

MINUTES

TITLE: Environment & Planning Subcommittee
DATE: Friday, 27 November 2009
TIME: 9.00 am
VENUE: Top 10 Holiday Park Conference Room, 10 Fearon Street, Motueka

PRESENT: Crs N Riley (Chair), M J Higgins, S J Borlase

IN ATTENDANCE: Principal Resource Consents Manager (J Butler), G Caradus, Consent Planner (I Holst-Stoffregen), Transportation Manager (G Clark), Executive Assistant (V M Gribble)

1. GARDEN PATH LTD – HIGH STREET, MOTUEKA - APPLICATION No. RM020704V1 AND RM040389V1

The applications seek the following Land Use/Commercial Activity in a Residential Zone:

- To change Conditions 7 and 8 of resource consent RM020704 – to extend hours of café operation. Currently hours of operation are from 0900 to 1700 during June to October, and 0900 to 1900 during November to May. Proposed hours to be 0900 to 1700 on Monday, Tuesday and Wednesday during 1 June to 31 October, and 0900 to 2200 for all other times.
- To increase the number of patrons from 30 to 45 at café.
- To change Condition 3 of RM040389 (extend hours of sale of liquor as above).

The application site is located at 473 High Street, Motueka, being legally described as Lot 1 DP 10650.

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 Riley / Borlase
EP09/11/24

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

Garden Path Ltd

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
Garden Path Ltd	Consideration of a planning application	A right of appeal lies to the Environment Court against the final decision of Council.

CARRIED

**Moved Crs Borlase / Higgins
EP09/11/25**

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

CARRIED

**2. GARDEN PATH LTD – HIGH STREET, MOTUEKA - APPLICATION
No. RM020704V1 AND RM040389V1**

**Moved Crs Riley / Higgins
EP09/11/26**

THAT pursuant to Section 104B of the Resource Management Act, the Committee GRANTS IN PART / DECLINES IN PART consent to Garden Path Ltd as detailed in the following report and decision.

CARRIED

Report and Decision of the Tasman District Council through its Hearings Committee

Meeting held in Motueka on Friday, 27 November 2009

A Hearings Committee (“the Committee”) of the Tasman District Council (“the Council”) was convened to hear the application lodged by **Garden Path Limited** (“the Applicant”), to increase the maximum number of customers and the hours of operation of the Up The Garden Path café. The application, made in accordance with the Resource Management Act 1991 (“the Act”), was lodged with the Council and referenced as RM020704V1 and RM040389V1.

PRESENT:

Hearings Committee
Cr N Riley, Chairperson
Cr S Borlase
Cr M Higgins

- APPLICANT:** Mr G Thomas (Planning Consultant)
Mr D Kellogg (Applicant)
Mrs S Kellogg (Applicant)
Ms J Carvell (Applicant)
Mr A Carvell (Applicant)
- CONSENT AUTHORITY:** **Tasman District Council**
Ms Ina Holst-Stoffregen (Consent Planner, Land Use)
Mr Graham Caradus (Co-ordinator Regulatory Services)
Mr Gary Clark (Transportation Manager)
- SUBMITTERS:** Mr R Adams
Ms S Morgan
Mr J Gatenby
Mr J Smits
Messrs McLean, Underwood, Woodman
R G and L Geer
Mr and Mrs Krammer
N Drummond and M Hall
Mr P Grant
T G and C E Hewetson
Mr Geer, speaking on behalf of N and V Krammer,
N Drummond and M Hall, P and J Jarmai, R G and
J L Geer and P Grant
- IN ATTENDANCE:** Mr J Butler (Principal Resource Consents Adviser) -
Assisting the Committee
Ms V Gribble (Committee Secretary)

1. SUMMARY

The Committee has **GRANTED IN PART** an application to change resource consent conditions to extend opening hours and increase the allowable number of patrons.

Specifically, the Committee has **GRANTED** the increase in the maximum number of patrons from 30 to 45, and the increase in number of staff living off-site from two to five. However, the Committee has **DECLINED** the extension of opening hours sought.

2. DESCRIPTION OF THE PROPOSED ACTIVITY

The application is seeking land use consent to change Conditions 7 and 8 of resource consent RM020704 and Condition 3 of RM040389. The changes originally sought in the application were:

- To extend the hours of operation at the café Up the Garden Path at 473 High Street to be 9.00 am to 5.00 pm on Monday, Tuesday and Wednesday during 1 June to 31 October, and 9.00 am to 10.00 pm for all other days of the year;
- To increase the number of patrons from 30 to 45 at any one time;
- To vary the hours of sale of liquor to match the extended hours of operation.

In 2002, the Garden Path Ltd - formerly Totally Tasman Ltd - was granted consent RM020704 ("the original consent") by the Council to undertake a commercial activity, being an art studio/café gallery in a Residential zone. Condition 7 of the consent restricted the business to operate (i.e. to be open for business) between the hours of 9.00 am to 5.00 pm June to October and 9.00 am to 7.00 pm November to May.

The applicant sought a variation to Condition 7 to extend the hours of operation to be 9.00 am to 5.00 pm on Monday, Tuesday and Wednesday during 1 June to 31 October, and 9.00 am to 10.00 pm for all other times. However, at the hearing this proposed schedule was revised and the changes are further discussed below.

The original consent permitted a maximum number of 30 customers at any one time on the premises. 'Customers' excluded those visiting the premises for private functions outside the hours of operation in Condition 7.

The applicant sought a change to Condition 8 to change the maximum number of customers to 45 at any one time on the premises.

In 2004, the Garden Path Ltd - formerly Totally Tasman Ltd - was granted consent, RM040389, by the Council for the sale of liquor during the hours of operation as granted under the original consent. The applicant sought to change to Condition 3 of that consent to vary the hours so that these match the proposed hours of operation.

The property is located at 473 High Street, Motueka and the corner of Courtney Street East.

3. TASMAN RESOURCE MANAGEMENT PLAN ("TRMP") ZONING, AREAS AND RULE(S) AFFECTED

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

Zoning: Residential
Area(s): Coastal Environment Area

The proposed changes to conditions are assessed as fully discretionary activities per Section 127 of the Act.

4. NOTIFICATION AND SUBMISSIONS RECEIVED

The applications were notified on 3 October 2009 pursuant to Section 93 of the Act. A total of 148 submissions were received. The following is a summary of the written submissions received and the main issues raised:

Of the 148 submissions received, 11 submitters opposed all aspects of the application. These 11 submitters all have properties or rent properties in the neighbourhood and are considered to be directly affected by the proposed additional customers and operating hours of the café. The submitters stated their main concerns are parking and traffic issues, increased noise and late night alcohol consumption, and the adverse effects resulting from longer operating hours and increased customer numbers on residential amenity, their daily lives and privacy.

The majority of the submissions in support came from submitters who do not live in the direct neighbourhood but valued the venue for its ambience and good management. A couple of submitters live in the vicinity and support the café as a positive addition to the residential community fostering community cohesion. The main reasons stated for supporting the application are positive economic flow-on effects for suppliers and the local economy, attracting visitors, providing employment, supporting local artists, filling a gap in the market and having a family-friendly evening dining in a pleasant garden setting.

There was one neutral submission from NZTA, asking for conditions regarding road safety to be included if the consent was granted.

Submissions in Support

Submitter	Reasons
J Taylor, C/- Our Town Motueka, PO Box 347, Motueka	<ul style="list-style-type: none"> • Encourages local use of dining opportunity • Changes the southern entrance to Motueka in a positive way • Displays local art • Good location to service the nearby Jack Inglis Friendship Hospital • Opening hours fit in with visiting times and dining hours at hospital
M and J Dickson, 3 Courtney Street, Motueka	<ul style="list-style-type: none"> • Café is well run • Established reputation • Changes will be managed well • Unique dining and well known as a visitor destination • Fills gap in the market • Enjoy its position
S Morgan, 48 Westdale Road, RD1 Richmond	<ul style="list-style-type: none"> • Provides training • Longer opening hours provide even better training
D Wood, 26A Ledger Avenue, Motueka	<ul style="list-style-type: none"> • Employment opportunities • Asset for town and community
I Goodman, 17 Wilkinson Street, Motueka	<ul style="list-style-type: none"> • Wants café to be open at night time
L Poppe, 274 Main Road, Riwaka	<ul style="list-style-type: none"> • Asset for town and community • Wants café to be open at night time
T Sims, 274 Main Road, Riwaka	<ul style="list-style-type: none"> • Asset for town and community
G Hay, Peregrine Winery, Gibbston, Queenstown	<ul style="list-style-type: none"> • Economic flow-on effect for suppliers • Employment • Venue adds to community
J Drummond, PO Box 95 Motueka	<ul style="list-style-type: none"> • Good business that needs to succeed • Provides family dining at evening
R Troughton, 2399 Coastal Highway Mariri, RD2 Upper Moutere	<ul style="list-style-type: none"> • Safe for children • Extended hours desirable
A Dyson, 98 High Street, Motueka	<ul style="list-style-type: none"> • Good for tourism
J and C Gatenby, 240 Thorp Street, Motueka	<ul style="list-style-type: none"> • Meets market demands • Provides much needed service

Submitter	Reasons
M Souter, 13 Goddard Road, Tasman, RD1, Upper Moutere	<ul style="list-style-type: none"> • Employment opportunities • Provides more choice of venues available for diners
A Trent, 1500 State Highway 60, RD1 Nelson	<ul style="list-style-type: none"> • Good for local economy • desirable establishment
R Glover, 6 Antoine Grove, Richmond	<ul style="list-style-type: none"> • Good atmosphere • Wants café to be available for evening dining
N Saunders-Loder, 25 College Street, Motueka	<ul style="list-style-type: none"> • Extended hours benefit diners
J Smits, 33 Glenaven Drive, Motueka	<ul style="list-style-type: none"> • Venue for tourists and locals and can accommodate large groups • Longer hours and larger numbers allows full potential • Creates employment, training opportunities and economic benefits to whole community
T Glover, 6 Antoine Grove, Richmond	<ul style="list-style-type: none"> • Good atmosphere • Wants café to be available for evening dining
T McIntosh, 235 Waiwhero Road, RD2 Upper Moutere	<ul style="list-style-type: none"> • Wants café to be available for evening dining
P Madsen, PO Box 10023, The Wood, Nelson	<ul style="list-style-type: none"> • Ideal venue for live music
B Robertson, 235 Waiwhero Road, RD2 Upper Moutere	<ul style="list-style-type: none"> • Wants café to be available for evening dining especially over summer month
K Stewart, 430 High Street, Motueka	<ul style="list-style-type: none"> • Café is a special place and good for tourism
B Adams 14 College Street Motueka	<ul style="list-style-type: none"> • Wants café to be available for evening dining • Venue for locals and visitors • Supports local artists • Evening opening hours suit people who are at work during day

Submissions in Opposition

Submitter	Reasons
Motueka South Gospel Trust, 476 High Street, Motueka	<ul style="list-style-type: none"> • Residential Zone rule breached • Traffic • Parking • Alcohol consumption in a residential area
R G Williams, 472A High Street, Motueka (owner)	<ul style="list-style-type: none"> • Residential zone is about homes • Road not safe and wide enough • Increased customer numbers will increase traffic and noise • Car parking not sufficient • Alcohol consumption late at night will increase noise and alcohol-related behaviour
P and J Jarmai, 478 High Street, Motueka	<ul style="list-style-type: none"> • Noise • Traffic • Amenity
R and J Geer, 1 Courtney Street, Motueka	<ul style="list-style-type: none"> • Scale and development of activity into a full restaurant– original application only to display artwork • Non-compliance with existing conditions - exceeding numbers

Submitter	Reasons
	<ul style="list-style-type: none"> • Unknown future development in the area • Late night operation should not be permitted in a Residential Zone • Concerns about lack of monitoring by TDC
N and V Krammer 475 High Street, Motueka	<ul style="list-style-type: none"> • Increased stress on their lives • Non-compliance with existing consent conditions - exceeding numbers
N Drummond and M Hall, 477 High Street, Motueka	<ul style="list-style-type: none"> • Inappropriate development in Residential Zone • Amenity value • Noise • Increased traffic • Loss of privacy • Does not meet objectives of TRMP • Cumulative effects • Non-compliance with existing consent conditions - exceeding numbers
P Grant, 473 High Street, Motueka	<ul style="list-style-type: none"> • Person vacating premises from 10.00 pm will have a major impact on noise levels, • Staff leave even later than 10.00 pm • Parking already a problem on both sides of road and too close to private driveway and on High Street • Increased customer number create more noise and make parking situation worse • Liquor license not appropriate in residential neighbourhood • Risk of diverting even further from original consent conditions • Café different from restaurant which is developing under new owners • Protection of residents by upholding existing consent conditions
R and K Smart, 466 High Street	<ul style="list-style-type: none"> • More noise from traffic, music and people
T Gordon and C Hewetson, 5 Mountview Place, Motueka	<ul style="list-style-type: none"> • Objects to longer operating hours later than 7.00 pm and • Sale of alcohol other than bottled wine and beer with food • Objects to parking on both sides of Courtney Street East • Concerned about pedestrians walking to school etc.
S Hewetson, 472 High Street, Motueka	<ul style="list-style-type: none"> • Scale of the operation, turns it into full scale restaurant • Amenity • Application inconsistent with residential zoning
M B and J M Hewetson 472 A High Street, Motueka (tenant)	<ul style="list-style-type: none"> • Traffic movements, cars parked on both sides of the road • Noise from the café noticeable sometimes at weekends • Traffic noise from High Street can be high during day time but is quiet in evenings and weekends • Amenity values adversely effected, quality of life and property values • No other commercial activity in the vicinity matches the activities relating to the operation of a café • Application inconsistent with Residential zoning

Neutral Submission

Submitter	Reasons
New Zealand Transport Agency (NZTA)	<ul style="list-style-type: none"> • Public safety on intersection • Visibility • Parking

5. PROCEDURAL MATTERS

A question as to whether we were able to consider an increase in the number of off-site staff was raised, as this was not applied for in the original application and was, therefore, not included in the notification process. Our finding on this matter is related to the effects of the proposed changes and is discussed in the reasons for our decision set out below.

6. EVIDENCE HEARD

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

6.1 Applicant's Evidence

Mr G Thomas (Planning Consultant)

Mr Thomas outlined the scope of the application and stated that the business has recently changed hands and the new owner is seeking to make some changes.

Firstly Mr Thomas sought that the hours of opening be changed in accordance with the table shown in Figure 1.

CURRENT SCHEDULE								
Month	Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
January		9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm
February		9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm
March - April 15		9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm
April 15 - 30		9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm
May		9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm
June		9am - 5pm	9am - 5pm	9am - 5pm	9am - 5pm	9am - 5pm	9am - 5pm	9am - 5pm
July		9am - 5pm	9am - 5pm	9am - 5pm	9am - 5pm	9am - 5pm	9am - 5pm	9am - 5pm
August		9am - 5pm	9am - 5pm	9am - 5pm	9am - 5pm	9am - 5pm	9am - 5pm	9am - 5pm
Sept - Oct 15		9am - 5pm	9am - 5pm	9am - 5pm	9am - 5pm	9am - 5pm	9am - 5pm	9am - 5pm
Oct 15 - 31		9am - 5pm	9am - 5pm	9am - 5pm	9am - 5pm	9am - 5pm	9am - 5pm	9am - 5pm
November		9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm
December		9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm

PROPOSED SCHEDULE								
Month	Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
January		9am - 7pm	9am - 10pm	9am - 10pm	9am - 10pm	9am - 10pm	9am - 10pm	9am - 10pm
February		9am - 7pm	9am - 10pm	9am - 10pm	9am - 10pm	9am - 10pm	9am - 10pm	9am - 10pm
March - April 15		9am - 7pm	9am - 10pm	9am - 10pm	9am - 10pm	9am - 10pm	9am - 10pm	9am - 10pm
April 15 - 30		9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm
May		9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm	9am - 7pm
June		9am - 5pm	9am - 5pm	9am - 5pm	9am - 5pm	9am - 10pm	9am - 10pm	9am - 10pm
July		9am - 5pm	9am - 5pm	9am - 5pm	9am - 5pm	9am - 10pm	9am - 10pm	9am - 10pm
August		9am - 5pm	9am - 5pm	9am - 5pm	9am - 5pm	9am - 10pm	9am - 10pm	9am - 10pm
Sept - Oct 15		9am - 5pm	9am - 5pm	9am - 5pm	9am - 5pm	9am - 10pm	9am - 10pm	9am - 10pm
Oct 15 - 31		9am - 7pm	9am - 10pm	9am - 10pm	9am - 10pm	9am - 10pm	9am - 10pm	9am - 10pm
November		9am - 7pm	9am - 10pm	9am - 10pm	9am - 10pm	9am - 10pm	9am - 10pm	9am - 10pm
December		9am - 7pm	9am - 10pm	9am - 10pm	9am - 10pm	9am - 10pm	9am - 10pm	9am - 10pm

ACTUAL CHANGE								
Month	Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
January		0	3	3	3	3	3	3
February		0	3	3	3	3	3	3
March - April 15		0	3	3	3	3	3	3
April 15 - 30		0	0	0	0	0	0	0
May		0	0	0	0	0	0	0
June		0	0	0	0	5	5	5
July		0	0	0	0	5	5	5
August		0	0	0	0	5	5	5
Sept - Oct 15		0	0	0	0	5	5	5
Oct 15 - 31		2	5	5	5	5	5	5
November		0	3	3	3	3	3	3
December		0	3	3	3	3	3	3

Figure 1: Proposed Annual Schedule of Opening Hours

He also sought that the number of customers allowed at any one time be increased from 30 to 45.

Mr Thomas identified seven parties who had been identified as potentially adversely affected by the Council and who had provided written approvals.

Turning to the effects, Mr Thomas stated that the applicant does live on site and that the style of café/restaurant is being confirmed as family orientated dining. Loud outdoor music will not occur in the future. He reminded us that commercial activities may occur in the residential zone and that it is to be treated as a discretionary activity.

With regard to residential amenity he stated that this is not a pristine residential area. There are other businesses, there is the busy main road, there is the hospital down Courtney Street West, and there is the entrance way to the coastal walkway. Mr Thomas criticised the lack of noise tests undertaken by Mr Caradus and stated that the most affected people have given their written approval.

With regard to noise and odour, Mr Thomas said that there is no reason to expect that noise levels will be breached by this application. Mr Thomas and Mr A Carvell presented some noise measurements that had been taken. Mr Thomas also stated that the applicant would accept a condition limiting outdoor music during the extended hours period.

Mr Thomas referred to the application by Gardens of the World Ltd (RM090538) and stated that there is no reason to believe that the permitted noise levels would be breached.

With regard to cooking odours, he considered that it would be easy to fit a filter to remedy these.

To accommodate increased numbers Mr Thomas stated that 13 car parks would be provided. He presented an email from Mr D Ley (Development Engineer) of the Council and stated that the upgrades sought by Mr Ley would be done if consent is granted. He considered these proposed upgrades would resolve any issues with the transport system.

Finally, Mr Thomas stated that there are great benefits to the local economy and widespread support. However, he reaffirmed that the decision must be made on the basis of effects and the extent to which they increase the existing effects and whether they can be mitigated with conditions.

As another relevant matter, Mr Thomas agreed that the applicant is currently not complying with a condition (Condition 6) that limits the number of full time employees that live off site. He stated that there are currently four off site staff working (plus the two owner operators) but expected this to increase. Therefore, he sought that Condition 6 be varied to allow five full-time equivalents.

Mr D Kellogg (Applicant)

Mr Kellogg explained how they had purchased the Up The Garden Path Café/Gallery. He said that they studied the previous owner's financial details and watched the operation of the business. After taking possession they realised the value in evening dining.

He also read the business' mission statement to show that they are dedicated to providing a fine dining and artistic experience.

Mrs S Kellogg (Applicant)

Mrs Kellogg addressed the art gallery side of the business. She considered the gallery to be of great value and a win-win for themselves and the artists. She said that the majority of the artists exhibited are New Zealanders and that it is good for tourism.

She opined that consent for extended hours would open up the opportunity for a great dinner and chance to look through the gallery.

Mrs J Carvell (Applicant)

Ms Carvell stated that there are very few restaurants in Motueka where a person can enjoy a relaxed, intimate evening with good food and excellent service. She stated that they do not have a rowdy alcohol-centred clientele.

She stated that they invest in the young staff and they are financing the apprenticeship of an employee and have put two front staff members through the LCQ training.

Mr A Carvell (Applicant)

Mr Carvell stated that evening dining seemed to be a natural extension of the many great aspects of the business.

Mr Carvell stated that they have made honest attempts to negotiate and deal with neighbours appropriately. He stated that they wish to provide Motueka with a wonderful evening dining option as well as to support local suppliers, organisations, artists, economic development and employment.

6.2 Submitters' Evidence

Mr R Adams

Mr Adams spoke in support of the application. He believed the extended hours will be good for the community; in the sense of providing employment and increased levels of art exposure. He did not believe the increase in hours will affect the quantity of alcohol consumed. He said that cafés and that type of environment do not generate large alcohol consumption.

Mr Adams was formally in the security industry and worked in many different establishments where excessive drinking often took place. He said that when the café scene formed in the 80s and 90s they noticed a quieter and more social trend. He said that they had very few problems with café patrons. He said that voices tend to travel at night and alcohol increases the volume. He said that the layout of premises is walled in and attracts a quieter clientele.

Ms S Morgan

Ms Morgan is a Training Advisor for the Hospitality Standards Institute. She stated that the industry is a difficult one and it is of great value having business that will train

an apprentice and that she is most grateful. She stated that the Rugby World Cup will cause a huge influx of visitors.

Ms Morgan said there is a real dearth of businesses interested in training. To have an apprentice and support them the business has to have a varied menu. When Mr Carvell asked if he could support an apprentice she was delighted. It costs \$3,000 per year for apprentice and it may cost the business about \$4,000 to \$5,000 in terms of time taken by the chef to train and having to supply specialty ingredients.

Mr J Gatenby

Mr Gatenby supported the application. He said that it will help meet market demand, will allow for the full potential of the café, is a much needed venue, is family friendly, is unique, will provide for more employment and will support local artists.

He said that they often refer their friends, guests and clients to the café. Their clients consider it to be one of New Zealand's better dining experiences.

Cr Higgins asked Mr Gatenby, as a local artist, to comment on the gallery as a venue for moving local art. Mr Gatenby said his work is sold there and he sends clientele there. He thinks it works well. He visits lots of galleries and considered this one to be unique. Prices are good and a real plus for the town.

Mr J Smits

Mr Carvell read a statement from Mr Smits who is the head chef at Up The Garden Path Café.

Mr Smits stated that he is absolutely in support of the extension of hours. He emphasised the extensive list of local ingredients that they use and suppliers that they support.

Messrs McLean, Underwood, Woodman

Mr Woodman stated that traffic and parking is their primary concern. He said that there are a large number of vehicle movements from their church hall at 476 High Street over half an hour to an hour when it is used.

Also, he did not consider it appropriate to have a liquor outlet in the residential area.

Lastly, he said that Courtney Street East will develop and will put pressure on the intersection.

Cr Borlase asked would you regard a café/restaurant that supplies beer/wine to patrons a liquor outlet? Mr Woodman replied, no.

R G and L Geer (1 Courtney Street)

Mrs Geer stated that they should not be subjected to the ongoing stress of a commercial enterprise operating in their residential area, as well as the ongoing resource consent hearings. She sought that the application be declined.

Mr and Mrs Krammer (475 High Street)

Mr Geer read a submission on behalf of the Krammers.

The Krammers live over the southern boundary from the site. They said that they often feel that their privacy and rights are affected. They have been subjected to unbearable cooking smells and they sometimes have to keep their house shut up.

They stated that they have problems with bottles being thrown into recycling bins and other problems with the area at the rear of the kitchen.

The thought of more people and at later hours is causing considerable stress and they do not believe they should be affected with the proposed changes. They asked that the application be declined.

Mr N Drummond and Ms M Hall

Mr Grant read a statement for Mr Drummond and Ms Hall. They expressed concern about the cooking smells that are intrusive and that it is inappropriate for the activity to be based in a residential zone. They also said that it is naïve to expect the applicant to self police and turn customers away when the maximum consented number is reached.

Mr P Grant

Mr Grant said his main problem with the application is the parking situation and he is concerned about opening later hours and having car doors shutting late at night. He said the investment made by the new owners should not be given any more consideration than any other submitter. He was concerned at how Council would monitor the compliance issues such as 45 patrons and car parks.

T G and C E Hewetson

Mr S Hewetson read the submission on behalf of Mr and Mrs Hewetson.

Cr Higgins said the applicant has expressed concern that the numbers have tended to be above the consent and are seeking to legitimise what happens. If we assume there would not be an increase in numbers that presently occur, do you say you are comfortable with that? Mr Hewetson generally agreed but stated that the traffic is a problem from now until the end of February.

Mr Geer, speaking on behalf of N and V Krammer, N Drummond and M Hall, P and J Jarmai, R G and J L Geer and P Grant

Mr Geer stated that the original reason for the application for the café being approved is that the activity is comparable to a home occupation (which is permitted under the TRMP). He considered that it is obvious that this activity was never comparable to that baseline. Originally it was a gallery to display Leanne's artwork and it provided coffee and muffins to patrons.

The new owners are trying to get permission to operate as a full restaurant.

They regularly exceed their limit on numbers and this had not been a major problem with the previous owners.

Mr Geer stressed that it is a commercial activity in a residential zone, that the café is a victim of its own success, the key impact is upon a residential amenity, and the café is intruding upon their lives.

The discharge of cooking smells has become a serious issue recently and night time noise will exceed consented levels if the application is approved.

Mr Geer also commented on the current breach of the staff numbers. He considered 11 parks to be nowhere near enough and parking will become a greater problem if numbers are increased.

Mr Geer then addressed the staff report. He said that most supporters do not live near the site.

Mr Geer agreed that the café is authorised to operate within the scope of its current consents, but the increases are out of scale with the residential environment.

Finally he stated that the owners are in breach of a large number of conditions of their existing consents and this is likely to continue. He said that they strongly oppose the application in its entirety and ask that it be declined.

6.3 Council's Reporting Officer's Report and Evidence

Mr G Caradus (Co-ordinator Regulatory Services)

Mr Caradus considered that we need to take into account odour emanating from the premises. He said the effects of traffic at 10.00 pm would be worse than what they are at 7.00 pm. He said there will be an increase in odour, either cooking odours or cigarette smoke. He considered the noise meter readings tabled by Mr Thomas could only be taken as a broad estimation. Mr Caradus noted that ten minute measurements are normally taken. L_{eq} measurements are now routinely being used, not L_{10} .

Cr Higgins asked about the differentiation between restaurants/taverns. Could Up the Garden Path become another Sprig and Fern¹? Mr Caradus said it is what the owners or management of the day allow the premises to morph into. For example, at 12 Noon the Abbey is clearly a restaurant and 6.00 pm on Friday night you'd think it was a tavern. There is nothing to stop Up the Garden Path doing the same thing, it's up to management. There would be scope for this change to occur with a future owner whilst still being within the consent conditions.

Mr Butler asked if there are characteristics of the site, i.e. outdoor eating areas shielded from properties.

¹ The Sprig and Fern is a bar in a residential area of Richmond which is generating many complaints from surrounding residents at the time this decision is being written.

Mr Caradus said there are positive aspects about the site. If people are having a chat outside at 10.00 pm, you do not know whether it will emanate over the fence to people who will be offended by it. The main noise sources will be the dining area and associated with kitchen activities. There is some advantage because of shielding, but the reality is, the problems we have with Sprig and Fern in Richmond is because it is a busy place in the middle of a residential area and people are sensitive about it.

Mr G Clark (Transportation Manager)

Mr Clark said conditions were included to mitigate traffic effects, relating to pedestrian safety and some safety relating to backing of vehicles off the grass berm, marking and protection of our wastewater pumping station which will be marked out in yellow lines to ensure it is kept clear.

He said that it is common to use three people per vehicle for estimating traffic generation by cafes/restaurants. He said that there are some issues with the existing car park and that it does not comply with good practice or the TRMP. He said that it is difficult to identify the parking area and he suggested improvements to signage. Mr Clark said that the problem with people parking in the car park who are not associated with the café is an onsite management issue. He was satisfied that adverse effects of parking will be avoided if the parking area is upgraded as per Mr Ley's email and staff report.

He said that he agrees with the NZTA's submission in principle.

Ms I Holst-Stoffregen (Consent Planner, Land Use)

Ms Holst-Stoffregen said that an assessment was made on potential adverse effects of the variation, the policies and the rules. She said that she is concerned about cross-boundary effects and noise in particular needs to be carefully considered.

Ms Holst-Stoffregen said that the NZTA submission was accepted as it raised important public safety issues.

She said that she has taken the positive effects of the activity into account but that the activity needs to be at an appropriate scale so neighbours are not adversely affected. She considered that expanding the business by increasing numbers and extending hours is inappropriate in a residential zone and she still recommends the application be declined.

Cr Higgins said, notwithstanding the recommendation, through the hearing it has been identified that customer numbers have tended to be higher than what the current consent allows. Could this matter be addressed through the process? Ms Holst-Stoffregen said this is trying to legalise the consent breach. She said that it is very problematic to try to monitor numbers especially when there are 77 seats in total. However she did consider that this may be an appropriate way of dealing with the maximum numbers, but the later opening hours are still a concern.

6.4 Applicant's Right of Reply

Mr Thomas said that the reduced hours are a significant reduction on what they applied for and he said that the applicant is prepared to volunteer a condition that no meal orders be taken within 45 minutes of closing time.

With regards to cooking odour, they had no idea that the changes to the ventilation system had caused a problem. He said that it will be rectified.

Mr Thomas said that it is a poor comparison between Up the Garden Path and Sprig and Fern in Richmond. He agreed that it comes down to management and the form of the establishment is not changing. He said it does not promote alcohol problems and excessive noise.

He reminded us that if written approval is provided the effects on those people cannot be taken into account.

Mr Kellogg commented on the amenity problem with noise. He said that in the future there will be more traffic on High Street and it is important to take that into consideration. He said that they based their projections on doing 35 meals for the entire night and that it would not get out of control; they are not expanding plant or doing anything other than expanding hours and making it possible for people who come during the day to come at night. He considered that this would therefore cause less traffic during the day.

7. PRINCIPAL ISSUES AND MAIN FINDINGS OF FACT

The principal issues that were in contention and our findings of fact are:

a) **To what extent will the extension of hours cause greater adverse effects on surrounding residents than what is currently authorised?**

We accept the evidence of Mr Caradus and Ms Holst-Stoffregen that the effects of a change in closing time from 7.00 pm to 10.00 pm are likely to be more pronounced than the effects during the period up to 7.00 pm. With the road quietening down after "rush hour" traffic, the background noise reduces and the noise emanating from the café (with its "special audible characteristics" as stated by Mr Caradus) will be more pronounced, noticeable and, potentially, objectionable. We agree that such noise can have disproportionately high adverse effects in the residential zone where there may be babies, young people, sick people, night-duty workers etc trying to get to sleep.

We understand that a quieter road may not always be the case, as stated by Mr Kellogg, but from the information we have it is the case now. If and when the environment changes such that the background noise is greater through until 10.00 pm then that may be a good time to make another application.

We recognise the reduction in the hours proposed by the applicant at the hearing but we do not consider that this reduction went far enough to safe-guard the amenity of the residential environment. With regard to Mr Thomas's reference to the Gardens of the World application it is relevant that the noise limits in the residential zone are lower and therefore it is harder to be certain that the limits will be met, particularly when there is a 5 dBA penalty for noises which

have special audible characteristics (slamming doors etc). Also, Mr Thomas will be aware that the Council declined the Gardens of the World Ltd application largely because it felt that there was a high likelihood that noise standards would be breached.

While the applicant is correct that, as a discretionary activity, it is entitled to apply to have, or in this case extend, a commercial operation in the residential zone, we feel that the first duty is to the occupants of the residential zone. If the effects can be avoided or mitigated to a level where they will not adversely affect the residents then such an application may have some merit, but we do not consider that this has been achieved.

Cooking odours are a problem that we believe the applicant was genuinely unaware of. The consents held by the applicant do not authorise the discharge of cooking odours that are discernible in any residentially used property. From the evidence heard it is unlikely that the relevant Condition 3 is being met and the applicant should work to improve the quality of the discharge without delay. Compliance with this condition is outside of the jurisdiction of this decision and should be addressed by the Council's compliance and monitoring staff. Nevertheless, it is relevant that if the hours were to be extended then cooking smells would be emitted over a longer duration which may increase the effects. Cooking smells should not be discharged over the property boundary to the extent that they are offensive or objectionable, however, even with an upgraded filtering system it is possible that such events may happen and longer hours will simply increase the duration over which such discharges may occur.

We do not consider that the lengthening of hours will cause any significant change in the intensity of traffic congestion or parking problems. It may just mean that there are cars parked there for longer periods into the evening. It is the late night noise of those vehicles which is more pertinent when considering the extension of hours.

b) To what extent will the increase in maximum number of customers cause greater adverse effects on surrounding residents than what is currently authorised?

For the most part decisions on resource consents are necessarily made on the basis of effects. Therefore, as it is evident that the café is generally operating with a maximum of 45 customers, the effects are demonstrable and, as we see it, generally acceptable. We feel that it is appropriate to allow the business to intensify its operation during the day from what was consented to what is currently occurring as we consider that the effects that the submitters are currently experiencing are acceptable.

The increase in numbers that is authorised by the consent will require an upgrade to the quality and quantity of parking provided. We think that the measures outlined in Mr Ley's e-mail and agreed to by the applicant are appropriate to provide more and better parking that will be better utilised.

- c) If the proposed changes are allowed, what would be the maximum effects that may occur there in the future (within the consent conditions) if management were to change? Or alternatively, if the hours are extended to what is sought what could the owner or any future owner do with the business as of right?**

The conditions of consent as they are proposed to be changed (particularly the later hours) would allow an owner to develop the café/restaurant (as it would then be) into more of a pub or venue with indoor music without any further resource management approval from the Council. Essentially, we must look at the application with complete disregard for who the owners are at any given time and what their intentions are. The consent may be transferred at any time and so it is the conditions of consent and what can be done within them that is critical.

Such an establishment would not be appropriate in the middle of a residential zone. Therefore we are mindful that we must look at the worst case scenario of what could reasonably occur as of right within the conditions of consent and not just what the honest intentions of the current owner are. It is for these reasons that we do not see the movement to night-time dining to be appropriate. Mr Thomas did not consider the Sprig and Fern to be a fair comparison as it is not the type of establishment that is intended here. However, we consider that there would be nothing to stop a future owner turning Up the Garden Path into a similar establishment should the condition limiting the hours be changed.

- d) What positive effects would the changes have if the changes were to be granted?**

We are certainly mindful of the benefits that were presented by both the applicant and the submitters in support. These include, employment opportunities, a quality dining option in the centre of the southern Motueka residential area where there are no others, support for the local economy and service providers, opportunities for hospitality apprenticeships and provision of high quality services for the Rugby World Cup in 2011. The benefits are certainly numerous but must be weighed against the adverse effects described elsewhere in this section.

- e) To what extent would the proposed changes cause a precedent or adversely affect the integrity of the TRMP?**

The test of whether or not a precedent is set, or whether or not the integrity of the TRMP's Residential Zone is likely to be adversely affected boils down to the circumstances of the application and whether similar circumstances could be encountered elsewhere.

While we accept Mr Thomas's evidence that there are surrounding features that differentiate this site from one which is purely residential (particularly, the estuary walkway, the second-hand shop, and the state highway) we do see a high likelihood that other applications for café/restaurants in the residential zone may arise should these variations (particularly the extension of hours) be granted. Essentially, other applicants may, hypothetically, be justified in saying that "Up the Garden Path got consent to operate in a residential environment, why can not we?" We believe that there would be few grounds to separate other

residential areas from this one when there are many residences that live immediately adjoining to the site. This does raise the potential of the integrity of the residential zone being affected. Residents may begin to be affected in the residential zone by the infiltration of such facilities into their midst.

We consider that such facilities, which certainly have a place in the communities which they serve and depend on, must be well planned and only in sites where their effects are largely avoided or mitigated by the site. It is also clear from the evidence of the applicant in this particular case that it is difficult to rely on conditions which dictate the management of such a business to avoid, remedy or mitigate adverse effects. Mr Carvell described it as commercial suicide to turn customers away at the door when there are seats sitting empty. We certainly understand his position and therefore we consider it more appropriate that real caution must be exercised when considering approval for such businesses. Essentially, the merits of the site must be robust and not too much reliance should be placed on conditions which seek to "micro-manage" the business itself.

8. RELEVANT STATUTORY PROVISIONS

8.1 Policy Statements and Plan Provisions

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

- a) Tasman Regional Policy Statement (TRPS); and
- b) the Tasman Resource Management Plan (TRMP).

8.2 Part 2 Matters

In considering this application, we have 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 104B of the Act, the Committee **GRANTS IN PART** consent subject to conditions.

Specifically, the Committee **GRANTS** the increase in maximum numbers from 30 to 45 and the increase in number of staff living off-site from two to five, with the imposition of several consequential conditions. However, the Committee **DECLINES** the extension of hours sought.

Therefore, the conditions of RM040389 are not amended, and the conditions of RM020704 are amended as follows:

Work Practices

6. No more than ~~two~~ five full-time equivalent persons who reside elsewhere than on the site shall be employed in the activity.

Customer Numbers

8. The maximum number of customers permitted on the premises at any time shall not exceed ~~30~~ 45.

Notation: "Customer" does not include persons visiting the premises for a private domestic special occasion such as a birthday party, anniversary celebration or private viewing of artworks outside of the hours of operation in condition 7.

Parking

- ~~12. An on-site car park for a minimum of nine cars and access drive shall be formed and maintained in a durable, all-weather dust-free surface, which shall have a permanent waterproof finish. Sealing of the site shall be carried out within an 18 months from the commencement of this consent.~~

12. The following works shall be undertaken prior to 1 November 2010:

(a) The existing carpark shall be redesigned, reconstructed and maintained so that it accommodates a minimum of fourteen cars. The car park and access drive shall be sealed. The design of the car park with regard to parking and manoeuvring shall be in accordance with the Tasman Resource Management Plan.

(b) A low profile barrier shall be installed from where the access enters the private/staff car park area to the east of the site. The face of the barrier is to be offset a minimum of 7.5 metres from the existing kerb on the north side of Courtney Street. The Consent Holder shall grass the berm areas within the area separated by the barrier.

(c) A 1.4 metre wide gravel or crushed shell footpath with timber edges on both sides shall be constructed along the consent holder's frontage from High Street (near the pump station site) to the entrance into the formal car parking area. The footpath shall be designed and constructed so that it does not compromise the well being of the roadside trees.

(d) The bamboo grove shall be removed to aid visibility to the car park area.

(e) Upgraded signage shall be installed to direct customers to the car park.

Plans for these works shall be supplied to the Council's Transportation Manager for approval prior to implementation.

- ~~13. The developed carpark shall be formed as shown on the sketch plan provided by the applicant at the hearing (and appended to this decision) except that the width of carparks 1 and 9 are to be reversed to enable on-site turning. Final approval of the design shall be subject to compliance with Building Consent (re-formation and drainage sump) and Council Engineering conditions (re-access formation).~~

The carpark area is to be fenced off from Courtney Street East between the access shown on the sketch and the adjacent property 1 Courtney Street East

~~(Lot 4, DP 4984). Construction of the fence and formation of the carpark, need to be carried out before operation of the café and gallery commences.~~

10. REASONS FOR THE DECISION

Effects on the Environment

“Up the Garden Path” was established as an art gallery and outlet, now attractively designed and finished as a café/restaurant. Its purpose is two-fold and is suitable for its location within the hours that it currently operates.

We consider that the effects on the environment from later closing hours are likely to be significant due to the low background noise environment and the relatively close proximity of surrounding houses. Further, if the requested changes were to be granted and the consent is utilised to the maximum extent possible including possible conversion to a bar selling wine and beer with indoor live music, then we would consider that the effects on the residential environment may be ongoing and extremely adverse.

As stated above, we consider our first duty in the residential zone is to the residents and we do not consider that this is an appropriate location for late night noise and traffic.

With regard to the increase in the maximum number of customers we consider that this change largely reflects the reality of the situation now. We consider that the noise emanations during the day are acceptable and the traffic can be dealt with by improving both the quality and the quantity of the car parking provided.

Similarly, we consider it appropriate that the number of staff living off-site be allowed to increase from the current two to five. The reasoning for this is similar to that of the increase in numbers. The applicant is currently employing up to four staff and if things are largely acceptable now then it seems appropriate that this arrangement be allowed. An improvement in the parking will also assist in this although we expect at least some of the staff members to travel to work by non-motorised means. Further, an increase in allowable customer numbers will certainly mean that more staff are required and we do not consider it appropriate that the effectiveness of the business be jeopardised by a condition which limits staff numbers to inappropriately low levels. There may be a concern that this change was not notified and is therefore outside of the scope of what can be granted. We do not agree and find that this change is largely consequential to the approval of an increase in the customer numbers.

The problem of cooking smells is largely outside the scope of this consent but the applicant is advised that such discharges across property boundaries are not acceptable and should be dealt with as soon as possible but the installation of better filtering technology or some other effective change of practice.

Objectives and Policies of the TRMP

We agree with Ms Holst-Stoffregen’s assessment of the relevant objectives and policies of the TRMP. We consider that the proposed extension of operating hours into the evening will be inconsistent with, in particular, Objective 5.1.2 and Policy 5.1.3.9. However, we do not consider that allowing an increase in the maximum

number of patrons and staff will be inconsistent with these and other provisions of the TRMP.

In addition, we consider that the extension of hours, allowing the creation of a full-blown restaurant, and possibly a small bar in the future, may compromise the integrity of the Residential Zone in the TRMP by setting a precedent of allowing such establishments in residential locations which have only minor mitigating circumstances.

Purpose and Principles of the Act

Adopting a broad overall judgement approach to the purpose of the Act, we are satisfied that the increase in customer and staff numbers is consistent with Part 2 and achieves sustainable management of natural and physical resources as set out in Section 5 of the Act.

However, we are not satisfied that extending the opening hours as proposed meets the purpose of the Act. In reaching this conclusion we have had particular regard to Section 7(c) which seeks to maintain and enhance amenity values.

11. COMMENTARY ON CONDITIONS OF CONSENT

The amended consents are attached. For completeness, resource consent RM040398 is also attached even though no changes were made to its conditions.

Although only part of the application has been granted (and possibly not the part that was most desired by the applicant) all of the traffic improvements recommended by Mr Ley, and agreed to by the applicant, have been imposed. We consider this to be appropriate as the consequential parking and traffic management conditions relate to the effects of the increase in maximum numbers.

Issued this 21st day of December 2009



Noel Riley
Chair of Hearings Committee



RESOURCE CONSENT

RESOURCE CONSENT NUMBER: RM020704V1

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

Garden Path Limited
(hereinafter referred to as “the Consent Holder”)

ACTIVITY AUTHORISED BY THIS CONSENT:

LOCATION DETAILS:

Address of property:	473 High Street, Motueka
Legal description:	Lot 1 DP10630 and Pt Lot 5 DP4948
Certificate of title:	NL5D/1012 and NL5D/1013
Valuation number:	1955035500
Easting and Northing:	2510871N 6008610E

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 business shall, unless otherwise provided for in the conditions of the consent, be undertaken in accordance with the documentation submitted with the application.
2. Any matter not referred to in this application for resource consent or otherwise covered in the consent conditions, must comply with the current provisions of the Resource Management Act 1991 and the Proposed Tasman Resource Management Plan (and its successors).

Discharges

3. The activity shall not emit offensive and pervasive dust or odours that are discernible in any residentially used property.

Noise

4. Noise generated by the activity on the site, when measured at any boundary in the Residential Zone shall not does not exceed:

	Day	Night
L ₁₀	55 dBA	40 dBA
L _{max}		70 dBA

Notations:

Day = 8.00 am to 8.00 pm

Night = all other times.

Noise must be measured and assessed in accordance with the provisions of NZS 6801:1991, Measurement of Sound and NZS 6802:1991, Assessment of Environmental Sound.

Lighting

5. All exterior artificial lighting shall be appropriately subdued and sufficient only for security and access. No artificial lighting shall create any glare to adjoining properties or public places.

Work Practices

6. No more than five full-time equivalent persons who reside elsewhere than on the site shall be employed in the activity.

Hours of Operation

7. Hours of operation shall be between:

9.00 am to 5.00 pm June to October and 9.00 am to 7.00 pm November to May (each following year).

Notation: Hours of operation shall mean the times when the premises are open and available for business (i.e. does not include any work carried on by the consent holders and their staff outside of the above stated hours).

Customer Numbers

8. The maximum number of customers permitted on the premises at any time shall not exceed 45.

Notation: "Customer" does not include persons visiting the premises for a private domestic special occasion such as a birthday party, anniversary celebration or private viewing of artworks outside of the hours of operation in condition 7.

Access

9. Accesses into the property and including customer and staff parking areas shall be to an all-weather, durable sealed surface.

10. The only vehicle accesses onto and off the property shall be from Courtney Street East.
11. No vehicle or pedestrian access shall be provided directly onto the site from High Street.

Parking

12. The following works shall be undertaken prior to 1 November 2010:
 - a) The existing carpark shall be redesigned, reconstructed and maintained so that it accommodates a minimum of fourteen cars. The car park and access drive shall be sealed. The design of the car park with regard to parking and manoeuvring shall be in accordance with the Tasman Resource Management Plan.
 - b) A low profile barrier shall be installed from where the access enters the private/staff car park area to the east of the site. The face of the barrier is to be offset a minimum of 7.5 metres from the existing kerb on the north side of Courtney Street. The Consent Holder shall grass the berm areas within the area separated by the barrier.
 - c) A 1.4 metre wide gravel or crushed shell footpath with timber edges on both sides shall be constructed along the consent holder's frontage from High Street (near the pump station site) to the entrance into the formal car parking area. The footpath shall be designed and constructed so that it does not compromise the well being of the roadside trees.
 - d) The bamboo grove shall be removed to aid visibility to the car park area.
 - e) Upgraded signage shall be installed to direct customers to the car park.

Plans for these works shall be supplied to the Council's Transportation Manager for approval prior to implementation.

13. The carpark area is to be fenced off from Courtney Street East between the access and the adjacent property 1 Courtney Street East (Lot 4, DP 4984).
14. When the carpark is sealed, each car park shall be adequately marked for ease of identification, and ensure customers are able to park their vehicles in an efficient and orderly manner. The consent holders shall encourage customers through appropriate advertising and signage to park their vehicles in the carpark property and not park on the road frontages.
15. Carparking / garaging that has already been developed is considered to provide adequate provision for parking for the dwelling occupants and staff (seven spaces in all).

Off-Site Works

16. The accesses to the car parks shall be sealed from the road onto the site in accordance with Council's Engineering Standards 1996 and revisions.
17. Courtney Street East shall be widened to provide a minimum 5.5 metre width durable sealed pavement from the intersection with High Street to the proposed car park entrance.
18. The edges of Courtney Street East shall be provided with stormwater sumps to collect water ponding at the road edges. Such sumps are to be connected to Council's reticulated stormwater system.
19. All off-site works shall be in accordance with Council's Engineering Standards 1996 (and revisions) and plans for the works specified in conditions 16 to 18 are to be submitted to Council for engineering approval prior to the works commencing.

Signage

20. One main double-sided sign may be erected on the property in the position shown in the application.
21. The sign shall have a maximum height of 3.0 metres and have maximum signboard dimensions of 2.0 square metres and maximum board dimension of 1.5 metres
22. Wording on the sign shall be limited to the business name (Up The Garden Path), the principal activities (Café/Gallery). No commentary on the quality of the activity, the food, drinks or any peripheral activities shall be included.
23. An attachable/detachable sign hanging directly underneath the main sign shall be provided with an indicative arrow showing 'Parking'. When the premises are closed or have reached the maximum permitted numbers of customers then this 'Parking' sign shall be replaced with one bearing the words 'Closed'.
24. In addition to the main sign two additional traffic directional signs of 0.6 square metres area indicating the location of the car park shall be provided, one on the north-east frontage of the property boundary and one at the car park entrance. The signs should be board type signs and be no higher than 1.0 metre above ground level.
25. In regards to issues of appearance, location and letter size the signs shall comply with the permitted activity standards for a signs in the Residential Zone.
26. Plans for all signage shall be submitted together with the application for building consent for the activity to confirm compliance with conditions and Plan Rules.

Residential Amenity

27. The proposed extensions shall be constructed in accordance with the plans submitted with the application. Finish colours shall be recessive and appropriate for the coastal environment (note the existing house colours are considered to meet this

requirement). Such exterior painting shall be completed prior to the opening of the café/gallery.

28. The carpark, High Street frontage and outside areas used by customers shall be permanently screened from adjoining residential properties by a wall or close-boarded fence. The fence shall be at least 1.5 metres and no more than 1.8 metres high.
29. The consent holder shall not store any materials associated with the activity outside of any building on the site.

Notation: This condition does not apply to garden ornaments/artworks that are used to enhance the exterior landscaping of the property.

Cultural Amenity

30. If, during any land disturbance or other excavation work at the site, any material or possible artifact is found, all work shall temporarily cease and the applicant shall notify the local Ngati Awa representative so that appropriate steps can be taken for identification and historical recording before removal.

Notation: The discovery of an archaeological site is subject to the provisions of the Historic Places Act 1993 and an application must be made to the Historic Places Trust for an authority to modify or destroy any site discovered.

Monitoring

31. 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 can be minimised by consistently complying with conditions and thereby reducing the frequency of Council visits.

Review

32. The Council may review Conditions 7 to 15 and 20 to 29 by giving notice of its intention so to do pursuant to Section 128 of the Resource Management Act 1991 at any time within the period commencing from the date of giving effect to this consent and expiring 12 months thereafter.

The purpose of such review would be to deal with any adverse effect on the environment which may arise, and is appropriate to deal with at a later stage, because it is not presently known what would be required of the consent holder to adopt the best practical option to reduce the adverse effects on the environment.

The particular issues, which Council will consider in its review, would be in regards to:

Condition 7 relating to hours of operation;
Condition 8 relating to customer numbers;
Conditions 9 to 11 relating to access;
Conditions 12 to 15 relating to parking;

Condition 20 to 26 relating to signage and;
Conditions 27 to 29 relating to residential amenity.

NOTATIONS

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 can be minimised by consistently complying with conditions and thereby reducing the frequency of Council visits.

Fire safety and Building Act requirements

Attention is drawn to the need to comply with various fire safety requirements and Building Act requirements.

Issued this 21st day of December 2009

A handwritten signature in black ink, appearing to read 'Noel Riley', enclosed in a faint rectangular box.

Noel Riley
Chair of Hearings Committee



RESOURCE CONSENT

RESOURCE CONSENT NUMBER: RM040389

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

Garden Path Limited
(hereinafter referred to as “the Consent Holder”)

ACTIVITY AUTHORISED BY THIS CONSENT:

LOCATION DETAILS:

Address of property:	473 High Street, Motueka
Legal description:	Lot 1 DP10630 and Pt Lot 5 DP4948
Certificate of title:	NL5D/1012 and NL5D/1013
Valuation number:	1955035500
Easting and Northing:	2510871N 6008610E

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 sale of liquor shall, unless otherwise provided for in the conditions of the consent, be undertaken in accordance with the documentation submitted with the application.
2. Any matter not referred to in this consent or otherwise covered in the consent conditions, must comply with resource consent RM020704 and the activity must also otherwise comply with the current provisions of the Resource Management Act 1991 and the Tasman Resource Management Plan.

Hours of Operation

3. Hours that the premises may be licensed for sale of liquor for on-site consumption shall be between:

9.00 am to 5.00 pm June to October and 9.00 am to 7.00 pm November to May (each following year).

Limitations on Sale, Supply and Consumption of Alcohol

4. Liquor for sale shall be limited to bottled beers and bottled wines.
5. Liquor shall only be sold to persons who are present on the premises for the purpose of dining.
6. Liquor may only be sold for consumption on the premises.
7. "Premises" for the purpose of this consent shall be the café/gallery and garden to the north and west of the café/gallery as shown on the attached plan.

Review

8. The Council may review Conditions by giving notice of its intention so to do pursuant to Section 128 of the Resource Management Act 1991 at any time within 12 months of this consent coming into effect, and annually thereafter.
9. The purpose of such review would be to deal with any unforeseen adverse effect on the environment which may arise from the exercise of this consent.
10. The particular issues, which Council may consider in any review, would be in regards to:

Condition 3 relating to hours of operation for the sale of liquor;
Condition 4 relating to limitations on types of alcoholic beverages sold, supplied or consumed on the premises;
Condition 7 relating to the definition of "premises".

Notes:

1. This resource consent is without prejudice to any application made pursuant to the Sale of Liquor Act 1989, but it is expected that the relevant conditions of this consent will be incorporated into conditions of any liquor licence issued pursuant to the Sale of Liquor Act 1989.
2. The applicant shall meet the requirements of Council with regard to all Building and Health Bylaws, Regulations and Acts.
3. 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 can be minimised by consistently complying with conditions and thereby reducing the frequency of Council visits.

Date Confirmed:

Chair: