

Hearings Commissioner

Notice of Meeting

A meeting of the Hearings Commissioner will be held in the Whangarei Library, May Bain Room, Rust Avenue, Whangarei on:

**Thursday
20 August 2015
10am**

**Application by
Trading Company Limited**

**Commissioner
Giles Bramwell**

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Report to Hearings' Commissioner Giles Bramwell on a Resource Consent Application

This land use consent application was lodged by Precision Planning on behalf of Trading Company Limited and was reported on by Council's Environmental Planner (Consents), Kelly Durham.

The applicant is proposing to convert an existing residential dwelling into an 80 seat licensed restaurant, with takeaways, open for both lunch and dinner, 7 days a week. The existing building will be extensively altered internally, while the existing veranda will be removed and replaced with a dining deck that will wrap around the northern, southern and eastern extent of the building. The restaurant will cater for takeaways, both delivery and pick up, and combined with dine in, when at operating capacity, up to 6 staff are expected on site. The proposed opening hours are as follows:

- 11am – 2:30pm (lunch)
- 5pm – 11:30pm (dinner)

Overall the proposal requires resource consent pursuant to the following rules:

- **Rule 41.3.1 Activities Generally** – The restaurant will be operating beyond 2200hrs daily within 50m of the Living Environment, and is therefore considered a discretionary activity in this regard.
- **Rule 41.3.5 Provision of Parking Spaces** – Carparks are required to be provided in accordance with Chapter 47: *Land Transport*. The proposal does not meet the carpark requirements in this chapter. The proposal is therefore a restricted discretionary activity pursuant to this rule.
- **Rule 47.2.1 Parking and Loading** - Only 10 carparks will be provided on-site, and the proposal is therefore a restricted discretionary activity pursuant to this rule.
- **Rule 47.2.4 On-Site Manoeuvring** – The proposal requires heavy goods vehicles to reverse onto the site, and is therefore a restricted discretionary activity pursuant to this rule.
- **Rule 59.2.3 Activities Near a Heritage Tree** – Site works include forming parking, maneuvering and access within the dripline of Heritage Trees. The proposal is therefore a restricted discretionary activity pursuant to this rule.

Overall the proposal is considered to be a **discretionary activity**.



Kelly Durham
Environmental Planner (Consents)

5 August 2015

Date

This report was peer reviewed by the following signatory:



Alister Hartstone
Resource Consents Manager

5 August 2015

Date

Statement of staff qualification and experience

Kelly Durham – Environmental Planner (Consents)

I hold the qualification of a Bachelor of Planning (Hons) from the University of Auckland. I am a graduate member of the New Zealand Planning Institute. I have been working at the Whangarei District Council since I started as a scholarship planner in June 2010, and have been working full time as an Environmental Planner (Consents) since November 2014. Overall, my work experience includes assessing and reporting on a range of subdivision and land use consents within the Whangarei District.

Dean Murphy – Council Senior Environmental Engineering Officer

My full name is Dean Murphy. I have worked as a Senior Environmental Engineering Officer for the Whangarei District Council for the last 9 years. I hold the qualifications of NZCE (Civil) and graduate member of IPENZ (GIPENZ). I have five years of experience in civil construction site engineering and project management including earthworks, drainage, roading, water treatment plant, sewer scheme & roading maintenance.

The above staff/consultant are familiar with the Environment Court's 'Code of Conduct' for expert witnesses and agree to comply with the Code of Conduct in presenting hearing evidence to the Commissioner.

Section 42A Hearing Report

Hearing By: Hearings' Commissioner Giles Bramwell of a discretionary activity land use proposal by Trading Company Limited to establish and operate an 80 seat licensed restaurant including takeaways.

The site is located at 1 Apirana Avenue, Whangarei being legally described as Lot 1 DP 77897

Evidence By: Kelly Durham
Bachelor of Planning (Hons)

File Refs: LU1400102
P050598

Dated: 28 July 2015

1.0 The Proposal & Background

1.1 The proposal

- 1.1.1 Tradings Company Limited seek consent to establish and operate an 80 seat licensed restaurant, with takeaways, located within 50m of a Living 2 Environment. Specifically the hours of operation proposed are 11am – 2:30pm (lunch) and 5pm – 11:30pm (dinner).
- 1.1.2 10 on-site carparks will be provided and a new access onto Apirana Ave will be formed. The construction of the manoeuvring area and access will occur within the dripline of Heritage Trees.
- 1.1.3 The Bank Street access will be entrance only until 10pm. At 10pm the Apirana Ave access will close, with all traffic after 10pm using the Bank Street Access. Heavy goods vehicles will enter and exit the site via Apirana Ave.
- 1.1.4 A new tower sign will be erected at the front of the site, comprising an area of 1.5m x 0.4m with a max height of 6m. The sign will be illuminated and will state 'Masala Indian Restaurant'. This sign meets the permitted criteria of the District Plan.
- 1.1.5 Proposed alterations and additions include the removal of the existing veranda and the construction of a dining deck that will wrap around the northern, southern and eastern extent of the building. The internal layout of the building will be extensively altered, with a new commercial kitchen and associated mechanical plant and refrigeration to be installed.
- 1.1.6 A copy of the application as lodged in September 2014 is included in attachment 1 and contains:
- Assessment of Effects and Statutory Analysis prepared by Precision Planning, dated September 2014;
 - Site Layout Plan prepared by Bill Dodds Architect;
 - Traffic Assessment prepared by Engineering Outcomes Limited, dated 22 August 2014.
- 1.1.7 A copy of the updated information submitted in April 2015 to satisfy the section 92 request is also contained in attachment 1 and includes:
- Arboricultural Assessment prepared by Symbiosis Tree Services and GreensceneNZ, dated December 2014;
 - Noise Assessment prepared by Styles Group, dated 10 September 2014;
 - Additional Traffic Assessment prepared by Engineering Outcomes Limited, dated 16 December 2014;
 - Site Plan prepared by Geospatial Services Ltd, dated 14 December 2014, ref T297

1.2 Background

- 1.2.1 The application was lodged on 8 September 2014. Included in the application was an assessment of the District Plan Objectives and Policies and an assessment of effects.
- 1.2.2 The application was placed on hold on the 19 September 2014 pursuant to s92 of the Resource Management Act 1991. The request for further information was satisfied on 11 May 2015.
- 1.2.3 The application was amended to reflect the change of the applicant on 1 April 2015.

2.0 Site and Surrounds Description

2.1 Zoning, resource areas and other notations

- 2.1.1 The subject site is zoned Business 3 in the Operative District Plan. Business 3 Environments include shopping centres outside the CBD and business areas near Living Environments. These areas are envisioned to provide convenience retail, while ensuring that the building form is appropriate to suburban locations.



Figure 1: Site Zoning

- 2.1.2 The site contains two Heritage Trees, District Plan ref: 378, being two Rimu Trees (*Dacrydium Cupressinum*). These trees are located on the boundary of Bank Street.
- 2.1.3 There is also a Pohutukawa Tree located in the Apirana Ave Road reserve, that due to its size, is also considered a Heritage Tree under the District Plan.

2.2 Site Description

- 2.2.1 The site is located at 1 Apirana Ave, on the corner of Apirana Ave and Bank Street, and is legally described as Lot 1 DP 77897. The total area of the site is 1329m². Located on the fringe of Whangarei's central business district, Bank Street is classified as an arterial road and Apirana Avenue is classified as local road. Both roads have speed environments of 50 km/h.
- 2.2.2 The site has one existing vehicle crossing off Bank Street.
- 2.2.3 There is an existing residential unit and garage currently located on the site. The dwelling is a bungalow constructed prior to 1940. The site has substantial landscape planting within and around the perimeter of the site.



Figure 2: Aerial photograph of the subject site and surrounding environment (2008)

2.3 Surrounding Environment

- 2.3.1 Commercial development fronts Bank Street on both sides, consisting of purpose built commercial buildings and converted residential units. There is a mix of commercial activities, with the area dominated by professional offices, restaurants and fast food outlets.
- 2.3.2 Residential development is predominately located behind the commercial development that lines Bank Street. This development is generally characterised by free standing villa/bungalow type dwellings on individual sections, with a few semi-detached cross lease units evident.
- 2.3.3 It is noted that Whangarei Primary School is located and can be accessed at the end of Apirana Avenue. This is a cul-du-sac road that has intersections with Bank Street and Hall Avenue (a no exit street).
- 2.3.4 Bank Street is classed as an arterial road under the District Plan due to its high daily traffic volume as it is a main route in and out of the central business district.

3.0 District Plan Assessment

3.1 Reasons for consent

- 3.1.1 The table below outlines the areas of infringement with this proposal:

Table 1: Assessment of Relevant Rules within the District Plan

<p>Rule 41.3.1 Activities Generally</p> <p>Any activity is a permitted activity if:</p> <p>a) It does not involve intensive livestock farming, mineral extraction, animal boarding, metal working, motor vehicle manufacturing or dismantling, fibre glassing or laminating; food irradiation; and</p>	<p>Any activity that does not comply with a condition for a permitted activity is a discretionary activity if:</p> <p>a) It does not involve intensive livestock farming; and</p> <p>b) It is not an activity involving any of the following on a commercial basis: bone</p>
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<p>b) The premises only operate, or open for visitors, clients or deliveries between the hours of 0600 and 2200 if the activity is located within 50.0m of a Living Environment boundary; and</p> <p>c) Religious observances outside the above hours of operation operate on no more than 4 days per year; and</p> <p>d) It is not an activity involving any of the following on a commercial basis: bone boiling or crushing; fish cleaning, curing and processing; flax pulping; flock manufacturing or teasing of textiles; refuse accumulation; disposal of sewage; storage, drying or preserving of bones, hides, hooves, or skins; tallow melting; tanning; wood pulping; wool scouring; and</p> <p>It is not an activity that is classified as an offensive trade in the Health Act 1956.</p> <p><u>Comment:</u></p> <p><i>The proposal cannot comply with this rule as the restaurant proposes to open for visitors until 11.30pm daily and is located within 50m of the Living Environment. As such the proposal is a Discretionary Activity with regard to this rule</i></p>	<p>boiling or crushing; fish cleaning, curing and processing; flax pulping; flock manufacturing or teasing of textiles; refuse accumulation; disposal of sewage; storage, drying or preserving of bones, hides, hooves, or skins; tallow melting; tanning; wood pulping; wool scouring; and</p> <p>c) It is not an activity that involves food irradiation; and</p> <p>d) It is not an activity that is classified as an offensive trade in the Health Act 1956.</p> <p>Any activity that does not comply with a standard for a discretionary activity is a non-complying activity.</p>
<p>Rule 41.3.5 Provision of Parking Spaces</p> <p>Any activity is a permitted activity if:</p> <p>a) Parking spaces are provided in accordance with Chapter 47; and</p> <p>b) No formed parking space is constructed or provided within 2.0m of a road boundary.</p> <p><u>Comment:</u></p> <p><i>Carparks are required to be provided in accordance with Chapter 47: Land Transport. The proposal does not meet the carpark requirements in this chapter. The proposal is therefore a Restricted Discretionary Activity pursuant to this rule.</i></p>	<p>Any activity that does not comply with a condition for a permitted activity is a restricted discretionary activity.</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> i. Those matters listed in Chapter 47 Road Transport Rules; ii. Those matters listed in Rule 41.4.8 (Landscaping).
<p>Rule 47.2.1 Parking and Loading</p> <p>Any activity is permitted if:</p> <p>a) Off-street parking spaces, loading bays and associated manoeuvring areas, are provided in accordance with Appendix 6A and constructed in compliance with Whangarei District Council's Environmental Engineering Standards 2010; and</p> <p>b) Vehicles are not required to undertake more than one reverse manoeuvre when manoeuvring in or out of any required vehicle parking space or loading bay; and</p> <p>c) Parking spaces and loading bays are not located on any access, manoeuvring area or outdoor living court and they remain unobstructed at all times; and</p>	<p>Any activity that does not comply with a condition for a permitted activity is a restricted discretionary activity.</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> i. Parking space numbers; ii. Availability of parking spaces; iii. Parking area location; iv. Parking area design; v. Parking spaces for people with disabilities; vi. Loading areas; vii. Access design; viii. Safety for pedestrians; ix. Location of activity; x. Type and frequency of use;

<p>d) Parking spaces and loading bays are located on the same site as the activity for which they are required; and</p> <p>e) All work is undertaken in accordance with the Engineering Performance Standards in Appendix 9.</p> <p><u>Comment:</u></p> <p><i>Only 10 carparks will be provided on site, as opposed to the 20 + 1HGV that are required. The shortfall of on-site parking spaces associated with the activity is a Restricted Discretionary Activity pursuant to this rule.</i></p>	<p>xi. Efficiency and safety of roads;</p> <p>xii. On-site manoeuvring.</p>
<p>Rule 47.2.4 On-Site Manoeuvring</p> <p>Any activity is permitted if:</p> <p>On-site manoeuvring is provided to ensure that no vehicle is required to reverse either onto, or off, a site where:</p> <p>a) The site has vehicle access to a State Highway, arterial or collector road; or</p> <p>b) The site requires 3 or more vehicle parking spaces; or</p> <p>c) The site is a rear site, or access is provided by a shared access.</p> <p><u>Comment:</u></p> <p><i>The proposed 10 on-site parking spaces generally comply with on-site manoeuvring with the exception of the HGV parking space which is proposed to reverse into the site from the Apirana Ave vehicle crossing. This requires resource consent as a Restricted Discretionary Activity pursuant to this rule.</i></p>	<p>Any activity that does not comply with a condition for a permitted activity is a restricted discretionary activity.</p> <p>Discretion is restricted to:</p> <p>i. Manoeuvring areas;</p> <p>ii. On-site manoeuvring;</p> <p>iii. Pedestrian safety;</p> <p>iv. Traffic safety and visibility;</p> <p>v. Type and frequency of use.</p>
<p>Rule 59.2.3 Activities Near a Heritage Tree</p> <p>Construction or alteration of any structure, excavation of land, or formation of new impervious surfaces is permitted if it does not occur within the dripline of a Heritage Tree.</p> <p><u>Comment:</u></p> <p><i>The proposal includes works within the dripline of Heritage Trees. This requires resource consent as a Restricted Discretionary Activity pursuant to this rule.</i></p>	<p>Any activity that does not comply with the condition for a permitted activity is a restricted discretionary activity.</p> <p>Discretion is restricted to:</p> <p>i. The public benefit or degree of necessity concerned;</p> <p>ii. Any alternative methods which may be available to achieve the objectives of the application;</p> <p>iii. The extent to which the tree or trees contribute to the neighbourhood;</p> <p>iv. Whether the activity is likely, in the opinion of Council, to damage the tree or endanger its health.</p>

3.1.1 It is noted that for the purposes of assessment, Rules 41.3.5 and 47.2.1 effectively address the same issues.

3.1.2 Overall, the application is considered to be for a Discretionary Activity.

3.2 Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011

3.2.1 The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES Contaminated Soils)

were gazetted on 13th October 2011 and took effect on 1st January 2012. Council is required to implement this NES in accordance with the Resource Management Act 1991 (RMA). The standards are applicable if the land in question is, or has been, or is more likely than not to have been used for a hazardous activity or industry and the applicant proposes to subdivide or change the use of the land, or disturb the soil, or remove or replace a fuel storage system. The following table assesses the proposal's compliance with the NES regulations:

Table 2: NES Assessment

Question	Answer	Comment
Is an activity described on the HAIL currently being undertaken on the piece of land to which this application applies?	No Evidence	<i>Confirmation was provided from Andrew Stewart Ltd that there is no evidence that the property has been used for HAIL activities.</i>
Has an activity described on the HAIL ever been undertaken on the piece of land to which this application applies?	No Evidence	
Is it more likely than not that an activity described on the HAIL is being or has been undertaken on the piece of land to which this application applies?	No Evidence	

3.2.2 After considering the above it is concluded that the Resource Management (National Environmental Standard) Regulations 2011 are not applicable to this application.

4.0 Notification, Submissions and Written Approvals

4.1 Notification

4.1.1 A notification decision was made on 14 May 2015 stating that the application required limited notification pursuant to section 95A(2)(b) of the Resource Management Act 1991 because it was assessed that the effects on the neighbouring landowners in the immediate locality may be more than minor but that the adverse effects of the activity on the wider environment were considered to be less than minor given the commercial nature of much of the wider surrounding catchment. The scope of the infringements is such that the potential effects are limited to those parties who are immediate to the site (specifically the residential sites) and in proximity to the infringing activity.

4.2 Submissions

4.2.1 The period for submissions closed on 24 June 2015. Copies of the application were specifically served upon those parties identified on the map below by red stars:

4.2.2 Council received 2 submissions within the timeframe, with 1 submission in opposition requesting that the application be declined, and 1 submission stating they were neutral, and would support the application subject to conditions. Both submitters requested to be heard in support of their submission.

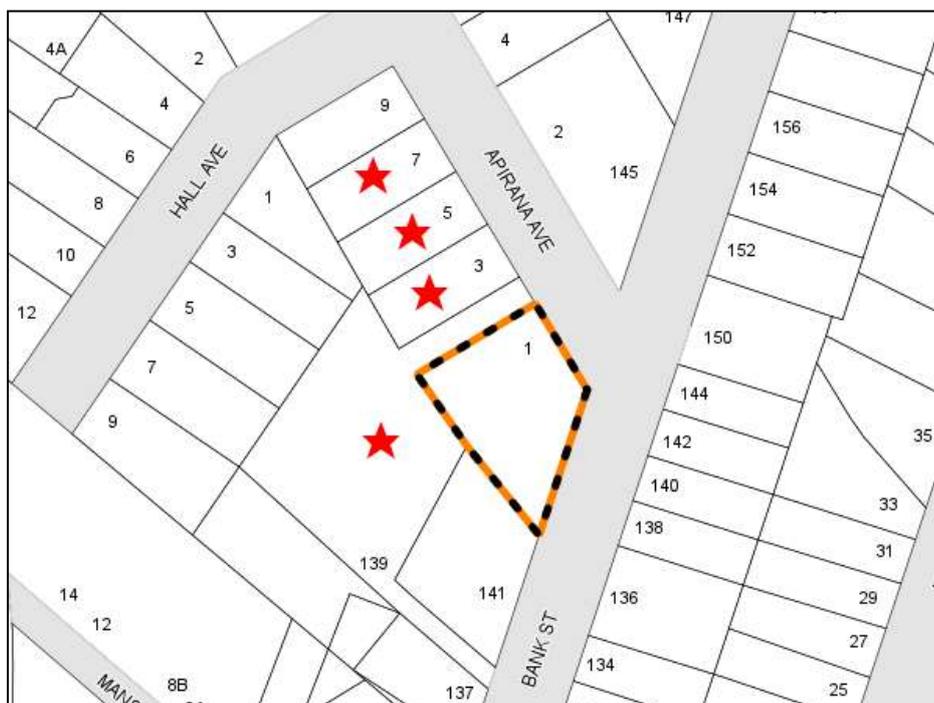


Figure 3: Sites with a red star were served notice of the application

4.2.3 The individual submissions are summarised as follows (a full copy of the individual submissions can be viewed in attachment two):

Table 3: Summary of Submissions Received

Submitter	Issues and Relief Sought
<p>Jan Homes</p>	<ul style="list-style-type: none"> • Neutral • <i>Issues-</i> concerned about noise, vibration and car headlights from vehicles using the proposed vehicle crossing off Apirana Ave. • Noise from delivery and refuse collection using the new access. • Noise from cars and patrons in the carpark late at night. • Noise from patrons using the northern deck. • Noise from the kitchen. • Safety concerns associated with the new vehicle crossing, noting that Apriana Ave is used by school children. • The increase in vehicle traffic to the site will damage the heritage trees. <p><i>Relief sought:</i></p> <ul style="list-style-type: none"> ➤ Construct a sound proof fence along the northern boundary. ➤ Roof is constructed over the northern deck, with soundproof curtains on the side. ➤ No new access is created off Apirana Ave, and the Bank Street access is widened. ➤ If a new access is created off Apirana Ave, it is entrance only, with the Bank Street access being exit only.

Submitter	Issues and Relief Sought
Te Mai Investments Ltd	<ul style="list-style-type: none"> • Oppose • <i>Issues-</i> Licensed restaurant being located so closely to a family restaurant and residential homes. • Safety issues with regard to the new Apirana Ave access. • Deliveries outside of opening hours. <p><i>Relief sought:</i></p> <ul style="list-style-type: none"> ➤ Decline the application

4.2.4 The map below indicates the location of the submitters.

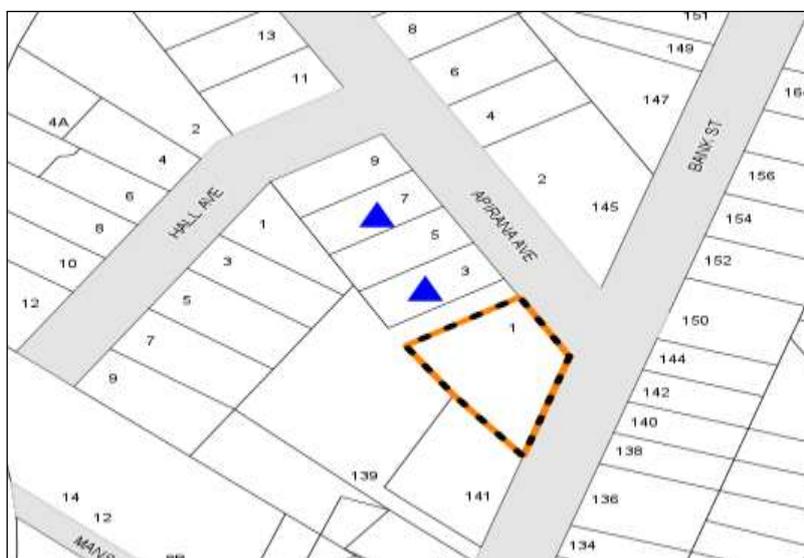


Figure 4: Map of Submitters' Locations (blue triangles)

4.3 Written Approvals

4.3.1 No written approvals were supplied in support of the application.

5.0 Resource Management Act 1991- Statutory Considerations

5.1 Section 104

5.1.1 Section 104 provides the matters, subject to Part 2 of the Act that the Consent Authority must have regard to when considering and application for resource consent and any submissions received. These matters are:

- (a) any actual and potential effects on the environment of allowing the activity; and
- [[(b) any relevant provisions of—
 - (i) a national environmental standard;
 - (ii) other regulations;
 - (iii) a national policy statement;
 - (iv) a New Zealand coastal policy statement;
 - (v) a regional policy statement or proposed regional policy statement;
 - (vi) a plan or proposed plan; and]]

- (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

5.2 Section 104B

5.2.1 Section 104B outlines Council’s powers when making a determination on a discretionary or non-complying activity. Section 104B states that:

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

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

6.0 Actual and Potential Effects on the Environment (s104(1)(a))

6.1 Definition of Effect

6.1.1 Section 3 of the Act defines the term ‘effect’ as including –

- (a) *any positive or adverse effects; and*
- (b) *any temporary or permanent effect; and*
- (c) *any past, present or future effect; and*
- (d) *any cumulative effect which arises over time or in combination with other effects – regardless of the scale, intensity, duration, or frequency of the effect, and also includes-*
- (e) *any potential effect of high probability; and*
- (f) *any potential effect of low probability which has a high potential impact.”*

6.2 Permitted Baseline

6.2.1 In terms of determining whether the adverse effects of the proposal are more than minor, section 104(2) of the Act provides that the Consent Authority ‘may’ have regard to the permitted baseline in order for effects on the environment that are permitted under the Plan (or by way of resource consent) to be disregarded.

6.2.2 The permitted baseline for this site includes the previously approved consents as well as the criteria set by way of the district plan rules:

Table 4: Permitted Baseline Assessment

Hours of Operation	The District Plan allows for commercial activities within 50m of a Living environment to operate between the hours of 0600 and 2200. In this instance the business will be open until 2330. It is the effects of this additional time spent open in the evenings that is to be assessed.
Carparking	The District Plan requires 1 carpark to be provided for every 4 seats. In this instance 20 carparks + 1 HGV are required, but only 10 will be provided on site. It is the effects of the parking shortfall of 11 carparks, that is to be assessed.
Noise Measurement	The application includes a noise assessment prepared by Styles Group that confirms that the activity will be able to comply with the permitted noise standards.

6.2.3 In this instance it is considered appropriate to consider the permitted baseline, as the proposal is consistent with development anticipated in the Business Environment, and as such is not fanciful.

6.3 Noise Effects

- 6.3.1 The Styles Group assessment contained in the application discusses the existing noise environment, the proposal, and the predicted noise levels. It provides the following comments:
- The design of the proposal orients the dining areas away from the Living 2 zoned properties except for the northern deck area.
 - All receivers are exposed to noise from traffic on Bank Street to varying degrees.
 - The ambient noise measurements undertaken depict an environment that is already exposed to noise levels in excess of those prescribed in the District Plan for Permitted Activities.
 - The predicted noise levels after 2200 with regard to carpark noise, are comfortably within the Permitted Activity noise limits.
 - A number of noise management measures and restrictions need to be applied to the operation of the restaurant to ensure that noise levels are compliant and reasonable.
 - If the Permitted Activity noise limits are complied with, the potential noise effects will be less than minor.
- 6.3.2 The submitter at 3 Apirana Ave has raised concerns regarding the effects of noise resulting from vehicles using the Apirana Ave access, patrons using the carpark including car doors closing, noise from the kitchen after 11.30pm, use of the northern deck, and noise from the extraction fans.
- 6.3.3 The noise report prepared by Styles Group proposes a range of conditions to ensure that the noise levels emitted by the restaurant remain within the permitted limits provided for in the District Plan. These conditions include:
- Preparing a noise management plan.
 - Restricting the use of the northern deck after 10pm.
 - Restricting the use of the Apirana Ave access after 10pm.
 - Restricting the times in which deliveries can be made.
 - Restricting music from being played outdoors.
 - Controlling the location of any mechanical ventilation plant.
 - Restrictions on group bookings on the northern deck.
- 6.3.4 While the proposal includes the ability for the restaurant to cater for functions, this has not been addressed in the Styles Group Noise assessment, nor has it been detailed in the application. This lack of detail, in addition to the restrictions recommended in the noise assessment, including no groups on the northern deck, no outdoor music and low levels of indoor music, as well as the likelihood of large groups of people entering and exiting the site, leads me to be of the opinion that functions are unlikely to be able to comply with the recommended conditions.
- 6.3.5 Taking into account the assessment provided by Styles Group, and the recommended conditions of consent, including the restriction on functions, the effects of noise on the locality are considered to be less than minor and are considered reasonable in terms of section 16 *Excessive Noise* of the Resource Management Act 1991.
- 6.3.5 The lack of on-site carparking provided on the site is likely to result in patrons parking along Apirana Ave. The question then becomes whether the activity will result in noise effects associated with the movement of people to and from the restaurant within the requested operating hours, and whether the effects could cause a significant loss of residential amenity for adjacent properties.
- 6.3.6 I consider that the customers are likely to park as near to the restaurant as possible, which will likely result in carparking by customers on Apirana Ave, adjacent to residential property. It is recognised that from a noise control point of view, the restaurant operator is unlikely to have the ability to control the noise generated by customers outside their site.
- 6.3.7 However when taking into consideration the existing noise environment, including the arterial nature of Bank Street, and noise generated from existing businesses adjoining and adjacent to the site including Pizza Hut and McDonalds, and the fact that no carparking is permitted along the western side of Apirana Ave, the effects of noise from patrons parking off-site are considered to be no more than minor.

6.4 Road Safety, Traffic and Parking Effects

- 6.4.1 The site will continue to use the existing vehicle crossing on to Bank Street. The application also includes a proposal to construct a new vehicle crossing off Apirana Ave.
- 6.4.2 Engineering Outcomes provided a report titled 'Assessment of Traffic Effects' dated 22 August 2014 in support of the application (see attachment 1). It concludes in the assessment the following:
- The road network can cope with the effects of the generated traffic movements without significant additional delays or safety risk.
 - The parking demand for the proposal will be more than adequately catered for on streets within a comfortable walking distance of the site.
 - The risks associated with vehicle movements onto, through, and off the site will be well within acceptable limits.
- 6.4.2 The traffic assessment discusses the existing traffic environment, the safety records for this environment, the site layout and operation, current traffic generation, predicted traffic generation and the impacts of both the increased traffic generation and right turning traffic. The traffic assessment predicts a maximum of 170 traffic movements daily. At least 80% of these are expected between 5pm – 11.30pm.
- 6.4.3 The application notes that exceedence of the on-site parking supply will be relatively common in the evenings and is also possible around the middle of some days. The carparking assessment undertaken by Engineering Outcomes includes a detailed parking survey that was undertaken at varying times on various days. The survey revealed that there was sufficient on-street carparking available during both lunch and evening periods.
- 6.4.4 Council's Senior Environmental Engineering Officer reviewed the report and his comments on the traffic issues are outlined below (see full report in attachment three):
- The Bank Street crossing can not achieve complying sight distances to the south due to the existing on street carparking; however after 10pm the likely reduction in use of on-street parking should allow for improved site visibility.
 - The proposed Apirana Ave vehicle crossing can achieve complying sight distances.
 - The proposed 10 on-site parking spaces generally comply with on-site manoeuvring with the exception of the HGV parking space which is proposed to be accessed through reversing into the site from the Apirana Ave vehicle crossing.
 - The design of all vehicle access, parking and manoeuvring areas are to be certified by a qualified arborist to certify that existing native trees will not be adversely affected.
- 6.4.5 Council's Senior Environmental Engineering Officer advised that the traffic effects of the proposal will be considered as less than minor if the conditions recommended in his report are included as conditions of any consent.
- 6.4.6 It is noted that both submitters raised concerns regarding traffic safety, specifically the new Apirana Ave access, and the danger of delivery vehicles reversing onto the site with children walking along Apirana Ave to and from school. Neither engineering assessment provided has made comment on this. In the absence of such advise, it is my opinion that due to the fact that access to Whangarei Primary School is located at the end of the road, and that the existing power transformer and pohutukawa tree located within the road reserve, on either side of the proposed new access, are likely to impede the views of both pedestrians and any heavy goods vehicle drivers, it is appropriate to prohibit deliveries between 8.30-9.00am and 3.00-3.30pm on week days.
- 6.4.7 When considering the hours that the restaurant will be open, the hours that deliveries will be made, and peak traffic times, I am satisfied that the road and pedestrian network can cope with the effects of the proposed movements with minimal risk to safety. In addition to this, Council's Senior Environmental Engineering Officer has confirmed that the Apirana Ave access will have complying sight lines.

- 6.4.8 When considering the hours that the restaurant will be open and the availability of on-street carparking within walking distance of the site I am satisfied that the existing road network can cope with the effects of the spill over parking.
- 6.4.9 Having assessed the application, and taking into account the expert traffic advice, I have reached the opinion that the traffic and pedestrian safety effects of the proposal and the effects associated with the parking shortfall will be less than minor.

6.5 Heritage Trees

- 6.5.1 The proposal includes works that will be undertaken within the dripline of Heritage Trees, specifically to do with the formation of the access and manoeuvring areas. An arborist report prepared by Symbiosis Tree Services and GreensceneNZ Limited was submitted with the application. This report provided an assessment of the existing state of the heritage trees and assessed the likely impact of the development on these trees. The report concluded by stating that:

“The existence of established trees does not preclude development in the immediate area. It does however mean that any works need to be carefully planned, well communicated and carefully implemented. Damage to established trees during construction is avoidable with appropriate care, awareness and oversight.”

- 6.5.2 The report recommends a range of conditions to be applied to any decision in order to maintain the health of the trees. This report has been reviewed by Council's Parks and Recreation Department who are satisfied with the assessment.
- 6.5.3 Confirmation has also been received from Mr Dean Scanlan of Engineering Outcomes Limited, that the new access off Apirana Ave will be located and designed so that Heavy Good Vehicles can adequately access the site, without requiring the Potuhtakawa Tree, located within the road reserve, to be trimmed.
- 6.5.4 Council's Parks Department have pointed out that the Tree Methodology Report provided in the Arborist report specifies that 'Any portion of the access way that falls within the root zone area of the rimu or pohutukawa trees should be constructed without bulk excavations, i.e. either above ground or on pile foundations.' They are concerned that this will result in the creation of a raised vehicle crossing off Apirana Ave that will not be compatible with Council's vehicle crossing standards and engineering conditions. Having undertaken a site visit, and after reviewing Dean Scanlan's additional comments provided on the 5th May 2015(attachment 1), I note that it will depend on the depth of the roots, and the design of the access, but am confident that the access can be formed in accordance with the Tree Methodology Report and Council's engineering standards, recognising that the construction methodologies for the access shall be developed in consultation between an arborist and engineer. It is anticipated that the applicant will provide further information at the Hearing to demonstrate a suitable access design.
- 6.5.5 Overall the effects of the works within the dripline of the heritage trees on the localised environment are considered to be less than minor subject to conditions, as they can be appropriately mitigated, and consequently, there will be no discernible changes to the amenity of the localised environment, or detrimental effects on the health of the trees.

6.6 Amenity and Character Effects

- 6.6.1 The District Plan describes amenity values as being the characteristics that influence and enhance people appreciation of a particular area. It also states that amenity values of an area are determined by natural and physical characteristics of an area, and the effects of activities.
- 6.6.2 As such, amenity consists of two components. One is 'amenity attributes' which are tangible matters such as noise, odour, density or shading. The other is 'perceptions and expectations' which are more intangible values which individuals and communities hold to their neighbourhoods such as their own perceptions of noise, culture, desires and tolerance.
- 6.6.3 The District Plan recognises that the Business 3 Environment is used predominantly for business areas that provide convenience retail while being sensitive and sympathetic towards the Living Environments.

- 6.6.4 It is acknowledged that the site sits within a mixed use environment characterised by commercial use to the east and south of the site, and residential use to the north.
- 6.6.5 It is noted that the form of the existing residential unit on the site will largely be retained, with additional 'wrap-around' decking to be established to provide for additional seating capacity.
- 6.6.6 The main potential effects on local amenity relate to the operation of the restaurant until 11.30pm daily, and the amount of on-site carparking.
- 6.6.7 The noise effects associated with the operation of the restaurant and the associated vehicle movements have been taken into account and assessed in the noise report prepared by Styles Group. It concluded that the overall predicted noise level would be compliant with the noise requirements under Rule 41.3.10 of the District Plan. Hence, the noise effects associated with the proposal are permitted by the Operative District Plan.
- 6.6.8 It is noted that the application includes the ability for the restaurant to be used for functions of up to 80 people. The use of the restaurant for private functions is likely to result in a significant portion of people entering and leaving at any one time. Due to the lack of specific data and assessment relating to the use of the site for functions, I believe that they could have more than minor effects on the amenity of the adjoining residential properties, and as such I believe it is appropriate to prohibit the use of the restaurant for functions.
- 6.6.9 The application states that vegetation is to be retained where possible throughout the site, with additional boutique gardens and box hedging established where possible. Low fencing, which ensures visibility to and from the site from Bank Street and Apirana Ave, will be erected around the perimeter of the site. It is considered appropriate to place a condition on the consent requiring a landscape plan to be submitted to Council prior to the commencement of on-site works.
- 6.6.10 Noting the location of the adjacent residential units to the north of the site, the landscaping plan will be required to demonstrate significant planting along the northern boundary in order to provide visual softening and screening of the site.
- 6.6.11 Taking into account the location of the site, the existing noise environment, the use of the existing residential unit on a Business zoned site, the maintenance of traffic safety and efficiency, as well as the compliance with the noise requirements under the District Plan, the effects on amenity and character of the locality are considered to be no more than minor.

6.7 Cumulative Effects

- 6.7.1 *Dye v Auckland Regional Council [2002] 1 NZLR 337* is regarded as the leading case on cumulative effects. In considering the characteristics of cumulative effects, the Court stated:
- *"A cumulative effect is concerned with things that will occur rather than with something that may occur, that being the connotation of a potential effect... The concept of cumulative effect arising over time is one of a gradual build up consequence.*
 - *The concept of combination with other effects is one of effect A combining with effects B and C to create an overall composite effect D. All of these are effects which are going to happen as a result of the activity which is under consideration."*
- 6.7.2 Having regard to the above, the following assessment considers whether the residual effects of the proposed activity (after mitigation by conditions) will give rise to an unacceptable increase in cumulative adverse effects that are beyond the carrying capacity of the receiving environment, including supporting infrastructure and the amenity and character values that define the locality.
- 6.7.3 For a cumulative effect to be significant, it must breach a threshold or 'tip the balance'. In this instance, the proposal is for a commercial activity in an area which is predominantly commercial in character but adjoins a Living Environment.
- 6.7.4 In accordance with Mr Murphy's assessment (see attachment 3) I am satisfied that the receiving roading environment has sufficient capacity to accommodate the potential effects associated with the shortfall of on-site carparking, and that the application will not represent a significant cumulative effect in this regard.

6.7.5 The principal area of concern in regards to cumulative effects in this instance, is the proposals potential to result in the cumulative deterioration of the residential amenity values within the Living 2 Environment adjacent to the site, through the additional effects of the proposed commercial activity.

6.7.6 In this instance, due to the conditions proposed, which will ensure compliance with the District Plan Noise requirements and will restrict the use of the Apirana Ave access, as well as the predicted level of traffic movements after 2000hrs, I consider that the proposal will not result in an adverse cumulative effect on the residential character and amenity values in the vicinity.

6.8 Effects summary

6.8.1 Overall I am satisfied that the effects will be acceptable considering the above assessment for the following reasons:

- The use of the existing residential unit on Business zoned land, along with compliance with the permitted noise standards and required landscaping will mean that the proposal will have minor effects on the amenity values and character of the locality.
- The proposed activity and associated traffic movements will not compromise the safe and efficient operation of the roading network, and there is sufficient on-street carparking available.
- Any other effect, such as those associated with servicing, lighting etc. are minor on the basis that they comply with the relevant standards of the District Plan.

7.0 Relevant Policy Statements, Plans or Proposed Plans (s104(1)(b))

7.1 Statutory consideration

7.1.1 The following section assesses the proposal against the relevant objectives and policies of the relevant plans for the subject site being the Operative Whangarei District Plan and Northland Regional Policy Statement (both the operative and proposed).

7.2 Northland Regional Policy Statement

7.2.1 The Regional Policy Statement for Northland (RPS) was made operative in July 2002; however in October 2012, a new Proposed Regional Policy Statement for Northland (PRPS) was publicly notified, which will (in its final form) supersede the 2002 document. These documents contain high level policy guidance for the development of lower order statutory documents, including the Regional Soil and Water Plan, and the District Plan. The Resource Management Act 1991 requires that district plans must “give effect to” the regional policy statement of a region and must “not be inconsistent” with regional plans.

7.2.2 The content of the RPS is reflected in and given effect to through the provisions of the Whangarei District Plan and as such the relevant matters are considered further in subsection 7.3.

7.2.3 On 17 September 2013 the Northland Regional Council formally adopted the Independent Hearings Commissioners' recommendations on provisions and matters raised in submissions on the PRPS as a decision. The document has not been declared as operative at this point in time (hearing of appeals was undertaken in April 2014, with consent orders still being finalised) so full weighting cannot be given to the provisions at this time, however it is considered to more accurately reflect the current issues relating to subdivision and development than the RPS which was prepared in 2002, and is therefore more relevant in assessing this application. Therefore, in terms of controlling the effects of development, Policy 5.1.1 *Planned and Co-Ordinated Development* of the PRPS seeks to ensure that:

Subdivision, use and development should be located, designed and built in a planned and co-ordinated manner which:

- a) Is guided by the 'Regional Form and Development Guidelines' in Appendix 2;*
- b) Is guided by the 'Regional Urban Design Guidelines' in Appendix 2 when it is urban in nature;*

- c) *Recognises and addresses potential cumulative effects of subdivision, use, and development, and is based on sufficient information to allow assessment of the potential long-term effects of development;*
- d) *Is integrated with the development, funding, implementation, and operation of transport, energy, water, waste, and other infrastructure;*
- e) *Should not result in incompatible adjacent land uses in close proximity and avoids the potential for reverse sensitivity; and*
- f) *Ensures that plan changes and subdivision to / in a primary production zone, do not materially reduce the potential for soil-based primary production on land with highly versatile soils, or if they do, the net public benefit exceeds the reduced potential for soil-based primary production activities; and*
- g) *Maintains or enhances the sense of place and character of the surrounding environment except where changes are anticipated by approved regional or district council growth strategies and / or district or regional plan provisions.*

7.2.4 As previously discussed within Section 6.0, the proposal is considered to result in a minor change to the amenity and the character of the locality. As such, the proposal is not considered to be inconsistent with both the RPS (as given effect to through the Whangarei District Plan) and PRPS, as required to be considered under Section 104(b)(v).

7.3 Operative Whangarei District Plan

7.3.1 The relevant objectives and policies in the Operative Whangarei District Plan ('the plan') for the proposed subdivision are located in Chapters 5: *Amenity Values*, Chapter 6: *Built Form and Development*, Chapter 8: *Subdivision and Development*, Chapter 14: *Heritage Trees*, and Chapter 22 : *Road Transport* (a copy of these chapters is included in **Attachment 4** of this report).

7.4 Chapter 5 Amenity Values

Objective 5.3.1 The characteristic amenity values of each Environment are maintained and where appropriate enhanced.

Objective 5.3.2 Adverse effects on amenity values do not result in a reduction of amenity value below that which is desirable for people's health and safety.

Objective 5.3.5 The actual or potential effects of Subdivision use and development is appropriately controlled and those activities located and designed, are to be compatible with existing and identified future patterns of development and levels of amenity in the surrounding environment.

Policy 5.4.1 Effects on the Local Environment – To ensure that activities do not produce, beyond the boundaries of the site, adverse effects those are not compatible with the amenity values characteristic of the surrounding and/or adjacent environment unless such effects are authorised by a district plan, a designation, resource consent, or otherwise. The following effects should be given particular consideration in this respect:

- Noise and effects;
- Shading;
- Glare;
- Light spill;
- Dust;
- Smoke;
- Odour;
- Vibration;
- Spray drift;
- Visual amenity.

Where internalisation of effects cannot be wholly achieved, the Council will consider a Best Practicable Option approach.

Policy 5.4.2 Character and Timing of Activities – To allow activities where their nature, timing and duration do not result in adverse effect on amenity

values beyond the extent compatible with the characteristics of the surrounding and/or adjacent Environment/s.

Policy 5.4.7 Intensity and Design of Subdivision and Development – To encourage that subdivision and development do not unduly compromise the outlook and privacy of adjoining properties, and to be appropriate to the Environment in which it is located. Particular regard should be had to:

- The layout and intensity of subdivision;
- The location, design and sitting of buildings and structures except where such buildings and structures provide a specific service for the surrounding environment. In the latter case any building or structure shall be designed, laid out and located, so as to avoid, remedy or mitigate any adverse effects on the environment.

Policy 5.4.12 Traffic – To encourage vehicle movements and parking demand, where it does not adversely affect the amenity values of the particular environment in which it is located, having regard to the characteristics of that environment and adjacent environments, and the range of activities for which it makes provision for.

7.4.1 The relevant objectives and policies of the District Plan relating to amenity values aim to balance the demand for residential and commercial development with the need to maintain the characteristic amenity values of the local environments. Specifically, commercial development adjacent to or adjoining a living environment should be of a scale, design and location that either avoids adverse effects or adequately mitigates adverse effects, to maintain the residential amenity of the living environment.

7.4.2 The proposed activity is considered consistent with the above provisions given the location of the site, the use of the existing residential dwelling, the scale of the activity, and the compliance with the noise requirements of the Operative District Plan. The proposed activity is therefore considered appropriate to the locality and will be of a scale not out of character with the existing development or the anticipated patterns of development within the surrounding area.

7.4.3 In addition, provided the consent holder complies with the conditions of consent relating to parking and manoeuvring, and the distribution of traffic movements throughout the day, it is considered that the amenity effects associated with traffic will not be significantly greater than those associated with the existing activities or the permitted activities within the surrounding area.

7.4.4 Overall, given the scale and design of the proposed restaurant along with the mitigation measures and the recommended conditions of consent, it is considered that the amenity values of the local environment can be maintained at an acceptable level and as such, the objectives and policies are not offended by the proposal.

7.5 Chapter 6 – Built Form and Development

Objective 6.3.2 Subdivision and development that ensures consolidated development in appropriate locations and avoids sprawling or sporadic subdivision and ribbon development patterns in the coastal and rural environment.

Policy 6.4.2 Consolidated Development

To consolidate urban development by:

- Further develop within existing built up areas, so as to avoid sporadic or sprawling subdivision and ribbon development patterns, particularly in rural areas and along the coast.
- Directing rural lifestyle and rural-residential development to appropriate locations adjacent to existing settlements, rather than allowing sporadic development throughout rural and coastal areas

7.5.1 The proposed activity is considered consistent with the above objective and policy given the location of the site being within a business environment, and not tipping the balance in terms of cumulative effects. The proposed activity is therefore considered appropriate to the locality and

will be of a scale not out of character with the existing development or the anticipated patterns of development within the surrounding area.

7.6 Chapter 8 Subdivision and Development

- Objective 8.3.1 Subdivision and development that achieves the sustainable management of natural and physical resources whilst avoiding, remedying or mitigating adverse effects on the environment.
- Objective 8.3.2 Subdivision and development that does not detract from the character of the locality and avoids conflicts between incompatible land use activities.
- Policy 8.4.1 Incompatible Land use Activities – To design and locate subdivision and development so as to avoid, as far as practicable, conflicts between incompatible land use activities.
- Policy 8.4.7 Design and Location – To ensure subdivision and development is designed and located so as to avoid, remedy or mitigate adverse effects on, and where appropriate, enhance:
- Natural character of the coastal environment, indigenous wetlands, lakes and rivers and their margins;
 - Landscape values;
 - Ecological values;
 - Amenity values and sense of place;
 - Archaeological, cultural (including tangata whenua) and heritage features;
 - Sites of Significance to Maori;
 - Heritage areas of significance to Maori;
 - The relationship of tangata whenua and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga;
 - Infrastructure, particularly roads and the Airport;
 - Water and soil quality;
 - Versatile soils;
 - Mineral resources;
 - Business growth and development opportunities within defined Business Environments;
 - Cross boundary coordination;
 - Human health and safety.

7.6.1 The relevant objectives and policies of the District Plan relating to development aim to ensure that business growth and development occurs within defined Business Environments, and that development is designed and located to avoid incompatible land use activities. The proposed activity is not considered contrary to the above provisions, as the proposed commercial activity is occurring within the Business 2 Environment, and is compatible with adjoining and adjacent development.

7.6.2 Given the scale, design and location of the proposed activity, the proposal is not considered to detract from the character of the locality where commercial activities are permitted subject to compliance with requirements such as hours of operation, noise and traffic movements. While the proposed restaurant will not be carried out in accordance with the permitted standards for car-parking and hours of operation, infringements have been assessed in Section 6 of this report and are considered to be acceptable subject to the mitigation measures and the recommended conditions of consent.

7.7 Chapter 14 Heritage Trees

- Objective 14.3 The protection and enhancement of trees that make a significant contribution to heritage values.
- Policy 14.4.2 Destruction – To ensure that no subdivision, use or development should result in destruction of, or adverse effects on, Heritage Trees, in particular adverse effects on:
- The long term life of trees;
 - The heritage and amenity values of the tree.

- 7.7.1 The relevant objectives and policies of the District Plan as they relate to Heritage Trees aim to ensure development occurs in such a way that the health and values of Heritage Trees are preserved. Subject to the mitigation measures and recommended conditions of consent, it is considered that the proposed activity will maintain the health of the trees, and the heritage and amenity values associated with them.

7.8 Chapter 22 Road Transport

- Objective 22.3.1 Establish and maintain a safe and efficient road transport network.
- Objective 22.3.2 Avoid, remedy or mitigate any adverse effects of road transport activities on the surrounding environment.
- Objective 22.3.3 Protect the road transport network from the adverse effects of adjacent land use, development or subdivision.
- Policy 22.4.4 Ecological, Landscape and Amenity Values – To ensure adverse effects of road transport activities on ecological, amenity and landscape values should be avoided, remedied or mitigated to the extent practicable.
- Policy 22.4.5 Location of Activities – To locate activities and developments in a manner that makes best use of the existing and proposed road transport infrastructure, and minimises adverse effects on traffic flows.
- Policy 22.4.6 Pedestrian Safety – To ensure that cyclists and pedestrians, including vulnerable groups, such as the young, the elderly and the disabled, are safe from vehicles and other road traffic. Suitable facilities for cyclists and pedestrians should be provided in new developments and within the existing roading hierarchy, as appropriate.
- Policy 22.4.7 Parking and Manoeuvring – To provide adequate parking, turning and manoeuvring space on every site, other than sites in the areas shown in Figures 6A.1 and 6A.2 to Appendix 6, to accommodate traffic generated by the activity, and to maintain the safe and efficient operation of the transport network; and to facilitate the provision spaces (owned by Council and/or private companies) in the areas shown in Figures 6A.1 and 6A.2 to Appendix 6, both on and off roads.

- 7.8.1 The relevant objectives and policies of the District Plan relating to road transport seek to maintain the safety and efficiency of the road transport networks. As discussed in Section 6 of this report, the safe and efficient movement of people, vehicles and goods in the locality is unlikely to be compromised. With the conditions of consent recommended by Council's Senior Environmental Engineering Officer, it is considered that the overall traffic effects of the proposed activity will be acceptable

- 7.8.2 In addition to this, it is not uncommon for new commercial development to be unable to meet all the development standards with regard to parking and transport requirements, particularly when the existing building is maintained, and limited site development is proposed. Therefore, the proposed activity is not considered contrary to the above provisions.

7.9 Summary

- 7.9.1 Overall, the proposal is considered to be consistent with the objectives and policies of the District Plan, primarily those that relate to sustainable management of natural and physical resources, amenity values and road transport.

7.10 Plan Change 110: Noise and Vibration

- 7.10.1 Plan Change 110 seeks to introduce objectives, policies and rules for noise and vibration at a District Wide level that are consistent with best practice, and that uphold what is required for the health and safety of people and communities, and the amenity values of the Environment in which they are located.
- 7.10.2 The Hearing for the Plan Change was held on the 15 and 16 June 2015. As per Council's resolution on Wednesday 10 December 2014, all rules in Plan Change 110 shall have legal

effect only once the Proposed Plan provisions become operative in accordance with Clause 20 of Schedule 1 of the Act. As such no weighting has been given to this Plan Change in this instance. In any case the proposal is unlikely to conflict with the provision, given the permitted status of the application with regard to noise.

8.0 Other Matters

8.1 There are no other matters relevant to the proposal that need to be considered.

9.0 Part 2 Matters

9.1 Section 5 – Purpose

9.1.1 Part 2 of the Resource Management Act 1991 details the overarching purpose and principles of the Act.

9.1.2 In terms of Part 2 of the Act, the proposed activity must meet the purpose of the Act set out in section 5 which is “*to promote the sustainable management of natural and physical resources.*” As outlined in section 5(2), “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 well being and for their health and safety while -

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.”

9.1.3 The purpose of the Resource Management Act 1991, as outlined in above, is to promote the sustainable management of natural and physical resources. The proposal is considered to represent sustainable management of land resources by providing a commercial opportunity whilst maintaining amenity by utilising an existing character dwelling. It is considered that the proposed activity is of a scale, design and location that adequately mitigates adverse effects and is not out of character with the existing development or the anticipated patterns of development within the surrounding area. Therefore, the proposal is considered consistent with the purpose of the Act.

9.1.4 Section 5 of the Act is supported by a number of other ancillary principles contained in sections 6, 7 and 8 in Part 2 of the Act that provide decision makers with a set of guidelines that reflect current government policies and ideologies in regards to resource management, and assist in the interpretation of sustainable management. The relevance of these sections to the proposal is assessed below.

9.2 Section 6 – Matters of National Importance

9.2.1 Section 6 of the Act highlights matters of national importance that shall be recognised and provided for in order to achieve the sustainable management purpose of the Act. None of these are relevant to this proposal.

9.3 Section 7 – Other Matters

9.3.1 The proposal is considered to maintain the amenity values and quality of the local environment as discuss in Sections 7 and 8 of this report. Therefore, it is considered that the proposal is consistent with the relevant matters as outlined in Section 7 of the Act.

9.4 Section 8 – Treaty of Waitangi

9.4.1 No matters pertaining to the principles of the Treaty of Waitangi, as outlined in Section 8 of the Act, are considered relevant to this application.

10.0 Conclusion & Recommendation

10.1 Conclusion

- 10.1.1 The proposal is to establish and operate an 80 seat licensed restaurant, with takeaways, in the Business 3 Environment, open from 11am – 2:30pm (lunch) and 5pm – 11:30pm (dinner), 7 days a week, with 10 on-site carparks provided. Overall, the application is considered to be a Discretionary Activity requiring consent under the rules of the Operative Whangarei District Plan relating to activities generally, carparking, engineering standards and heritage trees.
- 10.1.2 In considering the matters discussed in Section 6 of this report, it is concluded that the proposal will have no more than minor adverse effects on the environment subject to measures outlined in the application and the recommended conditions. This includes the effects on traffic safety and efficiency, noise, amenity and character of the locality, and heritage trees.
- 10.1.3 In terms of matters discussed in Section 7 of this report, it is concluded that the proposal is considered to be consistent with the objectives and policies of the Regional Policy Statement (both operative and proposed) and the Operative District Plan, primarily those that relate to sustainable management of natural and physical resources, amenity values, heritage trees and road transport.
- 10.1.4 In terms of the matters discussed in Section 9 of this report, it is concluded that the proposal is consistent with Part 2 of the Act.
- 10.1.5 Having considered the application against the relevant provisions of the Act, it is therefore recommended that this application be granted, subject to conditions.

○ **Recommendation**

THAT pursuant to sections 104, and 104B of the Resource Management Act 1991, it is recommended that consent be granted to Trading Company Limited (LU1400102 P050598) to operate an 80 seat licensed restaurant, with takeaways, at 1 Apirana Ave, open from 11am – 2:30pm (lunch) and 5pm – 11:30pm (dinner) daily, with 10 on-site carparks provided. Resource consent is required as a Discretionary Activity pursuant to Rule 41.3.1 *Activities Generally*, Rule 41.3.5 *Provision of Parking Spaces*, Rule 47.2.1 *Parking and Loading*, Rule 47.2.4 *On-Site Manoeuvring*, and Rule 59.2.3 *Activities Near a Heritage Tree*.

Recommended Conditions

1. The activity shall be undertaken in general accordance with the site plan prepared by Bill Dodds Architect and the application prepared by Precision Planning dated September 2014 including the following specialist reports:
 - Arboricultural Assessment prepared by Symbiosis Tree Services and GreensceneNZ Limited dated 9 December 2014.
 - Assessment of Noise Effects prepared by Styles Group dated 10 December 2014.
 - Assessment of Traffic Effects prepared by Engineering Outcomes Ltd dated 22 August, and subsequent additional comments dated 5 May 2015.
2. At no time shall the whole venue be booked for a single function, e.g. wedding, birthday party etc.

Noise:

3. The activity shall at all times comply with the noise limits set out in Rule 41.3.13 of the District Plan.
4. The selection and placement of any external or externally vented mechanical plant, and any mitigation measures required to ensure compliance with the night time noise limits in condition(3) at any surrounding site, shall be overseen by a suitably qualified acoustics expert. The noise level from the mechanical plant shall be sufficiently low to ensure that the cumulative noise levels from all sources on the site are compliant with the relevant noise limits. Written confirmation from a suitably qualified noise expert confirming this is to be provided to Council's Compliance Team Leader prior to the opening and operation of the restaurant.
5. Prior to the opening and operation of the restaurant, the consent holder shall submit a Noise Management Plan (NMP) setting out the measures required to ensure compliance with the noise limits in condition 3. The NMP shall set out specific requirements for:
 - i. Restrictions on the use of the northern deck area beyond 2200hrs, including allowance for screening by enclosures where appropriate;
 - ii. Methods to restrict the use of Apirana Ave access after 2200hrs;
 - iii. Signage directing goods vehicles to shut off engines when parked on site;
 - iv. Signage or other methods restricting the arrival of service vehicles outside of the hours of 0700 to 2200;
 - v. Signage inside the restaurant direction staff on the handling of refuse and recycling after 2200; and
 - vi. Restrictions on outdoor music;
 - vii. Restrictions on group bookings on the northern deck;
 - viii. Any other relevant and necessary noise management measures.

The NMP is to be certified by Council's Team Leader Compliance.

6. The NMP shall state that the northern deck area must be vacated by 2200hrs to ensure that noise limits are complied with. This restriction may be changed to allow some or all of the northern deck area to be available beyond 2200hrs to the satisfaction of Council based on:
 - i. The provision of a report from a suitably qualified and experienced acoustic expert that sets out the results of testing to confirm any proposed seating and/or enclosure arrangement will result in compliance;
 - ii. The testing regime shall include simultaneous indoor and outdoor noise measurements and full details of the final arrangement for the northern deck area.

This change to the NMP is to be made in writing to Council's Team Leader Compliance, supported by the evidence under i. above.

7. The restaurant shall operate in accordance with all the measures outlined in the NMP on a continuous basis.
8. A copy of the NMP shall be held on site at all times during the operation of the activity.

Heritage Trees:

9. The listed rimu trees and pohutukawa street tree shall be protected from damage for the duration of all works within the site. This is to be achieved by compliance with the Tree Protection Methodology provided in the Arboricultural Assessment report prepared by *Symbiosis Tree Services* and *GreensceneNZ Limited* dated 9 December 2014.
10. Prior to works commencing, a meeting shall be arranged by the consent holder so that the conditions of consent are explained by an appointed arborist to all contractors, sub-contractors and work site supervisory staff who are carrying out any works associated with the project within the dripline of all protected or scheduled trees covered by this consent. The meeting may also be attended by the relevant Council staff responsible for the consent monitoring. The consent holder shall give Council five working days prior notice of the intended date and time of this meeting.
11. The consent holder shall ensure that all contractors, sub contractors, and work site supervisory staff who are carrying out any works within the dripline of all protected or scheduled trees covered by this consent are advised of the conditions of consent and act in accordance with the conditions.
12. A copy of the conditions of consent and the Tree Protection Methodology provided in the Arboricultural Assessment report prepared by *Symbiosis Tree Services* and *GreensceneNZ Limited* dated 9 December 2014 shall be available at all times on the work site.

Engineering:

13. Prior to site works commencing, the consent holder must submit a detailed set of engineering plans prepared in accordance with Whangarei District Council's (WDC) Environmental Engineering Standards (EES 2010 Edition). The engineering plans are to be submitted to the SEEO for approval.

It is to be noted that certain designs may only be carried out by an Independently Qualified Person (IQP) or Chartered Professional Engineer (CPEng) working within the bonds of their assessed competencies. IQP's must have been assessed by WDC and hold a current status to submit design work.

Plans are to include but are not limited to:

 - i. All work needing design/certification by a WDC approved IQP/CPEng will require completion of a producer statement (design).

- ii. Design details of the construction of a new single width vehicle crossing on Apirana Avenue in accordance with Sheet 19 Commercial Crossing (Note the requirement for a 2.0m strip of hot laid AC at the mouth of the crossing) and Sheet 22. Entrance crossings are to be designed and constructed in such a manner that will control stormwater run-off entering a property from the road, and that likewise prevent stormwater and detritus, including gravel, dirt and other materials, migrating onto the road reserve from a property. Accessways and private driveways sloping up from the road shall have a stormwater collection and disposal system at the boundary as detailed on sheet 18. This design is to be certified by a qualified arborist to demonstrate that no damage will be caused to the adjacent pohutukawa tree including the root system located within the WDC Road reserve.
 - iii. Design details of the relocation of the existing “School Zone Ends” road sign to beyond the new Apirana Avenue vehicle crossing in accordance with Sheet 25 installation details.
 - iv. Design details of marked onsite parking and manoeuvring for 10 vehicles with a sealed, concrete or paved surface in accordance with AS/NZS2890.1. This design is to be certified by a qualified arborist to demonstrate that no damage will be caused to the existing rimu, pururi, and titoki trees as identified in the Arboricultural assessment compiled by Symbiosis Tree Services dated 9th December 2014.
 - v. Design details of the attenuation of stormwater for the onsite parking and manoeuvring areas to predevelopment levels in compliance with Chapter 4, and more specifically Section 4.11 of Council’s Environmental Engineering Standards 2010, to the satisfaction of the Senior Environmental Engineering Officer.
14. Prior to the opening and operation of the restaurant, all work on the approved engineering plans in condition 13 is to be carried out to the approval of the Senior Environmental Engineering Officer (SEEO) or their delegated representative.

All work needing design/certification by a WDC approved IQP/CPEng will require completion of a producer statement (construction).

In the case of works to remain in private ownership, these may be inspected and approved by a WDC approved IQP who has been certified to design/construct such works. (The works that fall into this category will be advised by the SEEO as part of Engineering plan approval) A producer statement (construction) is to be provided by the WDC approved IQP, along with copies of all test results/photographs etc. The SEEO is to be advised of any necessary inspections/testing of private works a minimum of 24 hours before they take place in order that the SEEO may observe the inspection/testing if so desired.

All works that are to be vested in WDC require the presence of the SEEO their delegated representative at all inspections/testing.

Failure to comply with these requirements may result in the work not being accepted as complying with the RC conditions/EES 2010 Edition.

No construction works are to commence onsite until the engineering plans required in condition 1(a) have been approved and all associated plan inspection fees have been paid.

15. The consent holder shall notify council, in writing, of their intention to begin works, a minimum of seven days prior to commencing works. Such notification shall be sent to the Senior Environmental Engineering Officer (SEEO) and include the following details:
- i. Name and telephone number of the project manager.
 - ii. Site address to which the consent relates.
 - iii. Activities to which the consent relates.
 - iv. Expected duration of works.
16. A copy of the approved engineering plans and a copy of the resource consent conditions and the above letter are to be held onsite at all times during construction.
17. The applicant shall ensure that spoil from the site must not be tracked out onto Council Road

formations to the approval of the Senior Environmental Engineering Officer.

18. The consent holder is to submit a Corridor Access Request application to Council's Road Corridor Co-ordinator and receive written approval for all works to be carried out within Council's Road Reserve in accordance with Council's Environmental Engineering Standards 2010 to the satisfaction of the Senior Environmental Engineering Officer or delegated representative (refer to the advisory clause below for the definition of a Corridor Access Request).
19. Prior to the opening and operation of the restaurant the consent holder must:
 - i. Provide written confirmation from a qualified arborist that the Apirana Avenue vehicle crossing and onsite parking and manoeuvring areas as referenced in conditions 13(a)ii & 13(a)iv have been constructed without causing damage to the existing trees as referenced by these conditions to the approval of the Senior Environmental Engineering Officer.
 - ii. Reinstatement council berms similar to surrounding environment to the satisfaction of Council's Senior Environmental Engineering Officer or their delegated representative.
 - iii. Provide a works producer statement from the suitably qualified contractors who completed the works, certifying that the works have been completed in accordance with the approved engineering plans, Council's Environmental Engineering Standards 2010 Edition and best trade practise, to the satisfaction of Whangarei District Council's Senior Environmental Engineering Officer.
 - iv. Submit a certified and dated "as built" plan of completed works and services, and 'RAMM' data prepared by a suitably qualified person in accordance with council's Environmental Engineering Standards (EES) 2010 Edition to the approval of the Senior Environmental Engineering Officer.
 - v. Locate a sign at the Bank Street Access facing inwards, clearly stating that 'no exit is permitted from the access prior to 10pm' to the satisfaction of council's Senior Environmental Engineering Officer or delegated representative.
20. No heavy goods vehicles are to use the Apirana Ave access between 8.30-9.00am and 3.00-3.30pm on weekdays.

Landscaping:

21. A detailed landscape plan shall be prepared by a suitably qualified person and submitted to Council's Team Leader Compliance for approval prior to the commencement of works on-site. It shall detail the following:
 - i. The size and species of any existing planting, and whether it is to be retained;
 - ii. Name of proposed species, (plants shall be appropriate to the immediate area and shall be eco-sourced from within the local ecological district);
 - iii. Size of proposed stock for planting;
 - iv. Numbers, locations and spacing of proposed plants;
 - v. Height, colour and material of fencing along the road boundaries;
 - vi. Specific landscaping along the northern site boundary.
22. Written evidence is to be provided from a suitably qualified person, stating that all planting in accordance with the approved landscape plan (as referenced in condition 24) has been completed prior to the commencement of the operation of the restaurant. The planting is to be maintained in perpetuity to the satisfaction of Council's Compliance Team Leader.

Review Condition:

23. In accordance with section 128 of the Resource Management Act 1991, the council may serve notice on the consent holder of its intention to review the above conditions of consent six months from the date of the decision, and in one year intervals thereafter.

The reviews will be for the purpose of dealing with any adverse effects on the neighbouring/surrounding environment not currently mitigated through the conditions of

consent, specifically conditions 5 and 20, and which may arise from the exercise of the consent and/or is appropriately dealt with at a later stage or to require the consent holder to adopt best practicable option to remove or reduce any adverse effects on the environment.

This condition will allow the council to have particular regard to the on-going management of the activity to ensure that it is carried out in the manner described in the application and in a manner that does not result in any adverse environmental effects in the locality.

Reasons for the Recommendation:

That pursuant to section 113 of the Resource Management Act 1991 the reasons for this decision are as follows:

1. In considering the matters discussed in Section 6 of this report, it is concluded that the proposal will have acceptable adverse effects on the environment subject to measures outlined in the application and the recommended conditions. This includes the effects on traffic safety and efficiency, noise, amenity and character of the locality, and services and hazards.
2. In terms of matters discussed in Section 7 of this report, it is concluded that the proposal is not considered contrary to the objectives and policies of the Regional Policy Statement (both operative and proposed) and the Operative District Plan, primarily those that relate to sustainable management of natural and physical resources, amenity values and road transport.
3. In terms of the matters discussed in Section 9 of this report, it is concluded that the proposal is consistent with Part 2 of the Act.

Advice Notes

1. The applicant shall pay all charges set by Council under Section 36 of the Resource Management Act 1991. The applicant will be advised of the charges as they fall.
2. Section 357B of the Resource Management Act 1991 provides a right of objections to costs.. Objections must be in writing, setting out the reasons for the objection, and submitted to Council within 15 working days after the decision has been notified to you.
3. Any works carried out within Council's road reserve will require an approved Corridor Access Request.
4. A Corridor Access Request (CAR) is defined in the new "National Code of Practice (CoP) for Utilities access to the Transport Corridors". This CoP has been adopted by Council. It provides a single application for Traffic Management Plans/Road Opening Notice applications. Enquiries as to its use may be directed to Council's Road Corridor Co-ordinator, ph 430 4230 ext 8231.

11.0 Attachments

1. The application (as lodged) and additional information
2. Submissions by Jan Homes and Te Mai Investments Limited
3. Council's SEEO Report
4. Relevant Provisions of the District Plan