



## STAFF REPORT

**TO:** Environment & Planning Subcommittee  
**FROM:** Jane Harley, Consent Planner  
**REFERENCE:** RM100036  
**SUBJECT:** **SPRIG AND FERN QUEEN STREET LIMITED - REPORT REP10-08-03** - Report prepared for hearing of 16 August 2010

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### 1. SUMMARY OF PROPOSAL

The application is seeking land use consent to operate the Sprig & Fern Tavern at 126 Queen Street, Richmond, within a Commercial Zone under the Tasman Resource Management Plan (TRMP).

Resource consent is required for the following land use matters:

- a) To allow for a maximum occupancy of 80 people without providing the required number of on-site car parks. The shortfall of car parks is 13 parks between 4.00 pm and 7.30 pm, which reduces to a shortfall of nine parks after 7.30 pm.
- b) To waive the requirement to provide two disabled car parks, as only one disabled car park is proposed; and to allow staff to use the one disabled parking space unless a specific demand arises.
- c) The standard of car parking surface is proposed to be unsealed compacted aggregate, whereas the Tasman Resource Management Plan requires car parks to be formed and sealed within the Commercial Zone.

### 1.2 Background

The Tavern run by Sprig and Fern Queen Street Limited has been operated from 126 Queen Street since 2007. Prior to being The Sprig and Fern the tavern was known as Harringtons Bar. The tavern expanded into the adjoining (previously a hairdresser) portion of the building in early 2009. The expansion of the Sprig and Fern has included an outdoor Garden bar area to the rear of the building. Since this expansion there have been a number of issues that have lead to the current Resource Consent Application. Patron numbers stipulated through original Building Consent paperwork for the expansion (30) did not reflect those actual numbers that were being catered for onsite. The business could meet TRMP parking requirements if designed for a maximum of 30 patrons but when the revised patron numbers were set at 80 through fire-safety documentation in September 2009 it became evident that the site could not provide the required number of car parks and Resource Consent would be required.

The current application seeks approval for this maximum occupancy of 80 persons without providing the required number of parks for 80 persons (1 park for every 4 persons design capacity). There will be a shortfall of onsite carparks of 13 parks between 4.00 pm and 7.30 pm, which reduces to a shortfall of 9 parks after 7.30 pm.

### **1.3. Site Location**

The property is located at 126 Queen Street and is zoned Commercial.

The site adjoins land zoned Residential, and gains access off Queen Street which is classed as a Distributor Road in the TRMP Rooding Hierarchy. The Tavern is positioned between and fish and chip shop and a dairy. A map showing the location and zoning of the subject site is attached as **Appendix 1** of this report.

### **1.4. Legal Description and Plan Attributes**

The application site is legally described as Lot 1A Deeds Plan 134 held in Certificate of Title NL1A/751 comprising a total area of 1138 square metres.

### **1.5 Status of Application**

Zoning: Commercial  
Areas: Land Disturbance Area 1

The proposed activity breaches TRMP Permitted Rules:

- 16.2.3.1(d) (parking spaces of at least the number required in 16.2C);
- 16.2.3.1 (l) (one disabled park for multiple use in place of the required two for dedicated disabled use) and
- 16.2.3.1(n) (sealed and formed surface for the parking area)

When the application was lodged on 26 January 2010 it was deemed to be a Discretionary Activity in accordance with Section 87B of the Resource Management Act 1991 (through the absence of a of a classification under the TRMP) this classification means Council had not restricted its discretion to certain matters under the TRMP in assessing the application. Since the lodgement of the application the TRMP has been amended to include non provision of parking under the Restricted Discretionary classification (pursuant to 16.2.2.6) which would limit the matters of discretion. In accordance with Section 88A (2) of the Resource Management Act 1991, notwithstanding the discretionary status when lodged the restricted discretionary status when the application is considered must be had regard to.

## **2. SUBMISSIONS**

### **2.1 Notification**

Due to the level of uncertainty relating to the issues and their associated adverse effects for this application it was considered to require public notification. The application was notified on Saturday 8 May 2010 and submissions closed on Friday, 4 June 2010. A total of 46 submissions were received. Of those 13 are in opposition, and 31 are in support and there were two neutral submissions/unstated positions requiring conditions.

## 2.2 Comments on Submissions

Of the 46 submissions received, 13 submitters opposed the application based on past experience, and ongoing issues that have arisen from higher customer numbers, and the impact this has on the designated parking areas, Queen Street parking, and general noise and amenity issues in the area. The submitters stated as their main concerns parking and traffic issues, increased noise and nuisance behaviour from the increased customer numbers on residential amenity, their daily lives and privacy. The compromised standard of the onsite parking surface has been an issue due to the storm water problems it presents to adjoining sites, dust and degradation issues. Reducing the disabled parking provision to one was not so much an issue with submitters as the proposed shared use of the one disabled park by non-disabled persons and staff members.

The submissions in support came from submitters who valued the venue for its ambience and good management. A few submitters live in the vicinity and support the tavern as a positive addition to the residential community fostering community cohesion but the majority of submitters do not live in the direct neighbourhood of the Tavern. The main reasons stated for supporting the application were the perception that a large number of patrons walk to the venue, thus reducing demand for parking and the Tavern was considered as a valued community facility in this location.

There were two neutral submissions. The adjoining fish and chip shop owner is seeking the current parking problems (both onsite rear parking and in front short term public parking) to be resolved and another party seeking respect and retention of a disabled park for disabled use only.

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

## 2.3 Submissions

The following table outlines the submission received, reasons the submitter opposes or supports the application and whether the submitter wishes to be heard at the hearing or not.

### Submissions in Opposition (three wish to be heard)

Submitter (and number given when received)	Reasons	Heard?
2.  Colin Robinson  23 Talbot Street, Richmond	<ul style="list-style-type: none"><li>• Allowing non-disabled use of the disabled park will create confusion;</li><li>• Parks should be sealed without exception, especially given proximity of food preparation activities;</li><li>• TDC standard should be applied and upheld to avoid the shambles that exists</li></ul>	Yes
3.  John Barclay Anderson	<ul style="list-style-type: none"><li>• 80 persons capacity seems high for such a small area;</li><li>• Parking on surrounding streets is at a premium (esp thur/fri/sat nights) so I am opposed to any reduction in required parks and reduced standard of surface.</li></ul>	No

14 Hunter Avenue, Richmond		
4. M M Mead family Trust 56 Hunter Avenue, Richmond	<ul style="list-style-type: none"> <li>The arrival of the Sprig and Fern in this area has have a huge impact on our property with noise, congestion on footpath and road;</li> <li>It is very rare now to be able to park outside our home.</li> </ul>	No
5. Owen Leslie and Margarent Rose Amor 129A Queen Street, Richmond	<ul style="list-style-type: none"> <li>Concerned about inaccuracies in the application, numbers of available parks grossly over stated and walking survey doesn't illustrate whether patrons walked from a car or home, fish and chip shop closes at 8.00 pm not 7.30 pm;</li> <li>The Sprig and Fern restricts the enjoyment and use of our property due to increased traffic movement, noise and tavern patrons parking on Queen Street, with partial access obstruction.</li> </ul>	No
6. Sharon J Wilson 124A Queen Street, Richmond	<ul style="list-style-type: none"> <li>Unsealed surface creates dust and gravel splattered from vehicles onto my property;</li> <li>Parking over my driveway at Queen Street as the carparks fills;</li> <li>Noise is not under control, noise and conversations in the courtyard travel to neighbouring residential properties, I frequently ring and ask to turn down noise, not just on weekends;</li> <li>They are open well past 10.45pm.</li> </ul>	No
9. Shirley Georgina Parkes 128A Queen Street, Richmond	<ul style="list-style-type: none"> <li>Increased noise and smell/smoke in outdoor areas and engines revving up, car doors slamming in the carparks in the late hours, the carpark is behind my property (adjacent to main bedroom);</li> <li>No more than 50-60 patrons should be allowed and parking should be restricted during Tavern hours in Queen Street and George Street;</li> <li>Cars are left overnight in George St restricting access from my driveway;</li> <li>SW overflows from carpark into my property causing flooding, improved drainage and sump collection is required.</li> </ul>	Not stated
10. Leslie Howard Cook (Susan Kethleen Cook if Howards away) 9 Vahalla Lane, Richmond	<ul style="list-style-type: none"> <li>Concerned about the evidence, claims and favourable conclusions drawn by the applicant in the application, the data is considered minimal, flawed and invalid;</li> <li>The area has become intense with increased density of parking, the area is not well lit for pedestrian identification;</li> <li>TRMP parking requirements are reasonable;</li> <li>Parking congestion on surrounding streets inevitable if onsite park not full, not everyone will venture onsite to</li> </ul>	Yes

	<p>seek a park, submits that off street parking is inadequate from exiting patron numbers;</p> <ul style="list-style-type: none"> <li>Provides own survey of patron and parking numbers (see original submission documentation)</li> </ul>	
<p><b>11.</b></p> <p>Richard Harold and Ruth Katherine Wells</p> <p>71 hunter Avenue, Richmond</p>	<ul style="list-style-type: none"> <li>Do not support: <ul style="list-style-type: none"> <li>reduction in the number of carparking below those required;</li> <li>waiving requirements for disabled car parks</li> <li>reduced standard for carpark surface.</li> </ul> </li> </ul>	Not stated
<p><b>13.</b></p> <p>Simon Lindsay Horrocks</p> <p>12a Darcy Street, Richmond</p>	<ul style="list-style-type: none"> <li>I object to the virtual dismissal to provide a car park for people with disabilities;</li> <li>Reduction from two to one is forgivable but allowing the remaining park to be used by non-disabled is disrespectful as it could be required by disabled members of the community who wish to attend the sprig and fern.</li> </ul>	No
<p><b>14.</b></p> <p>Phillip De weck</p> <p>50 Ellis Street, Brightwater</p>	<ul style="list-style-type: none"> <li>The parking requirements should be upheld and met;</li> <li>The disabled park being available for staff is not realistic or acceptable;</li> <li>Car park should be formed and sealed.</li> </ul>	No
<p><b>35.</b></p> <p>Ajay and Dina Maisuria</p> <p>128 Queen Street, Richmond</p>	<ul style="list-style-type: none"> <li>Garden bar next to our children's bedrooms, language, noise and smoke an issue for us;</li> <li>Over parking by pub patrons in the short term parking affecting our business and the fish and chip business;</li> <li>Rear car parks ground level has been raised quite high without adequate storm water control. This creates big problems with water flowing onto our property and under our house and out over neighbours properties;</li> <li>Photographic evidence of parking issues attached to submission documents.</li> </ul>	Yes
<p><b>44.</b></p> <p>Peter Robert Ashton</p> <p>124 Queen Street C/- First National 186 Queen Street, Richmond</p>	<ul style="list-style-type: none"> <li>The applicant has failed to address existing disturbance to adjoining property (124 Queen St). Vehicle lights entering and exiting parks numbered 15 and 16 impact on lounge area of 124 Queen St. Appropriate fencing between the sites would help address the issue;</li> <li>The application proposes ineffective solutions that are likely to severely impact on current and future occupiers in terms of visual and noise disturbance and property value;</li> <li>The fish and chip have had to relocate their bins toward 124 Queen St which creates nuisance effects;</li> <li>The application used inadequately researched</li> </ul>	

	information and Traffic Design Groups survey is not considered to be valid or reliable, seasons and weather influences not accounted for.	
<b>45.</b> Merryl and Paul Newton  133 Queens Street, Richmond	<p>Parking problem most evident friday night and over weekend, patron will still favour parking out on Queen Street, cars can be left over night. Parking near driveways makes visibility nil and unsafe to exit our driveway Friday and Saturdays;</p> <p>Suggest the marking of parking bays and parking signage for 150m either side of the commercial zone, to be policed for 6mths until the community are educated on new layout;</p> <p>The business operates within the correct zone, because Council allowed this zoning we feel council need to take responsibly to solve the issue rather than make it difficult for a business that adds character to the community;</p>	Not stated

### Submissions in Support (four wish to be heard)

Submitter	Reasons	Heard?
<b>1.</b> Stephen Henry Johnsen  1 Hunter Avenue, Richmond	<ul style="list-style-type: none"> <li>• Support good local business;</li> <li>• Responsible operating structure at the Sprig and Fern;</li> <li>• Carpark is only busy Thurs/Fri and Sat nights</li> </ul>	No
<b>7.</b> Terry Michael Kroft  34 Selbourne Avenue, Richmond	<ul style="list-style-type: none"> <li>• Its widely known that in excess of 30% of patrons walk;</li> <li>• We should support neighbourhood establishments such as this.</li> </ul>	No
<b>8.</b> HN & DM Holmwood Family Trust  80 Patons Rock Road Takaka	<ul style="list-style-type: none"> <li>• Support whole application, no conditions</li> </ul>	No
<b>12.</b> Gleniss Sarah Kemp  131A Queen Street, Richmond	<ul style="list-style-type: none"> <li>• I support the Sprig and Fern and do not have any difficulties with parking</li> </ul>	No
<b>15.</b>	<ul style="list-style-type: none"> <li>• Absurd to turn away walking patrons based on parking ordinances;</li> </ul>	No

Howard Hill 465 Hill Street, Richmond	<ul style="list-style-type: none"> <li>• Considers there to be sufficient parking on Queen Street and peak times are considered to be 5 hours per week;</li> <li>• Would like to see adequate safety signage to protect pedestrians in front of parking area entrance.</li> </ul>	
<b>16.</b> Tony Coulthard 34 Churchill Avenue, Richmond	<ul style="list-style-type: none"> <li>• Council should encourage people to walk to the Tavern;</li> <li>• Patrons appear sociable and respectable and have not observed any bad behaviour;</li> <li>• Wish to see an increase in the capacity of the tavern.</li> </ul>	No
<b>17.</b> Mark Quinn Best Island	<ul style="list-style-type: none"> <li>• As a regular visitor to the tavern I haven't found parking an issue and I've never witnessed the disabled park being used.</li> </ul>	No
<b>18.</b> Daniel Satherley 23 Gilbert Street, Richmond	<ul style="list-style-type: none"> <li>• Support local business;</li> <li>• Advocate for taxi service to divert drunk drivers;</li> </ul>	No
<b>19.</b> Anthony Kevin Satherley 23 Gilbert Street, Richmond	<ul style="list-style-type: none"> <li>• Local bar important as its only 5 min walk;</li> <li>• No drink driving;</li> <li>• Good size with friendly and sensible patrons;</li> <li>• Drinkers being refused admission with there is plenty of parking;</li> </ul>	No
<b>20.</b> Stephen H Smith 31 Tollemache Street, Richmond	<ul style="list-style-type: none"> <li>• It appears TDC advocate drink driving by requiring more car parks;</li> <li>• Reduces car parks encourages walking;</li> <li>• Hardly seen the car park full;</li> <li>• Increase the 10min time limit out front to allow off license purchasing;</li> </ul>	No
<b>21.</b> Luke Alexander Higgins 130 Queen Street, Richmond	<ul style="list-style-type: none"> <li>• To allow for more people to be in pub and low the car parking space and noise does not effect me, as I live across the road form the Sprig and Fern</li> </ul>	Yes
<b>22.</b> Andrew John Muir PO Box 1116, Nelson	<ul style="list-style-type: none"> <li>• I am a regular patron and I observe that the internal space comfortably seat 40/42 patrons there is ample outdoor space;</li> <li>• A good number of patrons park elsewhere or walk;</li> <li>• Restricting numbers disadvantages owners and patrons;</li> <li>• Have never witnessed the disabled park being used;</li> </ul>	No

	<ul style="list-style-type: none"> <li>Unsealed parking area creates no unconvince to users.</li> </ul>	
<b>23.</b> Breanna Bellis 1 George Street, Richmond	<ul style="list-style-type: none"> <li>I live close to the Tavern and I frequent the premises, I don't find parking a problem or that the outside of my house is affected;</li> <li>Never experienced overcrowding at the pub;</li> </ul>	No
<b>24.</b> Aaron Cleary 1 George Street, Richmond	<ul style="list-style-type: none"> <li>We walk and have never driven and don't see the need to decline the application</li> </ul>	No
<b>25.</b> Tyrone Callaghan 36 Olympus Way, Richmond	<ul style="list-style-type: none"> <li>A lot of patrons walk, not all drive</li> </ul>	No
<b>26.</b> Katrina Friend	<ul style="list-style-type: none"> <li>Appears to be no problem with parking as a large majority of patrons walk</li> </ul>	No
<b>27.</b> Kevin William Fleming Flat 3 130 Queen Street Richmond	<ul style="list-style-type: none"> <li>As a patron of three years I have not seen a problem with parking</li> </ul>	No
<b>28.</b> Patrick and Lynda Smith 82 Williams Street, Richmond	<ul style="list-style-type: none"> <li>We walk to the tavern and have no use for a parking space; we are aware of many other people who also walk.</li> </ul>	No
<b>29.</b> Paul Desmond 27 St James Avenue, Richmond	<ul style="list-style-type: none"> <li>I frequent the bar four-five times a week and have not had a problem with parking</li> </ul>	No
<b>30.</b> Alistair Richard Mackintosh 413 Hill Street, Richmond	<ul style="list-style-type: none"> <li>I frequent the bar five-six times a week and I have seldom seen a problem with lack of parking. Then only when exceptionally busy.</li> </ul>	No
<b>31.</b>	<ul style="list-style-type: none"> <li>I am a regular patron of the bar and have seen no problem with parking as most patrons walk;</li> </ul>	No



Irwin Friend 365A Queen Street, Richmond		
<b>32.</b> Carrol Roberts 27 St James Avenue, Richmond	<ul style="list-style-type: none"> <li>I frequent the sprig and fern two-three times a week and on there are occasion that I drive I haven't had a problem getting a park.</li> </ul>	No
<b>33.</b> Geoffrey Sutton 44 Surrey Road, Richmond	<ul style="list-style-type: none"> <li>I am a regular customer in car and on foot and always sufficient parking;</li> <li>Good, friendly clean local bar that the Council should support.</li> </ul>	No
<b>34.</b> Roy Kenneth Milne 47 Marlborough Crescent, Richmond	<ul style="list-style-type: none"> <li>As a community public the public should be encouraged to walk;</li> <li>Even in height of summer dust has never been an issue;</li> <li>If another handicap space is necessary it should be provided at the front of the shops to provide access.</li> </ul>	No
<b>36.</b> David Barrett Sprig and Fern Brewery PO Box 3470 Richmond	<ul style="list-style-type: none"> <li>The proportion of those who walk appears to be around 1/3;</li> <li>Frustrating for the business to refuse entry to patrons while there are vacant parking spaces at the rear;</li> <li>I observed a near perfect respect for parking restrictions at the front of the Tavern;</li> </ul>	Yes
<b>37.</b> Helen Mary Petterson 26 Roughten Lane, Brightwater	<ul style="list-style-type: none"> <li>As a regular visitor to the pub I park either on George St or in the rear car park and have never found it hard to get a park even at peak times;</li> <li>I have only witnessed one S&amp;F patron use the front parking for off license pickup.</li> </ul>	No
<b>38.</b> Michael John Higgins 1/25 Roeske Street, Richmond	<ul style="list-style-type: none"> <li>I am a regular and have seen people turned away even though parking is available;</li> <li>Local people walk to the tavern or get dropped off to prevent risk of Drink Driving.</li> </ul>	No
<b>39.</b> Aaron Johnson 3 Oxford Street, Richmond	<ul style="list-style-type: none"> <li>Frequent visitor of two-three times a week, observed large proposition of patron walk or get dropped off;</li> <li>Have observed and been turned away myself although parks and tavern appear half full;</li> <li>Recommended condition for regular maintenance to ensure compacted aggregate surface is up to standard.</li> </ul>	Not Stated

<p><b>41.</b></p> <p>John Everett</p> <p>66 Main Road Hope, Hope</p>	<ul style="list-style-type: none"> <li>• I have been going to the pub for several years and normally walk, get a cab or the bus driven by the owner;</li> <li>• I have been turned away when there is still ample parking out the back.</li> </ul>	<p>No</p>
<p><b>42.</b></p> <p>Preston Matthew McIntyre</p> <p>8 Squire Way, Richmond</p>	<ul style="list-style-type: none"> <li>• I have been refused entry when the carpark is not full;</li> <li>• Because of the residential location area a high percentage of patrons walk;</li> <li>• The culture of people at the bar abides by the rules.</li> </ul>	<p>Yes</p>
<p><b>43.</b></p> <p>Melanie Kotuhi Cookson</p> <p>8 Squire Way, Richmond</p>	<ul style="list-style-type: none"> <li>• We purchased our home to be in easy walking distance to this group of shops/pub;</li> <li>• Pub plays important role in establishing a cohesive neighbourhood;</li> <li>• The businesses as a group provide mutual support and self sufficiency for the locals;</li> <li>• Shame to turn away locals.</li> </ul>	<p>Yes</p>

#### NEUTRAL SUBMISSIONS (one wishes to be heard)

Submitter (and corresponding number)	Reasons	Heard?
<p><b>40.</b></p> <p>Shane Nicholson Queen Street Fish Supply</p> <p>126 Queen Street, Nelson</p>	<ul style="list-style-type: none"> <li>• I have issues with accuracy of the detail in the application;</li> <li>• 10 minute parking is not observed;</li> <li>• The fish and chip shop parking is used by patrons of the pub at times which isn't fair on my staff, when asked to move they are not obliging;</li> <li>• I am agreeable to the applicant getting his consent as long as the current parking problems are resolved;</li> </ul> <p>Would like to see short term parking extended until 9pm as the current notices are being ignored.</p>	<p>Yes</p>
<p><b>46.</b></p> <p>Anna Louise Cole</p> <p>39 Lodder Lane, Riwaka</p>	<ul style="list-style-type: none"> <li>• Bylaw a disabled park is required, this should not be dismissed or used by non-disabled people, one should be provided at the front of the Tavern on Queen Street for all patrons of all businesses;</li> <li>• Impact this may have on a disabled person is underestimated by the applicant.</li> </ul>	<p>Not Stated</p>

### 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 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 Commercial 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 a consent authority—

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

#### 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. No written approvals were supplied as part of the application.

#### **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**

When the application was lodged on 26 January 2010 it was deemed to be a Discretionary Activity in accordance with Section 87B of the Resource Management Act 1991 (through the absence of a of a classification under the TRMP) this classification means Council had not restricted its discretion to certain matters under the TRMP in assessing the application. Since the lodgement of the application the TRMP has been amended to include non provision of parking under the Restricted Discretionary classification which would limit the matters of discretion. In accordance with Section 88A (2) of the Resource Management Act 1991, notwithstanding the discretionary status when lodged “the restricted discretionary status when the application is considered must be had regard to.”

Given the range of matters raised through submissions this part of the report discusses all relevant matters and issues to be considered in making a decision to refuse or grant consent and the imposition of any conditions.

#### **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 issues I consider relevant are as follows:

#### **The key issues are:**

- Amenity (site amenity and surrounding residential amenity)
- Noise and Nuisance
- Traffic and Parking (including parking area surface and stormwater)

## 5.1 Key Issue 1 - Amenity

### 5.1.1 Residential Amenity

A Key issue identified for this application is maintaining acceptable residential amenity in the surrounding neighbourhood. In this case, the issues relating to amenity include general disturbance and adverse effects from traffic and parking congestion as well as loss of general amenity values resulting from having the Sprig and Fern commercial activity operating at a capacity for 80 patrons with the current parking facilities in the neighbourhood. In terms of visual amenity, the property is largely unchanged as viewed from Queen Street and the large unsealed parking area is most visible from adjoining sites that overlook this part of the site rather than from the public road space. The residential amenity could be seen to be better preserved by retaining the existing unsealed surface rather than sealing it as such wide expanses of asphalt or concrete are not typically found in residential areas. The activity operates from within a commercial zone however being a relatively small area of spot zoning that directly adjoins residential zoning on all sides so some level of impact on the residential amenity is a likely consequence on any commercial activity in this location. It is evident that the successful integration of the commercial activity into the general neighbourhood is largely dependent on the careful management of the activity and operation at suitable occupancy level to ensure one activity does not adversely impact another.

### 5.1.2 Site Amenity

Amenity effects have also been identified on the adjoining business environment. The effects largely relate to the demand on the short term car park spaces during the tavern's peak hours, as well as conflict arising with the rear parking spaces marked for other business staff and customer use during the Taverns peak hours. The businesses have identified reoccurring issues for customers wanting to pop into the dairy or fish and chip shop who are unable to park in close proximity to the premises when the short term parking is not being policed or adhered to by the public, including Tavern Patrons.

The matter of the non compliance with short term parking bylaw is not a matter to be resolved under this resource consent, however it is acknowledged that there is a correlation between the subject application and provision of adequate onsite car parks and the successful function and respect of the Queen Street short term parking area for combined use by the customers for **all** the businesses in this location. Councils Transportation Manager, Gary Clark has addressed the short term parking matter through his report appended to this document (Appendix 3) and it is discussed further in Section 5.3 - Traffic and Parking below.

There have also been issues raised and complaints documented relating to the disorderly behaviour of Tavern patrons on the adjoining businesses and surrounding environment. There have been issues in relation to the behaviour of patrons associated with the Sprig and Fern Tavern with those issues reflecting on the conduct of the operators of the Tavern. It has been highlighted by Council Regulatory Co-ordinator, Graham Caradus that it is appropriate that those matters continue to be dealt with as part of the Liquor Licensing process, rather than be included as a resource consent issue, however as Regulatory Services have also been involved in investigating complaints relating to patrons of the Tavern urinating on neighbouring

properties, vomiting on neighbouring properties, abuse of residents, and offensive language being used in and near the Tavern and being audible in the general vicinity of the Tavern. All of those matters have a negative effect on the Tavern's neighbouring properties however these issues are not necessarily related to the lack of parking or increased patronage. To date the applicant has convinced Council's Liquor Licensing Inspectors that corrective action has been taken and that further formal action is unnecessary.

These issues do highlight the potential for Tavern activities to become an issue when located in such small spot zones that are surrounded by residential activities. It has been illustrated that a Tavern activity can, when operated at a reasonably small scale be a successful commercial activity, with acceptable effects in this location (as was evident with the scale of the Harrington's Bar and original Sprig and Fern prior to expansion into the adjoining shop). Achieving the appropriate scale (occupancy level) for the current Sprig and Fern will be fundamental in safeguarding both site and adjoining residential amenity in this location.

## **Objectives and Policies relevant to Amenity from the TRMP:**

### **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.

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, the residential and commercial amenity values need to be safeguarded from adverse environmental effects resulting from the Sprig and Fern Activity.

The relevant TRMP objectives and policies allow commercial activities to be assessed on their merits if not compliant with permitted activity standards of the zone. If the adverse environmental effects of amenity, noise, dust, odour and traffic related issues can be appropriately mitigated then the activities will not be contrary to the objectives and policies.

Small spot zones of Commercial activities are not common occurrences within the heart of Residential zones. There are some small remnant clusters of commercial activities that were originally created to provide convenience stores to serve the day to day needs of the public, before the days of large supermarket facilities. The successful integration of the commercial activities within these small clusters of commercial zones is largely dependent on factors such as the nature, scale and demand for the activities and how successfully they are managed and cooperate with one another. The subject site has hosted a range of commercial activities, from butcher shops to hairdressers in the past and the Tavern activity has also been operated successfully prior to the issues that are being discussed at present. In the opinion of the writer it is possible to achieve a compatible commercial environment in a location like 126 Queen Street that maintains the original intent of the spot zoning without generating adverse effects that can be suitably mitigated and managed. Council may determine that these spot zones should be further investigated and revised if activities such as bars and taverns are no longer within the original intentions for these zone and have a highly likelihood of generating greater cross boundary issues than other commercial activities. At this stage the tavern activity is permitted in this location, and it is the number of patrons compared to the number of available parks that generates the need for the consent. It is the opinion of the writer

that matters raised in submissions and complaint history are closely linked to times when the Tavern has exceeded its capacity. The size and nature of the site should be capable of absorbing the effects from patronage between the permitted level of 47 and the proposed level of 80 when managed appropriately.

Submitters opposing the application consider the scale of the operation has got to a level that is inappropriate in this location. The business is now larger in terms of both built environment (having taken over and opened out into the area previously used as the hair salon in January 2009) and numbers (having originally stated a maximum of 30 patrons in building consent documentation to now having a fire safety figure set at 80 patrons) with a history of receiving in excess of 100 patrons. The Tavern is bound by the operating hours prescribed in the Commercial Zone Rules (Rule 17.2.2.1 (e) 7.00 am -11.00 pm) and this application does not seek to extend the hours outside of this timeframe. These hours are set by the TRMP for commercial activities operating on sites adjacent to Residential Zones, in an attempt to reduce cross boundary issues between the two activities. The tavern activity is most active in the afternoon/evening hours which does provide for a certain amount of compatibility with the convenience store during day time hours however it has also been illustrated how the peak demand times for the Tavern have a detrimental impact on both the accessibility of the convenience store and fish and chip shop in the evening, therefore the activity has more instances of conflict with the adjoining businesses in the evenings.

The Residential zone is a sensitive receiving environment for evening activities involving large numbers of patrons visiting a site. 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 tavern is authorised to operate within the scope of the permitted hours of operation (7.00 am - 11.00 pm), the numbers of patrons generated by the tavern can get to a level that is out of scale with the surrounding residential environment which is predominantly used for residential activities.

Over the years, and as recently as 16 July 2010 Council have received a number of complaints relating to the Tavern, mainly with regard to parking issues and breaches of permitted noise levels. Graham Caradus has provided a list of the recent noise complaints as part of this report attached to this document (**Appendix 4**). It has been acknowledged by the Council, the applicant and the neighbouring residents that the Sprig and Fern Activity has operated in such a way and generated noise of a non-complying nature resulting in detrimental impact on the adjoining environment.

If an appropriate occupancy level can be determined and imposed as a condition of resource consent the applicant must then take responsibility for ensuring that this number is not exceeded. It appears that many of the past issues have been created by a lack of the applicants compliance with previously agreed occupancy figures, including interim occupancy figures (as per occupancy management plan dated



20/102009 attached as Figure 1). If the figure is exceeded and abused then we can expect nothing to change in terms of effects leading to complaints and ineffective utilisation of the parking resources.

In the opinion of the writer the appropriate amenity could be achieved on the site if an appropriate level of occupancy can be set by the committee and successfully managed by the applicant and his staff to ensure the effects generated by the tavern activity are maintained at an appropriate level for the site, the adjoining businesses, the available parking spaces and the surrounding residential properties. Setting this appropriate occupancy level is going to be a fundamental element in ensuring the ongoing success for the Sprig and Fern and its neighbours in this location.

## 5.2 Key Issue 2 - Noise and Odour

The consent relates to design capacity of the facility, which determines occupancy levels, occupancy (numbers of people) is one of the key factors that determines the level of noise and traffic issues generated by the activity therefore it is considered to be a relevant effect to assess for this application.

Council's Regulatory Services Co-ordinator, Graham Caradus has undertaken an initial assessment of the potential effects of noise level increases from continuation of the activity and higher customer numbers. A full copy of Mr Caradus report dated 29 June 2010 is appended to this report as **Appendix 4**.

Mr Caradus points out that the track record of this business as it relates to noise up until November 2009 has been less than satisfactory and the matters in which the applicant has generally caused problems in the past with noise relate to both the playing of music and the sound of voices coming from the premises, particularly the outdoor areas.

Mr Caradus notes that the following measures have been put in place by the applicant to mitigate the effects of noise:

- The use of a sign at the exit point to the outdoor garden bar area of the Tavern asking patrons to keep noise to a level appropriate for the residential area. (The door was noted to be failing to close properly at the time of a visit on 25 June 2010, but the fault had not previously been identified and an assurance that the problem would be fixed was given.)
- Signage in the outdoor covered area requesting that patrons do not generate excessive noise and control the use of offensive language.
- Requiring patrons to vacate the garden bar by 9pm.
- Limiting the type of music played at the Tavern to that which will generate a limited amount of noise.
- Limiting the number of occasions that noise generating activities are undertaken.

- Construction of a solid timber fence between the outdoor areas and some of the neighbouring properties, the effect of which may be to reduce transmission of noise.

The ways in which the applicant can meet the need to achieve the “best practicable options” to limit noise as imposed by s16 of the RMA can be through good conduct by patrons or construction of physical barriers, or a combination of both. The measures detailed above are a combination of both strategies of conduct and construction. There would be considerable advantage in specifying some of the “best practicable options” measures the applicant should fulfil as conditions of consent if it was granted.

### **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 is aware of past failure to comply with the noise requirements and it is not submitted that the applicant wishes to exceed the noise standards in the future. Several of the submitters opposing the application are concerned about increase in noise resulting from larger numbers of patrons. 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.

In the case of noise from customers on the premises, the residences surrounding the rear of the building, garden bar and parking area are considered to be the most affected.

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 appropriate that the activity limit the use of music and large functions during hours of high sensitivity and continues to apply the measures outlined earlier in this section of the report in an effort to permanently curtail the noise.

### **5.3 Key issue 3 - Traffic and Parking**

The fundamental trigger behind this activity requiring resource consent is directly linked to parking requirements, and parking surface treatment. However it is evident that the design capacity that sets these parking requirements can be directly linked to the earlier flow on matters of amenity, and noise which have formed a significant part of the consideration of this application. The car parking issues to date could have largely been linked to events generating excessive numbers and a tavern occupancy over and above the 80 persons applied for in this consent, however the assessment must be undertaken on the 80 persons applied for.

#### **Traffic Generation**

The TRMP specifies on-site car parking spaces for taverns to be one park per three persons design capacity which makes the Sprig and Fern with a set occupancy level (design capacity) of 80 require 27 onsite car parks to meet the permitted activity standards.

The traffic generated by the business has the opportunity to park onsite to the rear of the Tavern within one of 13 designated tavern car parks (13 excludes those shared with Fish and Chip shop and disabled park) or to park out on Queen Street. There is short term parking available to the front of the shops for up to 10 minute trips to any of the businesses. Off licence pickups from the tavern may warrant use of these parks but any customers coming to drink on the premises should not be using these short term parks. The application was accompanied by a traffic report that

determined approximately 29% of patrons walk to the Tavern as oppose to bringing a vehicle.

The nature of the activity is such that there are large fluctuations in patronage depending upon the time of the day and the day of the week. The fluctuations mean that on occasions the number of parking spaces provided onsite adequately cater for demand but at times of peak demand there is insufficient numbers of onsite parking spaces available. If no onsite parks are available then the patron vehicles will use the adjoining streets to park on, however it is noted that often patrons will favour the street as opposed to onsite parking simply for convenience. There are no legal requirements for any patron to use the onsite carpark, however improved signage by the consent holder and awareness of patrons would assist in promoting more consistent use of the onsite parking when spaces are available.

The applicants have provided survey data illustrating a reasonable number of patrons walk to the facility. The facility is considered to be positioned well to encourage the surrounding community to walk, which is accepted and encouraged. Variables such as weather, proximity to patrons work and home, days of the weeks will always change the numbers who walk and drive and any assessment of the activity and its traffic generation must look at worst case (raining day) scenarios etc.

The most evident effect from the site providing less than the required number of parks would be more on street parks being used out on Queen Street and surrounding streets by tavern patrons. This effect is one that has been noted by both submitters in opposition and in support and it is an effect that is accepted by Council Engineering Staff as being an acceptable effect (when cars are parked in a legal manner) as the local road environment is considered to have ample room and capacity to accommodate the overflow. Worst case scenario for 80 patrons has been calculated as 13 overflow cars in the general vicinity.

Councils Transportation Manager Gary Clark has provided the following comments in relation to the traffic and parking environment at 126 Queen Street (full copy of Gary Clark Traffic assessment is attached as **Appendix 3** of this report):

*“The shortfall in car parking based on the Tasman Resource Management Plan is around 13 spaces for 80 patrons being on site.*

*Accordingly taking this as the shortfall there could be around 13 vehicles parking on street in the vicinity of the tavern.*

*Due to the road widths available, residents having off street car parking and the general residential nature of the road network there are no safety or efficiency effects arising from the overflow.*

*Accordingly I am comfortable with the overflow parking occurring on street and that there are no adverse effects. I note that is provided that drivers park legally. A motorist must park at least one metre from any driveway.*

*Some of the submitters had concerns over motorist parking too close to their drive ways. I note that this could be any driver and not just those going to the tavern. To address this matter I have instructed our contractors to paint parking L bars at driveways to indicate to motorists where they can park legally. This should address this matter.*

*The short term parking outside the shops is available to anyone to park for ten minutes from 8.00 am to 6.00 pm. It is not reserved for any particular shop or user. Submissions have been received that the parking restriction should extend through to 9pm. I am happy for a traffic resolution to be prepared to restrict the P10 parking to match up with the shop opening hours. Accordingly I have arranged for the parking restrictions to be altered. This process will have to go to Council for their approval.*

*I have reviewed the information relating to traffic effects and I am of the view that any effects on the safety and efficiency of the road network can be managed within the current environment.”*

In addition to the matters discussed above there needs to be further consideration and discussion at the hearing to expand on the current management plan proposed by the applicant (attached as **Figure 1**) which sets out that only 80 patrons will be allowed at the facility at any one time, and others will be made to wait until the numbers reduce and they can be admitted into the building. This system maintains 80 patrons within the facility but potentially creates additional demand for parking while patrons wait for there to be room within the tavern. Whether this system can work effectively in practise is not clear as there could be a demand in excess of 80 patrons that continues to push the limits of what the site can cope with. If the business continues to grow in popularity and patronage then it could be more viable and practical for the business to move to larger premises where it can cater for the larger numbers and provide the required parking for the larger numbers.

#### **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 extract 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 existing parking environment has been reviewed by Councils Transportation Manager and is deemed suitable for the proposed patron numbers of 80 persons. The proposal has been calculated to generate a potential over flow of 13 cars within the street environment. There is evidence however that when these numbers exceed beyond the 80 patrons and a large proportion of this number drives then safety and efficiency of the parking and traffic environment can be compromised.

Council Transportation Manager, who is responsible for the safe and efficient use of the roading network has reviewed the application and the submissions received and supports the application at 80 patrons.

There were two key issues raised by submissions in relation to Queen Street parking environment which were:

1. compliance with the short term parking in front of the shops and;
2. safe parking by motorists either side of driveway entrances.

As any consent approval cannot contain conditions subject to further approvals/ processes, Council's Transportation Manger has already indicated that he is making advancements to improve these two issues through separate Council processes. Firstly the short term parking limits are proposed to be extended to 9.00 pm, which will assist in keeping the parks available during the fish and chip shop opening hours. To assist in ensuring safe parking practises along Queen Street in relation to property entrances Mr Clark has instructed Councils contractors to paint the parking limit lines which illustrate where cars must be positioned in relation to driveways (at least 1 metre back from the driveway). I would suggest that these parking limit lines be extending down Queen Street as far as Roeske Street to the west and Wilkes Street to the East to ensure safe parking practises for a distance of at least 100 metres in either direction. These actions, while outside of the application site and not only relevant to traffic generated by the proposed activity, will assist in maintaining more satisfactory environment for the businesses and their customers and those residents who have had issues with unsafe parking practises near their driveways.

## **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 Commercial Zone (although the current plan changes make it a restricted discretionary activity). 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 next to 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 submitters supporting the application and who largely reside elsewhere in the district. There are examples of nearby residents however who have not experienced adverse impact from the tavern activity and support its proposal for an occupancy of 80 patrons.

The writer is aware that the consent requirements are strictly parking and traffic related, and the current Tasman Resource Management Plan structure limits those matters for such an application to traffic and parking related matters. Based on solely traffic and parking matters the expert opinion from Council Transportation Manger is that the site and the surrounding environment can adequately cater for the proposed occupancy levels and the traffic it would generate. The amenity and nuisance issues that have arisen in the past can be directly linked to both excessive numbers (over and above the 80 proposed) and ineffective Management by staff of the patrons and noise generated by the activity. Any consent approval would need to be subject to effective conditions and it will become the consent holder's responsibility to meet these conditions, and Councils responsibly to monitor compliance with these conditions. Based on this it can be concluded that any approval stipulating a maximum number of patrons and maximum noise generation will be complied with to ensure the activity in not detrimental to the amenity in this location.

A reduced formation standard for the large onsite parking area can be appropriate in situations where the surface is adequately maintained to a high quality all weather standard (so as not to generate dust or potholes). There are matters of dust and

noise of cars on the gravel that have been raised, but if the area is maintained to a high standard of all weather surface the effects are considered by Council to be sufficiently reduced and manageable in this location. As highlighted by Mr Clark large open areas of sealed parks are not typical of the visual amenity that surrounds residential areas, therefore the reduced standard can be said to be more consistent with the location.

The disabled park is not only a Tasman Resource Management Plan matter but a Building Act requirement too, to allow the use of the car park by non-disabled members of the public is contrary to legislation and law outside of the Resource Management Act 1991 and therefore should not be approved under this consent process. A condition of any consent approval would be to maintain the disabled car park for the sole use of those disabled persons requiring it.

I have considered all the issues raised, but acknowledge that due to a recent plan change Councils discretion is now restricted to traffic and parking matters only, which we must have regard to in making a decision on the application. I have been advised by Council staff with expertise in Traffic and Regulatory matters and have determined that it would not be fair or reasonable to recommend decline of the application. However determining the appropriate level of occupancy is crucial to controlling the effects and the committee must determine a level of occupancy that minimises the adverse effects. This figure could be the 80 applied for or a lesser occupancy with a review clause in 12 months to assess the effects and appropriateness of the occupancy limitations.

## **7. SECTION 5 AND RECOMMENDATION**

The Act's purpose can be met by granting consent to the application.

In terms of Section 5 of the Act, I consider that a grant of consent in its current form *or with patron numbers between the permitted level of 42 and the proposal level of 80* will 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 **APPROVED**.

## **8. CONDITIONS, ADVICE NOTES, PLANS**

If the Committee accepts my recommendation, then any approval to the activity must provide sufficient conditions and advice notes. The following conditions and advice notes would need to be considered as part of any consent approval:

### **General**

1. The operation of the Sprig and Fern Tavern shall, unless otherwise provided for in the conditions of the consent, be undertaken in accordance with the documentation submitted with the application.



*Where there is any apparent conflict between the information provided with the application, further information and any condition of consent, the conditions shall prevail.*

### **Patron numbers**

2. The Sprig and Fern Tavern shall be occupied by no more than 80 patrons at any one time within the building and outdoor garden environments.

(Note: The Committee may decide on a lesser number at the hearing)

### **Occupancy Management**

3. The management of occupancy levels shall be maintained in accordance with the Occupancy Management Plan dated 20/10/2009 and attached to this consent as **Figure 1**.

### **Operating Hours**

4. The Sprig and Fern shall be limited to the operating hours of 7am and 11pm 7 days a week.

### **Noise**

5. Noise generated by the activity, measured at or within the boundary of a site within a Residential Zone does not exceed:

	<b>Day</b>	<b>Night</b>
Leq	55 dBA	40 dBA
Lmax		70 dBA

Note: Day = 7.00 am to 9.00 pm Monday to Friday inclusive and 7.00 am to 6.00 pm Saturday (but excluding public holidays).  
Night = All other times, plus public holidays.

Noise must be measured and assessed in accordance with the provisions of NZS 6801:2008 Measurement of Sound and NZS 6802:2008 Assessment of Environmental Sound.

The following measures shall also be implemented / maintained to assist in maintaining the required noise standard:

- a) The consent holder shall maintain the use of a sign at the exit point to the outdoor garden bar area of the Tavern asking patrons to keep noise to a level appropriate for the residential area, and control the use of offensive language;
- b) The consent holders shall maintain the closing function of the exit point door to the outdoor garden bar area to ensure indoor noise is appropriately sealed and contained within the building;

- (c) The consent holder shall require that patrons vacate the garden bar by 9.00 pm;
- (d) The consent holder shall limit the type of music played at the Tavern to that which generates a limited amount of noise;
- (e) The consent holder shall maintain a solid timber fence between the outdoor garden bar and the neighbouring properties to assist in reducing the transmission of noise.

### **Site Access**

- 6. The consent holder shall widen and form the end of the driveway vehicle crossing to 4.5 metres and provide a passing bay in accordance with the attached Plan labelled Plan 2 and dated 11 March 2010.

#### **Advice Note:**

Drainage of this area shall not be permitted to flow across the footpath

- 7. The consent holder shall upgrade the boundary fencing and improve the health and density of vegetation along the driveway adjoining 124 Queen Street. This work shall be undertaken to improve the amenity and provide more effective screening of the site as viewed from 124 Queen Street.

### **Onsite Parking**

- 8. The carpark spaces shall be clearly marked out on the ground in accordance with the attached Plan labelled Plan 1 and dated 11 March 2010.
  - (a) In accordance with the signed car parking agreement dated 31/07/2009 (attached to this consent and labelled **Figure 2**).

The Sprig and Fern activity shall have exclusive use to parks numbered 1-14 (inclusive). The use of the parks 15-18 shall be for the exclusive use of Queen Street Fish Supply between 4.00 pm - 7.30 pm seven days a week, outside these times the Sprig and Fern will have full use of the carpark for their staff and customers, but will ensure their customers and staff do not park in restricted areas.

- 9. The car parking areas shall be maintained at all times to a high quality compacted aggregate all weather surface that does not generate dust. Potholes regularly filled to avoid degradation.
- 10. Two cycle parks shall be provided by the applicant in accordance with the attached Plan labelled Plan 6 and dated 11 March 2010. The cycle parks must be maintained so as not to obstruct pedestrians and clear of the footpath area
- 11. Appropriate signage (clear and visible) shall be installed advising customers of the availability of carparking at the rear of the complex

12. The disabled park shall be maintained in accordance with the attached plan labelled Plan 1 and dated 11 March 2010. This park shall be kept clear and available at all times for use by disabled members of the public,

### **Stormwater**

13. Storm water control for the car park shall be upgraded in consultation with Tasman District Councils Engineering department to be directed into an approved system. The design shall include a dish drain of slip formed concrete, offset from the boundary 200mm and an area of at least 3.0m radius around the above sump shall be permanently surfaced as to mitigate gravels and grit from entering the Stormwater system

**Advice Note:** If the design for connecting into an existing stormwater drain involves crossing any adjoining properties then the process may require further consultation and easement resolution with other parties. The process may also require Building Consent.

### **Review**

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

### **ADVICE NOTES**

#### **Council Regulations**

1. This is not a building consent and the consent holder shall meet the requirements of Council with regard to all Building and Health Bylaws, Regulations and Acts.

#### **Other Proposed Tasman Resource Management Plan Provisions**

2. This resource consent only authorises the activity described above. Any matters or activities not referred to in this consent, or covered by the conditions must either:

1. comply with all the criteria of a relevant permitted activity rule in the Tasman Resource Management Plan (TRMP);
2. be allowed by the Resource Management Act; or
3. be authorised by a separate resource consent.

### **Consent Holder**

3. This consent is granted to the abovementioned Consent Holder but Section 134 of the Act states that such land use consents “attach to the land” and accordingly may be enjoyed by any subsequent owners and occupiers of the land. Therefore, any reference to “Consent Holder” in the conditions shall mean the current owners and occupiers of the subject land. Any new owners or occupiers should therefore familiarise themselves with the conditions of this consent, as there may be conditions that are required to be complied with on an ongoing basis.

### **Monitoring**

4. 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 Consent Holder. Costs are able to be minimised by consistently complying with conditions and thereby reducing the frequency of Council visits.

### **Interests Registered on Property Title**

5. The Consent Holder should note that this resource consent does not override any registered interest on the property title.

Jane Harley  
**Consents Planner, Land Use**

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## SATHERLEY BUSINESS SOLUTIONS

### Personalised Services

Tasman District Council  
189 Queen Street  
Richmond

20/10/2009

Sprig and Fern Tavern - Queen Street

Occupancy Management Plan

Consent process is underway to apply for maximum of 80 people at any one time on the Tavern premises.

Sprig and Fern Duty Managers - 3 in total, are responsible for monitoring numbers on busy occasions.

Historically busy times are Fridays between 4.30pm and 7.30pm alongwith Wednesday evenings with the odd Saturday when there have been some private functions.

During these times one staff member acts as a Monitoring Warden and once the agreed limit is reached " Full House " Signs go up at both entrances.

Once this action occurs doorpeople are stationed at each entrance and any further patrons refused entry. When existing patrons leave same number can enter if still waiting.

Monitoring Warden also regularly - every 15 minutes - checks both inside and outside areas for numbers and behaviour.



CHRIS SATHERLEY

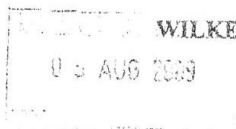
**Figure 2**  
**Car parking agreement between Wilkes Trusts Queen Street Partnership, Queen Street Fish Supply and Sprig and Fern.**

22/10/2009 11:08

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WILKES CONSTRUCTION

PAGE 01/01



WILKES TRUSTS' QUEEN STREET PARTNERSHIP

PO BOX 3223

RICHMOND

NELSON

Phone 03 544 6009

31<sup>st</sup> July 2009

Chris Satherley  
 3 Oxford Street  
 Richmond  
 NELSON 7050

Shane Nicholson  
 9 Greenwood Place  
 Richmond  
 NELSON 7050



RE: 126 QUEEN STREET - CARPARKING

We write to you regarding the car parking at the rear of our property at 126 Queen Street. We understand that over recent months, the issue of car parking has been raised between Queen Street Fish Supply and The Sprig & Fern.

As the owners of the property, we thought it best that we firstly set out to both tenants what their entitlements to the car parking spaces are, and try to make an agreement with both tenants to ensure everyone is happy and no-ones businesses suffer as a result.

In the first instance, we confirm that each tenancy has the facility to use 1/3<sup>rd</sup> of the rear parking space each. That being - Queen Street Fish Supply has the ability to use 1/3<sup>rd</sup> of the area, and the Sprig & Fern the other 2/3<sup>rd</sup>s.

Obviously as your businesses run over different time periods this can be altered as necessary.

We feel it would be fair that the parks are used as follows:

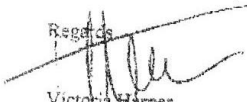
During the operational hours of Queen Street Fish Supply - they have exclusive access to four car parks - that being 1 directly behind their shop, and 3 on the driveway boundary beside. These parks are expected to be exclusively available to them seven days a week from 4.00pm to 7.30pm. This is considerably less than the lease provides for. The rubbish in that area has been removed, and we will place signage or markings of some sort to restrict others from parking there.

Outside of these times, Sprig & Fern can use the entire car park for their staff and customers, but will ensure their customers and staff do not park in the restricted areas.

We hope this is a good solution for all parties, and hope you are both in agreement.

If so, can you please sign below, otherwise we look forward to your feedback. We will return a copy of this document to all parties once it has been signed.

Regards

  
 Victoria Harper  
 WILKES TRUSTS' QUEEN STREET PARTNERSHIP

AGREED TENANCY AMENDMENT AS NOTED ABOVE:

Signed: 

For: Sprig & Fern

Date: 3/08/09



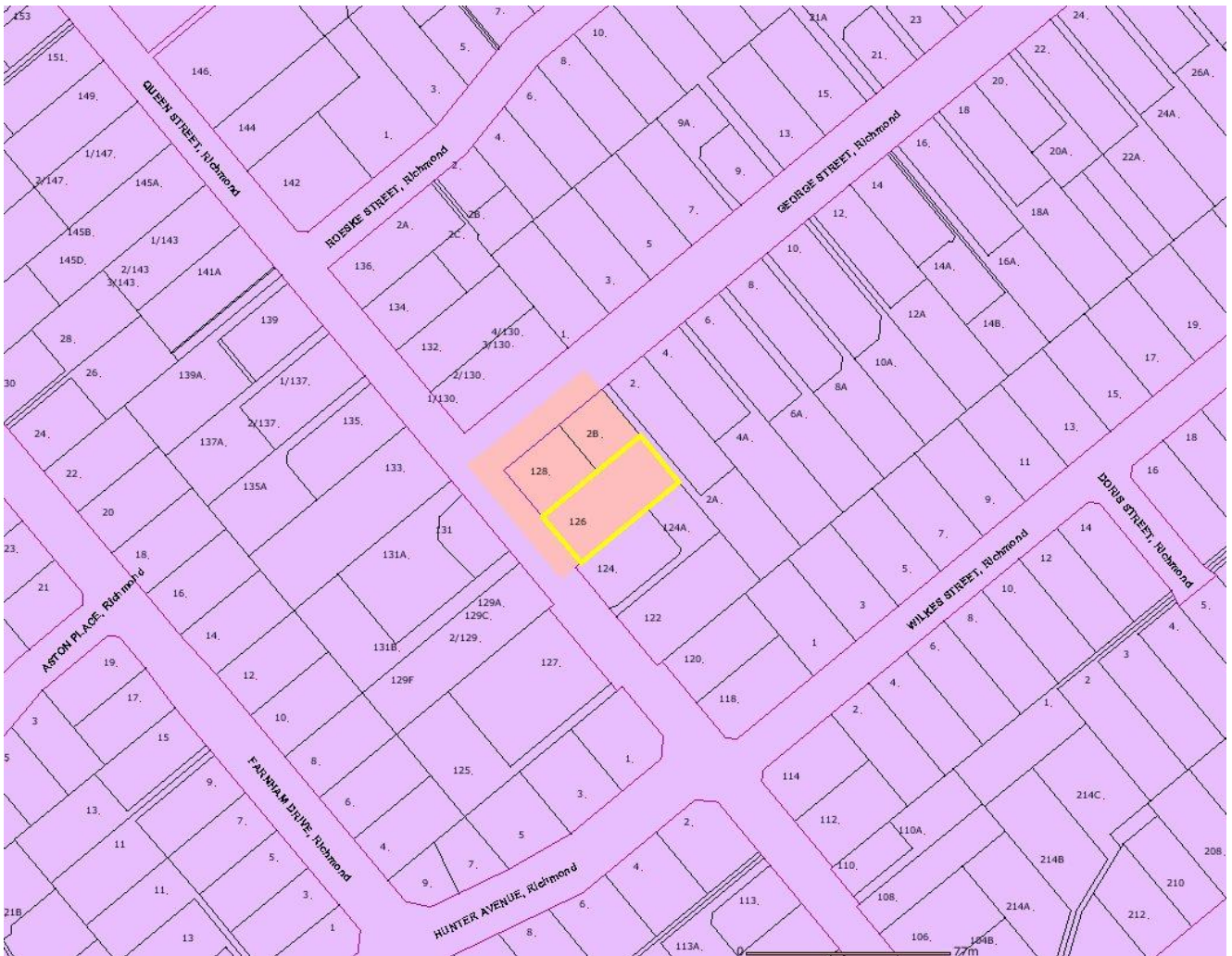
For: Queen Street Fish Supply

Date: 12/08/09

## **Appendices**

- 1. Zone Map**
- 2. Map showing submissions in immediate vicinity**
- 3. Tasman District Council Traffic Assessment by Gary Clark, Transportation Manager**
- 4. Graham Caradus, Regulatory Services Co-ordinator Memorandum**

**APPENDIX 1**  
**Zone Map - 126 Queen Street and surrounds**






KEY:  Commercial Zone  Residential Zone



APPENDIX 2  
Map showing submissions in immediate vicinity



Key :  Application Site  Opposing Submission  Supporting Submission

**Tasman District Council Traffic Assessment by Gary Clark, Transportation Manager****Traffic Assessment for Sprig and Fern - Queen Street****EXPERIENCE**

1. My name is Gary Paul Clark. I have a New Zealand Certificate in Engineering (Civil) and I am a Chartered Professional Engineer (Civil). I have passed the qualification standards for the Registered Engineers Associate Board requirements. I have post-graduate passes in Entr 602 Accident Prevention and Reduction, Entr 601 Traffic Engineering and Entr 606 Advanced Traffic Engineering. I am a Member of the Institute of Professional Engineers as well as a member of the IPENZ Transportation Group. In addition, I have completed the Making Good Decisions Course, operated by the Ministry for the Environment for Resource Management Act Decision Makers.
2. I am the Transportation Manager for Tasman District Council. As part of this role I am responsible for road, traffic and safety matters relating to the road network in this area.
3. I have worked in the road and traffic industry since 1982. The knowledge and experience gained over 28 years includes most road and traffic matters and in particular elements relating to planning, design and safety matters. This work has also included the preparation of strategy documents for various transportation areas, as well as providing technical advice on design elements for roading projects. I have developed roadside hazard ranking systems to identify and prioritise potential safety hazards. I have provided specialist skills in intersection design, modelling and funding evaluation for projects, town centre projects and urban design relating to the road environment. I have also carried out design work for intersections and in particular roundabouts.
4. Other expertise I have gained over the last 28 years includes car park design, preparing impact reports for small and large developments, and providing expert evidence to Consent Hearings and the Environment Court.

**INTRODUCTION**

5. I have reviewed the submissions and the applicant material and in particular the traffic report prepared for the development.
6. As noted in the various documents the Sprig and Fern occupies a site on the upper sections of Queen Street. It is located within a small neighbouring retail area with a corner store and fish and chip stop being adjacent to the site.
7. Some car parking is provided at the rear of the site with short term parking being available along the frontages of all the shops. There are currently 18 on site car parks of which one is set aside for the disabled, three for the fish and chip shop and the remainder for the Sprig and Fern.
8. The land use in the general area is residential with all the houses having at least two off street car parks. There are footpaths along both sides of the roads within the area and the roads are able to accommodate on street parking with no safety or capacity impacts.

9. The current environment already experiences the impacts of the local neighbourhood tavern and particularly on the busier nights such as Friday. The car parking demand cannot be accommodated on site with some overflow occurring on the neighbouring streets. This has been confirmed by my own observations.
10. I am also aware of some of the issues relating to the existing short term parking area with regard to taverns users overstaying in this area. An additional time restriction sign was installed and more enforcement of this space has addressed this issue during the times the time restriction applies.

## **TASMAN RESOURCE MANAGEMENT PLAN PROVISIONS**

### Parking

11. The Tasman Resource Management Plan requires car parking to be provided at the rate of one space per three persons as noted in Figure 16.2c. The design capacity of the tavern is 80 persons which would require an onsite parking provision of 27 spaces.
12. The parking area has 14 on site car parks available for its use. The assessment also assumes that the other on site spaces can be used by the tavern after the fish and chip shop closes.
13. The disabled space is available to both fish and chip shop patrons and users of the tavern.
14. With regard to the remaining three space set aside for the fish and chip shop, I am unclear of the legal arrangements to allow this parking to be used by tavern users. For example if the fish and chip shop decided to remain open longer then who would have use of these spaces. Accordingly for the purposes of my assessment I have excluded these from my analysis.
15. Therefore I have assumed that the tavern has unrestricted access to 14 car parks on site. This results in a shortfall of 13 spaces (27-14) as required by the Tasman Resource Management Plan for 80 patrons.
16. This will result in up to 13 vehicles parking on street based on the expectations of the Tasman Resource Management Plan.

### Loading

17. The loading provisions of the district plan are covered in Section 16.2.3.1(i) which requires a loading area of not less than 6 metre x 3.5 metres x 2.6 metres (high).
18. No identified loading areas are provided as part of the proposal.

### Other Matters

19. The other matters relating to traffic and the Tasman Resource Management Plan requirements are either retaining the existing use or comply. The matters include vehicle access and on site manoeuvring.

## **APPLICANT'S TRAFFIC ASSESSMENT (PREPARED BY TRAFFIC DESIGN GROUP)**

20. The assessment prepared by Traffic Design dated 16 April 2010 includes an a parking survey, analysis of the data and an assessment of the traffic matters relating to the development. I have reviewed this assessment.

### Parking Demand

21. The parking survey was carried out of Friday and showed 79 people visited the site. Of the 70 people who visited the site 35 walked and 44 drove.
22. The analysis of the parking data has been carried out and compared the parking demands against the provisions of the Tasman Resource Management Plan. Some further survey information from elsewhere in the country has been used for the parking demand analysis.
23. The assessment by the consultant uses this research to justify the low parking demands and therefore on site provisions as required by the Tasman Resource Management Plan. Their analysis is unfortunately based on 18 spaces being available which may not be the case. Furthermore their parking surveys were completed before the 7.30pm closing of the fish and chip shop so the actual influence of these three additional spaces cannot be confirmed.
24. This point is reinforced by the data above showing around 56% of the patrons drove to the tavern. I note that the Tasman Resource Management Plan requires a parking provision on site of one space for three patrons. The measured demand was recorded as around one space for every two patrons. I note that this data did not provide information relating to car occupancy. This information would be useful and should be provided at the hearing.
25. More importantly, the effects of not providing sufficient on street car parking must be considered. As I have noted above the shortfall in car parking based on the Tasman Resource Management Plan is around 13 spaces for 80 patrons being on site.
26. Accordingly taking this as the shortfall there could be around 13 vehicles parking on street in the vicinity of the tavern.
27. I have considered the surrounding road network with regard to this potential parking overflow. It is my view that this can be accommodated within the surrounding road network with no adverse effects.
28. Due to the road widths available, residents having off street car parking and the general residential nature of the road network there are no safety or efficiency effects arising from the overflow.
29. It can equally be argued that having some parking on street provides a road environment that is more in keeping with the residential nature.

### Loading

30. I have reviewed the loading requirements and agree with the assessment made by the applicant's traffic consultant. The loading requirements of the site are likely to occur outside peak times and can be accommodated on site.

## **SUBMISSIONS**

31. A number of submissions have been received both in support and in opposition. The general tenure of the submissions relates to the following:-

- Lack of onsite parking
- Use of the short term parking outside the shops
- Current time restrictions
- Parking over driveways

These matters are discussed below.

32. The matters relating to the lack of on site parking is addressed above in my assessment. I accept that there is a shortfall of car parking. The provision of car parking must be balanced against the surrounding road network to accommodate the over flow of parking safely efficiently with the need to ensure that large areas of unused parking are not formed. The formation of large car parks in residential areas has an adverse effect with regard to the residential character of the area.

33. Accordingly I am comfortable with the overflow parking occurring on street and that there are no adverse effects. I note that is provided that drivers park legally. A motorist must park at least one metre from any driveway.

34. Some of the submitters had concerns over motorist parking too close the drive way. I note that this could be any driver and not just those going to the tavern. To address this matter I have instructed our contractors to paint parking L bars at driveways to indication to motorists where then can park legally. This should address this matter.

35. The short term parking outside the shops is available to anyone to park for ten minutes from 8am to 6pm. It is not reserved for any particular shop or user. Submissions have been received that the parking restriction should extend through to 9pm. I am happy for a traffic resolution to be prepared to restrict the P10 parking to match up with the shop opening hours. Accordingly I have arranged for the parking restrictions to be altered. This process will have to go to Council for their approval.

## **CONCLUSION**

36. I have reviewed the information relating to traffic effects and I am of the view that any effects on the safety and efficiency of the road network can be managed within the current environment.

37. Accordingly I can support the application.

MEMORANDUM



Environment & Planning Department

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**TO:** Jane Harley  
**FROM:** Graham Caradus  
**DATE:** 29 June 2010  
**FILE NO:** File No. RM 100036  
**SUBJECT:** **Resource Consent Application: Land Use: Sprig and Fern Tavern, to allow occupancy of 80 persons and reduction in disabled car parking space and not seal the car park.**

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The Assessment of Environmental Effects submitted in conjunction with the application is silent on the matter on noise, other than to comment generally on “other effects”. Under that heading, the view expressed is that approvals will be sought from affected persons. Given the history of complaint, the lack of relevant comment is considered grossly inadequate. Other matters that appear relevant that have not received specific comment in the Assessment of Environmental Effects are potential for dust to be generated in the unsealed car park and potential for discharge of storm-water off the car park area on to those properties to the north.

Comments on issues the Regulatory Services group is involved with are made as follows:-

**14. Noise**

Council has been involved with complaints about noise from nearby residents. Those complaints culminated in the service of an abatement notice under section 322 of the Resource Management Act 1991 (RMA) being issued on 28 August 2009. A hardcopy of the electronic record of that abatement notice is attached as “Attachment 1” as it contains relevant history.

Since the service of that abatement notice, four complaints about noise from the Sprig and Fern Tavern have been received as shown in the following table:

Date of Complaint	Time of Complaint	Time investigated	Nature of Complaint	Outcome reported by noise control contractor
1/11/2009	20:05	20:13hrs	Loud music	No excessive noise
10/11/2009	17:20	18:02hrs	Loud music	No excessive noise
18/11/2009	21:00	21:36hrs	Loud music	Noise excessive: oral excessive noise direction
20/11/2009	18:57	19:02hrs	Excessive noise from Garden Bar	Noise excessive: oral excessive noise direction
25/02/2010	21:40hrs	21:53hrs	Music and partying noise	No excessive noise

I make the observation that if the after-hours noise control staff contracted to Tasman District Council had followed procedures that seizure of the amplifiers or associated equipment should have occurred on 18 November 2009, when after receiving a complaint about excessive noise, investigation revealed that the noise was excessive. That failure is regretted.

Sound level monitoring was also undertaken by the writer on 30 October 2009. A copy of that monitoring report is appended to this report and labelled "Attachment 2". That report established that at the measurement position in the back yard of the adjacent property, that there was a small margin between the performance standard of L<sub>10</sub> 50dBA (Tasman Resource Management Plan noise performance standard for commercially zoned land of L<sub>10</sub> 55dBA with 5dB penalty applied for special audible characteristics as per clause 4.3 and 4.4 of NZS6802:1991 *Assessment of Environmental Sound*) and the measured levels of L<sub>10</sub> 46dBA and L<sub>10</sub> 47dBA.

Whilst the levels recorded on that occasion were compliant, the fact that the measurement point was some distance from the boundary nearest the garden bar of the Tavern needs to be taken into account. There is no doubt that had the measurement position been on the boundary immediately adjacent to the garden bar, that the sound level would have been significantly higher and non-compliant. By calculation, quartering the distance between the measurement point and the noise source would result in L<sub>10</sub> levels of 57 dBA and 58 dBA. That level is considered likely for a measurement point immediately on the boundary. It is similarly likely that the L<sub>max</sub> compliance level of 70 dBA would have been exceeded during the second measurement recorded, had that level been applicable, as would have been the case had the same measurements been recorded either half an hour after the time of those measurements, or at the same time on the following night, which was a Saturday.

At the time the above measurements were made, the ability to make a measurement right on the boundary was not available, however that issue has now been overcome and in future compliance checks will be made at that more restrictive location. The need for further monitoring to be undertaken is typically established by complaints being received by Council.

Of concern also has been the offensive language that has emanated from the premises. Whilst this is technically "noise", it is more correctly dealt with in the section 3 of this report.

In summary, there is evidence that shows that the track record of this business as it relates to noise up until November 2009 has been less than satisfactory.

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

### 1.1 Specific Noise Performance Standards

The first obligation would be to meet the specific standard prescribed in the TRMP for noise in the Commercial Zone. This establishes a “Day” and “Night”  $L_{10}$  and  $L_{max}$  level at the notional boundary to any dwelling. Note that the current compliance level is expressed as  $L_{eq}$  and references the 2008 version of NZS6801 and NZS6802, but that at the time the business was established, that the performance standard was expressed as  $L_{10}$  and the 1991 version of NZS6801 and NZS6802 referenced. The relevant performance standard is therefore the former standard. However, should consent conditions be used to set a noise performance standard for the activity, conformance with the current TRMP rule (commercial and residential zones as necessary) would be appropriate.

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 commercial zone noise standard by virtue of the intended operation on Sundays and some public holidays and also after 9pm Monday to Friday, and after 6pm on Saturday. The special audible characteristics (identifiable tonal components etc) are likely to be applicable due to either music or voices being the main source of intrusive noise escaping from the premises. If those noises are audible at the boundary of the neighbouring commercial property, or nearby residential properties, 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 for commercially zoned sites by the TRMP are:

	<b>Day</b>	<b>Night</b>
$L_{10}$	55 dBA	55 dBA
$L_{max}$		70 dBA

The noise levels imposed by the TRMP adjusted for special tonal characteristics are:

	<b>Day</b>	<b>Night</b>
$L_{10}$	50 dBA	50 dBA
$L_{max}$		70 dBA

For the residential sites near the Tavern the (unadjusted) noise levels imposed for commercially zoned sites by the TRMP are:

	<b>Day</b>	<b>Night</b>
$L_{10}$	55 dBA	40 dBA
$L_{max}$		70 dBA

The noise levels imposed by the TRMP adjusted for special tonal characteristics are:

	<b>Day</b>	<b>Night</b>
$L_{10}$	50 dBA	35 dBA
$L_{max}$		70 dBA



## 1.2 General Limitations for Emission of Noise

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.

## 1.3 Excessive Noise

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.*

## 1.4 Limiting Noise

The matters in which the applicant has generally caused problems in the past with noise relate to both the playing of music and the sound of voices coming from the premises, particularly the outdoor areas. Some measures have been put in place to mitigate the effects of noise. These are:

- a. The use of a sign at the exit point to the out door garden bar area of the Tavern asking patrons to keep noise to a level appropriate for the residential area. (The door was noted to be failing to close properly at the time of a visit on 25 June 2010, but the fault had not previously been identified and an assurance that the problem would be fixed was given.)
- b. Signage in the outdoor covered area requesting that patrons do not generate excessive noise and control the use of offensive language.
- c. Requiring patrons to vacate the garden bar by 9pm.

- d. Limiting the type of music played at the Tavern to that which will generate a limited amount of noise.
- e. Limiting the number of occasions that noise generating activities are undertaken.
- f. Construction of a solid timber fence between the outdoor areas and some of the neighbouring properties, the effect of which may be to reduce transmission of noise.

## **1.5 Best Practicable Options**

The ways in which the applicant can meet the need to achieve the “best practicable options” to limit noise as imposed by s16 of the RMA can be through conduct or construction of physical barriers, or a combination of both. The measures detailed above are a combination of both strategies of conduct and construction. There would be considerable advantage in specifying some of the “best practicable options” measures the applicant should fulfil as conditions of consent if it was granted.

## **1.6 Parking**

The Regulatory Services section for which the writer is responsible carries out administrative functions related to those staff contracted to Council who fulfil obligations in relation to stationary vehicle offences, that is, parking offences. There has been considerable involvement with the area near the Sprig and Fern Tavern, with numerous complaints having been received from the other two businesses that operate adjacent to the applicant’s business. Infringement fines have been issued for exceeding the 10 minute parking restriction as a consequence of investigations following complaint. The matter of parking spaces to be provided by the applicant to satisfy resource planning obligations, and storm water drainage from the current car park are not discussed in this report, those matters most appropriately resting with other Council staff. However, the issue of the car park surface material is something appropriately commented on from an environmental health perspective.

The current unsealed surface has been seen on a number of occasions as a consequence of visits made to the Tavern and to the neighbouring premises. Observations made have been that the surface has appeared most recently to be well graded, but that on other occasions it has appeared to be in a deteriorated state with an uneven potholed surface. If the surface remains unsealed, there is an increased likelihood of the surface deteriorating. An unsealed surface will also generate more noise from the passage of tyres rolling over it compared with a sealed and swept surface. The generation of dust is a much greater likelihood from an unsealed surface than a well maintained sealed surface. Such dust may have the effect of causing annoyance to neighbours as well as presenting a barrier to those of the Tavern’s patrons who would choose to avoid an unsealed surface to reduce the subsequent need to clean their cars. See the photograph below which shows the mud adhering to the mud flap on a vehicle driven on to the car parking area during light rain. The same component from the car-park surface could be expected to generate dust when dry.



## 1.7 Conduct of Premises Licensed for Sale of Liquor

There have been issues in relation to the behaviour of patrons associated with the Sprig and Fern Tavern with those issues reflecting on the conduct of the operators of the Tavern. Councils Liquor Licensing staff (of which the writer is one of three) have been involved and it is appropriate that those matters continue to be dealt with as part of the Liquor Licensing process, rather than be included as a resource consent issue. The consequence of further liquor licensing issues coming to Council's attention could result in the suitability of the licensee being formally questioned, and as a consequence for liquor licensing staff to seek cancellation of the on licence or to oppose the renewal of the licence based on the unsuitability of the licensee to hold a liquor licence. Sections 13(a) and 22(a) and 22(c) of the Sale of Liquor Act 1989 are all relevant. In either case, such application by Council Liquor Licensing Inspectors would result in a hearing before the Liquor Licensing Authority, and a decision being handed down by that authority.

However, it is appropriate to note that the issues that have been investigated have related to patrons of the Tavern urinating on neighbouring properties, vomiting on neighbouring properties, abuse of residents, and offensive language being used in and near the Tavern and being audible in the general vicinity of the Tavern. All of those matters have a negative effect on the Tavern's neighbouring properties. To date the applicant has convinced Council's Liquor Licensing Inspectors that corrective action has been taken and that further more formal action is unnecessary.

Graham Caradus  
**Regulatory Services Co-ordinator**

**ABATEMENT NOTICE UNDER SECTION 322  
OF THE RESOURCE MANAGEMENT ACT 1991**

To: Sprig & Fern Queen Street Limited  
126B Queen Street  
Richmond

**1. Location in respect of which abatement notice applies**

Part of 126 Queen Street, Richmond, and having a legal description of Pt Lot 1A Deeds Plan 134 Nelson Land Registration District, and a certificate of title NL1A/751, containing 0.1083 hectares. Specifically, the premises and car parking area utilised by the Tavern business at 126B Queen Street Richmond, known as Sprig & Fern Queen Street and the car parking area associated with that premises on the private land at 126 Queen Street.

**2. The reasons for the notice are**

You are in breach of Section 16(1) of the Resource Management Act 1991 in that the emission of noise from your premises from time to time exceeds a reasonable level and is adversely affecting neighbouring residents and so liable to service of an Abatement Notice under Section 322(1)(c)(i) of this Act. Council records show that the history of noise complaints is not limited to, but includes:-

- (i). Advising that noise was a nuisance and disturbance to nearby residents in a meeting with premises Manager Chris Satherley and bar manager Hanan Satherley at 2.30 pm on 16 February 2009.
- (ii). A letter to Sprig & Fern Queen Street Limited written on 23 June 2009 confirmed a meeting with Chris Satherley in which "Noise from patrons in the outside area of your premises continues to be an issue."
- (iii). A warning was given about excessive noise to the manager of the premises between 10.21 pm and 10.28 pm by Council's after hours noise control contractor on 15 August 2009.
- (iv). As a consequence of complaints relating to poor conduct of patrons of the premises, a meeting was held with premises manager Chris Satherley, Council staff and the Police Alcohol Harm Reduction Officer shortly after 1.00 pm on 24 August 2009. At that meeting the issue of the excessive noise complaint on 15 August 2009 was discussed and Mr Satherley admitted that a door immediately adjacent to the stage where the band was playing had been left open despite his instructions to staff to the contrary. The consequences of further justified noise complaints which included the issue of an abatement notice and possible infringement fines of \$750 was discussed with Mr Satherley.
- (v). At 9.44 pm on 26 August 2008, Council's after hour noise control contractor responded to a complaint of excessive noise and found on arrival at the premises found that the complaint was in his opinion justified on the basis of a

subjective assessment, and concluded that the noise from the premises was excessive. The noise was noted to be from a band. A warning was given.

**3. The actions required to be taken are:**

To adopt the best practicable option of ensuring that the emission of noise from within the property occupied by the Sprig and Fern Queen Street Limited, including such parts of the car parking area associated with the operation of that business, does not exceed a reasonable level.

**Note:** in assessing that noise from the premises does not exceed a reasonable level, Council Officers or contractors employed by Council may undertake subjective assessments of noise or may undertake sound level measurements and assess such measurements against the performance standards for noise set out in the relevant zone rules contained in the Tasman Resource Management Plan.

**4. The date and time on or before which that action must be taken or must cease is:**

12.00 noon, Saturday, 29 August 2009.

**5. The further conditions imposed by this notice are:**

Nil

**6. You have the right of appeal to the Environment Court against the whole or any part of this notice by lodging a notice of appeal with the Court in Wellington, in accordance with Section 325 of the Resource Management Act 1991, within 15 working days of the date of service of this abatement notice on you.**

**7. The name of the enforcement officer serving this notice is:**

David Graham Caradus

**8. The authority under which the enforcement officer is acting is:**

Section 322(1)(c)(i) of the Resource Management Act 1991 and a warrant of authority pursuant to Section 38 of the Resource Management Act 1991 issued by Tasman District Council.

**9. The name and address of the local authority whose enforcement officer served this notice is:**

Tasman District Council, Private Bag 4, 189 Queen Street, Richmond

**10. Note: If you do not comply with this notice, you may be liable to prosecution or infringement fee under Section 338 of the Resource Management Act 1991. If you appeal the abatement notice you may also apply to an Environment Judge for a stay of this notice pending the Environment Court's decision on the appeal. An appeal against this abatement notice does not operate as a stay of the notice unless a stay is granted by an Environment Judge under Section 325(3D) of the Resource Management Act 1991. An application for a stay must be in the prescribed form and must:**

- (a) state the reasons why you consider it is unreasonable for you to comply with the abatement notice; and
- (b) state the likely effect on the environment if the stay is granted; and
- (c) be lodged with the Environment Court and served immediately on the Tasman District Council.

11. **Additional actions that may be undertaken by Council:**

You are advised that Council may choose to give effect to action pursuant to the provisions of Section 323(2) of the Resource Management Act 1991. Those provisions allow for action to be undertaken by an enforcement officer if you fail to comply with the requirements of this abatement notice. The actions specified that may be undertaken by an enforcement officer are to, without further notice, enter the place where the noise source is situated, and -

- (a) Take all such reasonable steps considered necessary to cause the noise to be reduced to a reasonable level; and
- (b) When accompanied by a constable, seize and impound the noise source.

\_\_\_\_\_ **Signature of Enforcement Officer**

\_\_\_\_\_ **Date**

File Note ON0125

Sprig and Fern Queen Street Richmond. 30 October 2009

## 1. Background

Noise monitoring was undertaken in the adjacent commercially zoned property between 8.14 pm and 8.47 pm on Friday, 30 October 2009. The photograph below shows the sound level meter microphone set up on a tripod prior to measurements beginning.



## 2. Sound Level Assessment

Location of measurement: Backyard of dairy on the corner of Queen Street and George Street

Weather Conditions: Fine and high overcast. Near calm.

Time of measurements: 8.14pm to 8.47pm Friday 30 October 2009

### Equipment used

Meter used: Rion NL-18 Precision Integrating Sound Level Meter (SLM), serial number 00360034.

Calibration due date: 8 April 2011 (last completed by ECS Ltd)

Acoustic Calibrator: Bruel & Kjaer type 4230, serial number 1206832.

Calibration due date: 9 April 2010 (last completed by ECS Ltd).

SLM operator: Graham Caradus

A microphone wind screen was used for the duration of the survey for each environmental measurement. For each result recorded, the SLM microphone was set up on an extension lead and positioned on a tripod at about 1.5 metres above ground. The SLM was initially calibrated with the microphone extension lead in the circuit, and not shut down until re-calibrated at the end of the sequence of measurements. Calibration level limits were within 0.5 of 93.8 dBC and therefore within the required tolerance.

Results:

Measurement number	Measurement time min:	Start time	Finish time	L <sub>eq</sub> in dBA	L <sub>max</sub> in dBA	L <sub>min</sub> in dBA	L <sub>10</sub> in dBA	L <sub>95</sub> in dBA	Comments include apparent noise source
0		20.14							Calibrate 93.9 dBC (start)
1	10:00	20.19	20.30	43	57	34	46	37	Chatter from customers and vehicles in car park. Vehicles passing on the road filtered from measurement.
2	10:00	20.31	20.46	44	63	34	47	37	As above. Shouted conversations & whistles between persons in car park and persons on premises. Argument/altercation re parking between "Milesie" and other unknown person re parking of 17 year old girl.
3		20.47							Calibrate 93.8 dBC (end)

The level of noise was most intrusive at the measurement site, but the TRMP levels were not breached. The raised voices, whistling and shouting would be a breach of s16 RMA and would therefore breach the abatement notice.

Of greater significance than the level of sound was the remarkably poor language involved with patrons appearing to get several "f's" per sentence as part of the conversations that were clearly audible. Those conversations would have been clearly audible in the car park (a public place) and also very likely on parts of the street. There appeared to be no control of this unacceptable behaviour by the management of the premises. The altercation in the car park appears further evidence of a lack of control by the premises management.