



9 May 2005

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RC 4338

**THE CHAIRPERSON AND MEMBERS OF THE REGULATORY  
COMMITTEE**

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**REPORT ON A SECTION 127 APPLICATION TO CHANGE CONDITIONS  
(1), (13) AND (16) OF RESOURCE CONSENT RC4338 'TO USE PREMISES  
FOR SOCIAL FUNCTIONS AND A CONFERENCE CENTRE'**

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<b>APPLICANT</b>	Chris Edmeades and Geoff Orchard (The Olde Creamery)
<b>PROPERTY ADDRESS</b>	317 Kaipaki Road, Kaipaki
<b>LEGAL DESCRIPTION</b>	Part Allotment 317 Te Rapa Parish (SO 379/1)
<b>SITE AREA</b>	1.1887ha
<b>ZONING - DISTRICT PLAN</b>	Rural
<b>PROPOSAL</b>	To vary conditions (1), (13) and (16) of resource consent RC4338 (consent to operate a venue for meetings and social functions)

## **1 PURPOSES OF REPORT**

- 1.1 The purposes of this report are to assist the Regulatory Committee in coming to a decision on the application by:
- ◆ Outlining any further information or clarification that has been obtained so that all parties have a clear understanding of the proposal;
  - ◆ Outlining the statutory framework of the Resource Management Act 1991 (RMA) and the policy framework of the Waipa District Plan under which a decision is to be made;
  - ◆ Independently “auditing” the reports submitted by the applicant in support of the application to identify any deficiencies or areas where different interpretations should be applied;
  - ◆ Identifying key issues that need to be considered by the Committee;
  - ◆ Commenting on points raised in submissions; and
  - ◆ Making a recommendation to the Committee for their guidance.
- 1.2 The report has been prepared with specialist input from Council’s Development Engineer.

## **2 INTRODUCTION**

- 2.1 An application was lodged with Council in June 2004 seeking land use consent to extend the scope of activities permitted at the site (i.e. a flower business and Devonshire teas café), to include a venue for social functions, weddings, small meetings and conferences.
- 2.2 The application was publicly notified and attracted six submissions, four in opposition and two in support.
- 2.3 The Regulatory Committee considered the application and submissions at a hearing on 22 November 2004. The decision of the Regulatory Committee was to approve the application, subject to some 21 conditions. A copy of the resource consent decision is attached as Appendix 1.

## **3 APPLICATION TO CHANGE CONDITIONS**

- 3.1 The applicants have applied to amend conditions (1), (13) and (16) following of land use consent RC4338. The amendments to the resource consent decision are requested in accordance with Section 127 of the RMA.

**Condition (1):**

*“1 That the operation and development proceed in general accordance with the application and plans, and further information accompanying the application (WDC reference: RC 4338), unless otherwise altered by the consent conditions”.*

**Condition (13):**

*“13. The maximum number of visitors to the site, excluding staff and owners/occupiers, shall be eighty (80) at any one time. For avoidance of doubt, this maximum is the total number of visitors for all activities on the site (i.e. from the florist/flower business, Devonshire tea café, social functions and meeting/conferences)”.*

**Condition (16):**

*“16 The consent holder shall upgrade Kaipaki Road fronting the proposed site to the Councils standards. Reference shall be made to RTS 6, Guidelines for Visibility at Driveways, Figure 3; Seal Widening on Rural Roads for Low Volume Driveways. All works shall be designed, constructed and completed to the satisfaction of the Asset Manager - Roading, and shall be at the consent holder’s expense.*

*An application, construction drawings and specifications shall be submitted for approval prior to any work being carried out.*

*As-built plans and information of all infrastructure assets, to be vested in Council, shall be provided prior to the final inspection”.*

3.2 The applicant has applied for the following changes to conditions (1), (13) and (16) of the consent decision:

**Condition (1):** Requires amending to include references to the Section 127 application information.

**Condition (13):** Changes are sought to reduce the maximum number of visitors to the site permitted at any one time from 80 persons to 60 persons. The applicants state on page 2 of their Section 127 application that they:

*“...wish to reduce the number of visitors to the site from 80 to 60 at any one time. This will have the effect of reducing the number of vehicles arriving and departing from the property and it will make compliance more easily attainable...”.*

**Condition (16):** The Section 127 application proposes to reduce the maximum permitted guest numbers, to prevent functions from starting and finishing between 5.00 pm – 6.00pm on weekdays, and to exclude buses from visiting the property. As a consequence the applicants are requesting a reassessment of the entrance design requirements. In particular no road widening on the opposite side of Kaipaki Road to the site access and no entrance splay and sight benching to the east of the site access.

3.3 A copy of the Section 127 application is attached as Appendix 2.

#### 4 PUBLIC NOTICE AND SUBMISSIONS

- 4.1 In the original application (RC4338), the applicant was unable to obtain the written consent from parties deemed affected by the proposed activities, and the application was limited notified.
- 4.2 The Section 127 application to now vary conditions (1), (13) and (16) of the consent has therefore also been assessed as a limited notified application, with notice being served on parties who were submitters in opposition to the original application.
- 4.3 The submission period of 20 working days closed 13 April 2005. Submissions were received from three persons within the allotted time, all in opposition to the proposal. A summary of the submissions is included in Table 1 below. A copy of the submissions and a locality plan identifying the submitter's properties is attached as Appendix 3.

**TABLE 1: SUMMARY OF SUBMISSIONS**

SUBMITTER	ADDRESS	OPPOSE / SUPPORT	TO BE HEARD	ISSUES RAISED
WJ Mitchell	Kaipaki Road	Oppose	No	<ul style="list-style-type: none"> <li>• Traffic safety – conflicting traffic movements around the entrance</li> <li>• The road should be to a standard to cope with <b>all</b> traffic movements without imposing traffic problems on our driveway</li> <li>• Exclusion of buses should not result in a downgrade of the entrance– should be safe for <b>all</b> types of vehicles</li> <li>• Proximity of the Mitchell driveways to the Creamery entrance is such that the Creamery traffic will clash with our vehicles</li> <li>• Cars leaving both of the Mitchell properties will block the proposed pull over lane</li> </ul>
G & E Mitchell	315 Kaipaki Road	Oppose	Yes	<ul style="list-style-type: none"> <li>• Opposed to any variation to the existing conditions</li> <li>• Current disregard for consent conditions – alcohol being consumed outside, fence is under 1.8m high, courtyard constructed</li> <li>• Who counts the 20 events consented to?</li> <li>• Traffic figures don't add up</li> <li>• Major traffic safety issues</li> </ul>

SJ & END Clayton	292 Kaipaki Road	Oppose	No	<ul style="list-style-type: none"> <li>All road works shall be carried out on north side of Kaipaki Road to avoid the recent reshaping works and water main that runs along the road reserve on the southern side of Kaipaki Road</li> </ul>
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## 5 NGAA IWI TOOPU O WAIPA (NITOW) CONSULTATION

5.1 NITOW have advised that they have no concerns with the Section 127 application.

## 6 OFFICER COMMENTS

### Development Engineer

6.1 Council's Development Engineer has reviewed the Section 127 application and Condition 16 of the consent (relating to the requirement for entrance upgrading and road widening on the opposite side of Kaipaki Road). He advises as follows:

- ♦ The proposal to reduce the number of guests from 80 to 60, and to exclude any buses from visiting the property is such that the original requirement for a 'sealed widening for driveways frequently used by heavy vehicles' is no longer required.
- ♦ The revised conditions require the entrance to be upgraded to a medium commercial entrance standard which is considered suitable for the revised traffic volumes.
- ♦ The latest available traffic counts taken on 17/11/00 in the vicinity of the site entrance confirm an Annual Daily Traffic (ADT) of 1000 vehicles. Kaipaki Road is therefore deemed a high volume collector road.
- ♦ Sight benching is still required to improve existing sight distances to comply with current Code of Practice standards (as per the Road and Traffic Standards (RTS) Manual Guidelines for Visibility at Driveways, Figure 2 – Lines of Clear Sight). Kaipaki Road is a 100km/hr speed environment past the site entrance and a minimum sight distance of 250 metres is required in both directions. The proposal presently complies with the sight distances to the west, but an existing bank prevents compliance to the east.
- ♦ The standard imposed on the original consent required the area to the east of the entranceway to be flared, and the work associated with that construction would have required the bank to be benched in accordance with the aforementioned benching requirements. A specific condition is now recommended to ensure compliance with Council's sight distance requirements.
- ♦ Based on the changes, an additional condition stipulating that no parking or drop off areas shall be permitted for buses (or vehicles with a seating capacity of 12 or more persons) is also now recommended.

## 7 STATUTORY FRAMEWORK – RESOURCE MANAGEMENT ACT 1991 (RMA)

7.1 This is an application to change conditions of a land use consent and it is made in accordance with Section 127 of the RMA. Section 127 of the RMA states:

*“127. Change or cancellation of consent condition on application by consent holder*

- (1) The holder of a resource consent may apply to a consent authority for a change or cancellation of a condition of the consent (other than any condition as to the duration of the consent).*
- (2) Except in accordance with section 234, this section does not apply to a subdivision consent in respect of which a survey plan has been deposited by the District Land Registrar or Registrar of Deeds in accordance with Part X.*
- (3) Sections 88 to 121 apply, with all necessary modifications, as if-*
  - (a) the application were an application for a resource consent for a discretionary activity; and*
  - (b) the references to a resource consent and to the activity were references only to the change or cancellation of a condition and the effects of the change or cancellation respectively.*
- (4) For the purposes of determining who is adversely affected by the change or cancellation, the local authority must consider, in particular, every person who-*
  - (a) made a submission on the original application; and*
  - (b) may be affected by the change or cancellation”.*

## 8 SECTION 127 ASSESSMENT

### Condition 1

8.1 Amendments to the wording of Condition 1 will only be necessary should the committee decide it is appropriate to amend conditions 13 and/or 16. In such circumstances, condition 1 should be reworded to refer to the Section 127 application documents.

### Condition 13

8.2 The applicants have advised that they wish to reduce the maximum number of visitors to the site from 80 to 60 at any one time. I agree with their assessment that the reduction in visitor numbers will likely reduce vehicle numbers and noise emissions, to the obvious benefit of neighbours. Accordingly, I support the amendment sought to condition 13.

## Condition 16

- 8.3 Condition 16 requires the vehicle crossing of the site to be upgraded. The standard of upgrading was based on the number of vehicles which could access the site at any one time, together with the type of vehicles which could potentially access the site (ie. buses).
- 8.4 The Section 127 application proposes to both reduce the number of visitors who may attend any function and exclude buses from the site. These changes, and the submissions in opposition to them, have been reviewed by Council's Development Engineer. The Development Engineer comments (refer to Section 6 of this report) that the vehicle crossing upgrade now need only be to a medium commercial standard. This revised crossing standard means that no seal widening opposite the site access is required but that seal widening and sight benching work to the east of the vehicle crossing is still required.
- 8.5 Traffic safety is the main concern of the submitters. In this regard, Council's Development Engineer is satisfied that the medium commercial type standard crossing, along with the reduced visitor numbers and exclusion of buses, will not however impose a traffic safety concern. Moreover, the medium commercial type is the standard for other similar scale activities and thus Council are being consistent in their approach in this regard.
- 8.6 I rely on the Development Engineers comments for my recommendation that condition 16 be amended in order that the vehicle crossing now need only be upgraded to medium commercial type standard.

## Consequential Amendments to Conditions

- 8.7 As a consequence of the proposed changes to conditions (1), (13) and (16) of RC4338 described above, condition (12) needs to be amended to restrict functions commencing or ending between 5.00pm and 6.00pm; condition (14) needs to be amended to delete references to bus parking; and a new condition (condition 15A) needs to be added which excludes buses from parking on the site.

## **9 CONCLUSION**

- 9.1 The application is to amend conditions (1), (13) and (16) of resource consent RC4338.
- 9.2 Changes are required to condition 13 of the decision, to reduce the maximum number of guests permitted at the site from 80 to 60 persons. The reduction in the number of guests permitted will result in an overall reduction in the scale and intensity of the site activities, and will not affect the integrity of the consent, or the remaining resource consent conditions.
- 9.3 The proposal to reduce the number of guests from 80 to 60, and to exclude any buses from visiting the property has resulted in a reassessment of the site entrance requirements. The original requirement for a 'sealed widening for driveways frequently used by heavy vehicles' is no longer required. An amended condition is therefore proposed, requiring a medium commercial type vehicle crossing, inclusive of sight benching to improve sight distances to the east.

- 9.4 A new condition (Condition 15A) is required to prohibit any heavy vehicles (buses) from parking or dropping off guests, and is required in accordance with the amended proposal now sought by the consent holders. Amendments to conditions 12 and 14 are also necessary given these changes.
- 9.5 It is the writers opinion that the application to vary conditions (1), (12), (13), (14) and (16) of resource consent decision RC4388, and to add an additional condition as Condition (15A) in accordance with Section 127 of the Resource Management Act 1991, should be approved.

## 10 RECOMMENDATION

That:

- (a) The report of SG Bigwood, senior planner for Bloxam Burnett & Olliver Ltd dated 9 May 2005 be received.
- (b) In consideration of Section 127 of the Resource Management Act 1991, the Waipa District Council approves the proposal to amend the conditions of consent RC4338 granted by Council's Regulatory Committee on 22 November 2004, by amending conditions 1, 12, 13, 14 and 16, and adding condition 15A. Land use consent RC4338 shall be amended on the terms set out below:
- (i) Condition 1 be deleted and replaced with the following condition:
1. That the operation and development proceed in general accordance with the application and plans, further information accompanying the application (WDC reference: RC4338) and as amended by the Section 127 application received by Council on 7 February 2005, unless otherwise altered by the consent conditions.
- (ii) Condition 12 be deleted and replaced with the following condition:
12. That the hours of operation for social functions and meetings and conferences shall be restricted to 9.00am and 11.00pm inclusive, with a maximum of twenty social functions permitted in any calendar year.  
  
No social functions and meetings and conferences shall commence or end between the hours 5.00pm to 6.00pm, Monday to Friday inclusive.
- (iii) Condition 13 be deleted and replaced with the following condition:
13. The maximum number of visitors to the site, excluding staff and owners/occupiers, shall be sixty (60) at any one time. For avoidance of doubt, this maximum is the total number of visitors for all activities on the site (i.e. from the florist/flower business, Devonshire tea café, social functions and meeting/conferences).
- (iv) Condition 14 be deleted and replaced with the following condition:
14. The consent holder shall construct the proposed carparking facilities to an all weather standard. Reference should be made to the Council's standards as set out in the Code of Practice for Land Development and Subdivision as a guide

to satisfactory standards. All work is to be carried out and completed to the satisfaction of the Asset Manager – Roading and shall be at the consent holder's expense. The following shall be addressed:

- ♦ The carpark shall have no less than 25 parking spaces for visitors and staff, and
- ♦ The site shall have further provision for 10 overflow parking spaces. A site plan showing the location of the overflow parking area(s) shall be submitted to and approved by the Asset Manager – Roading

(v) New condition 15A to be inserted:

15A. No on-site or off-site parking or drop off areas shall be permitted for vehicles associated with the activity, with a seating capacity greater than 12 or more persons.

(vi) Condition 16 to be deleted and replaced with the following conditions:

16. The consent holder shall upgrade the existing vehicle entrance to the Olde Creamery, as required, to a Standard Rural Vehicle Entrance Medium Commercial type complying with Council's standards as set out in the Code of Practice for Land Development Subdivision. The work shall be carried out and completed to the satisfaction of the Roading Manager, and shall be at the consent holder's expense.

The following issue shall also be addressed:

Sight benching, and removal of trees and vegetation, shall be carried out on the berm on the east side of the entrance to achieve sight distances of 250 metres, in accordance with Code of Practice for Land Development and Subdivision, to the satisfaction of the Roading Manager.

**The reasons for this decision are:**

- a) Conditions (1), (12), (13), (14) and (16) of the decision have been amended at the request of the consent holder, to reduce the maximum number of guests permitted from 80 to 60, to limit the starting and finishing times of events, and to exclude any buses from visiting the property.
- b) The reduction in the maximum number of guests permitted will result in an overall reduction in the scale and intensity of the site activities, and traffic movements, and will not affect the integrity of the consent, or the remaining resource consent conditions.
- c) The proposal to reduce the number of guests from 80 to 60, and to exclude any buses from visiting the property has led to a reassessment of the vehicle crossing requirements, and subsequent amendments to Condition (16) of the decision. The sight benching that is now required to the east of the entrance is necessary to improve existing sight distances to comply with current Code of Practice standards.

- d) Condition (15A) is required to prohibit any heavy vehicles from visiting the property. By excluding heavy vehicles (buses or passenger vehicles with a seating capacity of 12 or more persons), the road widening works required in the original consent decision are no longer required opposite the site entrance.
- e) The proposed medium commercial type standard crossing, along with the reduced visitor numbers and exclusion of buses, will not impose a traffic safety concern and thus meet the traffic safety concerns of submitters.

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SG Bigwood  
*Senior Planner – Bloxam Burnett & Olliver Limited*

**Approved for Regulatory Committee Agenda**

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**Garry Dyet**  
*Deputy Chief Executive*

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## **APPENDIX 1**

## **APPENDIX 2**

## **APPENDIX 3**

## **APPENDIX 4**