

MINUTES

TITLE: Environment & Planning Subcommittee
Commissioner Hearing
DATE: Friday, 8 December 2006
TIME: 9.30 am
VENUE: Council Chamber, 189 Queen Street, Richmond

PRESENT: David Collins

IN ATTENDANCE: Consultant Planner (T Quickfall)

1. D AND T FRY, HART ROAD, RICHMOND - APPLICATION NO. RM060654

1.1 Application

The application seeks to expand the range of activities currently authorised on the subject property, known as "Fossil Ridge". The additional activities are to establish and operate a café/wine bar/restaurant and to use the subject property for functions and events.

Up to 20 functions and events would be held each year and would cater for up to 80 persons per function or event. The functions and events would run until midnight, in addition to the six evening invitation wine tasting sessions already authorised by Resource Consent RM040843.

The café / wine bar/restaurant would cater for up to 40 persons until 10.30 pm each day

The property is zoned "Rural 1" according to the proposed Tasman Resource Management Plan and the proposal requires a resource consent for the extended commercial use (additional activities) of the site.

The application site is located at Hart Road, Richmond, being legally described as Lot 2 DP 7765 (CT NL3B/1151).

The Commissioner proceeded to hear the application, presentation of submissions and staff reports as detailed in the following report and decision.

The Commissioner reserved his decision and the hearing concluded.

**Report and Decision of Hearings Commissioner D W Collins, under authority
delegated by the Tasman District Council**

Hearing held in the Tasman Room, Richmond Council Offices

on the 8th of December 2006

Commissioner David Collins was appointed to hear and determine the application lodged by Dr and Mrs D L and T M Fry for land use consent to use the property known as Fossil Ridge at the corner of Hart Road and Hill Street, Richmond for a café/restaurant and for events such as wedding ceremonies for up to 80 people. The application, made in accordance with the Resource Management Act 1991 ("the Act"), was lodged with the Tasman District Council and referenced as RM 060654.

PRESENT: **Hearings Commissioner**
David W. Collins

APPLICANT: Dr and Mrs Fry
Mr Francis Bacon, planning consultant

CONSENT AUTHORITY: **Tasman District Council**
Mr Tony Quickfall, planning consultant

SUBMITTERS: Mr Ray Firth
Mr Paul Trotman
Ms Victoria Chisnel (counsel for Mr and Mrs Trotman)
Ms Glynis Bevernage

1. DESCRIPTION OF THE PROPOSED ACTIVITY

This application seeks land use consent to expand the activities currently carried out on the application site, a 5.873 hectare L shaped property on the western corner of the Hart Road/Hill Street intersection, Richmond, known as "Fossil Ridge".

The property is within the Waimea East irrigation area and has been developed into a vineyard and olive grove. A resource consent granted in September 2004 permits the retail sale of produce including wine (under an off-licence) grown on the property, culinary demonstrations up to 12 times a year, wine tasting between 10.00 am and 6.00 pm daily, and up to six evening invitation-only wine tasting events finishing no later than 10.30 pm. These activities are carried out in and around a modest purpose-designed building with an area of 133 m² including a semi-enclosed 50m² verandah.

Consent is now sought (application as scaled down following the receipt of submissions) to operate a café/winebar with food available for up to 40 persons open up to 10.00 pm Monday to Thursday, 10.30 pm Fridays and Saturdays and 9.00 pm Sundays, to hold up to 12 daytime private functions per year limited to 80 guests and

finishing no later than 6.30 pm, to hold up to eight evening functions per year limited to 40 guests and finishing no later than 11.30 pm, and to retail art works.

There is an existing formed carpark for 16 vehicles near the building and another parking area for about 12 cars has been formed about 100 metres further into the site. A revised application plan tabled at the hearing shows an existing grassed area as to be used for “20-25 space overflow” and “bus/coach park”. The application states that no additional signage is sought (there is an existing sign at the entrance to the property, which is from Hart Road).

2. PROPOSED TASMAN RESOURCE MANAGEMENT PLAN (“PTRMP”) ZONING, AREAS AND RULE(S) AFFECTED

The application site is zoned Rural 1 under the Proposed Tasman Resource Management Plan. I understand all provisions relevant to this application are beyond change so there is no need to consider the Transitional Plan. Under Variations 49 and 50 to the Proposed Plan the land in this area is to be rezoned Deferred Residential, but the variation process has only reached the stage of submissions and further submissions being received.

Under Rule 17.4.2(b)(iv) of the Proposed Plan consent is required as a discretionary activity for the sale of liquor, and under Rule 17.4.4(b)(vii) of the Plan consent is required for commercial activities, again with the status of discretionary activities.

3. NOTIFICATION AND SUBMISSIONS RECEIVED

The application was publicly notified on 9 of September and drew 11 submissions; two expressing support and the others expressing various degrees of concern about noise, hours of operation, traffic, and discharges.

4. PROCEDURAL MATTERS

No procedural matters arose during the hearing.

5. EVIDENCE HEARD

The following is a summary of the evidence and submissions presented.

The Applicants’ Case

A consultant planner, Mr Francis Bacon, appeared for the applicants. Mr Bacon confirmed that the proposal is discretionary under the Proposed Plan and would be discretionary under the Variations. He expressed his view that the alterations to the application made since notification are within the scope of the application. (This was not disputed, and I agree.) Mr Bacon emphasised that the focus of the proposal is small ceremonies and receptions, comparing this with the effects of about 58 houses if the site was developed for housing. Much of Mr Bacon’s evidence related to concerns raised in submissions and suggestions about how these concerns could be met through conditions. In particular, in the course of exercising the applicants’ right of reply at the end of the hearing Mr Bacon put forward further volunteered restrictions on the number of events and the hours involved.

The Concerns Expressed by Submitters

All of the submitters present were opposed to the application.

Mr Ray Firth, who lives nearby at 105 Hart Road expressed particular concern about likely noise, especially from events. He requested that if the café/bar is approved it should be subject to conditions preventing any amplified music, and limiting hours to 9.00 pm. Mr Firth (and in fact all the neighbours speaking at the hearing) suggested that the topography of the locality means that the proposed activity area is at the base of a natural amphitheatre, exacerbating noise effects.

Ms Victoria Chisnel appeared as counsel for the closest immediate neighbours, Mr and Mrs Paul and Helen Trotman. Ms Chisnel emphasised the amenity values of the locality, and made submissions on the relevance of various objectives and policies in the Tasman Regional Policy Statement and the Proposed Tasman Resource Management Plan. She disputed a suggestion in the section 42A report that the proposal had similarities with other events venues (Melrose House in Nelson and Gardens of the World on Clover Street East). Ms Chisnel submitted that consent would create a precedent for commercial activities in areas where there are residential neighbours.

Mr Paul Trotman presented a statement outlining the background to his recent purchase of the rural-residential property above and north of the area on the application site where the additional activities are proposed. His is the closest residence – about 100 metres from the outdoor area proposed to be used for functions. Mr Trotman emphasised the potential for noise, particularly from functions, but indicated that he did not find the present activities disturbing.

Ms Glynis Bevernage, who has lived above the application site at 409 Hill Street for the last 21 years, also expressed concern about the potential for noise. She noted that occasional noise from farming activities in the area ceases after dark and that parties in the neighbourhood are only occasional events. Ms Bevernage noted that there are several cafes and bars not far away in the town.

The Reporting Officer's Report and Evidence

I had the benefit of a comprehensive report prepared pursuant to section 42A by a consultant planner retained by the Council, Mr Tony Quickfall. His report covered the background to the application, relevant provisions of the Proposed Tasman Resource Management Plan, the permitted baseline and a discussion of the concerns raised by submitters.

6. PRINCIPAL ISSUES

The principal issue in contention was the likely level of disturbance, particularly noise, from the proposed expansion of activities on the site. There was also some discussion about adverse traffic effects, the potential to create a precedent for commercial activities in the zone, and the proposed effluent disposal arrangements.

7. MAIN FINDINGS OF FACT

It was clear from my visit to the application site that the site has been developed in a way that makes it attractive as a venue for functions and for a café. Both the existing building and the landscaped surrounds are significant physical resources in terms of section 5 and section 7(b) of the Act.

It is also clear that the low density residential and rural-residential environment surrounding the site provides a high standard of amenity for neighbours and has to be protected. In particular, the area does not at present have any activities generating continuous or loud noise. There is some traffic noise, and according to one of the submitters there is occasional noise from agricultural activities and normal residential activities. The already consented wine tasting on the application site is not cited by neighbours as causing any significant disturbance. This involves the use of a domestic type of sound system with speakers mounted both inside the building used and outside under the veranda.

I am satisfied that the parking arrangements proposed – approximately 25 formed spaces, plus about 25 “overflow” spaces is likely to be sufficient for the peak demand of a function with 80 people. It can be noted that the application specifies that the café would be closed during private functions so the parking requirements for the two activities are not additive.

8. RELEVANT STATUTORY PROVISIONS

The proposal has to be assessed under sections 104 and 104B of the Act. Section 104 directs me to have regard to “*..actual and potential effects on the environment..*” and the provisions of relevant statutory documents - in this case the Tasman Regional Policy Statement and the Proposed Tasman Resource Management Plan.

8.1 Policy Statements and Plan Provisions

The Regional Policy Statement provides some broad guidance relevant to this application in the General Objectives, but the same concerns are addressed in the Proposed Tasman Resource Management Plan. These relate to the avoidance, remedying and mitigation of adverse effects arising from the use of resources, the efficient use and development of resources, and the “*Maintenance of economic and social opportunities to use and develop resources in a sustainable manner.*”

The application site is zoned Rural 1 under the Proposed Plan. There is residential zoning opposite the site on Hart Road, rural residential zoning across Hill Street from the site, and rural zoning to the south and west. Together with adjoining land the site is also subject to a Deferred Residential zoning under a notified Variation to the Plan. Deferral is related to the provision of services. The Variation has reached the stage where submissions (30) and further submissions (9) have been lodged, but no hearings have been held. I understand that all but two submissions support the proposed rezoning and there was consensus at the hearing that I should attach significance to the likely future zoning.

I accept that, but in my assessment it does not have a great bearing on the appropriateness of the applicants' proposals. All aspects of the application have the status of discretionary activities under both the Rural 1 and the Deferred Residential zoning. On the one hand the probability of residential development in the immediate neighbourhood is a factor against consent because it would mean more potentially adversely affected people, but on the other hand it also means that the existing semi-rural "receiving environment" would no longer exist. As Mr Bacon pointed out, the application site could be developed for at least 58 houses under low density residential zoning. That would have far more impact on the amenity of the neighbourhood in terms of visual amenity, traffic and (arguably) noise than what is proposed by this application. Consent could have the effect of delaying conversion of this site to residential use, to the benefit of immediate neighbours.

Mr Quickfall's report included schedules of relevant objectives and policies in the Regional Policy Statement and the Proposed Resource Management Plan and Ms Chisnel's submissions also traversed the relevance of some of these. It can be noted that the proposals would not undermine the productive capacity of the site (a concern while it has rural zoning), would not interfere with the safety and efficiency of the road network. Most of the other relevant objectives and policies relate to amenity concerns, discussed below.

8.2 Part II Matters

Consideration is "*subject to*" the purpose and principles of the Act set out in Part II of the Act. Relevant Part II matters in this case are the overall sustainable management of resources purpose of the Act as defined in section 5(2), section 7(b) – "*The efficient use and development of natural and physical resources*" and section 7(c) – "*The maintenance and enhancement of amenity values*".

As already noted above, I accept that the application site and existing wine tasting facilities are significant physical resources. What is proposed is "*efficient use and development*" of these.

Section 7(c) relates to the central concern in this case: whether the benefits to the applicants and their customers/visitors (the enabling purpose of the Act set out in section 5) would be outweighed by the adverse effects on the amenities of the area currently enjoyed by the neighbours.

9. DECISION

I am satisfied that the purpose of the Act would best be met by granting consent, provided the adverse effects on the amenities of the neighbourhood are severely constrained by conditions. Pursuant to sections 104 and 104B consent is hereby granted, subject to the conditions set out below.

10. REASONS FOR THE DECISION

The central issue in this case is whether the extended range of activities could be carried out as proposed without unreasonably undermining the exceptional amenities of the immediate area. The general issue of preserving amenity values is a strong theme in both the Regional Policy Statement and the Proposed Tasman Resource Management Plan, and is brought into focus here because the part of the application site concerned is at the base of what was described as an "*amphitheatre*". There

was some dispute over the extent to which this topography leads to amplification of sound generated on the site, but there is no doubt that some neighbours' homes overlook the site.

In my assessment the acceptability of a proposal for additional visitor-attracting activities on this site depends on the details of the scale and nature of those activities. There is no question of these activities being necessarily contrary to the Plan: they have the status of discretionary activities, meaning that they are considered appropriate in the zone under some circumstances. Discretionary status also means there can be no concern that consent would create some kind of undesirable precedent for commercial activities in the Rural 1 Zone.

The application was drafted to specifically limit the scale of the activities and the hours of operation. Following a useful discussion about these important details at the hearing the application was further modified. For ease of monitoring and if necessary enforcement, I will incorporate these modifications into the conditions of consent.

In my assessment the proposed café and functions activities are quite modest and would be unlikely to cause unreasonable disturbance to the neighbourhood. Ample off-street parking is to be provided and the vehicle entrance is well separated from all but one neighbouring vehicle entrance and the nearest intersection. The café building and outdoor area to be used for functions are generally screened from neighbours' view. I note in particular that the primary outlook from the nearest residence (the Trotmans') is in the opposite direction.

I accept that from time to time both the café and the functions would generate audible noise such as car doors slamming and voices, but for most of the time it can be expected that they would not. During winter and on inclement days at other times of the year, the activities would be contained largely within the building. It should be noted that the application does not seek larger functions at night: the 12 events with up to 80 guests are to finish by 6.30 pm. The evening functions (maximum of 8 per year) and the café are limited to a maximum of 40 people.

Neighbours have an understandable concern about the prospect of amplified music. The conditions have been designed to severely limit amplified music, and a review clause has been included to cover the eventuality of the "amphitheatre" effect being greater than I anticipate (there was no technical evidence on this).

The display of art works for sale does not appear to me to be likely to give rise to any adverse effects. Again, it is an efficient use of the environment that has been created by the applicants.

There was some discussion at the hearing about a condition recommended by Mr Quickfall requiring the installation of three permanent toilets. The applicants would prefer to install two permanent toilets (including one for disabled patrons) and bring in an additional portable toilet for large functions as required. I understand from advice obtained by Mr Quickfall during the hearing that the Building Act does permit waivers from the Code requirements for numbers of permanent toilets. Obviously waivers are granted (or assumed) for occasional events. The question will be how many events can reasonably be permitted with only partial compliance. I see no reason to preempt what is a discretion that could otherwise be exercised under another Act.

11. COMMENTARY ON CONDITIONS OF CONSENT

As noted above, I consider this is a proposal which has to be carefully constrained by conditions to ensure an appropriate balance between the benefits to the applicants and future users of the facilities and the adverse effects on the amenities enjoyed by immediate neighbours.

The restrictions on hours of operation and number of people catered for specified in the conditions were volunteered, but I believe they are at the upper end of what is reasonable. A review condition has been included to allow the consent authority to reconsider these if experience proves they are too liberal. It should be noted in particular that only eight evening functions are authorised by this consent, and that they are limited to 40 guests. There is no evidence that the evening wine tasting functions already authorised are causing undue disruption. The nearest neighbour, Mr Trotman, indicated at the hearing that these are not causing him any concern.

The restriction on the size of any marquee used was volunteered and I have included it as a condition although a larger marquee would not affect the number of guests at functions as that is controlled directly by other conditions.

Condition 8 has been included for the practical reason that without it the consent holders would have no way of predicting the number of participants, leading to potential difficulties in complying with the restrictions on numbers.

The restriction on the origin of art for sale was volunteered and seems to be a readily enforceable method of addressing a concern that retailing of bulk imported art could otherwise become a major component of the activity on the site.

Conditions 10 to 12 relating to noise are intended to provide measurable standards as well as directly controlling the potential source of noise most likely to create disturbance even when numerical standards are met. I considered excluding all amplified music outside, but it seems unreasonable to exclude the use of a portable keyboard during wedding ceremonies. This would be of short duration. Similarly I considered the request from one of the submitters that there should be no sound system speakers outside. There are presently two small speakers attached to the outside wall under the veranda. I acknowledge that these could be used to create more volume than is desirable, but that seems unlikely given that the operators of the café and private functions will want to keep volume to a level that allows conversation in the immediate vicinity of these speakers. Still, this is something to be monitored.

There was some dispute about the number of car parks likely to be required, but as there is no shortage of space it seems sensible to ensure an ample supply so as to avoid any necessity for parking on the road. Similarly in relation to the requirement to provide parking and manoeuvring for a bus, I consider it is better to encourage the use of a bus by groups rather than assuming car transport.

Condition 19 requiring exterior lighting to be directed away from boundaries is to avoid possible glare towards neighbours houses and gardens.

The conditions about monitoring are designed to ensure there a proper record of events held and any complaints about adverse effects of those so as to facilitate monitoring of compliance with the conditions and possible assessment of whether a review of the conditions should be initiated under section 128 of the Act.

Issued this 24th day of January 2007

David W Collins
Hearings Commissioner

RESOURCE CONSENT NUMBER: RM060654

Pursuant to section 104B of the Resource Management Act 1991 the Tasman District Council hereby grants resource consent to:

Dr and Mrs Darryl and Tranja Fry
(hereinafter referred to as “the Consent Holder”)

ACTIVITY AUTHORISED BY THIS CONSENT:

To operate a café/winebar with food available for up to 40 persons open up to 10.00 pm Monday to Thursday, 10.30 pm Fridays and Saturdays and 9.00 pm Sundays, to hold up to 12 daytime private functions per year limited to 80 guests and finishing no later than 6.30 pm, to hold up to eight evening functions per year limited to 40 guests and finishing no later than 11.30 pm, and to retail art works.

LOCATION DETAILS:

Address of property: south-eastern corner of Hart Road and Hill Street, Richmond

Legal description: Lot 2 DP 7765

Certificate of title: NL 3B/1151

Pursuant to Section 108 of the Act, this consent is issued subject to the following conditions:

CONDITIONS

General

1. The activity shall be undertaken in accordance with application RM060654, engineering report and plans submitted with the application, further information letter dated 31 August 2006, the further information letter dated 26 October 2006, and the Plans marked “A” and “B” dated 24 January 2007 attached to this consent. Where there is any actual or apparent conflict between the information provided with the application and any conditions of this consent, the conditions shall prevail.

Café

2. The café shall be licensed to provide alcohol and food for no more than 40 persons.

3. Café hours shall be limited to 0800 (8.00 am) to 2200 (10.00 pm) Monday to Thursday inclusive, 0800 (8.00 am) to 2230 (10.30 pm) Friday and Saturday, and 0900 (9.00 am) to 2100 (9.00 pm) Sundays and public holidays.
4. The café shall be closed to the public during private functions.

Private Functions

5. Private functions are limited to:
 - 12 events per year with a maximum of 80 guests and closing no later than 1830 (6.30 pm); and
 - Eight events per year with a maximum of 40 guests closing no later than 2300 (11.00 pm), except for Sundays and public holidays when the events shall close no later than 2100 (9.00 pm).
6. There shall be no more than one function per day.
7. The floor area of any marquee used in association with a function shall be no greater than 36 square metres.
8. Functions shall be for invited guests only, and not advertised as open to the general public.

Sale of Art

9. The sale of art shall be limited to art produced within, or by artists residing within the Tasman District Council or Nelson City Council boundaries.

Noise

10. There shall be no amplified music or public address system except the existing low-powered domestic system or a similar replacement, and use of a portable amplified keyboard during wedding ceremonies.
11. The activities shall at all times comply with the following noise controls:

Noise generated by the activity, measured at or within the boundary of any site, other than the site from which the noise is generated, or at or within the notional boundary of any dwelling, shall not exceed:

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

N.B. Day = 7.00 am to 9.00 pm Monday to Friday inclusive and 7.00 am to 6.00 pm Saturday (but excluding public holidays).
Night = all other times plus public holidays

12. For compliance purposes, noise shall be measured and assessed in accordance with the provisions of NZS 6901: 1991, *Measurement of Sound* and NZS 6802:1991, *Assessment of Environmental Sound*.

Parking

13. The Consent Holder shall provide a total of 43 on-site parks plus one marked loading space.
14. The parking area adjacent to the café building shall be set aside exclusively for loading with permanent signage (complying with the Proposed Tasman Resource Management Plan's dimensions for permitted signs in the Rural 1 Zone as at the date of this decision) indicating this as a loading area.
15. One coach park shall be provided with sufficient manoeuvring area to comply with the Proposed Tasman Resource Management Plan permitted activity standards for on-site vehicle manoeuvring (Proposed Plan as at the date of this decision).
16. All access and parking areas shall be formed and maintained in a dust free (all weather) surface.
17. Forming of the additional 16 parking spaces (which are additional to the existing formed car parks), shall be completed prior to any private event catering for up to 80 guests being held. The Consent Holder shall advise the Council's Coordinator Compliance Monitoring of the date that the additional parking spaces have been formed.
18. The parking, loading and coach park shall be located generally within the areas identified on the site plan marked Plan "A" dated 24 January 2007 attached to this consent.

Lighting

19. All exterior lighting shall be permanently directed away from the site boundaries.

Monitoring

20. The Consent Holder shall advise the Council's Coordinator Compliance Monitoring when the activity this consent authorises commences so monitoring of conditions can be programmed.
21. During the first year of operation the Consent Holder shall notify the Council's Coordinator Compliance Monitoring at least 24 hours prior to each private function taking place, for the purposes of enabling the Council to monitor compliance with the conditions of consent.
22. The Consent Holder shall maintain a written record of the dates of private functions held, noting which category of authorised event each falls into, and shall make this record available to the Council on request.
23. The Consent Holders shall maintain a written record of any complaints about the operation, detailing the name of the complainant (if known), the date and time, method of complaint, concern(s) raised, and any action taken to address the concern(s). This record shall be made available to the Council on request.

Review

24. Pursuant to section 128 of the Resource Management Act 1991, the conditions of this consent may be reviewed 12 months after the date of commencement of this consent, or at the expiry of any 12 month period thereafter. The review may be necessary to deal with any significant adverse effects on the environment which may arise as a result of this consent or to deal with any other matter relevant to the authorised activity that may be raised through the review.
25. The review of conditions referred to in Condition 24 may allow for the deletion or amendment of any of the conditions of this consent or the addition of new conditions as necessary to avoid, remedy or mitigate any adverse effects on the environment.

Advice Note on Monitoring

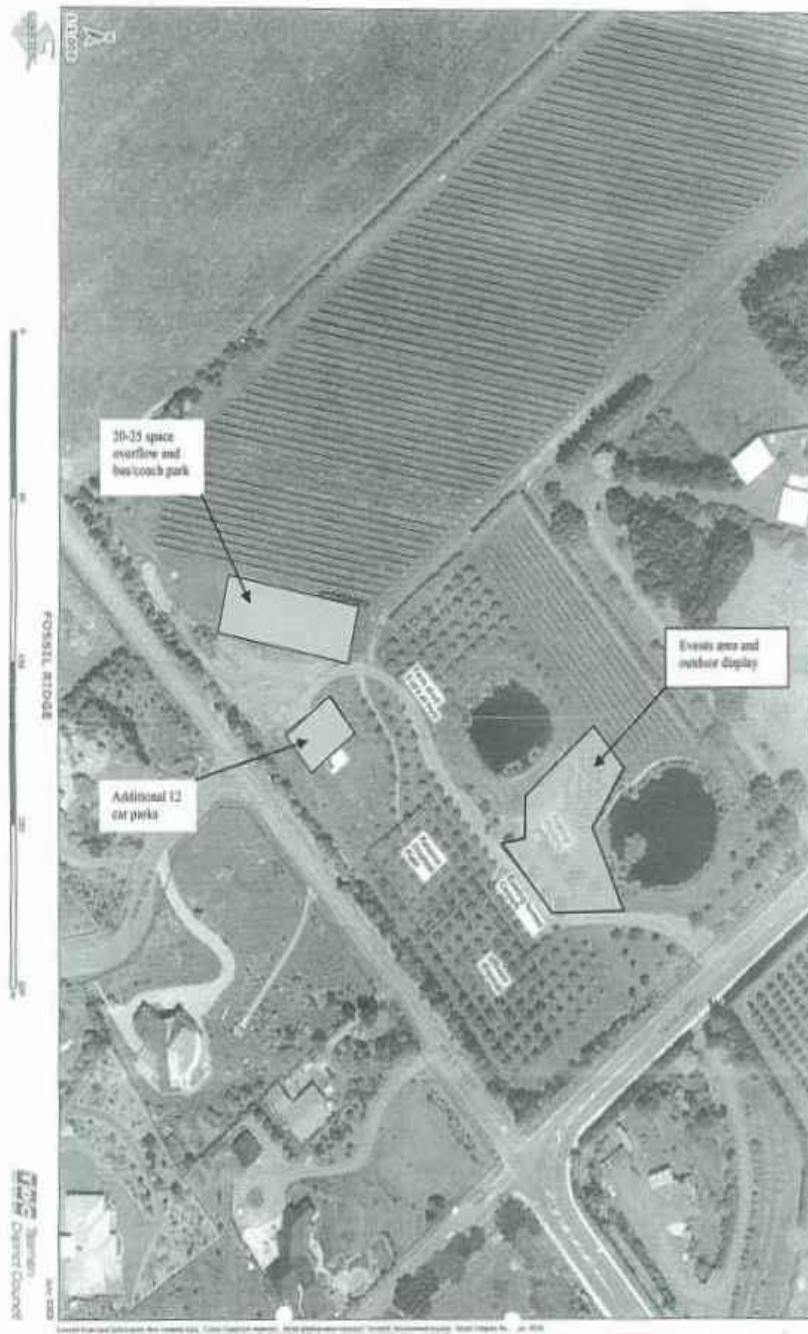
Monitoring of the consent is required under section 35 of the Resource Management Act 1991 and a deposit fee is payable at this time. Should monitoring costs exceed this initial fee, the Council will recover this additional amount from the resource consent holder. Costs are able to be minimised by consistently complying with conditions and thereby reducing the frequency of Council visits.

Issued this 24th day of January 2007

David W Collins
Hearings Commissioner

Date Confirmed:

Chair:



Plan A – Site Plan for RM060654 (Dated 24/01/07)



Plan B - Floor Plan for RM060654 (Dated 24/01/07)

