enables the Mussel Inn to operate as a licensed café for up to 50 persons. That condition restricts the sale of liquor to an On-Licence, meaning liquor cannot be sold for people to take away from the premises.

The application site is located at State Highway 60, Onekaka, Golden Bay, being legally described as Lot 1 and Part Lot 2, DP 1683 (CT NL5B/798).

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

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

Zoning: Rural Residential
Area(s): N/A

The proposed activity does not comply with Permitted Activity Rule 17.6.2(b)(iv) of the proposed Tasman Resource Management Plan and is deemed to be a Discretionary activity in accordance with Rule 17.6.3 of the Plan.

3. NOTIFICATION AND SUBMISSIONS RECEIVED

The application(s) was notified on 2 December 2006 pursuant to Section 93 of the Act. A total of two submissions were received. The following is a summary of the written submissions received and the main issues raised:

Transit New Zealand

Transit New Zealand has lodged a submission opposing the application to enable an Off-Licence to be obtained for the Mussel Inn. Transit New Zealand has the responsibility to ensure the strategic function of the State Highway Network is not compromised by land use activities, particularly where they have direct access from the State Highway. Transit considers the sight distances for the entrance and exit for the Mussel Inn are significantly less than those prescribed by the Proposed Tasman Resource Management Plan (PTRMP) and Transit’s Planning Policy Manual. They consider an extension of the operation to allow off sales to take place would exacerbate the traffic safety risks and be contrary to the objectives and policies of the PTRMP. They have asked that the application is declined in its entirety.

C O Lee on behalf of Takaka Police

Mr Lee is a Police Officer stationed at the Takaka Police Station who has lodged a submission on behalf of the New Zealand Police relating to parking at the Mussel Inn. His submission is neutral and has indicated he supports consent being granted, with the proviso that additional parking is provided for patrons. He has visited the Onekaka area when there are significant numbers of people at the Mussel Inn and describes the parking of vehicles on the State Highway as “having the potential for a serious motor vehicle crash”. He also believes the absence of street lighting in this area also increases the risk of accidents. Action has been taken by Police in the past where vehicles are incorrectly parked on the State Highway.

4. PROCEDURAL MATTERS

No procedural matters were raised.

5. EVIDENCE HEARD

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

5.1 Applicant's Evidence

Andrew and Jane Dixon were in attendance and tabled and spoke to their evidence.

Mrs Dixon said they sell beer, cider, wine, lemonade, pressed juice, and potentially could have spirits. They have no intention of having a bottle store.

Mr Dixon said they are not producing product for off sale. They want to be allowed to sell the occasional rigger or ginger beer to people who are dining at Mussel Inn.

Cr O'Regan said the Committee has undertaken a site visit. He asked Dixons if they had considered, when applying for this relatively minor part of previous non-compliance, applying to have approval for increased capacity on the whole site.

Mr Dixon said Transit are objecting to this application, and he did not believe they would have stood a chance of increasing the number of patrons. Transit have made it clear they do not want more people coming to Mussel Inn. If they altered the speed restriction it would help, but he did not see Transit doing that.

Mr Dixon said the number of people they have now is no different to what it was when the business first started. The number of nights we exceed the numbers is less. 95% of the time we would have well less than 50 patrons.

Cr Borlase asked if Dixons have any criteria for saying yes or no to requests to buy drink to take away. Mr Dixon said they make a beer and put it into kegs and if there is any left would on-sell it.

Mrs Dixon said since September 2006 they have had none available. They do not sell over January so in the potentially busy time there are no off sales. It is only from this time of year and in the winter and the business is closed over August.

Cr O'Regan referred to the NZ Police submission which states a specific date when vehicles were illegally parked. He asked if there were any prosecutions relating to that. Mrs Dixon said Officer Lee handed out 16 tickets for vehicles which were parked illegally.

Cr Borlase asked if Dixons had thought about providing a happy bus from Takaka for the special events held at Mussel Inn.

Mr Dixon said we do not want to encourage more people to come and providing a bus would bring a bus load, plus all the people in their cars.

In the right of reply Mrs Dixon said in 1994 they applied for an on licence and that was granted. There has been no evidence presented that traffic volumes are increasing or will continue to increase at the site in the future. With the unstable nature of tourism and rising fuel costs it should not be assumed traffic numbers will increase. Riggers are not filled from taps, they are pre-filled at the brewery. It was suggested if speed was reduced to 80 kph there would be no problem, so there is the possibility for a speed reduction. The issue seems to be with the road and that road is a community road, it is not like a motorway. Pedestrians are valid users of the road, school children walk along it to catch the school buses and there are cyclists and people riding horses.

Mr Dixon explained that regarding quantities, they are limited by the tank space available. Approximately 200 to 300 hecta-litres are produced each year.

5.2 Submitters Evidence

Mr Weir commented that Transit would reserve its position regarding any proposed changes pending details, but would not be happy about expansion because of the roading situation. Mr Weir presented his evidence which mainly related to planning issues. He considered that the brewery operation was not part of the consented activity on the site and that it could not be considered as a home occupation as the produce was retailed through the commercial operation of the Mussel Inn. He expressed concern that the recommendation of the Planner would allow the off-licence to be unlimited in terms of amount and type of liquor to be sold. He considered that granting a change of conditions as currently sought would be ultra vires and recommended that the application be declined.

Mr Ben Holland tabled and presented his evidence regarding traffic safety issues. He noted that at times there were cars parked on the side of the State Highway despite Transit's attempts to eliminate this practice by painting "no-stopping" lines on the road side. He considered that with the amount of traffic turning into the site and the limited sight distances, that any increase in activity on the site would be increasing an already dangerous situation. He considered that it had been a matter of good fortune that no serious accidents had occurred already.

Mr Holland said the best visibility is 170 metres towards Takaka and 230 metres towards Collingwood.

Cr Borlase noted the applicants have said beer would not be available over the peak period as they are too busy to brew it and asked If Council was to apply a condition that the off licence was not to be used between October and March, would Transit agree to that. Mr Holland said his first reaction would be that it would reduce or limit the likelihood, but have no effect on the consequence.

In commenting on questions relating to changing the speed limit, Mr Weir said to drop in speed limit requires a third party to do something. Transit is reluctant to reduce speeds on open speed highways.

Mr Holland said research suggests that people do not see signs. People drive at speeds they consider appropriate. If there is an 80 kph sign people will still drive at what they consider to be suitable.

5.3 Council's Reporting Officer's Report and Evidence

Mr L Davidson spoke to his report. He noted this is an application to allow off sales to take place from the Mussel Inn, not an application to establish and operate the café as granted in 1992. Many of the things raised today were raised at that time. He accepts the evidence produced today to say the position of the entrance and exit can create some concern, but this is not the correct forum to revisit those things. If the Committee does perceive a problem there is a correct procedure to go back through compliance and pursue it. The letter produced from the Dixons today confirms the access satisfies Transit conditions.

Mr Davidson found it difficult to measure effects produced purely by allowing someone to purchase something and take it away from the premises. He had reservations about it generating extra traffic as it is in an isolated location and the catchment for the off sales is likely to be either local Onekaka people or people who are present on the premises. The Engineering comment from Mr D Ley relates to access. That was not pursued because we had a letter dated 1994 saying the access met Transit's requirements. The consent granted in 1992 was pre-TRMP and the site distance issue was traffic evidence, rather than Plan evidence. In terms of the brewery, that situation was looked at carefully at the time the building consent was granted. It is well under 75 square metres, very small scale and subsidiary to the residential activity. While it produces sales on site, they are consented by the 1992 consent. He believes somebody can carry on home occupation on a rural residential property as long as it complies terms in size and scale. Council can monitor off sales. During a "controlled purchase operation" in Golden Bay someone went to Mussel Inn to purchase liquor and they were refused. He said there are traffic issues all over Golden Bay during the holiday season. He suggests conditions that preclude advertising, that it be limited to sales within the café itself and if the Committee considers there is a problem with the existing consent, it should be raised with compliance staff, not at this hearing.

Cr O'Regan asked about the access/exit plan mentioned in the letter from the Compliance Officer dated 5 November 2004.

Mrs Dixon said Transit wanted to have the northern entry with trees planted along the grassy verge so that traffic coming from the south would have to come around and back. Transit then realised it was better for traffic from the south to come in and go out north and having trees planted would not be a good idea.

Cr O'Regan noted that once such a consent is granted, somebody else could take it over and go into specialised liquors or beers of any sort and that is a regular occurrence throughout country.

Mr Davidson said the brewery is incidental to the residential use of the site.

6. PRINCIPAL ISSUES

The principal issues that were in contention were:

- a) Will the increased level of traffic movements associated with allowing an off-licence for products made on site create a significant adverse traffic effect in relation to the State Highway?

- b) Would allowing off site liquor sales of products made on site be ultra vires ?

7. MAIN FINDINGS OF FACT

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

- a) The Committee considered that allowing an off-licence would generate a demand which would result in additional traffic being attracted to the site and given the current level of traffic effects, it would be unwise to allow an increase.
- b) The Committee considered that allowing an off-licence for the sale of products produced by the on-site brewery does raise the issue of the status of the brewery operation. It does not currently form part of the resource consent and thus allowing off-site sales of beer etc may cause the "home occupation" to fall outside the permitted activity status.

8. RELEVANT STATUTORY PROVISIONS

8.1 Policy Statements and Plan Provisions

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

- (i) Tasman Regional Policy Statement (TRPS);
- (ii) the proposed Tasman Resource Management Plan (TRMP);

8.2 Part II Matters

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

9. DECISION

Pursuant to Section 104B of the Act, the Committee **Declines** the application to change condition 7 of the resource consent.

10. REASONS FOR THE DECISION

The Committee acknowledged that the Mussel Inn is an important and popular facility in Golden Bay for both visitors and local residents. The Committee noted that non-compliance in terms of off-site sales had been acknowledged by the applicants, but in recent times this has ceased in order for this process to be completed in good faith.

However, the Committee concerned about the traffic safety issues and considered that allowing an off-licence would undoubtedly add to the level of traffic movements to and from the site and hence increase the chance of an accident occurring. From the evidence presented, it was difficult to predict the exact extent of this increase. The Committee considered that allowing any change to the consent conditions which would lead to increased traffic movements would be unacceptable unless additional

mitigation measures were proposed in conjunction with any change of conditions. The Committee noted that it would be possible to limit the time which an off-licence could operate, and it could be limited to the sale of products made on site, but that these limitations would not remove the additional traffic safety impacts associated with granting an off-licence.

The matter of the “legality” of the brewery operation was considered to be unclear. At the time of the building consent being granted, it was considered to be a “home occupation” and thus a permitted activity. However, the Committee was concerned that allowing off site sales of the products would render the brewing “home occupation” to be outside of the permitted activity terms contained within the Plan; particularly that in relation to the requirement for retailing to be in accordance with the rural selling place provisions in Rule 17.6.2 and to be in accordance with the definition of rural selling place. Rule 17.6.2 prevents a rural selling place being permitted where it has access from an arterial road (which is the case here). The Committee notes this as an issue, but as the application is being declined for traffic safety reasons, the status of the brewery activity does not change.

In addition, the Committee was also concerned about the lack of clarity and controls on the scale to which the brewery operation could grow (assuming it is a permitted activity) and the impact such future growth could have on traffic movements. Again this is noted as an issue and forms part of the reasoning to decline the application to allow an off-licence.

Although it is not usual, the Committee wish to express their support for the operators of the Mussel Inn. However, it is clear that there are currently aspects of the existing consent which are not being complied with (i.e. the number of patrons exceed the limit of 50 persons at times) and there is doubt as to the status of the brewery activity. It would be appropriate for this aspect to be brought within the scope of the resource consent. In summary, if the proprietors wish to move forward with their business plans, the matters of traffic safety, off-site parking and access, and the limit on numbers of patrons needs to be dealt with appropriately.

Issued this 11th day of April 2007

Councillor O'Regan
Chair of Hearings Committee

Date Confirmed:

Chair: