

MINUTES

TITLE: Environment & Planning Subcommittee
DATE: Monday, 18 February 2008
TIME: 9.30 am
VENUE: Tasman Council Chambers, 189 Queen Street, Richmond
PRESENT: Crs N Riley (Chair), T B King, E J Wilkins
IN ATTENDANCE: Resource Consents Manager (R Lieffering), Consent Planner – Land (J Harley), Environmental Health Officer (G Caradus), Development Engineer (D Ley), Executive Assistant (V M Gribble)

1. NELSON DISTRICT FREE KINDERGARTEN ASSOCIATION INCORPORATED, WARREN KELLY STREET, RICHMOND - APPLICATION No. RM070581

Mr N McFadden, Counsel for the applicant, presented the evidence on behalf of the applicant.

The application is for land use consent to establish and operate a community activity, namely a Government-licensed early childhood education centre. The centre will cater for up to 26 children aged between 0 and 5 years and be open from 7.30 am to 5.30 pm Monday to Friday, but closed on public holidays and for two weeks over the Christmas period. The centre will be staffed by four registered teachers.

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.

RESOLUTION TO EXCLUDE THE PUBLIC

Moved Crs Wilkins / King
EP08/02/07

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

Nelson District Free Kindergarten Association Incorporated

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
Nelson District Free Kindergarten Association Incorporated	Consideration of a planning application	A right of appeal lies to the Environment Court against the final decision of Council.

**Moved Crs Riley / Wilkins
EP08/**

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

CARRIED

- 2. NELSON DISTRICT FREE KINDERGARTEN ASSOCIATION INCORPORATED, WARREN KELLY STREET, RICHMOND - APPLICATION No. RM070581**

**Moved Crs Riley / King
EP08/02/09**

THAT pursuant to Section 104C of the Resource Management Act, the Committee GRANTS consent to Nelson District Free Kindergarten Association Incorporated subject to conditions 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 Tasman Room, Richmond

on Monday, 18 February 2008 commencing at 9.30 am

A Hearings Committee (“the Committee”) of the Tasman District Council (“the Council”) was convened to hear the application lodged by **Nelson District Free Kindergarten Association Incorporated** (“the Applicant”) to establish and operate a community activity, namely a Government licensed early childhood education centre. The application, made in accordance with the Resource Management Act 1991 (“the Act”), was lodged with the Council and referenced as RM070581.

- PRESENT:** **Hearings Committee**
Cr N Riley, Chairperson
Cr T King
Cr E Wilkins
- APPLICANT:** Mr N McFadden, Counsel for the Applicant
Mrs J McNae, Planning Consultant
Mrs W Logan, General Manager of Nelson District Free Kindergarten Association Incorporated
Mrs P Puklowski, Centre Manager of Futures Early Childhood Centre at Gilbert Street, Richmond
Mr M Hunt, Acoustic Consultant
Ms E Sutton, Traffic Engineer
- CONSENT AUTHORITY:** **Tasman District Council**
Mrs J Harley, Consent Planner (Land Use)
Mr D Ley, Development Engineer
Mr G Caradus, Environmental Health Officer
- SUBMITTERS:** Mrs N Dowling
Mrs B Harris
Mr N and Mrs D Davis
Mr B Moore
- IN ATTENDANCE:** Dr R Lieffering, Resource Consents Manager – Assisting the Committee
Mrs V Gribble – Committee Secretary

1. DESCRIPTION OF THE PROPOSED ACTIVITY

The Applicant has applied for a land use consent (RM070581) to establish and operate a community activity, namely a Government licensed early childhood education centre at 9 Warren Kelly Street, Richmond (Lot 31 DP 5962, Certificate of Title NL 166/62). The centre will cater for up to 26 children aged between 0-5 years and be open from 7.30 am to 5.30 pm Monday to Friday, but closed on public holidays and for two weeks over the Christmas period. The centre would be staffed by four registered teachers.

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: Residential

Area(s): No relevant "Areas" apply to the site

The proposed activity does not comply with permitted activity Rule 17.1.2(da) of the PTRMP as it is a community activity that would generate more than 30 vehicle movement per day on any one day. The activity is deemed to be a restricted discretionary activity in accordance with Rule 17.1.7A of the Plan.

Consent may be refused or conditions imposed, only in respect of the six matters to which Council has restricted its discretion. These six matters are outlined and discussed later in this report.

3. NOTIFICATION AND SUBMISSIONS RECEIVED

The application was publicly notified on 23 June 2007. Seventeen submissions were received with 15 opposing and two supporting the proposal.

The submissions received are summarised in the tables below:

Submissions in opposition:

Submitter and submission number	Received	Reasons for Opposition	Decision Sought
Bruce William Hanna	27/06/2007	Noise Congested Street parking Increased traffic and access issues	Decline This submitter indicated that he did not wish to be heard at the hearing.
Brian and Averill Moore	06/07/2007	Activity exceeds reasonable expectation of usual residential character Intensive use of a residential site Limited ability of landowner to make sure consent conditions are adhered to with landlord/tenant relationship proposed by this application Scale of parking area not residential in nature	Decline The submitters have indicated that they wished to be heard at the hearing.

Submitter and submission number	Received	Reasons for Opposition	Decision Sought
		Review of conditions essential , including acoustic consultant input to oversee noise issues	
Larry Vernon Norriss	09/07/2007	Too many schools in the area Proposal should move to an area where more kids live No car markings in the street Car are currently parking over access ways Roads congested forcing cyclists on footpaths	Decline This submitter indicated that he did not wish to be heard at the hearing.
Alison Jane Strathern	11/07/2007	Volume of traffic Traffic noise in the early morning Safety for cars and pedestrians Warren Kelly Street does not have the capacity Increased noise	Decline This submitter indicated that she did not wish to be heard at the hearing.
Maarten and Jannetje Van Geldermalsen	12/07/2007	Traffic This area of Richmond already congested by school traffic	Decline The submitters have indicated that they did not wish to be heard at the hearing.
Constance Barbara Harris	17/07/2007	Extra Traffic (has supplied her own traffic count) and parking congestion Noise Loss of Residential Character Unsuitable Location	Decline This submitter indicated that she wished to be heard at the hearing.
Helena Franklin	18/07/2007	Increased Traffic and access issues to properties, wet weather effects on traffic Safety issues Noise	Decline This submitter indicated that she did not wish to be heard at the hearing.
Nicky and Peter Dowling	20/07/2007	Loss of residential Character in Warren Kelly Street Increased Traffic congestion Noise	Decline The submitters have indicated that they wished to be heard at the hearing.
Joanne Mulvena	20/07/2007	Traffic volume – congestion, access, safety Residential character Pedestrian and cycle safety	Decline The submitter has nominated Delwyn Davis to speak on her behalf at the hearing
Paul John Bourke	19/07/2007	Parking is already a big problem during school hours	Decline This submitter indicated

Submitter and submission number	Received	Reasons for Opposition	Decision Sought
		Noise of the preschool	that he wished to be heard at the hearing.
John and Andrea Babington	20/07/2007	Traffic volume and noise Oppose any increase to an already heavily congested traffic situation in this area	Decline The submitters have indicated that they did not wish to be heard at the hearing.
Gillian Clarke	20/07/2007	Traffic increase, increase parking, noise and and pollution Increased noise in neighbourhood Children's safety when crossing warren Kelly street	Decline This submitter indicated that she did not wish to be heard at the hearing.
Mark Henman	20/07/2007	Traffic volumes Increased risk of accident, congestion noise pollution	Decline This submitter indicated that he did not wish to be heard at the hearing.
Pam Alice Joyce	20/07/2007	Increased traffic, 50 week operation will have an effect even outside normal term time Safety of pedestrian, residential	Decline This submitter indicated that she wished to be heard at the hearing.
Nathan John and Delwyn Christina Davis	20/07/2007	Noise, privacy and general disturbance Onsite, onstreet traffic and exhaust emissions Storm water disposal	Decline The submitters have indicated that they wished to be heard at the hearing.

Submissions in support:

Submitter	Received	Reasons for Support	Decision
Des Duthie	3/07/2007	Concern for education of Children	Approve This submitter indicated that he did not wish to be heard at the hearing.
Des and Noeline McManaway	25/06/2007	No matters mentioned	Approve This submitter indicated that they did not wish to be heard at the hearing.

4. PROCEDURAL MATTERS

The only procedural matter which the Committee had to consider and make a decision on was in relation to the written statement of evidence of Ms M Falconer which was tabled and read by Mrs N Dowling (a submitter on the application). Ms Falconer has recently purchased the property at 11A Warren Kelly Street, being the property formerly owned by Mr B and Mrs A Moore. The Moores have submitted on the application but have moved from the property since the close of submissions. The Committee notes that the Moores have not withdrawn their submission and therefore still have the status of being a submitter to the proceedings. Because of this, the Committee can not consider the letter of Ms Falconer and decided that it

does not constitute a submission and that Ms Falconer does not qualify as being a submitter. Had the Moores withdrawn their submission then Ms Falconer could have entered the proceedings by virtue of being a successor in title but that is not the case here.

5. EVIDENCE HEARD

The Committee heard evidence from the Applicant, expert witnesses, submitters, and the Council's reporting officers. The following is a summary of the evidence heard at the hearing.

5.1 Applicant's Evidence

Mr N McFadden, Counsel for the Applicant

Mr N McFadden presented the evidence on behalf of the Applicant. He introduced the application and introduced the various witnesses who would present evidence.

Mr McFadden stated that the Committee needs to consider the application on its merits rather than saying there are other schools in the area that are having an adverse effect and focus on the matters which the Council has restricted its discretion as outlined in the PTRMP.

The Committee notes that Mr McFadden had initially advised (in paragraph 2.5 of his evidence) that it could not consider cumulative effects because it was not one of the matters which the Council had restricted its discretion. After being asked to clarify the legal basis of this position Mr McFadden advised the Committee that the definition of "effects" (Section 3 of the Act) does in fact include cumulative effects and they are therefore a matter which the Committee can have regard to provided they relate to the matters which the Council has restricted its discretion. Cumulative effects were not one of the "other matters" provided for in Section 104(1)(c) of the Act.

Mrs W Logan, General Manager, Nelson District Free Kindergarten Association Incorporated

Mrs Logan presented and read a brief of evidence in support of the application.

Mrs Logan advised the Committee that there is no "zoning" in respect of accepting children from certain areas for these facilities. She stated that there is a "need" for early childhood centres throughout the whole Nelson-Tasman area, particularly since the Government introduced 20 hours free care for three and four year olds, which has affected capacity of existing child care centres in all areas. The need is particularly for under two year old care and people will travel because the need is so great.

She stated that at the moment children go from Gilbert Street Futures to Henley Kindergarten. Children would not move from the proposed Warren Kelly Street facility until they are old enough to go to Gilbert Street Futures.

Mrs P Puklowski, Centre Manager, Futures, Gilbert Street

Mrs Puklowski presented and read a brief of evidence in support of the application.

In reply to a question from Cr Wilkins, Mrs Puklowski advised that the Gilbert Street Futures building is not soundproofed but that soundproofing the whole building at Warren Kelly Street could be a possibility.

Mr M Hunt, Acoustic Consultant

Mr Hunt presented and read a brief of evidence in support of the application. This included a Draft Noise Management Plan to which he made some minor amendments at the hearing. Mr Hunt recommended the construction of a 2.6 metre high acoustic fence in the rear of the property adjacent to the play area to mitigate sound effects on the occupiers of 11A Warren Kelly Street. Mr Hunt stated that the acoustic fence will be seen from the upper level of 11A Warren Kelly Street and he confirmed that his client would need a gate to stop children getting around the back of the fence. Mrs Puklowski added that they would be happy to do planting in the gap between the acoustic fence and neighbour's boundary.

The Committee questioned whether the existing house was constructed such that children running around would result in noise nuisance for neighbours. Mr Hunt directed the question to Mrs Puklowski who advised that the existing building has wooden floors and will be used for the under twos where most of the sleeping children will be but they would look at carpeting the floors to limit some of the noise.

Ms E Sutton, Traffic Engineer

Ms Sutton presented and read a brief of evidence in support of the application. Her evidence included an amended car parking layout labelled as Figure 1. Her evidence concluded that Warren Kelly Street was of sufficient capacity to accommodate the predicted traffic generated from the centre.

Mrs J McNae, Planning Consultant

Mrs McNae presented and read a brief of evidence in support of the application.

Mrs McNae stated that there will be adverse effects as a result of the centre operation but the decision that has to be made is whether effects are significant. It was Mrs McNae's professional opinion that the adverse effects would be minor.

5.2 Submitters Evidence

N and P Dowling

Mrs Dowling presented her submission which opposed the application. The reasons why they opposed the proposal were the loss of residential character in Warren Kelly Street, increased traffic congestion and noise.

Mrs Dowling stated that it is more likely that there will be at least six staff on site. She requested that if the consent was granted a condition be included which would provide them with a 1.8 metre high solid wooden fence along their boundary to help mitigate some of the adverse effects. Mrs Dowling stated she was concerned about how the monitoring of conditions would be undertaken. Mrs Dowling stated that parents currently double-park to let children out, especially on wet days and that this creates a lot of traffic congestion.

Mrs Dowling stated there are a lot of school children who bike in the streets during school holidays now. She stated with the extra ten weeks of use proposed for the centre will mean that cars will be coming and going during the school holiday period when children are biking around and she would be concerned about letting her children out to play during the holiday period. She stated that Warren Kelly Street is getting busier, especially at the normal drop off and pick up times for the nearby schools.

C B Harris

Mrs Harris presented her submission. She stated that she was concerned about extra traffic flow and parking in Warren Kelly Street.

J Mulvena

Mrs D Davis tabled and read a submission on behalf of Mrs Mulvena.

B and A Moore

Mr Moore presented his submission which opposed the application. He was concerned about the extent to which the activity will result in loss of residential character, the ability to mitigate adverse noise and visual effects by screening of the activities from adjoining roads and sites, the scale of any building, structures and car parking compared to existing permitted development, duration of consent and timing of reviews of conditions. He expressed concern at the noise attenuation proposals submitted by the Applicant in its evidence.

N and D Davis

N and D Davis live at 7 Warren Kelly Street. Mr Davis read his submission. He mentioned an incident which occurred on the morning of the hearing whereby a driver did a U-turn and almost collided with another vehicle. He noted that the Committee had witnessed this during its site visit. Mrs Davis commented that this was not unusual and happened frequently.

Mr Davis advised the Committee that stormwater from the subject site flows towards their property and that more paving will make this nuisance effect worse. Mr Davis tabled additional notes and read these. These notes related to the staff reports which had been included in the hearings agenda. Mrs Davis made additional comments on the evidence provided by the Applicant earlier in the hearing. A number of questions were raised by Mrs Davis and some of these were answered by Mr McFadden and the Applicant.

5.3 Council's Reporting Officer's Report and Evidence

J Harley

Mrs Harley spoke to her report. She acknowledged that this was a difficult application to assess and that whilst she did not initially support the proposal, the evidence that had been presented at the hearing had convinced her that, overall, the adverse effects will be no more than minor. She also noted that whilst she did not initially "support" the proposal that this appeared to have been misinterpreted as meaning that she was opposed to it but this was not the case.

Cr King asked Mrs Harley whether she had any comments on the conditions proposed by the Applicant, especially in respect to the boundary fences. Mrs Harley advised that the Noise Management Plan was prepared by an expert and was appropriate to include as a condition of consent. She noted that the application stated that the full fencing would occur around the property but that this was not carried through as conditions of consent but should be.

D Ley

Mr Ley spoke to his report. He advised that the traffic effects were no more than minor and he tabled an additional memorandum from Ms Krista Hobday through which confirmed that the traffic safety issues would be no more than minor.

Mr Ley advised that Warren Kelly Street was 10 metres wide curb to curb and was a large street relative to the residential environment that it serviced. It could handle in the order of 500 vehicle movements per day whereas the existing use is around 70-80 vehicle movements per day.

Mr Ley advised that parking limit lines were to be painted on Warren Kelly Street and Gilbert Street and that these would be painted irrespective of whether this consent was granted or not.

Cr King asked whether erection of signage preventing U-turns was appropriate and whether the speed limits in the area need to be reviewed. Mr Ley advised that he was not sure about the legality of undertaking U-turns but that this was a traffic enforcement matter rather than a Council matter. He also advised that he was unsure whether a reduction from the current 50 km/h was appropriate.

Cr Riley asked what the effect would be of having yellow "no parking" lines. Mr Ley advised that no parking lines were problematic and white parking limit lines were a better option.

Mr Ley agreed that the amended parking layout was satisfactory. The first two cars of the parking area (i.e. the first on the right and the first on the left) should be reserved for staff as they would be first to arrive and these two cars would be more difficult to enter and exit. He advised that a 6 metre width between the parking stalls was sufficient for two-way traffic in and out of the parking area onto Warren Kelly Street. The proposed 7 metre width was adequate for turning so that cars can exit forwards.

Mr Ley discussed stormwater in the area and the fact that the Council was going to be upgrading the stormwater infrastructure in the future.

Cr Wilkins asked how the stormwater which is generated from the subject site and currently enters the neighbouring property would be managed. Mr Ley advised that the stormwater would need to be addressed at building consent stage.

G Caradus

Mr Caradus spoke to his report and confirmed again that the evidence that he had heard, especially that from Mr Hunt, had confirmed that he was now satisfied that the noise issues associated with the proposed centre would be mitigated and that the best practicable options were being promoted.

Cr Riley asked whether vehicle emissions were still an issue. Mr Caradus advised that it would need to be considered, especially in the parking area, and that it could be a nuisance to neighbours.

Cr King asked whether the Council receives many complaints about noise from child care centres. Mr Caradus advised that in the past 10 years the Council had received only one noise complaint and that was from a primary school.

Cr King asked whether child noise is “benign”. Mr Caradus stated that in general it is but if one is close to the sound it can be annoying but he also noted that there are a range of sensitivities for different people.

Cr King asked whether the proposed noise attenuation fence should be extended and whether there are other neighbours who could be adversely affected by noise. Mr Caradus stated that the occupiers at 11A Warren Kelly Street were the most affected by noise, especially children playing outside and that the noise attenuation fence proposed by Mr Hunt was of a sufficient length to mitigate the noise there. He stated that the other neighbours may be affected but not to the degree of 11A Warren Kelly Street.

Cr King asked whether the removal of the shed, as proposed, would result in additional noise problems. Mr Caradus advised that it would increase the noise on the occupiers of 7 Warren Kelly Street.

Cr King sought clarification as to whether the adverse effects of noise would be more than minor or not. Mr Caradus confirmed that the effects would be no more than minor provided the mitigation measures were in place.

5.3 Applicant’s Right of Reply

Mr McFadden presented the right of reply on behalf of the Applicant. He began by repeating that cumulative effects were those that “will” occur and not those that “may” occur. That is, cumulative effects are actual effects not potential effects.

Mr McFadden put forward a number of questions which he considered that the Committee should be answering when it is considering the application and he put forward the Applicant’s answers to those questions.

1. Can the environment cope with the traffic effects? Yes they can.
2. Is there any evidence showing that the roads cannot cope with the additional traffic? No, there wasn’t any such evidence presented by submitters.
3. Is there evidence that there is a traffic or pedestrian safety risk? No, but there were “views” presented by submitters but these were not backed up by evidence.

4. Is there any evidence that the applicable noise standards for the zone will be breached? No there was not, and Mr Hunt advised the Committee that the noise standards will be able to be met.
5. Are the noise mitigation measures proposed the Best Practicable Option (BPO)? Yes they are.
6. Is the proposal an efficient use of natural resources? Yes.
7. Are there any cumulative adverse effects? No.
8. Does the proposed activity meet the sustainability test of Section 5 of the RMA? Yes it does.
9. Will there be adverse effects? Yes, but will they will be avoided, remedied or mitigated? Yes they would.

Mr McFadden concluded that resource consent should be granted, subject to conditions. Mr McFadden then made some comments on the evidence presented by submitters. He advised the Committee that the letter tabled from the new owners of 11A Warren Kelly Street should have no standing because Mr Moore, who formerly owned the property and had lodged a submission, had not withdrawn his submission. Had he done so then the new owners could claim to have status as successors in title.

Mr McFadden advised the Committee that evidence presented by experts such as the traffic engineers, should be given significantly more weight than any evidence presented by submitters who are not experts in the field themselves.

Mr McFadden suggested a change to the Condition 12 recommended in his evidence to include the words "...an approved stormwater system..." He also suggested that the plan referred to in Condition 7 should be Figure 1 presented by Ms Sutton at the hearing as it showed the amended parking layout. He also suggested that the condition could be amended to require the upgrade works to be completed before the Centre begins operating. Likewise the Management Plan condition which he volunteered should be complied with before the Centre begins operating.

Mr McFadden made comments on the acoustic fencing for each of the neighbouring properties as follows:

- 11 Warren Kelly Street: This property does not adjoin the play area but is next to the carpark. The Applicant proposes to landscape this boundary but not construct a new fence there.
- 11a Warren Kelly Street: The Applicant is now proposing a specifically designed acoustic fencing with landscape planting in between it and the boundary.
- 7 Warren Kelly Street: The Applicant is now volunteering to replace the existing tin fence with a close board wooden fence.

Mr McFadden repeated the suggested changes to the Draft Noise Management Plan which Mr Hunt had previously discussed.

6. PRINCIPAL ISSUES

The principal issues that were in contention were:

- a) Are the adverse effects associated with additional traffic movements more than minor given the existing environment and standard of roads in the area?
- b) Will the activity result in a loss of residential character?
- c) Will there be adverse effects in respect of noise that are more than minor taking into consideration the mitigation measures proposed by the Applicant?

7. MAIN FINDINGS OF FACT

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

- a) The Committee heard evidence from the Applicant's traffic engineer, Council's Development Engineer (and written evidence from MWH Limited), as well as observational/anecdotal evidence from submitters. The submitters considered that there were currently traffic problems as a result of the other schools and child care centres in the area and that the proposal would only add to the problem, however no evidence was presented from any expert to support this position. On the contrary, the evidence of the traffic engineer and the Council's Development Engineer was consistent and it was their view that the road network in the area was of a good standard and that the adverse effects as a result of the increased traffic numbers would be minor. The Committee agrees that this would be the case. Warren Kelly Street is a large street by residential standards and sufficiently wide to cope with parked cars and the traffic flows during peak periods, being the opening and closing of schools.
- b) The Committee considers that the proposal will result in a minimal loss of residential character of Warren Kelly Street. The proposed centre will utilise an existing residential house with an extension and the extension will be in keeping with the residential nature of the surrounding area. Whilst additional sealed car parking will be provided between the building and Warren Kelly Street, there will be amenity planting provided to screen this area. In addition, the Committee noted that other residential properties in Warren Kelly Street had large asphalted parking and manoeuvring areas on their properties so what is proposed at the Centre is not out of character in this respect.
- c) The Committee heard evidence from the Applicant's noise expert, the Council's Environmental Health Officer and anecdotal evidence from submitters. All witnesses agreed that the neighbouring properties will be affected by noise from the Centre but evidence of the noise expert and the Council's Environmental Health Officer was that the adverse effects in respect of noise would be no more than minor provided the proposed mitigation measures were implemented. The submitters did not present any expert evidence to the Committee which disputed this view.

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:

- a) Tasman Regional Policy Statement (TRPS);
- b) the Proposed Tasman Resource Management Plan (PTRMP);

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 purpose of the Act as presented in Section 5.

9. DECISION

Pursuant to Section 104C of the Act, the Committee GRANTS consent subject to conditions.

10. REASONS FOR THE DECISION

The Committee has decided to grant consent because the proposal will result in adverse effects that are no more than minor. This decision takes into account the mitigation measures proposed by the Applicant, especially in respect to noise.

The Committee notes that community activities such as early childhood centres in the residential zone are a permitted activity in the PTRMP provided there are less than 30 traffic movements per day. The nature of the activity is therefore anticipated by the plan, and the 30 traffic movements per day provides an appropriate "permitted baseline" to compare the effects of what is being proposed.

The Committee considers that the increased traffic movements will be able to be accommodated by the surrounding roading network and any adverse effects will be minor. There will be some loss of residential character but this will be minimal.

The Committee considers that the proposal is consistent with the following objectives and policies of the PTRMP:

Chapter 5 – Site Amenity Effects

- Objectives 5.1.0, 5.2.0, 5.3.0
- Policies 5.1.1, 5.1.4, 5.2.1, 5.2.8, 5.2.10, 5.3.3

Chapter 6 – Urban Environment Effects

- Objective 6.1A.0
- Policy 6.1A.1

Chapter 11 – Land Transport Effects

- Objective 11.2.0
- Policies 11.2.2, 11.2.3

More importantly, the Committee considers that the granting of this consent meets the purpose of the Act, as set out in Section 5 of it.

11. COMMENTARY ON CONDITIONS OF CONSENT

Conditions have been imposed on this consent. Some of the conditions are those recommended by Council staff and others are those volunteered by the Applicant. Additionally, the Committee has imposed a number of conditions which were requested by submitters. The conditions of consent form an important part of the decision to give approval for the proposal because they require certain works to be undertaken which will mitigate adverse effects in respect of traffic, amenity, and noise.

The Committee notes that both the Council staff and the Applicant included a condition relating to stormwater from the subject property. The activity being considered is a restricted discretionary activity and as such the conditions which may be imposed on the consent must only relate to the matters over which the Council has restricted its discretion, which are:

The proposal is a restricted discretionary activity where the Council has restricted matters over which it has reserved its control to the following six matters:

1. The extent to which the activity will result in loss of residential character.
2. The ability to mitigate adverse noise and visual effects by screening of activities from adjoining roads and sites.
3. The scale of any building, structures and car parking compared to existing permitted development.
4. Adverse effects of the activity in terms of traffic and parking congestion on site and safety and efficiency of roads giving access to the site.
5. The duration of the consent and the timing of reviews of conditions.
6. Financial contributions, bonds and covenants in respect of performance of conditions.

Stormwater management is not one of the matters listed and as such no condition can be imposed on this land use consent. The Committee has, however, including an advice note on the consent relating to stormwater.

The Committee has included a condition which specifies limits on noise generated from the centre, which for compliance purposes would be measured at the boundary of any other property in the residential zone. The condition imposed by the Committee differs from that recommended by the Council's reporting officer and that volunteered by the Applicant (Mr McFadden) in that the Lmax level of 70 dBA now applies only to night time, not day time. The conditions recommended by Council

staff and Mr McFadden were a direct copy of the permitted activity noise standards from Rule 17.1.2(l) of the PTRMP.

Whilst the noise levels in the condition recommended by Council staff and Mr McFadden were not specifically discussed or disputed at the hearing, the Committee notes that Mr Hunt's evidence does present this figure as a night time figure. It appears that Mr Hunt intended to copy (paragraph 4.1 of his evidence) the permitted activity noise standards from Rule 17.1.2(l) of the PTRMP but somehow his Lmax level has been presented as a night time level. It is the Committee's view that the Lmax level presented in Rule 17.1.2(l) is in fact a typographical error and should be a night time level. The Committee notes that all other permitted noise standards in the other zones of the PTRMP present the Lmax level as a night time figure. For this reason the correct noise limits have been imposed on this consent.

12. LAPSING OF CONSENT(S)

Pursuant to Section 125(1) of the Act, resource consents, by default, lapse in five years unless they are given effect to before this period.

13. EXPIRY OF CONSENT(S)

Pursuant to Section 123 of the Act, land use consents have no expiry date provided they are given effect to within the lapse period and also provided that the use is not discontinued for a continuous period of more than 12 months.

Issued this 11th day of March 2008



Cr N Riley
Chair of Hearings Committee

RESOURCE CONSENT NUMBER: RM070581

Pursuant to Section 104C of the Resource Management Act 1991 ("the Act"), the Tasman District Council ("the Council") hereby grants resource consent to:

Nelson Free Kindergarten Association Incorporated
(hereinafter referred to as "the Consent Holder")

ACTIVITY AUTHORISED BY THIS CONSENT: To establish and operate a community activity, namely a Government licensed early childhood education centre.

LOCATION DETAILS:

Address of property:	9 Warren Kelly Street, Richmond
Legal description:	Lot 31 DP 5962,
Certificate of title:	Certificate of Title NL 166/62
Valuation number:	1961017300

Pursuant to Section 108 of the Act, this consent is issued subject to the following conditions:

CONDITIONS

General

1. The establishment and operation of the early childhood education centre (hereinafter referred to as "the centre") shall, unless otherwise provided for in the conditions of this consent, be undertaken in accordance with the documentation submitted with the application.
2. The centre shall cater for no more than 26 children between the ages of 0 and five years. The centre shall not have more than 26 children attending at any one time and no more than 26 children shall be booked in for any one day.
3. The hours that children attending the centre may be on site shall only be between 7.30 am and 5.30 pm Monday to Friday excluding public holidays and two weeks over the Christmas period.

Noise

4. Noise generated by the centre, as measured at or within the boundary of any site within the zone, other than the site from which the noise is generated, shall not exceed:

	Day	Night
L10	55 dBA	40 dBA
Lmax		70 dBA

Note Day = 7.00 am to 9.00 pm Monday to Friday inclusive and 7.00 am to 6.00 pm Saturday (but excluding public holidays).

Where compliance monitoring is undertaken in respect of this condition, noise shall be measured and assessed in accordance with the provisions of NZS 6801: 1991, Measurement of Sound and NZS 6802:1991, Assessment of Environmental Sound.

5. Notwithstanding condition 4 above, the Consent Holder shall adopt the best practicable option approach to mitigate the adverse effects of noise from the centre.

Access and Parking

6. A new central access crossing shall be formed and the existing access shall be closed off prior to the centre activities commencing. The new central access shall have a maximum width of 6 metres and shall be located at the location shown on Plan A attached to this consent. The Consent Holder shall reinstate the footpath adjacent to Warren Kelly Street as part of the works.

Advice Note:

The consent holder is required to apply to the Council's Engineering Department for a permit to allow for the above works to commence.

7. A minimum of eight on-site car parks shall be provided for the centre and the car parks shall be laid out in accordance with those shown on Plan A attached to this consent. The two car parks closest to Warren Kelly Street shall be marked for use by staff only.
8. The car parks, manoeuvring areas, and the access shall be formed to a permanent, all weather asphaltic concrete (hot mix) or concrete surface and clearly marked on the ground prior to the centre activities commencing.

Signage

9. Two “children” warning signs shall be erected on Warren Kelly Street, one on either side of the centre, prior to the centre activities commencing.

Advice Note:

The Consent Holder will need to consult and get additional approvals from the Council’s Engineering Department in relation to the process of erecting the road signage.

10. The centre shall have no more than one site identification sign erected on site and it shall be no greater than one square metre in area. The sign shall be attached to the front fence of the site or the building and shall be constructed in a manner that maintains unrestricted vision for vehicles entering and exiting the site. The location of the sign shall be submitted to the Council’s Development Engineer for certification.

Landscaping and Fencing

11. The site shall be landscaped and fenced along the Warren Kelly Street boundary in a manner that screens the car parking area whilst still maintaining unrestricted vision for vehicles entering and exiting the site.
12. The Consent Holder shall construct a solid wooden fence which is 1.8 metres high along the entire boundary of the site, excluding the road frontage boundary (refer to Condition 11 for requirements for that boundary). The construction of these boundary fences shall be at the Consent Holders expense and shall be completed prior to the centre activities commencing.
13. The Consent Holder shall construct an “acoustic barrier fence” between the designated outdoor playing area and the property boundary of 11A Warren Kelly Street. The acoustic barrier fence shall meet the following minimum requirements:
 - i) be at least 2.4 metres in height measured from existing ground level;
 - ii) extend for the entire length of the designated playing area;
 - iii) shall have no holes or gaps in or under it; and
 - iv) have a minimum superficial mass of fence cladding of at least 10 kilograms per square metre.

The Consent Holder shall plant vegetation which will grow to at least the height of the acoustic barrier fence between it and the property boundary of 11A Warren Kelly Street to screen the acoustic barrier fence. A gate shall be constructed at the end of

the acoustic barrier fence to prevent children entering the space between the acoustic barrier fence and the boundary fence.

Advice Note:

The acoustic barrier fence should be based on the design specifications presented in the Draft Noise Management Plan prepared by Malcom Hunt Associates which was presented as evidence at the consent hearing for this application. A copy of this evidence is available on resource consent file RM070581 which is held in the Council's Richmond office.

Management Plan

14. The Consent Holder shall prepare a Management Plan for the centre and shall submit the Management Plan to the Council's Regulatory Coordinator for review prior to the centre activities commencing. The Management Plan shall be to the satisfaction of the Council's Regulatory Coordinator. The Management Plan shall include a Noise Management section that has been prepared by a qualified acoustic consultant which includes policies and protocols to minimise the noise generated at the centre. The Management Plan shall also include policies and protocols relating to traffic management, including minimum booking times for children attending the centre and restrictions on drop-off and pick-up times.

Advice Note:

The Noise Management section of the Management Plan should be based on the Draft Noise Management Plan prepared by Malcom Hunt Associates which was presented as evidence at the consent hearing for this application. A copy of this evidence is available on resource consent file RM070581 which is held in the Council's Richmond office.

The applicant also offered, as part of the evidence presented at the hearing (paragraph 16 of the evidence of Mrs P Puklowski), that the drop off times for children be restricted and that children would be accepted between 8.30 am -9.15 am and also that children would be booked in for a minimum of six hours. Whilst not specifically a condition of consent, the Council expects these management matters to be specified in the Management Plan.

Review

15. That pursuant to Section 128(1)(a) and 128(1)(c) of the Resource Management Act 1991, the Consent Authority may review any conditions of the consent within twelve months from the date of issue and annually thereafter for any of the following purposes:
 - a) to deal with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage; or
 - b) to deal with inaccuracies contained in the consent application that materially influenced the decision made on the application and are such that it is necessary to apply more appropriate conditions; or
 - c) to assess the appropriateness of imposed compliance standards, monitoring regimes and monitoring frequencies and to alter these accordingly;

- d) to review Management Plan required to be prepared in accordance with Condition 14 of this consent.
- e) to review the appropriateness of the access and parking requirements specified in Conditions 6, 7 and 8 of this consent

ADVICE NOTES

Council Regulations

1. The Consent Holder shall meet the requirements of Council with regard to all Building and Health Bylaws, Regulations and Acts.

Proposed Tasman Resource Management Plan

2. Any activity not referred to in this resource consent must comply with either: 1) a relevant permitted activity rule in the Proposed Tasman Resource Management Plan (PTRMP); 2) the Resource Management Act 1991; or 3) the conditions of a separate resource consent which authorises that activity.

In respect to stormwater, the Consent Holder will need to either connect into the Council's stormwater reticulation system or if that has no capacity then stormwater may need to be managed on site. A resource consent (discharge permit) may be required if connection to the Council's system is not possible. This will be determined when the building consent application for the proposed extension of the building is lodged with the Council.

Development Contributions

3. The Consent Holder may be liable to pay a development contribution in accordance with the Development Contributions Policy found in the Long Term Council Community Plan (LTCCP). The amount to be paid will be in accordance with the requirements that are current at the time the relevant development contribution is paid.

Council will not issue a Code Compliance Certificate until all development contributions have been paid in accordance with Council's Development Contributions Policy under the Local Government Act 2002.

Safety Protocols

4. The Early Childhood Education Centre is responsible for the development of safety protocols that all parents will enter into ensuring safe traffic practices when delivering and collecting children from the centre.

Ministry of Education

5. The Early Childhood Education Centre is to meet the Ministry of Education Codes and Standards and be registered with the Ministry of Education.

Monitoring

6. Monitoring of the consent is required under Section 35 of the Resource Management Act 1991 and a deposit fee is payable at this time. Should monitoring costs exceed this initial fee, Council will recover this additional amount from the resource consent holder. Costs are able to be minimised by consistently complying with conditions and thereby reducing the frequency of Council visits.

Consent Holder

7. 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.

Meanings of Words

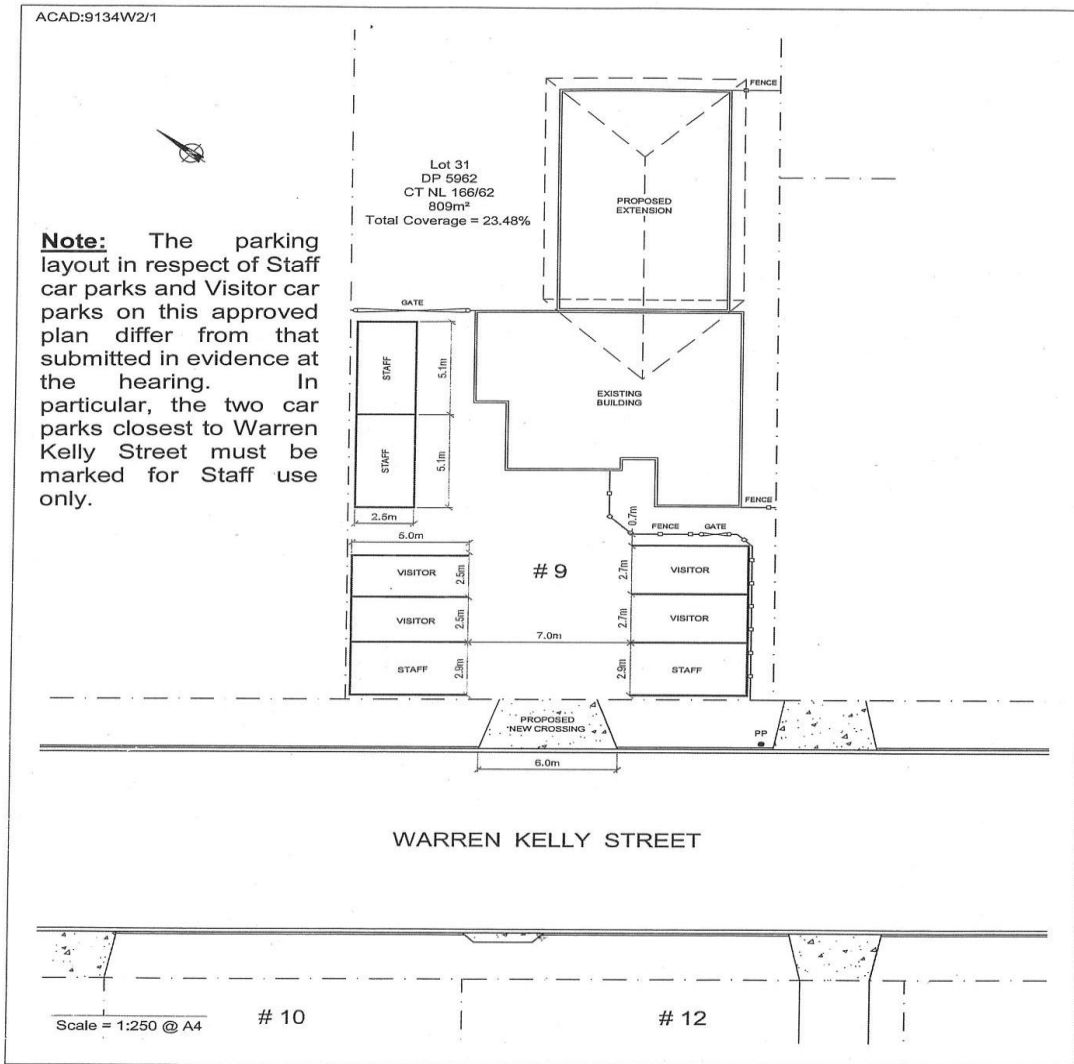
8. Unless otherwise defined in this consent, the meanings of words and terms in this consent are as provided for in Chapter 2 of the Proposed Tasman Resource Management Plan (that version which was in existence as of the date of this consent) or Sections 2 and 3 of the Resource Management Act 1991.

Issued this 11th day of March 2008

A handwritten signature in black ink, appearing to read 'N Riley', written in a cursive style.

Cr N Riley
Chair of Hearings Committee

PLAN "A" – RM070581



Date Confirmed: _____

Chair: _____