

STAFF REPORT

TO: Environment & Planning Committee

FROM: Ina Holst-Stoffregen, Consent Planner

REFERENCE: RM020704V1 and RM040389V1

SUBJECT: **GARDEN PATH LTD - REPORT EP09/11/14** - Report prepared for hearing of 27 November 2009

1. SUMMARY OF PROPOSAL

The application is seeking land use consent to change Conditions 7 and 8 of resource consent RM020704, to extend the hours of the café operation and increase the number of patrons, and to change Condition 3 of RM040389, seeking an extension of the hours of the sale of liquor to meet market demands. The site has an established art studio/café gallery, Up the Garden Path, at 473 High Street and is located in the Residential zone.

The activities sought include:

- extending 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;
- increasing the number of patrons from 30 to 45 at any one time;
- varying the hours of sale of liquor to match the extended hours of operation.

1.2 Background

In 2002, the Garden Path Ltd – formerly Totally Tasman Ltd, was granted consent RM020704 by the Tasman District Council to undertake a commercial activity, being an art studio/café gallery in a Residential zone. The consent granted at the time permits the business to operate, ie to be open for business, between 9.00 am to 5.00 pm June to October and 9.00 am to 7.00 pm November to May as covered by Condition 7.

The applicant seeks 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.

In the application, the applicant refers to TRMP Rule 17.1.2.1 (c), hours of operation: Non-residential activities operate only between 7.00 am and 11.00 pm except for the telecommunication and radio communication for which there is no restriction.

I would like to point out that this rule refers to permitted activities which the operation of a café in a Residential zone is not.

In the original consent, the Council 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 seeks a change to Condition 8 to change the maximum number of patrons to 45 at any one time on the premises. Indoor and outdoor seating totals 77 seats giving customers a choice between indoor and outdoor seating.

In 2004, the Garden Path LTD – formerly Totally Tasman Ltd, was granted consent, RM040389, by the Tasman District Council for the sale of liquor during the hours of operation as granted under consent RM020704 in the Residential zone. The applicant seeks a change to the Condition 3 to vary the hours so that these match the proposed hours of operation.

Most of the traffic generated by the business is by customers, some additional traffic is generated by delivery trucks and staff vehicles. The busiest traffic days are during the summer months when customer demand is highest.

Currently nine on-site car parks are provided for customers, and four car parks are provided for the dwelling. There does not appear to be sufficient parking to be provided by the applicant as customers tend to park on the road reserve on Courtney Street and along the sides of the road.

The applicant informed Council that the business currently employs four fulltime staff and has two owner/operators. The applicant informed the Council of the staffing situation as follows: When the owners are not at the café, the staff on the floor will be as follows: One front staff opener (8.00 am to 4.00 pm = 8 hours), two front staff secondary (10.00 am to 5.00 pm = 2 x 7 hours), one opener cook (8.00 am to 3.30 pm = 7.5 hours), one second cook or kitchen hand (9.00 am to 4.00 pm = 7 hours). When the owner are on the schedule, which is five days per week, then only one secondary front staffer is required on that day. If part-time assistance is needed on a very busy day, usually Sundays, such a person may be on-site from 12.00 pm to 2.00 pm during lunch time.

Condition 6 of the original consent permits no more than two full-time equivalent persons who reside elsewhere than on the site to be employed in the activity. The employment of four full-time staff breaches that consent condition.

The applicant stated that it was very likely that the café would be employing a greater total number of staff members to meet the need generated by increased hours. However, as these staff members will work in separate shifts, during the day and evening, even with increased customer numbers the applicant did not anticipate an increase in the total number of staff on the premises at any particular time.

The bathroom facilities have been assessed by Council Building Inspector Rory Metcalf and have been found to be sufficient for the increased patron numbers of 45 and up to eight staff at any one time.

Consent breaches concerning condition 8, exceeding the numbers of patrons allowed at any time, have been documented by Council's Compliance Officer, Warren Galbraith. Mr Galbraith's comments are attached as **Appendix 4** of this report. Mr Galbraith commented that the complaints were sometimes based on the numbers of vehicles parked in the immediate vicinity of the café. Estimates of patron numbers were made on the basis that if 24 vehicles were parked outside, and assuming that each vehicle had at least two passengers, then there must be around 50 customers in the café. On some occasions a complainant had entered the café and counted the number of patrons and reported that information to Council.

1.3. Site Location

The property is located at 473 High Street, Motueka and the corner of Courtney Street East. A zone map is attached as **Appendix 1** of this report. The site is zoned Residential and adjoins properties zoned Residential which are used for residential purposes to the south and east. The property is located on the south eastern corner of High Street and Courtney Street East. The properties on the opposite side of the road to the site are also zoned Residential. An antique shop is situated at the northwest corner of High Street and Courtney Street.

In the general area to the east of Courtney Street lies a Rural 1 Zone and a Light Industrial Zone is situated to the south on High Street.

1.4. Legal Description and Plan Attributes

The application site is legally described as Lot 1 DP 10630 and Pt Lot 5 DP 4948, being all of the land in Certificate of Title NL5D/1012 and NL5D/1013 with both allotments comprising a total area of 2703 square metres.

1.5 Status of Application

Zoning: Residential

Areas: Land Disturbance Area 1, Coastal Environment Area, adjoining Designated Area D121 (High Street)

The proposed activity breaches TRMP Rule 17.1.2.1 b (iii), undertaking a Commercial Activity in the Residential Zone.

Overall the proposal is a discretionary activity.

2. SUBMISSIONS

2.1 Notification

As the adverse effects on the environment were considered to be more than minor the application was fully notified. Submissions closed on 2 November 2009 and a total of 147 submissions were received. Of those 11 are in opposition, and 136 is in support with conditions. There are no neutral submissions.

2.2 Comments on Submissions

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 as their main concerns 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 1 neutral submission from NZTA, asking for conditions regarding road safety to be included in case the application was granted.

A map showing the location of the submitters within the vicinity of the site is attached as **Appendix 2**.

2.3 Submissions

Submissions in support

(The names and addresses of submitters who did not wish to be heard are attached in **Appendix 3**. Their points have been summarised under the following bulleted reasons)

Submitter	Reasons	Heard?
	<ul style="list-style-type: none"> • Desirable venue for locals and visitors to Motueka • Employment opportunities • Longer opening hours benefits local economy • Extended opening hours benefit people working till 5.00 pm • Asset for Motueka as the town Motueka lacks evening venues, this application fills that gap • Extension of hours is reasonable • Family friendly place to go to in the evening • Raises profile of café • Full potential can be achieved by longer hours and increased customer numbers • Supports local artists • Local place to meet neighbours etc adds to community cohesion • Traffic safety on High Street 	No
1. 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 	Yes
2. M 7 J Dickson,	<ul style="list-style-type: none"> • Café is well run 	Yes

Submitter	Reasons	Heard?
3 Courtney Street, Motueka	<ul style="list-style-type: none"> Established reputation Changes will be managed well Unique dining and well known as a visitor destination Fills gap in the market Enjoy its position 	
3. S Morgan, 48 Westdale Road, RD1 Richmond	<ul style="list-style-type: none"> Provides training Longer opening hours provide even better training 	Yes
D Wood, 26A Ledger Avenue, Motueka	<ul style="list-style-type: none"> Employment opportunities Asset for town and community 	Yes
4. I Goodman, 17 Wilkinson Street, Motueka	<ul style="list-style-type: none"> Wants café to be open at night time 	Yes
5. 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 	Yes
6. T Sims 274 Main Road, Riwaka	<ul style="list-style-type: none"> Asset for town and community 	Yes
7. G Hay, Peregrine Winery, Gibbston, Queenstown	<ul style="list-style-type: none"> Economic flow-on effect for suppliers Employment Venue adds to community 	Yes
8. J Drummond, PO Box 95 Motueka	<ul style="list-style-type: none"> Good business that needs to succeed Provides family dining at evening 	Yes
9. R Troughton, 2399 Coastal Highway Mariri, RD2 Upper Moutere	<ul style="list-style-type: none"> Safe for children Extended hours desirable 	Yes
10. A Dyson, 98 High Street, Motueka	<ul style="list-style-type: none"> Good for tourism 	Yes
11. J & C Gatenby, 240 Thorp Street, Motueka	<ul style="list-style-type: none"> Meets market demands Provides much needed service 	Yes
12. 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 	Yes
13. A Trent, 1500 State Highway 60, RD1 Nelson	<ul style="list-style-type: none"> Good for local economy desirable establishment 	Yes
14. R Glover, 6 Antoine Grove, Richmond	<ul style="list-style-type: none"> Good atmosphere Wants café to be available for evening dining 	Yes
15. N Saunders-Loder, 25 College Street, Motueka	<ul style="list-style-type: none"> Extended hours benefit diners 	Yes
16. 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 	Yes
17. T Glover, 6 Antoine Grove, Richmond	<ul style="list-style-type: none"> Good atmosphere Wants café to be available for evening dining 	Yes
18. T McIntosh, 235 Waiwhero Road, RD2 Upper Moutere	<ul style="list-style-type: none"> Wants café to be available for evening dining 	Yes
19. P Madsen, PO Box 10023, The Wood, Nelson	<ul style="list-style-type: none"> Ideal venue for live music 	Yes
20. 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 	Yes
21. K Stewart, 430 High	<ul style="list-style-type: none"> Café is a special place and good for tourism 	Yes

Submitter	Reasons	Heard?
Street, Motueka		
22. 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 	Yes

Submissions in Opposition

Submitter	Reasons	Heard?
23. 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 	Yes
24. R G Williams, 472 A 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 	No
25. P & J Jarmai, 478 High Street, Motueka	<ul style="list-style-type: none"> • Noise • Traffic • Amenity 	Did not say
26. R & 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 • Unknown future development in the area • Late night operation should not be permitted in a Residential Zone • Concerns about lack of monitoring by TDC 	Yes
27. N & 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 	Yes
28. N Drummond & 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 	Yes
29. 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 	Yes

Submitter	Reasons	Heard?
	<ul style="list-style-type: none"> developing under new owners Protection of residents by upholding existing consent conditions 	
29. R & K Smart, 466 High Street	<ul style="list-style-type: none"> More noise from traffic, music and people 	Did not say
30. T Gordon & 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. 	Yes
31. 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 	No
32. M B & 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 	No

Neutral Submissions

Submitter	Reasons	Heard?
33. New Zealand Transport Agency (NZTA)	<ul style="list-style-type: none"> Public safety on intersection Visibility Parking 	No

3. STATUTORY CONSIDERATIONS

The assessment is undertaken in accordance with the relevant sections of the Resource Management Act 1991.

Section 104

When considering applications for a change of conditions to a resource consent, and any submissions, the following matters under Section 104(1) of the Resource Management Act must be had regard to, subject to Part 2 of the Act:

- “a) any actual or potential effects on the environment of allowing the activity; and
- b) (iii) any relevant regional policy statement, and proposed regional policy statement; and
- b) (iv) any relevant provisions of a plan or the Plan; and
- ...

- c) any other matters the consent authority considers relevant and reasonably necessary to determine the application.”

Having considered these matters the application may be declined or granted consent, with conditions if necessary (Section 108).

The following sections of this report address the relevant matters listed in section 104 of the Act.

A decision on this application must be made under Section 104 of the Resource Management Act 1991.

The application is a discretionary activity in the Residential Zone. As a discretionary activity the Council must consider the application pursuant to Section 104(B) of the Resource Management Act 1991.

The matters for the Council to address in Section 104(B) are:

Part 2 (Sections 5, 6, 7 and 8)
Effects on the environment (positive and negative)
Objectives and Policies of the TRMP
Other matters

Section 104B of the Resource Management Act 1991 (as amended) provides:

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—

- (a) may grant or refuse the application; and
(b) if it grants the application, may impose conditions under section 108.

4. SECTIONS 6, 7 AND 8

The following matters are relevant to this application:

Section 7 of the Resource Management Act sets out the other matters that any person exercising powers and functions must have regard to in relation to managing the use, development and protection of natural and physical resources. Matters that are relevant to this application are as follows:

S.7(c) the maintenance and enhancement of amenity values;
These other matters have direct relevance and in particular those relating to amenity values and the quality of the environment. These are reflected in the policies and objectives in the TRMP and other planning instruments.

Treaty of Waitangi

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

5. KEY ISSUES

Principal Issues

After taking into account the application, the submissions for and against, information gathered at a site visit, the Act, and the TRMP provisions, the main key issue I consider relevant are as follows:

The key issues are:

- Residential Amenity
- Noise and Odour
- Traffic and Parking
- Creation of Jobs and Economic Development

Written Approvals

Section 104(3)(b) specifies that a consent authority must not have regard to any effect on a person who has given written approval to the application. The following written approvals have been provided by the applicant:

- W Cleaver, owner of 464 High Street, Motueka 7120
- B Burnett, lives at 465 High Street, Motueka 7120
- M Dickson, owner of 3 Courtney Street East, Motueka 7120
- N Heberd, owner of 5 Courtney Street East, Motueka 7120
- P Inglis, owner of 5A Courtney Street East, Motueka 7120
- Brungasta Holdings Ltd., owns land adjoining 5A Courtney Street East
- Wakatu Incorporation, 1 Courtney Street East, Motueka 7120

5.1 Key Issue 1 – Residential Amenity

The overarching issue identified for this application is residential amenity. In this case, the issues relating to amenity include general disturbance and adverse effects of noise from traffic, music and customers, odour from cooking and smokers, light disturbance from exterior lighting at night time and loss of general amenity values such as privacy and character, resulting from having operating a commercial activity within the neighbourhood. In terms of visual amenity, the property is shielded by a large fence and no new buildings are proposed as part of the application. The main buildings on these properties are considered to be compatible with the residential environment. They are well maintained, residentially proportioned, and provide character to the area and those in support of the application have praised the café's ambience and setting as a particular asset.

Relevant objectives and policies from the TRMP are considered as follows:

Chapter 5: Site Amenity Effects

The following extracts from the introduction, principal reasons and explanations for Chapter 5 are considered relevant:

“Land use frequently has effects which cross property boundaries. Those effects may add to or detract from the use and enjoyment of neighbouring properties.

They may also affect natural resource values, such as air and water quality, or common goods such as views or local character.

The health and safety of people, communities and property is a significant part of site amenity, both within the site and between sites. Contaminants, including noise, and fire, hazardous substances and natural hazards, are factors in maintaining or enhancing amenity values.

Adverse cross-boundary effects are commonly noise, dust, vibration, odour, contamination, shading and electrical interference. Amenity values such as privacy, outlook, views, landscape, character and spaciousness may also be affected.

Effects of Activities

Objective 5.1.2 Avoidance, remedying or mitigation of adverse effects from the use of land and enjoyment of other land on the qualities of the natural and physical resources.

Policy 5.1.3.9 To avoid, remedy or mitigate effects (such as noise, vibration, dust, and vehicles) beyond the boundaries of the site.

Urban Environment Effects - Motueka

Issues 6.9.1.5 Poor traffic management, access, parking and amenity in the central commercial area.

Policy 6.9.3.5 Avoid further commercial ribbon development on High Street, development opportunities are provided in Tudor Street, Wallace Street, and Greenwood Street.

None of the matters of national importance listed in section 6 of the RMA are relevant to the application or to this site. There are no coastal margins, wetlands, lakes or rivers, and there are no outstanding natural features, areas of significant indigenous vegetation or significant habitats of indigenous fauna. The site is highly modified from its natural state, as is the land surrounding it. Whilst it is considered that under Section 6 there are no matters of national importance relevant to this application, Section 7 of the Act provides for the following "Other Matters" to have particular regard to:

- The efficient use and development of natural and physical resources;
- The maintenance and enhancement of amenity values;
- Maintenance and enhancement of the quality of the environment;

"Amenity Values" means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes. "Environment" means the social, economic, aesthetic, and cultural conditions which affect or which are affected by, amongst other things, ecosystems and their constituent parts, including people and communities, amenity values and all natural and physical resources.

The extent to which the proposal represents efficient use and development of natural and physical resources will depend on the extent to which adverse effects arising from the proposal can be avoided, remedied or mitigated having regard to the general direction afforded by the Tasman Resource Management Plan.

Comments

The above objectives and policies confirm the need to protect amenity values. In this case, residential and amenity values need to be safeguarded from adverse environmental effects resulting from the activity.

The relevant TRMP objectives and policies allow commercial activities to be assessed on their merits within the Residential zone. If the adverse environmental effects of amenity, noise, dust, odour, visual effects, and traffic can be appropriately mitigated then the activities will not be contrary to the objectives and policies.

Commercial activities are generally uncommon in Residential zones. The extension of operating hours and increased customer numbers could have adverse effects on residential amenity. Generally, residential dwellings have visual effects from the buildings they are located in, some noise effects, and traffic effects that are not limited by hours of operation. In order to meet the amenity objective, the commercial activity will at least need to maintain amenity values on-site and within the residential community of Courtney Street and High Street residents.

Submitters opposing the application consider the scale of the operation inappropriate in a Residential zone. The business is larger than home occupations allowed in the TRMP. It employs more staff than is permitted for home occupations. With the current restrictions of the hours of operation, the effects of noise, odour, traffic and parking on the residents are limited to the daytime and early evening hours. This is likely to change with extended hours of operation. With regard to an increase in the numbers of patrons, some submitters have raised concerns regarding raised noise levels from people dining and music, traffic noise and increased alcohol consumption during night time, as well as effects from exterior lighting at night time. The issue of a possible reduction in the value of properties in the vicinity, if the scale and intensity of the business increased, was also mentioned in the submissions.

The Residential zone is a sensitive receiving environment for evening activities involving large numbers of patrons visiting a site such as is proposed with the longer hours and increase in customers. The TRMP states (Site Amenity Effects 5/1) that “the health and safety of people, communities and property is a significant part of site amenity, both within the site and between sites. Contaminants, including noise, and fire, hazardous substances and natural hazards, are factors maintaining or enhancing amenity values.”

Objective 5.1.2 states the “avoidance, remedying or mitigation of adverse effects from the use of land on the use and enjoyment of other land and on the qualities of natural and physical resources.”

While it is accepted that the café is authorised to operate within the scope of its current consents, the increases proposed are out of scale with the residential environment which is predominantly used for residential activities. Motueka has a large number of young families and as such children will be sleeping at sites in the

vicinity and are likely to be disturbed from their sleep by vehicles and general noise from the café.

Over the years, Council received a number of complaints from residents, mainly with regard to parking issues and breaches of consent conditions. Council's Compliance officer Warren Galbraith provided a summary of complaints (see **Appendix 4**). The complaints concern breaches of consent conditions and on 18 August 2009 neighbours of the Café requested a meeting with Council Compliance staff to discuss their concerns. It was confirmed at the time that although previous complaints may have been made by one person, those complaints reflected the concerns of approximately 10 different affected local residents.

5.2 Key Issue 2 – Noise and Odour

Council's Regulatory Services Co-ordinator, Graham Caradus has undertaken an initial assessment of the potential effects of noise level increases from higher customer numbers and longer operating hours. A full copy of Mr Caradus report dated 19 October 2009 is appended to this report as **Appendix 5**.

With regards to the extended operating hours, Mr Caradus points out in his assessment that the noise made by patrons entering and leaving vehicles will be more intrusive at around 10 pm than at the current closing time of 7.00 pm and that there is a significantly increased potential for children and other residents to suffer from sleep disturbance at 10 pm from such activities than will be the case now.

Properties most likely to be affected by intrusive noise from vehicle movements are those opposite the parking area in Courtney Street East. Only one of the five affected properties situated north of the parking area on the Courtney Street East road frontage, L. Mills, the owner of 467 High Street, has not provided written approval.

Odour associated with the operation will be from cooking and customers smoking in the outdoor area. Mr Caradus stated in his report that he expects the amount of odour to increase due to both the increased number of patrons as well as the extended opening hours effected most the properties on the southern boundary of the café.

Relevant objectives and policies from the TRMP are considered as follows:

Effects of Activities on amenity

Objective 5.1.2 Avoidance, remedying or mitigation of adverse effects from the use of land and enjoyment of other land on the qualities of the natural and physical resources.

Policy 5.1.3.9 To avoid, remedy or mitigate effects (such as noise, vibration, dust, and vehicles) beyond the boundaries of the site.

Noise and Odour Effects

Relevant requirements under the RMA 1991:

In association with the obligations imposed above, the applicant is also obliged to ensure that "excessive noise" is not generated. Section 326 of the RMA says:

Meaning of "excessive noise"—

(1) In this Act, the term "excessive noise" means any **noise that is under human control and of such a nature as to unreasonably interfere with the peace, comfort, and convenience of any person** (other than a person in or at the place from which the noise is being emitted), but does not include any noise emitted by any—

- (a) Aircraft being operated during, or immediately before or after, flight; or
- (b) Vehicle being driven on a road (within the meaning of section 2(1) of [the Land Transport Act 1998]); or
- [(c) Train, other than when being tested (when stationary), maintained, loaded, or unloaded.]

(2) Without limiting subsection (1), **the term "excessive noise" may include any noise emitted by any—**

- (a) **Musical instrument**; or
- (b) **Electrical appliance**; or
- (c) Machine, however powered; or
- (d) **Person or group of persons**; or
- (e) Explosion or vibration.

Comments

The TRMP imposes a permitted noise performance standard. In addition, the applicant is obligated to meet the requirements of section 326 of the RMA 1991 to avoid excessive noise and section 16 of the RMA 1991 to adopt the best practicable option in order to ensure that the emission of noise does not exceed a reasonable level.

The applicant argues that there is no reason to believe that noise levels would increase as a result of the extended opening hours. However, several of the submitters opposing the application are concerned about a potential increase in noise. Whilst the increase in noise is difficult to estimate at this point, it is considered reasonable to assume that a larger number of patrons entertained at any one time will generate more noise than a smaller number of patrons. Noise from vehicles leaving the premises later at night could also become an issue for residents. The extended hours may result in increased alcohol consumption, as it is more likely that customers consume more alcohol later rather than earlier in the day, and noise levels could potentially increase with a more cheerful clientele.

In the case of noise from customers on the premises, the residences on the southern boundary are considered to be the most affected.

While some commercial activities can be compatible with residential site amenity policies and objectives, in this case, as Mr Caradus pointed out, the noise from vehicle use and customers arriving and leaving, cannot be managed inside the property boundaries and in such a way that general and neighbourhood amenities

are not compromised. There is no mechanism to control noise associated with traffic movements available to Council other than declining the consent unless mitigating measures can be found to address the noise issue from traffic movements.

For all other noise from the operation, eg music and conversation from customers, the café is expected to comply with the Residential Zone rules as set out under the original consent conditions. As a mitigating measure to curb noise, the applicant has volunteered to restrict music to the indoor area during in the extended hours, in this case after 7.00 pm.

In the context of Objective 5.1.2 which seeks the avoidance, remedying or mitigation of adverse effects from the use of land and enjoyment of other land it is considered more appropriate for the operating hours to allow the late evening to be free from business activity to curtail the noise.

In terms of odour, to be controlled under condition 3, two submitters commented on the cooking odour wafting from the site as being offensive. Odour may increase with increased customer numbers and mitigating measures such as an improved filtering system may need to be employed.

With regard to odour from smokers, the applicant volunteered as a mitigating measure to have "smoker areas" away from the southern boundary.

5.3 Key issue 3 - Traffic and Parking

Traffic Generation

The traffic generated by the business will have access from High Street, which is classed as an Arterial road in the Council's roading hierarchy, into Courtney Street East, classed as an access place.

High Street is the responsibility of the New Zealand Transport Agency (NZTA). NZTA is considered an affected party and did not provide written approval. However, NZTA made a submission with regard to public safety at the intersection resulting from an increase in traffic volume. NZTA pointed out the need for extending the "no stopping lines" 10 metres in both directions and the pruning of trees to maintain sight distances at the Courtney Street intersection at all times. It is difficult to say what the effects are of an increased traffic volume that can only be estimated at this stage. The TRMP parking requirements, the issues regarding non-compliances, the applicant's case, and the Council's Engineering Services Department comments have been considered carefully to undertake a thorough assessment of the parking and traffic effects and the TRMP calculations used for parking requirements are considered to be appropriate.

According to the TDC Engineering Standards and Policies 2008 an access road has a capacity of 30 to 50 households. At an average of 10 vehicle movements per day for a dwelling this is the equivalent of 500 vehicle movements per day. Although no Council traffic count has been taken to date, this appears to be well within the design capacity intended. It is important to note that the business is seasonal and the increased traffic volume generated from an increase of customer numbers by 15 over the year is not expected to exceed the above vehicle movements. However Courtney Street also provides access to a large 55.3573 hectare block of

undeveloped land that was rezoned Residential by the Council. Although this land is currently undeveloped, at some stage it is likely that the Residential zoning will be taken up and dwellings be constructed on the site with a further increase in traffic volume.

The TRMP specifies on-site car parking spaces for restaurants based on the Gross Floor Area (GFA) and the outdoor seated provided. According to the TRMP a restaurant requires one car parking space per 30 square metres of GFA. Based on a Gross Floor Area (GFA) of 233 square metres (including the verandah of 60.65 sm²), a total of eight on-site car parks are required. In addition, a further eight car parks are required based on the 34 customers seats provided outdoors. Therefore 16 on-site car parks for the restaurant are required in order to meet the TRMP standard. Also non-residential activities require one loading space on the site. A further two parking spaces are specified under the TRMP for the dwelling on the site. The TRMP specifies a total for all activities on the site of 18 car parks and one loading space.

The cafe site has nine sealed parking spaces on the on-site car park and four car parks are provided for the dwelling. The informal parking used by customers on the road frontage is not part of the original consent.

Council's Development Engineer Dugald Ley has assessed the current traffic and parking situation in his report (**Appendix 6**). He considers the changes which have occurred since 2002/2003, when the application for a café was first processed, and the current situation and Mr Ley concluded that the applicant needed to curtail the present car parking on the road frontage, on the corner of High Street and Courtney Street East. Mr Ley's concerns include safety issues (see photos 1-3) for pedestrians and motorised traffic.

After discussions with the engineering department, the applicant has volunteered solutions to address the parking issues as attached in the report by Mr Ley in **Appendix 6**. The parking provision will need to ensure that the appropriate policies are met to ensure that adequate and efficient parking and a loading space is provided to avoid or mitigate adverse effects on the safety and efficiency of the road network.



Photo 1 and 2 – shows parking on the road frontage.

Photo 3 shows parking on both sides of Courtney Street East

Relevant objectives and policies from the TRMP are considered as follows:

Effects of Activities on Amenity Values

Objective 5.2.2 Maintenance and enhancement of amenity values on-site and within communities, throughout the District.

Policy 5.2.3.8 To avoid, remedy or mitigate the adverse effects of traffic on the amenity of residential, commercial and rural areas.

Effects of Activities on Transport Safety and Efficiency

Policies in this section are not only about providing a safe driving environment, but also about ensuring safety for people in the environment through which vehicles are driven. Amenity in that environment is also a relevant issue.

Objective 11.1.2 A safe and efficient transport system, where any adverse effects of the use or development of land on the transport system are avoided, remedied or mitigated.

Policy 11.1.3.2 To ensure that land uses generating significant traffic volume: are located so that the traffic has access to classes of roads that are able to receive the increase in traffic volume without reducing safety or efficiency; and are designed so that traffic access and egress points avoid or mitigate adverse effects on the safety and efficiency of the road network.

Policy 11.1.3.4 To avoid, remedy or mitigate adverse effects of traffic on amenity values.

Policy 11.1.3.7 To ensure that adequate and efficient parking and loading spaces are provided, either on individual sites or collectively, to avoid or mitigate adverse effects on the safety and efficiency of the road network.

The following extracts from the principal reasons and explanations for Chapter 11 are considered relevant:

“Adequate on-site parking is required for activities to prevent the spread of on-street parking, which can interfere with the safe operation of the transport network and property access to the network”.

Comments

The above objectives and policies identify the need to avoid conflicts with traffic, having particular regard to issues of traffic safety and efficiency, including the effects of existing roading, provision of adequate parking and amenity values. The current parking situation does not meet TDC policy to ensure that adequate and efficient parking and loading spaces are provided to avoid or mitigate adverse effects on the safety and efficiency of the road network and pedestrians.

Courtney Street Road Reserve Parking Area

As pointed out by Mr Ley, the current parking regime on the Courtney Street East road frontage cannot continue as it is inconsistent with the above mentioned TRMP transportation policies and poses serious safety issues to other road users.

Mr Ley reported that vehicles park over the pump station on the corner of High Street and Courtney Street East which is not considered a car park. Furthermore he raised the issues of people not being able to walk down on the south side of Courtney Street East without walking on the street and people walking around the rear of reversing vehicles. He observed vehicles reversing into parked vehicles, haphazard stopping/turning and parking and commented on the underutilisation of the on-site car-park.

Traffic and parking was also one of the main issue for the submitters opposing the application. As the major concerns submitters have mentioned vehicles parking on both sides of Courtney Street East, and on High Street, at times limiting access to driveways, and noise effects issues related to traffic and people coming and leaving.

Future development for residential uses of the Courtney Street East area will also impact on the parking on the road frontage as the street is upgraded to accommodate increased usage. Although the proposal needs to be assessed within its current environment with few users on Courtney Street East, the 55.3573 hectare block owned by Brungasta Holdings Ltd. has recently been rezoned Residential by the Council. The zoning forms part of the planning environment and while it the land has not yet been developed it is likely that a number of dwellings will be constructed on the site in the future. One of the main accessways is from Courtney Street East.

Under condition 14 in the original consent, the consent holder shall encourage customers to park their vehicle in the on-site car park property and not park on the road frontage. Based on Council's Development Engineer's site inspection current car parking is a safety risk and is likely to be exacerbated with an increased number of customers frequenting the café.

After discussions with the engineering department, the applicant proposed the following mitigating measures: to enlarge the existing carpark area to comply with current parking and onsite turning requirements to fit up to 14 to 15 carparks on the onsite carpark, better signage and clearance of existing vegetation from the entrance of the onsite carpark. Suggestions were also made with regards to addressing the car parking on the road frontage by putting in parallel car parks with barriers, a footpath and appropriate landscaping.

High Street (SH 60) and NZTA Traffic Safety Concerns

In their submission NZTA's points out public safety issues resulting from an increased use of the intersection and proposes the extension of the "no stopping lines" on High Street and the trimming of the trees to improve sight distances and improve traffic safety.

5.4 Key issue 4 - Benefits for the Local Economy and Employment

There is widespread support from customers submitting in favour (136) of longer opening hours, increased number of patrons and an update of the liquor license to match the changes the existing consents. Most of the supporters are in favour of having another evening family-friendly venue and list as the benefits economic reasons and employment opportunities. The location of the business provides a positive entrance to Motueka from the south and well known in the region. The investment made by the new owners, the existing consent holders, also needs to be considered.

A list of close to 200 signatures of patrons being supportive of longer operating hours has been submitted by the applicants. The petition asked customers to sign if they were interested in 'Up the Garden Path' being open for dinner and to show their support for the extended hours.

There are no provisions in the plan to accommodate commercial activities in Residential zones. While there are economic and social benefits to having a venue with a well established reputation open into the evening hours, it is considered that the positive social and economic effects are outweighed by the adverse effects on residential character, noise, odour, and traffic safety and noise effects which will result from the extension of hours and increase in patrons.

5.5 Policy Statements

The application was assessed against the relevant policy statements.

5.5.1 National Policy Statements

There are no relevant national policy issues and the New Zealand Coastal Policy is not relevant to this application.

5.5.2 Regional Policy Statement

The operative Tasman Regional Policy Statement (TRPS) specifies the overriding policies of the Council when preparing other resource management plans and when considering applications for resource consent. The TRPS contains a number of policies and objectives relating to managing the natural and built environment of the Tasman District. These policies and objectives have been refined and expanded upon in the Tasman Resource Management Plan (TRMP). Most of the objectives and policies contained within the TRPS are mirrored in the TRMP. It is considered that if the policies, objectives and rules of the TRMP are met then so too are the policies and objectives of the TRPS.

6. SUMMARY OF ISSUES

The application is a discretionary activity in the Residential Zone. One of the major issues considered for this application is general amenity and disturbance for those who are directly affected by increasing the scale and intensity of the commercial activity in a Residential Zone. In this case, the adverse effects of the activity are of greater consequence to those who live in the immediate neighbourhood, as expressed by those opposing the application, than from those 136 submitters

supporting the application and who mostly reside elsewhere in the district. It is argued that the general disturbance from running a café in a residential neighbourhood is predominantly from increasing levels of noise, offensive odours, related parking and traffic issues affecting various aspects of residential amenity. On the other hand, there are positive factors which have been taken into account such as the provision of training opportunities and employment and the economic flow-on effects for the wider community from a successful business.

7. SECTION 5 AND RECOMMENDATION

The Act's purpose will not be met by granting consent to the change of conditions. Particular regard has been had to the relevant parts of section 7, especially part (c) the maintenance and enhancement of amenity values.

In terms of Section 5 of the Act, I consider that a grant of consent in its current form would not promote the sustainable management of natural and physical resources. In this Act, "sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or at a rate which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety.

Therefore I recommend that the application be **DECLINED**.

8. CONDITIONS, ADVICE NOTES, PLANS

If the Committee does not accept my recommendation, then the following conditions and advice notes are recommended:

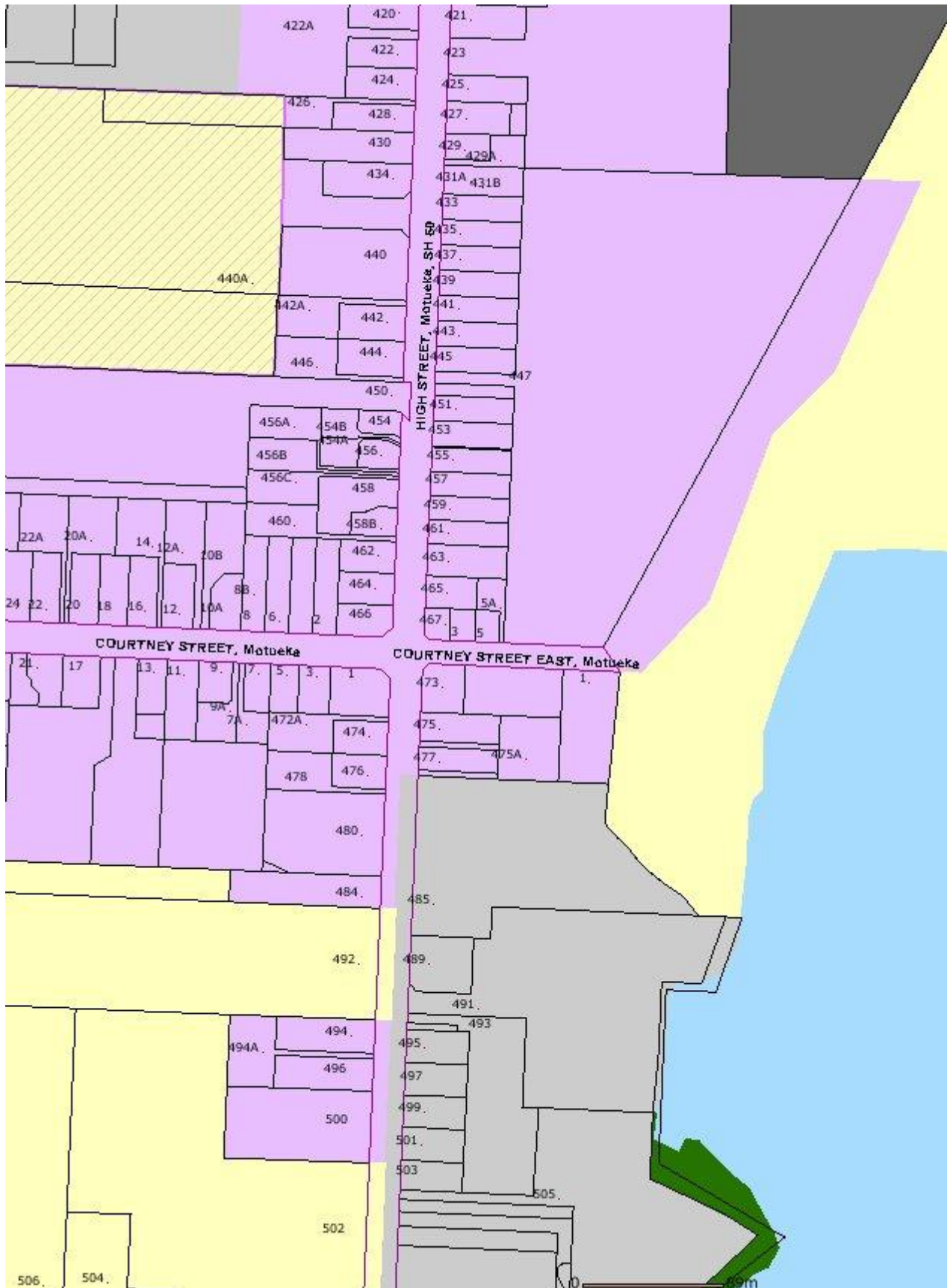
- Hours to be determined by the Committee.
- Patrons to be decided by the Committee.
- Parking and traffic management – see mitigating measures volunteered by the applicant, Engineering department report **Appendix 6**.
- To limit adverse effects from noise live music shall not be permitted in the outdoor area and music shall not be played in the outdoor area after 7.00 pm. This condition was volunteered by the applicant.
- Offensive Odours – Smokers shall be confined to a specific area directed away from the properties on the southern boundary of the site. Cooking odours shall be reduced to a minimum by installing an appropriate filtering system.
- Exterior lighting shall be directed away from adjacent residential properties;
- Appropriate changes shall be made to the intersection of High Street and Courtney Street East under consideration of the points made by NZTA;
- Consent conditions shall be reviewed after a 12 months period.

- Advice Note - Liquor licensing- the applicants will only be able to operate their café as a licensed café for those extended hours after the liquor license has been granted by the District Licensing Agency.
- Advice Note - With an increased number of patrons and staff totalling over 50 people, the café is required to comply with building code requirements before the consent becomes effective.



Ina Holst-Stoffregen
Consent Planner (Land)
Golden Bay

APPENDIX 1
Zone Map – Courtney Street East and surrounding area



APPENDIX 2 – Site Map showing submitters opposing the application



APPENDIX 3

Names and Addresses of Submitters supporting the application and do not wish to be heard

Date	Name and Address	Date	Name and Address	Date	Name and Address
12/10/09	L & R Mills 467 High Street Motueka 7120	20/10/09	L E Jones 46 Main Road Lower Moutere RD 2 Upper Moutere 7175	31/10/09	M Wentworth 16 Courtney Street Motueka 7120
13/10/09	Brungasta Holdings Limited /Isabel McRae 14 Wairarapa Terrace Merivale Christchurch 8014	20/10/09	P Walker 24 Wilkie Street Motueka 7120	30/10/09	Christine Sanders 117 Higgs Road Mapua
13/10/09	S P Satherley Little Sydney Valley RD 3 - Motueka 7198	20/10/09	P Savage 30 Hursthouse Street Motueka 7120	2/11/09	N M Black PO Box 186 Motueka 7143
15/10/09	A Seifried PO Box 7020 Nelson 7042	20/10/09	J Roper 85 Pomona Road Ruby Bay 7173	30/10/09	G & P Bainbridge 93 Brabant Drive Ruby Bay Mapua 7005
15/10/09	A M Seifried 1 Berkshire Place Stoke - Nelson 7011	20/10/09	L M Fagan 210 Queen Victoria Street Motueka 7120	30/10/09	Anatoki Salmon C/- I & G Dissel McCallum Road RD 1 Takaka 7142
19/10/09	S N Luxford Brooklyn Valley Road RD 3 - Motueka 7198	21/10/09	M Lunn PO Box 188 Motueka 7143	30/10/09	D Iorns 30 Hursthouse Street Lower Moutere RD 2 Upper Moutere 7175
19/10/09	B Kinnaird 10 Linden Place Motueka 7120	21/10/09	A Hutchison 16 Taylor Avenue Motueka 7143	30/10/09	I Hersche 3 Titoki Place Motueka 7120
19/10/09	P R Smith Brooklyn Valley Road RD 3 - Motueka 7198	21/10/09	L Dillimore 458 Main Road RD 3 Riwaka	30/10/09	L Salt 137 Lodder Lane RD 3 Motueka 7198
19/10/09	S A Reed 67B Lower Moutere Highway RD 2 - Upper Moutere 7175	19/10/09	T Fisher 527 Main Road RD 3 - Riwaka 7198	30/10/09	L Rosewarne C/- Val Thomsen Waiwhero Road RD 1 Motueka 7196
19/10/09	G Stones 37 Awa Awa Road RD 1 - Upper Moutere 7173	20/10/09	Leo Coldstream Hylton-Slater PO Box 345 Motueka 7143	30/10/09	J D Bensemman 396 Wsetbank Road RD 1 Motueka 7196
20/10/09	M Clinton-Baker 506 High Street Motueka 7120	21/10/09	Carolyn Krammer Westbank Road Motueka	30/10/09	L S Steidinger Lloyd Valley Road Orinoco - RD1 Motueka 7196
20/10/09	M D Allen 3 Tillson Crescent Motueka 7120	27/10/09	Mrs Lisa Clarkson 5 Community Road RD 2 Upper Moutere 7175	30/10/09	J De Becker 26 Sunrise Valley Road RD 1 - Motueka 7173
		29/10/09	Colleen Tutbury Roebuck 27 Tudor Street Motueka 7120	30/10/09	

R & S Hart 144 Strickland Crescent Deakin ACT Australia 2600	30/10/09 R McKay & L Shanks 11 Jessie Street Mapua 7005	2/11/09 B Roebuck 27 Tudor Street Motueka 7120
30/10/09 M G Smith 39 Ohiti Road RD 9 -Pernhill Hastings	3/01/09 R J McGeorge 539 High Street Motueka 7120	2/11/09 S Jeffries 35 Horton Road Tasman RD 1 Upper Moutere 7173
30/10/09 S & J Hart PO Box 11560 Ellerslie -Auckland 1542	30/10/09 L R McGeorge 569 High Street Motueka 7120	2/11/09 L K Smits 25 High Street Motueka 7120
30/10/09 H Kennedy PO Box 182 Motueka 7143	30/10/09 S Skinner 73 Beach Road Nelson 7010	2/11/09 J Smits 29B Willkie Street Motueka 7120
30/10/09 T Sheild 107 Higgs Road Mapua- Nelson 7005	30/10/09 D R & M K McKay 16 Glenover Drive Motueka 7120	2/11/09 E Steel 440 High Street Motueka 7120
30/10/09 M Carrington C/- Waimea Estates 59 Appleby Highway Richmond	30/10/09 L C Hylton-Slater PO Box 345 Motueka 7143	2/11/09 L McIntosh 54 Staples Street Motueka 7120
30/10/09 W Van Der Pol 93 Pah Street Motueka 7120	30/10/09 L Chambers 70 Tudor Street Motueka 7120	2/11/09 N E Heberd 5 Courtney Street East Motueka 7120
30/10/09 R & G Brooks Riverside Farm & Lodge Ngatimoti - RD 1 Motueka 7196	2/11/09 L Cooper 248 Umukuri Road Brooklyn RD 3 Motueka 7198	2/11/09G J Bolitho 3 McCarthy Crescent Motueka 7120
30/10/09 G W Inglis 12 Queen Victoria Street Motueka 7120	2/11/09A Murphy 175 Coastal Highway RD 1 Richmond 7081	2/11/09 D Arundel 3 Hampton Place Motueka 7120
30/10/09 Blackenbrook Wines Ltd C/-Ursula Schwanenbach 50 Baldwin Road RD 1 Upper Moutere 7173	2/11/09 A Blakiston C/- PO Box Kaiteriteri Kaiteriteri RD 2 Motueka 7197	2/11/09 S Inglis 655 Main Road Riwaka RD 3 Motueka 7198
30/10/09 Toad Hall C/-A Morris & H Fletcher 502 High Street Motueka 7120	2/11/09 C Armstrong 146 Horton Road - Tasman	2/11/09 R Morante 2395 State Highway 60 Mariri RD 2 Upper Moutere7175
30/10/09 Brungasta Holdings Limited C/- Isabel McRae 14 Wairarapa Terrace Merivale Christchurch 8014	2/11/09 E D`Ath 30A Courtney Street Motueka 7120	2/11/09 J I Mansson Mariri RD 2 Upper Moutere 7175
30/10/09 OME Kerkham Cushendal Old House Road RD 2 Upper Moutere 7175	2/11/09 K Ford 40 Victoria Heights Nelson 7010	2/11/09 M Abu MaririRD 2 Upper Moutere 7175
	2/11/09 A Smits 1 Claire Place Motueka 7120	

2/11/09
D Macleod
Robinson Road
Mariri
RD2 Upper Moutere 7175

2/11/09
H A McClintock
164 Brooklyn Valley
RD 3 -Motueka 7178

2/11/09
Sublime Coffee Company
C/- Daniel Hennah
211 Haven Road
Nelson 7010

2/11/09
S Whitaker
5 Angelus Avenue
Richmond7020

2/11/09
G McClintock
Brooklyn Valley
RD 3 -Motueka 7198

2/11/09
L McClintock
Brooklyn Valley
RD 3 -Motueka 7198

2/11/09S Whitson
Paratiho
545 Waiwhero Road
RD 2 Upper Moutere 7175

2/11/09
M Whitson
Paratiho
545 Waiwhero Road
RD 2 Upper Moutere 7175

2/11/09
C R Campbell
7A Courtney Street
Motueka 7120

2/11/09
K Whitson
Paratiho
545 Waiwhero Road
RD 2 Upper Moutere 7175

2/11/09
N Campbell

7A Courtney Street
Motueka 7120

2/11/09
T & J Roberts
144 Westbank Road
RD 1 - Motueka 7196

2/11/09N N Steidinger
118 Lloyd Valley Road
Orinoco
RD 1 Motueka 7196

2/11/09
M Quinn
C/- Talley's Group
Port Motueka
Motueka

2/11/09M Lightfoot
123 Thorp Street
Motueka 7120

2/11/09
M Graham
6 York Street
Motueka 7120

2/11/09
K Edgecombe
96 Wildman Road
Motueka 7120

2/11/09J
L Compton
31 Goodman Drive
Motueka 7120

2/11/09
M A Compton
31 Goodman Drive
Motueka 7120

2/11/09
R Darragia
18 Lionel Place
Mapa 7005

2/11/09
B I Trewavas
193 Thorp Street Motueka 7120

2/11/09
F Maddren
82 Thorn Road
RD 2 - Wakefield 7096

2/11/09
T L Andrews
11 Jocelyn Avenue
Motueka 7120

2/11/09
K A Granger
60 Lodder Lane
Riwaka

2/11/09G
G Franklin
9 Ledger Avenue
Motueka 7120

2/11/09
D W J Ryder
84 Martin Farm Road
Kaiteriteri

2/11/09
K R Burnett
24 Woodlands Avenue
Motueka 7120

2/11/09
J R McCuish
3 College Street
Motueka 7120

2/11/09
M D Hinton
187 Thorp Street
Motueka 7120

2/11/09
C Burgess
25 Courtney Street
Motueka 7120

2/11/09
D Friend
Nelson Packaging Supplies Ltd
PO Box 2051
Stoke Nelson 7041

2/11/09
B Hooper
29 Fearon Street
Motueka 7120

3/11/09
S M Hunt
353 Trafalgar Square
Nelson 7010

Memorandum
Environment & Planning Department

To: Ina Holst-Stoffregen
From: Warren Galbraith
Date: 13 November 2009
File: RM020704
Subject: **Complaints about Up The Garden Path breaching conditions of consent**

I am asked to provide a précis of complaints received by Council relating to the operation of the Café – Gallery “Up The Garden Path” situated on the intersection of High Street, and Courtney Street East at Motueka.

Complaints about any activity relating to a registered property or to a resource consent, should be recorded electronically and linked to either the property or the resource consent or both. That does not always happen for a number of possible reasons such as: the apparently minor nature of the complaint; the person receiving the complaint not having ready access to a mechanism for recording the complaint at that time; the matter being complained of having previously been dealt with as the result of a prior complaint; and other possible reasons according to circumstance.

In this case I have recorded complaints received as listed below, but where I might have received a complaint outside of working hours I may have neglected to record that complaint when next in the office. Other Council staff may well have received complaints in respect to this activity which have not been linked to the property or resource consent.

The first registered complaint in respect to Up The Garden Path was dated 31 December 2004 and reported that there were more than 25 vehicles parked in the area of the café, and the complainant could not get out of her driveway safely. That complaint was attended by the compliance officer “on call” at that time. The fact of complaint was relayed to the operator who said that there were occasions where there might be 27 customers on the premises, and a vehicle might arrive with 4 passengers.

Further complaint was received on 10 January 2005 in respect to the same condition being breached. Electronic records suggest that the matter was dealt with by telephone.

The next recorded complaint is dated 9 June 2009 and alleges that the café is exceeding the permitted numbers, and also that they are selling premixed alcoholic drinks when the consent restricts alcohol sales to wine and beer. A prompt response to the complaint was not possible on this occasion, and when attended the following day. The operator was again warned about the need to comply with consent conditions. Premixed gin/lime/lemonade drinks were observed in the display cooler and the operator was advised to remove them.

On 18 August 2009 neighbours of the café requested a meeting with Council Compliance staff to discuss their concerns in respect to continued consent breaches and recent advertising material which suggested an expansion of that business was imminent when the consent conditions were quite restrictive in respect to hours of operation, staff numbers, customer numbers etc. It was confirmed that although previous complaints may have been made by one person, those complaints reflected the concerns of approximately 10 different affected local residents.

Two further complaints are recorded as having been received on 31 August, and 12 October 2009 relating to supposed numbers of patrons at the café. At least two other complaints have been made over that same period, which have not been electronically recorded. Complaints are sometimes based on the numbers of vehicles parked in the immediate vicinity of the cafe on the basis that where there might be 24 vehicles parked outside, and if it is assumed that each vehicle had at least two passengers then there must be around 50 customers in the café. On some occasions a complainant enters the café and counts the number of patrons, and reports that information to Council. Unfortunately it is not always possible to attend complaints promptly, when the compliance officer receiving the complaint might be in working some distance away, or not on duty. I personally have given an undertaking to complainants to be available at any reasonable time, but I live 30 minutes away by car and might be doing anything at the time I receive a complaint.

Memorandum
Environment & Planning Department

TO: Ina Holst-Stoffregen

FROM: Graham Caradus

DATE: 19 October 2009

FILE NO: RM020704 and RM040389

RE: TOTALLY TASMAN LTD – NOW – GARDEN PATH LTD: - Variation to Consent

1. RM020704: variation to Conditions 7 and 8 and RM040389 variation to Conditions 1 and 3

The site at 473 High Street Motueka is zoned residential and operates the premises (which are subject to both registration pursuant to the Food Hygiene Regulations 1974 and an on license issued pursuant to the Sale of Liquor Act 1989) are subject to conditions imposed in a resource consent. That consents imposes a restriction on both the hours of operation and the number of persons that may be present in the premises at any one time including staff members. The variation seeks to change both of these controls.

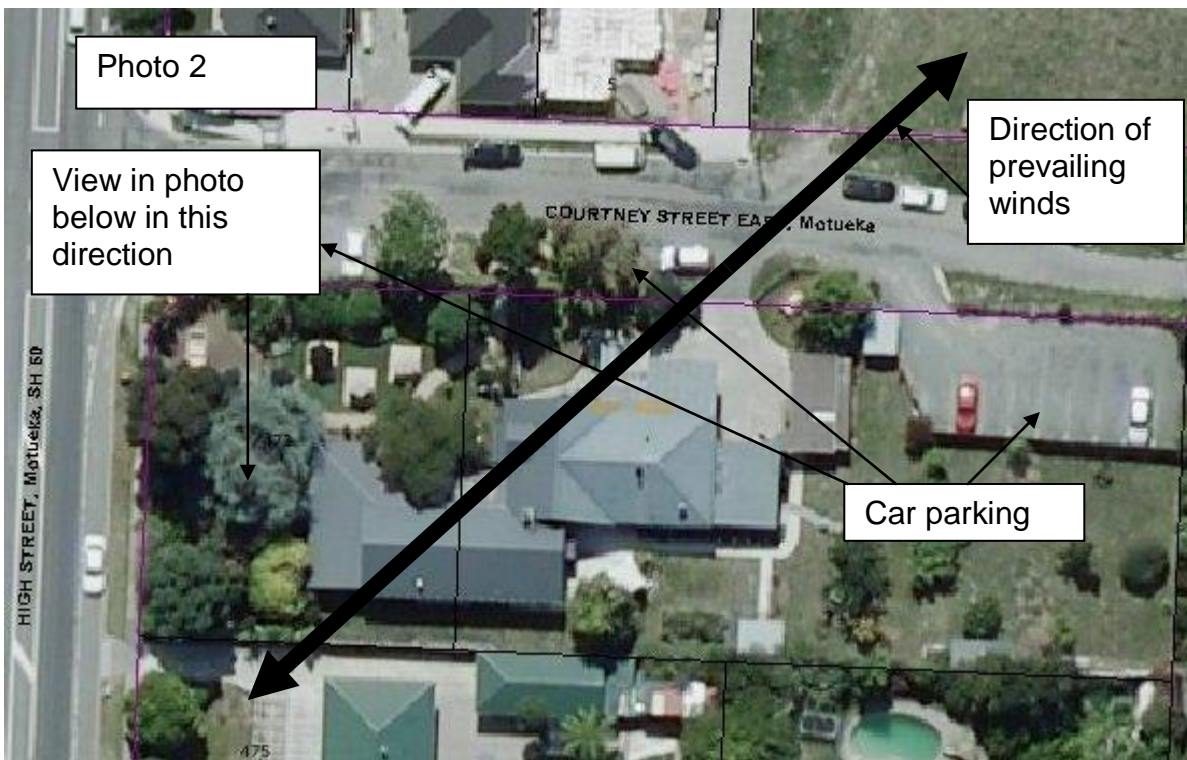
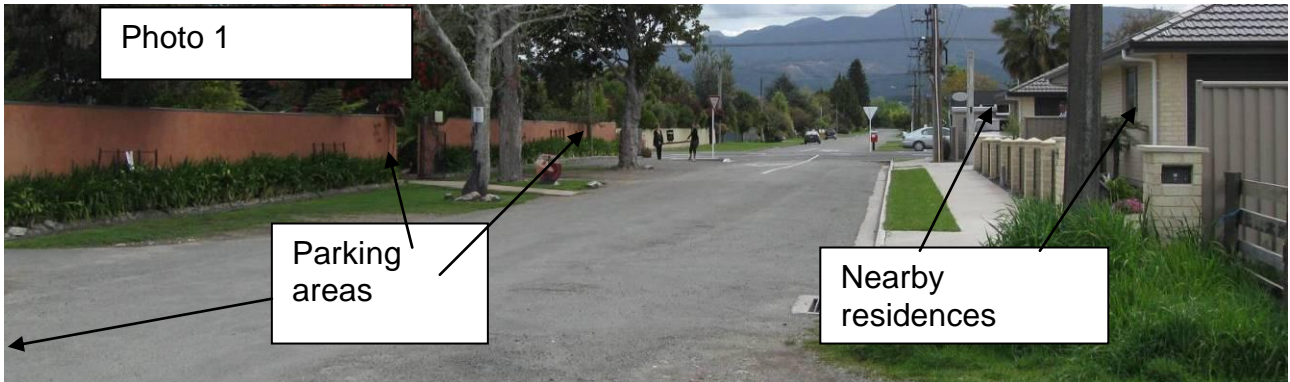
2. Hours of Operation

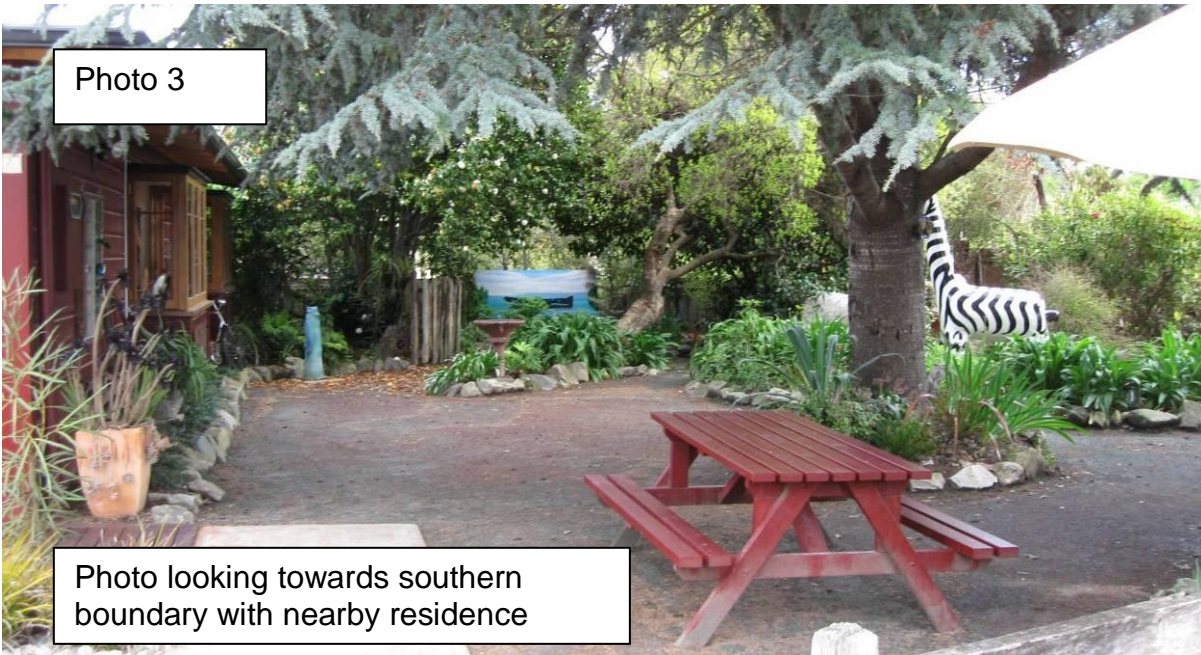
The variation does not seek to alter the hours for Mondays, Tuesdays or Wednesdays during the period from June through to October inclusive. However, extension of the hours at all other times are proposed through until 10.00 pm from the existing 5.00 pm in the winter and 7.00 pm in the summer. The operation until 10.00 pm with increased numbers of patrons does increase the possibility that nuisance noise and other discharges are more likely to trouble the surrounding residential neighbours.

3. Noise

Examination of the site on 15 October 2009 revealed that neighbouring properties across the road in Courtney Street East are reasonably well shielded from spill of noise that may be generated in the out door dining area, by a combination of the front fence and distance. Such noise sources are expected to be from the chatter of customers or staff associated with the normal operation of a café type business. If background music: live or recorded, is part of the entertainment provided by the café, the chance of disturbance being created for neighbouring properties is increased and controls will be required to avoid nuisance. The noise that may be generated by patrons entering vehicles (slamming of doors, starting engines, voices) will be more intrusive at the proposed closing time of 10.00 pm than it will be at the current closing time of 7.00 pm. There is a significantly increased potential for children or other residents to suffer from sleep disturbance at 10 p.m. from such activities than will be the case now.

The observation needs to be made that the RMA (and therefore the TRMP) does not control the noise of vehicles being driven on the road. The implications of that will need to be carefully considered by Council's planners as the effect of operating the business later at night will produce noise associated with vehicles leaving the area as detailed above from the parking area on the road outside the business as well as in the car park on the subject premises and other nearby roadside areas. That noise needs to receive consideration as it is likely to impact on nearby residents, but as already mentioned, there are limited processes available to Council to control such noise.





The properties that are most likely to be affected by intrusive noise from vehicle movements are those opposite the parking area in Courtney Street East: see photo 1.

The line of sight to the nearest property on the southern side of the subject premises will be more protected from traffic noise associated with patrons parking vehicles in Courtney Street East. However I note the potential for the noise of patrons dining or otherwise occupying the out door area nearest to High Street to cause nuisance to the residence situated near the boundary on the southern side. See photos 2 and 3.

4. General Obligations in relation to Noise.

4.1 The operation is obliged generally to meet three standards in relation to noise as follows:

4.1.1

The first obligation would be to meet the specific standard prescribed in the TRMP for Noise, residential zone. This establishes a “Day” and “Night” L_{10} and L_{max} level at the site boundary. The hours of operation of the activity are identified in the application as those hours which are defined both as “Day” and “Night” in the TRMP residential zone noise standard by virtue of the intended operation in the evenings and on Sundays and some public holidays. The special audible characteristics (identifiable tonal components etc) may be applicable due to the noise from such sources as music or the banging of car doors. If those noises are audible at the boundary of the neighbouring property, it is expected that the 5dBA penalty would apply and the L_{10} levels detailed below would be effectively reduced by a further 5 dBA. The (unadjusted) noise levels imposed by the TRMP are:

	Day	Night
L_{10}	55 dBA	40 dBA
L_{max}		70 dBA

If the above penalty for special audible characteristics does apply, the compliance level would become L_{10} 35 dBA for night time (after 9.00 pm Monday to Friday inclusive; after 6.00 pm Saturdays, all Sunday and public holidays)

4.1.2

The notation and method of describing noise limits is being changed throughout the District to reflect the recent updating of the New Zealand Standard. That is being picked up incrementally with changes to the TRMP as they occur, and the intent is that the new descriptors will also be picked up in any resource consent issued in which noise is included as a consent condition. Should noise limits be imposed in any consent that is granted to the applicants, the following is recommended as the way in which the noise condition should be written:

“Noise generated by the activity on the site, when measured at or within the boundary of any site within the residential zone, other than the site from which the noise is generated, does not exceed:

	Day	Night	Saturdays 6 pm to 9pm, Sundays and Public Holidays
$L_{Aeq}(15 \text{ minutes})$	55dB	40dB	40dB
L_{AFmax}		70dB	

N.B. Night = 9.00 pm to 7.00 am inclusive.

Day=all other times but excluding Saturdays 6.00 pm to 9.00 pm, Sundays and Public Holidays.”

Noise must be measured and assessed in accordance with the provisions of NZS6801:2008 Acoustics - Measurement of environmental sound and NZS6802:2008 Acoustics – Environmental noise.”

4.1.3

The second obligation in relation to noise is to comply with s16 of the RMA. This places a duty on occupiers of land to “adopt the best practicable option to ensure that the emission of noise....does not exceed a reasonable level.” This requirement places additional obligations over and above any need to comply with the TRMP noise standards.

4.1.4

In association with the obligations imposed above, the applicant is also obliged to ensure that “excessive noise” is not generated. Section 326 of the RMA says:

326. Meaning of “excessive noise”—

(1) In this Act, the term “excessive noise” means any **noise that is under human control and of such a nature as to unreasonably interfere with the peace, comfort, and convenience of any person** (other than a person in or at the place from which the noise is being emitted), but does not include any noise emitted by any—

- (a) Aircraft being operated during, or immediately before or after, flight; or
- (b) Vehicle being driven on a road (within the meaning of section 2(1) of [the Land Transport Act 1998]); or

[(c) Train, other than when being tested (when stationary), maintained, loaded, or unloaded.]

(2) Without limiting subsection (1), **the term "excessive noise" may include any noise emitted by any—**

- (a) **Musical instrument**; or
- (b) **Electrical appliance**; or
- (c) Machine, however powered; or
- (d) **Person or group of persons**; or
- (e) Explosion or vibration.

Note that in the copy of section 326 above I have **bolded** those parts considered of greatest relevance.

4.2 Interpreting the obligations the applicant has in relation to noise, and bearing in mind the expectation that the occupier of a dwelling in a residential zone may have, it appears that the applicant is faced with a potentially difficult task. The residential neighbours may reasonably expect that they should not be subject in that residential zone to the noise of patrons leaving a commercial operation at a time when some may be trying to sleep. It remains for the applicant to offer a mechanism or methods of control to mitigate such potential noise nuisance.

5. Odours associated with the proposed operation

The expectation is that some odours will be generated on the site, both from the cooking processes reasonably expected to be undertaken by a café, and from smokers who will be expected to move outside to indulge in any smoking activity. The amount of odour generated can be expected to increase due to both the proposed increase in operating hours and the increased number of patrons that may be on site at any one time. Photo 2 shows what is reliably understood to be the prevailing wind at the nearby Motueka Aerodrome (personal communication Caradus/Penny McKay, director of Nelson Aviation College Ltd 20 October 09). The consequence of wind in that direction may result in the residence on the southern boundary being subject from time to time to odours from smokers who have moved into the area shown in photo 3 to get away from dinners to light-up.

6. Other changes that will be required if Consent is granted

As mentioned in 1. the Café operation is subject to control through the Food Hygiene Regulations 1974 and the Sale of Liquor Act 1989. The numbers of persons on the premises and the increase in the number of meals likely to be prepared have an effect on the registration and licensing processes undertaken by the foregoing legislation.

Comment has been sought from Councils Senior Building Inspector Rory Medcalf on issues that will be significant. I asked him to address two questions, namely:

- Will the existing toilets be sufficient for 45 customers and 8 staff?
- Will a building consent be necessary for this change of use?

His response has been:

1. Yes they do have enough toilet accommodation for customers and staff under G1-Personnel hygiene.
2. There is no change of use as activity is staying the same, but now with customer and staff numbers added together they are over 50 people and require under C Documents Fire safety to have a fire alarm which means a building consent is required and then a compliance schedule at sign-off of the consent as they will have a specified system in the building which requires regular inspection and maintenance.

The necessity to comply with those building code requirements should be a condition of consent if it is granted.

Coincidentally Environmental Health Officer Pete Harcom made a programmed visit to the premises in the last week, and he has confirmed that there are no additional issues that cannot be dealt with under the existing controls provided by the food premises registration process.

Liquor licensing is in a similar position, although if resource consent is granted for extended hours, the applicants will not be able to operate as a licensed Café for those additional hours until such time as a variation to their liquor licence is granted by the District Licensing Agency (a function of Council). It is appropriate that such requirement be drawn to the applicant's attention by consent condition if it is granted.

Graham Caradus
Regulatory Services Coordinator

TO: Ina Holst-Stoffregen, Consent Planner
FROM: Dugald Ley, Development Engineer
DATE: 23 October 2009
FILE NO: RM020704
RE: **UP THE GARDEN PATH – CORNER HIGH STREET AND COURTNEY STREET, MOTUEKA**

This application was first processed in 2002/2003 when Courtney Street East served only one or two properties and was in essence unformed.

Since then a number of changes have occurred:

1. Five-lot subdivision to the north where new accessways have been provided for four new dwellings; kerb and channel and footpath also provided together with sealing part of the road.
2. Council has installed a new buried wastewater pumpstation (upgrade) at the corner of High Street and Courtney Street and provided a permanent surfaced area so that service vehicles can work “off” the carriageway.

Following a site visit on 11 October 2009 issues that are now evident are:

- Parking of vehicles over the pumpstation area. Note – this was formed for the use of Council service vehicles and is now unavailable.
- Parking (90°) directly off Courtney Street along the applicant’s frontage on the grass berm. This causes issues for vehicles reversing out on to the road.
 - People walking around the rear of reversing vehicles;
 - Vehicles reversing into parked vehicles on the north side of Courtney Street;
 - Haphazard stopping/turning/parking in Courtney Street;
 - The designated car park not well used and remote from the site (hidden); and
 - Pedestrians not able to walk down Courtney Street (south side) without walking on the road.

Courtney Street East has the potential for future growth, ie zoned residential and therefore more traffic movements into this area will develop over time.

It is therefore apparent that the present car parking regime cannot continue and officers have had discussions with the applicant on those issues. Agreement has been reached with the applicants adviser and the following are suggested conditions of consent should the application be approved

1. A low profile barrier (design to be approved by the Transportation Engineer) shall be installed from the where the access enters the private/staff car park area to the east of the site. This face of the barrier is to be offset a min 7.5 metres from the existing kerb and channel on the north side of Courtney Street. Berm areas to be grass or low profile plants
2. A 1.4 metre wide Gravel/crushed shell footpath (timber edges both sides) be constructed along the applicant's frontage from High Street (Near the Pump station site) to the entrance (east side) in to the formal car park area. The footpath to be sympathetically constructed to retain the roadside trees.
3. The bamboo grove shall be removed to aid visibility from the Carpark area.
4. Upgraded signage directing customers to the designated car park.
5. Reconstruction of the designated car park (min 14 vehicles) so that it complies with parking and manouvreing in regard to the TRMP.
6. The above shall comply with the current Engineer standards and engineering plans shall be submitted for approval.

Provided all the above conditions are imposed on the resource consent we consider the traffic and safety effects to be less than minor.

Dugald Ley
Development Engineer