

MINUTES

TITLE: Environment & Planning Subcommittee
DATE: Tuesday, 2 June to Thursday 4 June 2009
TIME: 11.00 am
VENUE: Tasman Council Chambers, 189 Queen Street, Richmond
PRESENT: Crs N Riley (Chair), B W Ensor, J L Edgar
IN ATTENDANCE: Consents Manager (J Butler), Co-ordinator Natural Resources Consents (L Pigott), Consent Planner Land Use (J Harley), Executive Assistant (V M Gribble)

1. APPLICATION NO RM080687, RM081020 – GARDENS OF THE WORLD LTD, CLOVER ROAD EAST, HOPE

1.1 Proposal

Land Use Consent – RM080687

The application seeks to establish and operate the following activities:

- A crematorium with an estimated six cremations a week during the day;
- A place of religious assembly with seating for up to 25 persons;
- A reception centre for up to 80 guests with on-site kitchen/catering facilities between the hours of 10.00 am and 11.00 pm Monday to Sunday;
- A café in the reception centre building between the hours of 9.00 am to 10.00 pm seven days a week but not operating at the same time as private functions;
- A memorial garden with access to the public between 9.00 am and 9.00 pm seven days a week.

The application includes development of associated buildings and car parking areas on the site.

Discharge Permit: Air Discharge from Crematorium – RM081020

The application includes development of associated buildings and car parking areas on the site.

To discharge the combustion products from a gas-fired crematorium to air.

- Normal operation should not create any visible smoke.
- Expected to result in no offensive or objectionable odour or particulate material at or beyond the boundary.
- Fired with LPG with a maximum energy input of approximately 586 kW.

- Stack will be at least 6.5 metres above ground and 1 metre above the roof of the chapel building.

Stack will have an internal diameter of 0.495 metres.

The application site is located at 95 Clover Road East, Hope, being legally described as Lot 1 DP 18219.

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

The public session of the hearing concluded at 11.56 am.

The Committee reserved its decision.

RESOLUTION TO EXCLUDE THE PUBLIC

**Moved Crs Ensor / Edgar
EP09/06/20**

THAT the public be excluded from the following parts of the proceedings of this meeting, namely:

Gardens of the World

The general subject of the matter to be considered while the public is excluded, the reason for passing this resolution in relation to the matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for passing this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under Section 48(1) for the passing of this resolution
Gardens of the World	Consideration of a planning application	A right of appeal lies to the Environment Court against the final decision of Council.

CARRIED

**Moved Crs Edgar / Ensor
EP09/06/21**

THAT the open meeting be resumed and the business transacted during the time the public was excluded be adopted.

CARRIED

**2. APPLICATION NO RM080687, RM081020 – GARDENS OF THE WORLD LTD,
CLOVER ROAD EAST, HOPE**

**Moved Crs Edgar / Ensor
EP09/09/22**

**THAT pursuant to Section 104B of the Resource Management Act, the Committee
DECLINES consent to Gardens of World as detailed in the following report and
decision.**

CARRIED

Report and Decision of the Tasman District Council through its Hearings Committee

Meeting held in the Tasman Room, Richmond between 2 June and 4 June 2009

A Hearings Committee (“the Committee”) of the Tasman District Council (“the Council”) was convened to hear the application lodged by **Gardens of the World Ltd** (“the Applicant”), to establish and operate a crematorium and associated place of assembly and memorial garden, and a reception centre/café, and to discharge combustion products from the crematorium to air. The applications, made in accordance with the Resource Management Act 1991 (“the Act”), were lodged with the Council and referenced as RM080687 (land use) and RM081020 (discharge).

PRESENT:

Hearings Committee

Cr N Riley, Chairperson
Cr B Ensor
Cr J Edgar

APPLICANT:

Mr N McFadden (Counsel for Applicant)
Mr G Etherington (Developer of the Gardens of the World)
Mr F Day (Applicant)
Mr R Langbridge (Landscape Architect)
Mr R Baxendine (Registered Valuer)
Mr R Malthus (Environmental Health Consultant)
Mr J Iseli (Air Quality Consultant)
Mr N Williams (Traffic Engineering Consultant)
Mr T Quickfall (Planning Consultant)

CONSENT AUTHORITY:

Tasman District Council
Ms J Harley (Consent Planner, Land Use)
Mr L Pigott (Coordinator Natural Resource Consents)
Mr D Ley (Development Engineer)
Mr G Clark (Transportation Manager)
Mr G Caradus (Regulatory Services Coordinator)

SUBMITTERS:

Mr W Day
Ms S Little
Ms J Barr
Mr M Weir (New Zealand Transport Agency) and
Mr P Kortegast (Opus)
Ms S Hills
Ms S Gepp (Counsel for Living in Hope group)
Mr D Statham (Traffic Engineering Witness)
Mr S Richards
Mr C Zimmerman
Mr W Raats
Mr G Marshall
Mr M Brown (Hope School Board of Trustees)
Ms J Pollitt
Ms E Currie
Mr R Barry
Mr R Aubrey
Mr W Hill
Ms T Zimmerman
Ms M Hobson
Mr A Greenhough
Mr A Brodie
Mr B Helem
Mr T Milton

IN ATTENDANCE:

Mr J Butler (Principal Resource Consents Adviser) –
Assisting the Committee
Mrs V Gribble (Committee Secretary)

1. SUMMARY

The Committee has **DECLINED** resource consents to establish and operate a crematorium and associated place of assembly and memorial garden, and a reception centre/café, and to discharge combustion products from the crematorium to air.

2. DESCRIPTION OF THE PROPOSED ACTIVITY

The application is for land use consent to build and operate at the Gardens of the World (“the Gardens”) a crematorium; a place of non-denominational religious assembly (although presumably non-religious assembly would be allowed too) with seating up to 25 persons; visitor reception centre catering for up to 80 people incorporating a café; and associated parking, servicing and signage. A discharge permit is also sought (RM081020) for discharge to air from the crematorium, a term of 35 years is sought for this consent.

The subject site is 3.8406 hectares in area and located at 95 Clover Road East, Hope. The subject site is known as “Gardens of the World” which has been historically run as a small scale tourist garden, offering guided tours of the gardens and the site is open to the general public between the hours of 9am and dusk. This site contains extensive gardens and visitor car parking, a large tunnel house, grapefruit orchard, residential dwelling and various other outbuildings.

The legal description of the land is Lot 1 DP 18219, Certificate of Title 12A/1049C.

The site is screened from Paton Road and partially screened from Clover Road by mature planting, fencing and developed gardens. The property sits amidst a range of horticultural blocks, lifestyle blocks and smaller rural residential holdings.

A previous resource consent, 910069 ("the existing consent") exists for the site which allows the tourist garden to be used for "weddings and other functions". The construction of a reception centre was part of the consent but was not given effect to within the necessary time frame. Therefore it is considered that the reception centre component of the existing consent has lapsed.

With regard to the proposed discharge to air, the application is as follows:

- The applicant has applied to run a crematorium, carrying out a maximum of six cremations per week.
- The crematorium is fuelled by LPG with a maximum fuel usage of 80 litres per hour. The rate of fuel consumption will result in an energy release not exceeding 586 kw.
- The discharge occurs via a stack that is at least 6.5 metres in height and it will be at least 1 metre above the roof. The discharge will be directly ventilated to air without any obstructions that may reduce the efflux velocity.
- The stack will be monitored to keep its opacity less than 15% to ensure that normal operation does not cause any visible emission of smoke.
- The applicant will minimise the solid metal and chlorinated plastics that are cremated.

The discharge will contain combustion products from LPG (most importantly PM₁₀ and NO₂) and the products of cremation (SO₂, HCl, dioxins, furans, and metals). The critical contaminants in terms of potential to cause adverse effects are SO₂, NO₂, PM₁₀, HCl, dioxins and furans and metals. Mercury is notable due to the volatilisation of the amalgam used for filling teeth.

3. TASMAN RESOURCE MANAGEMENT PLAN ("TRMP") ZONING, AREAS AND RULE(S) AFFECTED

According to the TRMP the following apply to the subject property:

Zoning: Rural 1

Area(s): Special Domestic Wastewater Disposal Area; Aquifer Protection Area

The proposed land use activity is deemed to be a discretionary activity in accordance with the following table.

Activity	Relevant rules	Proposal	Status
Reception centre, café, chapel and onsite functions serving alcohol	17.5.2.1 (b) (vi), 17.5.2.2 – commercial activities are not permitted ; 17.5.2.1 (b)(iv), sale of liquor is not permitted	Not permitted Not permitted	Discretionary Activities Pursuant to 17.5.2.3
Crematorium	36.3.10)(b)(x) – discharges from crematoria are listed as discretionary The crematorium activity could be deemed to meet the definitions of industrial, commercial and community activities as listed in Chapter 2 – Meaning of Words in the TRMP. 17.5.2.1(b)(i) – industrial activity 17.5.2.1(b)(vi) – commercial or community activity	Not permitted Not permitted	Discretionary pursuant to 36.3.10 Discretionary Pursuant to 17.5.2.3
Building bulk and location	17.5.3.1 <ul style="list-style-type: none"> • 7.5m max height • 5 m boundary setback • Site coverage 5% or 2000m² max 	All buildings have been designed to comply	Permitted
Memorial gardens	17.5.2.1 – the activity of visiting the memorial gardens is not necessarily a commercial or community activity however the sale of a memorial plot could be considered to be a commercial activity.	Not permitted	Discretionary Pursuant to 17.5.2.3
Wastewater discharge	36.1.5 (SWDA) permitted if: <ul style="list-style-type: none"> • Max average weekly flow does not exceed 2000l/day • Not located within wastewater management Area • No effluent run-off to surface water • Minimum 1.5m from adjoining property and 20m from any domestic bore • Various other controls 	Designed to comply	Permitted
Signs	16.1.5.1, 16.1.5.2 - One free standing sign per site, max 1m ² and no higher than 3m	Second sign on one site complies with height and size	Restricted Discretionary Pursuant to 17.1.5.4
Access / Vehicle crossings	16.2..2.1 (q) - more than one crossing and; Figure 16.2A - Access standards (10m sealing required).	Two access ways are existing, and third is proposed off Paton Road. Sealing is	Restricted Discretionary Pursuant to 16.2.6.1

Activity	Relevant rules	Proposal	Status
		proposed for 5m instead of 10m.	
Parking and loading	<p>Figure 16.2C onsite Parking spaces required: Reception centre, place of assembly and the gardens are “places of assembly” under the plan – 1 space per 4 persons’ design capacity</p> <p>Café – 1/30m² GFA plus one per four persons outdoor seating (occupies the same floor space as the reception building (approx 171m² and proposed outdoor dining for 16)</p> <p>Reception centre / cafe, 80 people plus outdoor seating = 24 spaces</p> <p>Place of assembly/ crematorium/ Memorial garden area;, capacity of 25 people = six spaces</p>	<p>Reception centre, gardens of the world and café combined: Car parking plan shows 61 spaces plus four bus and one loading area or when bus bays are not used a total of 84 car parks are available;</p> <p>Place of assembly and memorial gardens – site plan shows 13 proposed parking spaces</p>	Permitted

The proposed discharge to air is deemed to be a discretionary activity in accordance with Rule 36.3.10 of the TRMP.

4. NOTIFICATION AND SUBMISSIONS RECEIVED

The applications were notified on 6 December 2008 pursuant to Section 93 of the Act. A total of 83 submissions were received, 47 in support and 36 in opposition. A comprehensive summary of the main issues, reasons for submissions and decisions sought was presented in Ms Harley’s staff report. While a summary of those submissions is not presented here the Committee in making its decision has read all of the submissions.

5. PROCEDURAL MATTERS

There were no procedural matters that required a ruling by the Chair.

6. EVIDENCE HEARD

The Committee heard evidence from the applicant, expert witnesses, submitters, and the Council’s reporting officer. The following is a summary of the evidence heard at the hearing.

6.1 Applicant's Evidence

Mr N McFadden (Counsel for Applicant)

Mr McFadden introduced the proposal and the history of the development of the Gardens of the World site.

Mr McFadden stated that many of the submitters seem to be of the view that productive farming uses is all that Rural 1 zoned land can be used for, whereas it is apparent from Chapter 7 and particularly from Objective 7.2.2 that the planning documents allow it to be used for other purposes. He considered that a grant of consent would enable the rural attributes of the site to be respected while the needs of people and communities are met.

Mr McFadden stated that the existing implemented resource consent obtained in 1991 authorises a range of activities, but not including a café or function centre. He considered this to be an important baseline for considering the current application. He considered the existing consent to be remarkably condition free.

Mr McFadden considered that the permitted baseline consideration is relevant in this case, and also that the Court of Appeal concluded that the "environment" includes the environment as it might be modified by the implementation of resource consents which have been previously granted.

Mr McFadden stated that he understood that the concerns of the submitters relate to noise, odour, traffic, effects on values and the risk of mercury fallout.

Mr McFadden agreed with the conclusions of the staff reports and generally accepted the recommended conditions.

Mr McFadden then discussed the purpose and principles of the Act. He considered that there are no relevant matters of national importance and that Section 7(b) (efficient use and development of resources) 7(c) (amenity values) and 7(aa) (stewardship) are relevant.

Mr G Etherington (Developer of the Gardens of the World)

Mr Etherington outlined the development of the Gardens and the need for a resource consent for a café and to have functions. While he agreed that there has never been a café building on the site there has been a café service operating.

Mr Etherington stated that he does not have the capacity to complete his dream of gardens with associated café and hopes that it will be fulfilled by another owner. He considered that a crematorium and associated facilities is consistent with his dream and that he wholeheartedly supported the application.

Mr F Day (Applicant)

Mr Day stated that it was, and is, his family's intention to establish a crematorium in the Richmond area. Mr Day stated that he had considered the Residential Zone but as sections have got smaller it has become very difficult, although he did state that there are crematoriums on Willis Street and in Kilbirnie in Wellington and in Blenheim.

He also considered the commercial area of Richmond but considered them too busy and unsuitable. Therefore he commenced looking at the surrounding rural zones. Mr Day considered that the Gardens “ticked all the boxes” in terms of desirability for the intended purpose.

Mr Day described the reception centre as an entrance to the gardens and a site where people can mingle and be available for small weddings and private functions.

Mr Day explained that the site will become two parts. The front part (the existing gardens) will be largely unchanged albeit with the addition of a reception centre and café service. The back area, with a separate entrance, will contain the chapel, crematorium, memorial gardens and associated car parking. The memorial gardens will be in a similar style to the existing gardens with a place where ashes can be buried with memorial plaques.

Mr Day confirmed that no liquor licence is proposed for the site. He stated that weddings will cater for themselves in terms of alcohol.

Mr Day confirmed the hours of operation of the Gardens of the World and Memorial Gardens as being 9.00 am to dusk seven days per week. Cremations will be between 9.00 am and 6.00 pm with around six per week.

In answer to a question Mr Day stated that they do not have funeral processions to crematoriums. He said that a committal would only be a few people travelling in cortege. Less than 10% of funeral cremations would have more than one car. He has not had a cortege to crematorium in last five years that would involve more than five cars.

Cr Edgar put it to Mr Day that the layout looked, and had opening hours more like a restaurant rather than a café and that, with restaurants people want to have alcohol. She asked whether he could see a licence being sought in the future. Mr Day said they deliberately want to limit alcohol as the gardens are pristine and they do not want events that will spill over into the gardens and have them damaged. Tourists are surprised there is no facility for afternoon teas or lunches.

Cr Ensor asked if it would be fair to say these days it would be difficult to get consent in a residential area to put a crematorium in. Mr Day said one of the Wellington ones was only four years ago, in the middle of residential area and they had no trouble. With regard to a previously proposed Champion Road site that was declined, it would be more difficult in our provincial area.

Cr Ensor said by 2026 elderly population in Nelson will double. Is there a possibility you would concentrate all your efforts on Gardens of the World? Mr Day said definitely not. He insisted Nelson City Council would keep the old cremator and maintain it for emergencies. He has always believed there should be an alternative. There is no intention to close the Motueka crematorium.

Mr R Langbridge (Landscape Architect)

Mr Langbridge considered that the Gardens site is visually isolated from its surroundings by the trees and shelterbelts. As a result only the car park and the implement shed can be seen from Clover Road East. He describes the site as having a high absorption capacity.

As the proposed acoustic fence will be inside the perimeter plantings around the car park it will have little or no landscape impact.

Mr Langbridge considered that the chapel and cremator building will have an insignificant impact on this complex landscape. The reception centre will be partially visible from Clover Road East but will be absorbed into the landscape.

In addressing the recommended conditions of consent Mr Langbridge did not consider that plantings should be established prior to any activities taking place. He said that with the high absorption capacity of the landscape visual barriers will increasingly screen the activities.

Cr Edgar asked whether he was referring to the grapefruit orchard when he referred to the site as being productive. Mr Langbridge stated that he was talking about the service provided and that it has a commercial return due to the productivity of the gardens.

Mr R Baxendine (Registered Valuer)

Mr Baxendine concluded from analysis of sale and resale data that houses near to the Wakapuaka crematorium and cemetery are not sold and resold more often than a sample of houses further away. He also said that there was no discernable lesser value in the houses close to the Wakapuaka crematorium.

In the case of the Motueka crematorium he similarly found no evidence of more resales of properties in close proximity. Similarly, he found no discernable impact on the value of the properties from the presence of the crematorium.

Mr Baxendine stated that the proposed cremator is well separated from other dwellings and he did not expect that there would be any adverse effect on property values.

Mr Baxendine reported on conversations with other Telfer Young valuation offices around the country, none of whom reported any effects on property values.

In response to a question from Cr Edgar, Mr Baxendine stated that he had not done any analysis of the length of time that it took for properties to sell.

Also in response to a question, Mr Baxendine stated that the Wakapuaka crematorium cannot be seen except for the chimney. He also confirmed that both the Wakapuaka and Motueka crematoriums were in residential areas rather than rural as is the case with the current application.

Mr R Malthus (Environmental Health Consultant)

Mr Malthus described the topography as being generally flat but with a river terrace on the south west boundary dropping down to a lower level.

The existing consent places daytime and night-time limits on noise levels (using the L_{eq} noise parameter). Mr Malthus compared this with Rule 17.5.2.1(d) of the TRMP which limits noise (L_{10} and L_{max}) in the Rural 1 zone and which is mirrored in Ms Harley's recommended conditions. He considered that the Rule is slightly more

stringent than the existing consent. Mr Malthus considered that the limit on the existing consent is more relevant as L_{eq} is a more effective measure.

However, Mr Malthus considered that the proposal will meet the condition recommended by Ms Harley.

Noise will be attenuated principally by distances between the activities and the adjacent dwellings 6dBA with every doubling of distance from the source. Attenuation will also occur by shielding and containment.

He considered the reception centre to be the most significant noise source proposed. Noise can be contained within the facility through design and operation, including closed windows and doors at night time.

The car park is also a significant noise source. He considered that a level of 56 dBA would be generated within the car park. A solid timber acoustic fence 2 metres in height will be constructed to mitigate the effects of this noise.

Mr Malthus considered that noise from the crematorium and associated facilities would be minimal given the lesser noise production and the distances and shielding involved.

Mr Malthus set out a range of management procedures that should be implemented to ensure that the effects of noise are acceptable. He stated that the applicant has volunteered such procedures.

He considered that limiting the number of events and limiting activities to the proposed operating hours will substantially mitigate the adverse noise effects.

Mr J Iseli (Air Quality Consultant)

Mr Iseli described the proposed cremation unit (a Power-Pak II or PPII) as a modern advanced unit designed for use in sensitive areas.

Mr Iseli described the contaminants discharged as being similar to those discharged from typical fuels in domestic, commercial and industrial combustion. He considered that discharges from the stack of carbon monoxide and particulates (smoke) are significantly less than from burning commonly used solid fuels in conventional boilers or furnaces.

With regard to potential adverse effects he stated that the relevant contaminants are PM_{10} , dioxins (including furans), metals (primarily mercury), SO_2 , NO_2 and HCl.

Mr Iseli discussed the amount of mercury discharged. He settled on a conservative figure of 2.1 grams per cremation.

Mr Iseli described the results of contaminant dispersion modelling undertaken. He stated that maximum concentrations of contaminants will occur within 30 metres of the chapel (i.e. mainly within the Gardens site but a small way into Mr Greenhough's property to the north) and decline rapidly with distance. He presented the maximum predicted ground level concentrations (GLCs) for each contaminant at the boundary.

With regard to PM₁₀ emissions, he stated that levels will be very low and will be less than from a single open fire or an old-style woodburner.

With regard to mercury emissions, Mr Iseli stated that maximum predicted GLCs at dwellings are less than 0.3% of the guideline, and background concentrations are small. He stated that research has found that soils retain only 0.05% of the likely total mercury emission. He stated that tests have shown that there are small concentrations of mercury in soils around the Motueka crematorium.

Mr Iseli stated that a conservative guideline level of 1.0 mg/kg has been applied to some residential areas in New Zealand. He stated that the background concentration at the Gardens site is 0.06 mg/kg and that any increase beyond the property boundary will be very small over the next 35 years.

Mr Iseli quoted research which concluded that the potential public exposure to mercury through foodstuffs is almost certainly indistinguishable from the existing background concentrations in the diet.

He considered there to be no detectable mercury contamination effect on water supplies.

Mr Iseli stated that measures to control mercury emissions from cremators have not been required in New Zealand as mercury is not considered an area of concern and the cremators are small by international standards. Immobilisation of mercury by the addition of selenium under reducing conditions is not appropriate as mercuric selenide is highly toxic and under oxidising conditions the contaminants would be vapourised and emitted.

Mr Iseli also stated that the discharge from the Fonterra plant caused by the consented burning of coal would equate, in mercury discharge terms, to about a cremation every 2 to 3 days.

With regard to SO₂ and NO₂ the concentrations are predicted to be within 5% of the respective National Environmental Standard values, with background values small. Therefore no adverse effects are expected.

Mr Iseli stated that brief smoke discharges can occur as a result of mechanical or electronic systems, or during the cremation of "obese cases". Special procedures are required for the latter.

Mr Iseli concluded that mercury concentrations in soil at the property boundary will be very small and within the range of background concentrations measured in New Zealand. He stated that bio-accumulation in the food chain, in waterways and water supplies will be negligible. He considered selenium filters and capsules to not be feasible nor necessary for the proposed cremator.

Mr Iseli considered that the recommended soil monitoring is not necessary, but is accepted and volunteered by the applicant should the consent be granted.

Cr Edgar asked about the interment of ashes in the Gardens' grounds and effects on long-term soil quality. Mr Iseli stated that it was outside his area of expertise.

On the issue of control of mercury using selenium, Mr Iseli stated that in Europe there are very large scale crematoriums and much greater population density. The combination of the two factors means that there is greater concern about mercury emissions, particularly given higher background levels due to centuries of coal burning.

Mr Iseli stated there would be no adverse effect on the reported nearby aquaculture site.

Mr N Williams (Traffic Engineering Consultant)

Mr Williams stated that both Paton Road and Clover Road East are Collector Roads in the Tasman Resource Management Plan.

Mr Williams reviewed the crash history of Paton Road for the last 10 years. He stated that 9 of the 20 crashes (including two fatalities) occurred at night outside the proposed hours of operation. He considered that the lowering of the speed limit in 2005 to 80 km/hr appears to have reduced the annual crash rate. The traffic volumes carried by the roads are typical of the volumes carried on many rural roads in the district.

Clover Road East connects to State Highway 6 (SH6). Mr Williams considered that Paton Road is an obvious route from the site and that there is a low likelihood of vehicles turning right onto SH6 at the Clover Road East intersection. He considered that any of the road formations between the site and Richmond could handle brief increases in traffic. Overall, Mr Williams considered the road and traffic conditions to be quite conventional and able to sustain ongoing safe and efficient operation for motorists.

With regard to submitters' concerns about high traffic volumes he said that the chapel has capacity for 25 seats (about 10 cars) and the function centre is limited to 80 people (40 cars). Therefore even with coinciding events there would be around 50 to 55 vehicles. Higher traffic volumes associated with open-air activities and the 70 to 90 provided car parks will cater for most of the demand at these times.

Mr Williams considered that most of the traffic generated by funerals would be between 10:30 and 11:00; 12:15 and 13:00; 13:30 and 14:00; and 15:15 and 16:00.

Mr Williams then addressed the effects of traffic on the school on Paton Road. He did not consider it necessary to install variable speed signs either side of the school. He considered that all pickups of children would be completed by 3:15 and that the bulk of traffic generated by the applicant's proposal would be after that time. He further stated that if any problems do arise then the applicant can adjust their operations to ensure that traffic is delayed until after that time.

Mr Williams did not anticipate any safety or efficiency issues with the Clover Road East – SH6 intersection. When questioned about right turns into Clover Road East from SH6 he stated that the opposing volume is not great and that a driver approaching from the north would have approximately 8 seconds to see and deal with a turning car.

With regard to car parking, he considered the 80 car (or 60 car and 4 coach) car park capacity to be suitable in most cases and that overflow could use the chapel and memorial garden parking areas to the east. The flat grass verges allow on-street parking without serious disruption.

When asked by the Committee whether he considered Paton Road to be unsafe Mr Williams stated that it is not particularly unsafe. He stated that vehicle numbers are low and this will not change as a result of this proposal.

With regard to visibility to the east along Clover Road East when exiting the site he agreed that some vehicles may be out of sight for 1 to 2 seconds but that there is no record of crashes.

Cr Ensor asked about the safety issues on Paton Road and asked if he had done a comparison with similar roads in the District. Mr Williams stated he had not done a comparison but that crashes in the vicinity of the site was one fatality that failed to stop at the southern end of Paton Road. He stated that the issue with traffic crashes is that they are singular and each has a different cause. He said that the road is not patently unsafe in comparison with other roads in the district. Lots of other roads are narrow in terms of seal width, have drains beside them and limited visibility. The actual crash record is in a five year window and reflects improvements from reduced speed limits.

Cr Ensor said that mention was made about reducing the speed limit from 80 to 70 on Paton Road. Would that make it a safer road? Mr Williams said that we have seen evidence with reduction from 100 to 80 km/hr. Further reducing speed limit would start to stretch it for people. If you dropped the speed limit any further you probably would not achieve any reduction in speed.

Mr T Quickfall (Planning Consultant)

Mr Quickfall confirmed his opinion that the existing resource consent has been given effect to pursuant to Section 125 of the Act.

Mr Quickfall considered the conditions on the existing consent to be important as they establish a permitted baseline for future activities. The conditions include a maximum occupancy of 80 people, hours of operation between 10 am and 11pm (7 days) and no sale of liquor, at least 50 car parks and 4 bus parks, road widening of Clover Rd, and maximum noise limits.

Mr Quickfall said it is important to identify what is not controlled by the conditions as these will become permitted under the current consent. There is no limit on the type or frequency of events and the crematorium building is permitted.

Mr Quickfall considered that the area already has a building density which is more representative of a Rural Residential Zone.

In discussing the type of activity proposed (industrial, commercial or community) as defined in the Tasman Resource Management Plan, Mr Quickfall stated that he is not convinced it is a commercial activity because a commercial transaction will not normally be undertaken at the site.

Mr Quickfall attached a copy of a flyer that was circulated in the public which, he stated, misrepresents the proposal. He had concerns with the approach as it contained inaccurate information.

Mr Quickfall identified the matters raised in the submissions which do not relate to the application. His responses are summarised in parentheses where necessary. The matters raised were: industrial use of rural land (he did not consider it an industrial activity); funerals, a funeral parlour and hearses; perceived effects of buried people (no burials are proposed); and fragmentation of rural land (no fragmentation as no subdivision consent applied for).

Mr Quickfall then identified the matters raised in the submissions which are not relevant for assessment under Section 104 of the Act. His responses are summarised in parentheses where necessary. The matters raised were: no consent for interment of ashes (no consent needed as is a permitted activity); no/misleading consultation (the Act does not oblige any consultation and some was carried out); record of non-compliance (there is no record of complaints); too many activities on one site (the TRMP does not limit the number of activities that can occur on one site as permissions must be effects-based); future growth (speculative); alternative sites are available (not an effects-based assessment matter); carbon footprint; enforcement of guest numbers; loss of use of Gardens of the World; lower enjoyment of area (addressed as amenity); loss of property values (generally not taken into account in making decisions under the Act); liquor consumption (permitted); and perceived effects (not relevant under definition of effect).

With regard to the matters raised in submissions which can legitimately be considered under Section 104, Mr Quickfall stated that many of the effects are within the permitted baseline. Buildings can be constructed as a permitted activity and rural noises can be emitted. He stated that there is no requirement for planting or screening. If the crematorium is not considered a commercial activity then it could be built and operated as a permitted activity (except for the discharge to air).

Mr Quickfall then identified the core effects as being traffic safety, emissions, and an incompatible activity. With regard to the loss of productive land, the total building coverage will be substantially less than what is permitted. The gardens will retain productive potential.

With regard to amenity he considered that the current amenity is higher than the typical Rural 1 land use patterns.

Overall, Mr Quickfall considered the proposal to be consistent with the relevant Objectives and Policies in the Regional Policy Statement and Chapters 5, 7, 11, and 33 of the Tasman Resource Management Plan.

With regard to Section 5 of the Act, Mr Quickfall considered that the proposal will not limit the potential of this rural land to meet the needs of future generations and will provide a crematorium and memorial garden facility which is a core part of society.

6.2 Submitters Evidence

6.2.1 Submitters in support

Mr W Day

Mr Day introduced himself as the Manager of the Gardens. On behalf of himself and Mr J Beattie he supported the proposal. He considered that it would be a fantastic venue and asset for the District.

Mr Day stated that a funeral was held on site and that it was bigger than anticipated. He said that people parked on the road and they could not stop this. He estimated there were around 90 people at the function.

6.2.2 Submitters in opposition

Ms S Little

Ms Little stated that she and her family really appreciate and enjoy the Gardens as it is quiet and peaceful. She was concerned that the application will affect the area and neighbours.

She stated that land is highly productive and receives a wind from the Lee Valley that reduces the impact of frosts and leaves some parts frost free and therefore very valuable for horticultural production, hence the reason why the Gardens is so successful. To tie up this land with weddings, functions, and funerals seems “a crime” when there are alternatives.

She considered that the emissions have been underestimated on neighbouring horticulturalists who must have a zero tolerance of contaminants for export or for organic status.

She considered Paton Road to be unsafe and to add traffic is a “recipe for disaster”.

She stated that it can currently be very noisy on calm evenings and to live beside a café or function centre would have adverse effects.

The effect of knowing people are being cremated and ashes interred will have a mental impact and all the people living around it are in opposition.

Ms J Barr

Ms Barr stated that Paton Road has a history of crashes and is unsafe. She considered that until Paton Road has substantial work done to improve safety the consent should be declined.

Ms Barr also considered the SH6 intersections with Clover Road East and Aniseed Road to be dangerous at peak traffic times.

Ms Barr presented to the Committee a petition collected in 2002 asking that Paton Road be improved.

She considered that functions closing at 11pm will be disruptive with traffic and lights as late as midnight. Capping the events may be impossible as people cannot feasibly be turned away.

She considered that human health, agriculture, viticulture, horticulture and aquaculture will be affected by mercury discharges, particularly through settling directly on leaves and crops.

Mr M Weir (New Zealand Transport Agency) and Mr P Kortegast (Opus)

Mr Kortegast stated that the Clover Road – SH6 intersection has limited visibility and that crossroad intersections have a poor safety record. Any increase in traffic will cause an increased crash risk exposure.

The NZTA has no programmed upgrade works planned for the intersection and the NZTA may consider closing the Clover Road East connection completely if the intersection required improvements as a result of increased traffic movements.

The off-site sign on SH6 is a hazard and should be removed.

Mr Kortegast recommended additional conditions to be imposed should the consent be granted. These included a contribution be paid to the NZTA based on the measured increase in traffic towards upgrading the entrance way, advising all funeral parties and suppliers of goods and services to access the site via Paton Road, and to remove its unauthorised signage at the intersection of Clover Road and SH6.

He considered that the café potential could be quite significant. For servicing the café itself and funerals, there will be 65 to 100 additional vehicles movements per day. Figures quoted in evidence would be on the low side in his opinion.

The Committee raised a concern about the fairness of the Condition 1 recommended by the NZTA in that there is already traffic at the intersection. Mr Weir stated that the intent of the condition is to flag to Council the NZTA's concern that in event of an accident attributable to activities then the NZTA would like it to be monitored and a contribution made.

Mr Kortegast believed that there will be right turning traffic (from Brightwater area). He considered that right turns into Clover Road East are very dangerous as people tend to sit in the middle of the road and wait rather than pulling to the left. This causes a high risk to inattentive drivers following.

Ms S Hills

Ms Hills is concerned about the emissions and said that their livelihoods are at stake.

The traffic issue is significant and the roads and junctions are already dangerous.

She is concerned about noise and alcohol-related functions as people can bring their own alcohol.

Prime productive land should be kept as such. She stated that she moved to a rural area to be in a rural area, not commercial.

Ms S Gepp (Counsel for Living in Hope group)

Ms Gepp accepted that significant rural activities could be carried out as of right on the site however she emphasised that the operation of a crematorium and café/reception centre does not have any real comparison with a permitted rural activity. While elements of the proposal may have a permitted baseline the essence of the activity does not.

Ms Gepp quoted the TRMP by stating that commercial activities in rural areas remove land from the potentially productive rural land resource, and that their presence can affect rural character and amenity values. She considered that the proposal will have a significant effect on rural amenity values due to noise, traffic, effect on recreational use of the area, residents' appreciation of its pleasantness and the intrusion of a commercial activity into the rural zone, as well as through reverse sensitivity.

She stated that residents are affected by noise from live or recorded music, people's voices as they arrive and leave and at the functions, and vehicle noises including slamming of car doors. The impacts will increase with the changes in scale from occasional weddings to regular functions and with the operation of the café.

There have been very few functions over the past 13 years. If consent is granted the function centre will be 70 or so metres from Ms Zimmerman's son's bedroom window. Residents have put up with noise but this willingness should not now be held against them (by stating that there have been no complaints) in the face of this greater scale proposal. While no formal complaints have been lodged with the Council, complaints and concerns have been dealt with directly by property owners.

She quoted the Maize Maze case in which broadcast music was accepted as detracting from the rural character and amenity values and was an important factor in declining the consent, even though the activity would comply with the noise standards.

The area is well used by cyclists, walkers, horse riders etc even though there are no footpaths and the roads are narrow. Alcohol will obviously be available adding further concerns about road safety. During the occasional functions cars are not restricted to the car park and have parked on road verges. Photographs were presented showing extensive parking on the verges along Paton Road and Clover Road East.

Ms Gepp questioned how numbers can be limited at a funeral by a consent condition. She stated that if it is not possible for an adverse effect to be avoided, remedied or mitigated by conditions then it should be declined.

Ms Gepp stated that Ms Zimmerman experiences glare from evening lighting and vehicle headlights shining directly onto her house. The night time will be altered from a norm of quietness and darkness to voices, car doors, engine noise and lights.

Ms Gepp stated that combustion of human bodies will adversely affect residents' amenity. She quoted the decision of the Planning Tribunal that declined consent for Mr Day's application on Champion Road on the sole basis of the amenity of the residents.

The café and reception centre are commercial activities, as is the memorial garden. While it is accepted that the applicant will meet some permitted standards in terms of scale and setbacks, it is the cumulative effect of several buildings, various commercial activities, and an industrial activity that will have an effect on rural amenity. The site will be very busy.

Ms Gepp expected more instances of reverse sensitivity, such as pressure being put on neighbours to keep noise down during funerals or restriction of legitimate rural activities. Not all of these issues can be dealt with via rural emanations easements.

Mercury emissions are of principal concern to Mr Marshall, Mr Greenhough and Milcrest Estate who are (or in the case of Milcrest are considering) seeking organic certification. Soil testing will not address this concern. High mercury deposits within the Gardens site may affect its potential to be used productively in the future.

Ms Gepp stated that the high class soils of the Rural 1 zone make up only 5% of the soils in the district and this land is uniquely valuable rural land. Ms Gepp said that residents do not consider that the site has been permanently taken out of productive use. There are a wide range of small organic vegetable gardens, kiwifruit orchards and other micro producers flourishing in the area. The Gardens site could be converted to a productive use easily and quickly. The proposal including the interment of ashes in the memorial garden will forever take it out of production.

Ms Gepp rejected Ms Harley's perspective that the uniqueness of the Gardens site will only make it useful to a small number of occupiers. i.e. it will probably be used for rural residential as a private residence or similar. This undervalues the site's value and is not a relevant consideration.

Ms Gepp added that she does not believe that the existing water permit NN020019 can legally be used to provide water to the development.

Ms Gepp stated that the proposal does not satisfy Section 7(b) which requires regard to be given to the efficient use and development of natural and physical resources, in this case the productive land. The "need" for a new facility is an important consideration in determining efficient use of resources. The need has not been demonstrated and does not exist; therefore devoting highly valuable land to more services is inefficient.

Overall, she considered this location to be wrong because it uses prime rural land for incompatible commercial and industrial activities, because the cross-boundary effects of emissions and noise will adversely affect activities and people, because it will create adverse traffic effects, and because water cannot be obtained.

Ms Gepp then identified the conditions that should be imposed in the event that the consents are granted.

Cr Edgar said the concerns about amenity and noise seem to be primarily with regard to the reception centre. How do these concerns pertain to the chapel, memorial gardens and crematorium? Ms Gepp said noise primarily relates to reception centre and car parking. Amenity values and perception of pleasantness will be affected by things other than the reception area including the crematorium.

Cr Edgar said it is a rural area so any agricultural machinery can operate including frost fans. Ms Gepp said that neither of the vineyards use frost fans, and the residents would be more accepting of rural noise than out-of-character noise associated with this application. Most rural noises finish earlier than the proposed functions will finish.

Ms Gepp said there is no requirement to assess demand per se but there is a requirement to show the proposal amounts to efficient use of resources.

Mr D Statham (Traffic Engineering Witness)

Mr Statham considered that the traffic generated by the site is likely to be higher than stated by the applicant as it is likely that the reception centre will generate a significant additional amount of traffic. He estimated a traffic increase of 85% on a day when a function occurs. Any multiple events will increase this further and cross-over between events may cause a shortage of parking.

Mr Statham stated that seating for up to 25 people in the chapel building does not mean that numbers will be limited to 25.

Overall, he considered the applicant's Expected Peak Movements per Day traffic generation for the Crematorium/Chapel facility and the Café/Reception centre to be optimistically low. He considered it difficult to maintain attendance limits which may inflate vehicle movements further.

Mr Statham did not consider that the Council should be allowing or encouraging further traffic generation on Paton Road or Clover Road East. Mr Statham stated that neither of the roads met the standards specified in the Engineering Standards and Policies 2008.

Mr Statham thought that the emotional effects of funerals, cremations and interments on driving should be taken into account. He stated that a recent death in New Zealand has been attributed to this issue.

Overall, Mr Statham considered the effects of traffic generation, the effects on the local roading network and the parking effects to be more than minor.

Mr S Richards

Mr Richards presented an aerial plan showing the extent of local opposition to the proposal. The property is in a very prominent location within the community.

Mr Richards considered that the proposal is an excess of commercial activity and will adversely affect the rural character of the immediate area through noise, discharges and vehicle movements. The proposal is not complementary with the surrounding land uses. Cemeteries in the district should be considered as alternative sites for cremation services.

Mr Richards was concerned that the ponds that are proposed near the crematorium discharge will leak and deliver mercury to the aquifer which is the drinking water supply for the area.

Mr Richards considered the increase in traffic to be dangerous and unacceptable.

An 80 seat reception centre that closes at 11.00 pm (seven days/week) will be in full swing when the neighbourhood is quietening down for the night. This is not acceptable.

He considered that there is very little certainty in the effects that have been identified by the applicant's witnesses.

Cr Ensor asked what Mr Richards' view would be if, for example, there was not a crematorium but café to the size proposed in the application, and did he think there would be such strong opposition. Mr Richards said that he was quite happy for a café to operate with the garden but the effects generated from additional proposed activities cumulatively are not acceptable.

Mr C Zimmerman

Mr Zimmerman identified the site as highly valuable for horticulture due to low frost levels. The Council has guarded Rural 1 land jealously and does not allow fragmentation of the resource. Most applications which may result in fragmentation are declined. Mr Zimmerman considered activities other than subdivisions as potentially fragmenting land. He expressed surprise that Ms Harley does not consider that the proposal will take land out of potential production. He believed it could be easily achieved and a real possibility.

Mr Zimmerman considered the proposal to be inconsistent with the area and with unknown effects. He considered the effects on the exports from the area could be adversely affected.

Mr W Raats

Mr Raats stated that he was concerned about the change in character to a commercial environment as well as the noise resulting from the reception centre. He is also concerned about the discharge of contaminants to air.

Finally, he believed that the increase in traffic has been "seriously downplayed". He considered the risk to cyclists in particular to be very high.

Mr G Marshall

Mr Marshall was concerned about the traffic, use of Rural 1 land for inappropriate activities and the discharge of contaminants.

Mr Marshall considered that Mr Ley's report ignores other road users such as walkers and riders. With no footpaths there are no alternatives for these other road users. Further traffic will put them at greater risk.

The land could easily be turned back into productive land. Productive land is extremely valuable and the proposal will undermine this resource. Once building begins or interment proceeds the possibility will be gone.

Conflict will begin between the proposed use of the site and the surrounding rural uses. The rural countryside is not quiet and the activities will not be compatible.

Mr Marshall stated that Mr Iseli specifically stated that the discharge would not affect organic production. Mr Marshall did not consider Mr Iseli was appropriately qualified to comment on this. Mr Marshall believed that any detection of mercury would exclude him from organic status.

Mr M Brown (Hope School Board of Trustees)

Mr Brown stated that the Board of Trustees' chief objection to the proposal is the traffic implications for the school. He said that Paton Road has a "tragic history". The school is a busy place in the mornings and afternoons and these times will likely coincide with busy times for the funerals and events at the Gardens.

Mr Brown sought electronic signage for the school to reduce traffic speed at times.

Mr Brown also stated that the Board is concerned about the issue of mercury discharge.

Ms J Pollitt and S Foote

Ms Pollitt opposed the proposal on the basis of visual impact from the Haycock Road hills, and on the basis of traffic danger.

Ms Pollitt considered that the proposal lends itself to natural growth and it is likely that parts of the business will be sold off and further developed leading to further fragmentation. The land could be productive but, if approved, that will never happen.

Ms E Currie and Mr B Batty

Ms Currie stated that the site is in the area known as the "winter lettuce belt" due to its climate. She considered that its loss from potential production must be avoided.

Ms Currie anticipated a large increase in traffic numbers and with associated danger to walkers and riders of whom there are many.

Ms Currie stated that the noise associated with the commercial activity will be out of keeping with the area. The acoustic fence will have a large hole in it to allow vehicle movements. On warm nights guests will not be enticed to keep the doors and windows shut. Talking and laughing in the garden will not be contained.

Ms Currie was also concerned about the mercury discharge.

Mr R Barry

Mr Barry tabled some photographs of the roadside parking and congestion that occurred at a recent funeral. He is concerned about the roading network and considered the Clover Road - SH6 corner to be very dangerous.

Mr R Aubrey

Mr Aubrey considered that the proposal is inconsistent with the objectives and policies of the TRMP, particularly Objective 7.1.2.

Mr Aubrey considered that the proposal will permanently remove potentially productive land. The subdivisions that Mr Etherington has already undertaken have already done damage to the productivity of the land. He stated that there are many instances where less than 3.8 hectares is used productively. The proposed buildings will fragment the land.

Due to the wording of the original resource consent, Mr Aubrey did not consider that effect had been given to the consent as the functions depend on the reception centre being built.

Mr Aubrey considered the effect of traffic to be unknown as it is impossible to limit numbers that may attend a memorial service and it is unlikely that wedding numbers could be enforced. Mr Aubrey confirmed his understanding that the roads (Paton and Clover) do not meet the relevant Engineering Standards.

Mr Aubrey considered that rural character will be adversely affected, especially outside working hours which is when such facilities get maximum use.

Mr Aubrey was also concerned about the mercury discharge.

The Committee queried Mr Aubrey about his opinion of Objective 7.2.2 of the TRMP. He considered that this did not apply to the Rural 1 land but more to the Rural 2 and 3 zones.

Mr W Hill

Mr Hill said the land is not zoned for this activity. He believed it should be sited in Lower Queen Street. Traffic is of concern and he opposed the application.

Ms T Zimmerman

Ms Zimmerman stated that she lives over the road from the proposed car park. She considered that she would be under pressure to restrain her normal legitimate (rural) activities on her lifestyle block. Attendees at a previous function had complained about her noise during a wedding ceremony.

Her son's bedroom window is on the road side of the house on the top story. He is concerned about people being "burnt" next door.

She was concerned about headlights shining into her house and the noise of traffic, music, bottles, car doors, laughing, loud conversations and car stereos, particularly from the car park, reception centre and surrounding outside areas.

Ms Zimmerman stated that there have been no complaints because very few functions have occurred historically. To go from occasional outdoor events to a reception centre will increase the regularity of events and numbers markedly.

Ms Zimmerman stated that the car park is still substandard and the parking situation is unacceptable and unsafe. She noted the impact of the recent funeral held at the Gardens where large numbers attended.

Ms Zimmerman stated that the combination of a café and a crematorium is inappropriate and that a café, function centre and tourism operation is not their core business. She anticipated that she will sell that side of the operation.

Ms M Hobson

Ms Hobson recounted a funeral at the site where there were many cars along the roads. The funeral had approximately 120 people attending. The parking was haphazard and dangerous.

She considered that a major reason for support for the proposal is that it appears to be a lovely place to carry out the kind of activities proposed. These people do not live onsite and there are effects which are relevant.

Mr A Greenhough

Mr Greenhough stated that he owns a vineyard next to the proposal and they are in the three year process of gaining organic certification. To maintain this licence he is audited each year. His vineyard is on some of the best viticultural land in the region.

His livelihood, in addition to that of Mr Marshall who also grows organically, is threatened by this proposal due to the cross-boundary effects. He stated that outside perception in the wine industry is extremely important. Widespread knowledge of the existence of the crematorium would occur and would detrimentally affect that perception.

Mr Greenhough stated that cross-boundary contamination is always a problem. BioGro (his organic certifier) maintains very high standards. Contaminant testing of the fruit may become necessary should the proposal go ahead.

Mr Greenhough stated that he saw potential value to his business in the purchase of the Gardens site, however the timing was not right. He has expanded from four to 11 hectares and has considered expanding further. Therefore the land could be used productively, but if the consent is granted this opportunity would be lost.

Mr Greenhough was also concerned about noise and rural character. The noise will not be rural but will be human. People congregate in car parks and they speak and laugh loudly.

Mr Greenhough considered the estimation of a 20% increase in traffic from current levels to be farcical given the scope of the proposal. Any number of events could occur overlapping with funerals and cremations.

Mr Greenhough provided BioGro organic standards which stated that the maximum permissible level of pesticide residues in food products is 10% of the concentration permitted in the relevant regulations. For mercury this would be 0.01 mg/kg. In soils the limit is 1 mg/kg. The potential effects of chemicals come from air, water and soil contamination, but also from residue settling directly onto the crop.

Mr A Brodie

Mr Brodie confirmed that the Gardens land is valuable and should not be lost from potential production.

He stated that there are now very tight requirements for kiwifruit export.

He considered that the traffic volumes are high and the risks of increased traffic are unacceptable.

Mr B Helem

Mr Helem opposed the application, particularly due to traffic effects, the discharges and the appropriateness of the proposal on Rural 1 land.

Mr T Milton

Mr Milton represented Milcrest Holdings Ltd. The company owns and operates a fully operational vineyard. He stated that there has not been a damaging frost on the site for 30 years. He is considering going organic along with Mr Greenhough and Mr Marshall.

His grapes are subject to strict contaminant limits. Mr Milton is also concerned about the stigma and reputation that his produce will receive if the proposal goes ahead.

Mr Milton is also concerned about the noise from the site. It is laughable that events will stay inside the building in the evening as the location at the Gardens is to encourage indoor-outdoor events and use.

Mr Milton considered that the roads are unsafe and leaving the site late at night is dangerous.

6.3 Council's Reporting Officer's Report and Evidence

Ms J Harley (Consent Planner, Land Use)

In assessing this application there can be no assessment of what other activities could take place on the site or what would be more appropriate. The application has to be assessed under Section 104 of the Act.

The Committee's decision must reflect efficient use and development of the natural and physical resources of the site.

Ms Harley considered that the proposal does draw on the site's unique features and is practical and complementary with the Gardens. Ms Harley accepted that the submitters have raised serious concerns with the effects on them. While these are personal, she accepts them. Ms Harley considered that amenity is a matter that may require further consideration by the Committee in making its decision.

Ms Harley confirmed that the Council's staff do believe that the existing land use consent has been given effect to insofar as functions have been held and the holding of functions and the exercise of the consent is not dependent on the building of the originally proposed reception centre.

Cr Ensor asked for comment on Day vs TDC which Ms Gepp had raised and had said that the sole reason for decline was due to the effect on residents' amenity. Ms Harley agreed that amenity issues are greater in residential area because of density. There appears to be no good place for a crematorium, and proposals must be assessed on their merits. There is a view that the rural zone has less impact than the residential environment. But people have said today said that the residential zone may be better. Accordingly, these views are subjective.

Mr D Ley (Development Engineer)

Mr Ley accepted that there is a lack of certainty around the change in vehicle movements. The roads adjoining the site do not meet the Engineering Standards except for gravel shoulders.

Mr Ley agreed that there have been a number of accidents on Paton Road. The road is long and, therefore, incidents towards the northern end may not be relevant. Mr Ley stated that he looks at accidents within a 500 metre radius and within the last five years.

In response to a question, Mr Ley noted that he had not undertaken any independent assessment or review of the road or potential traffic effects but had used the data provided by the applicant.

Mr Ley said that the Council is trying to discourage parking on berms. Cr Riley asked how effective "no stopping" signs are. Mr Ley said they are not very effective, but impediments could be put on the edge of grass, e.g. rocks. However, rocks may cause more of a safety hazard. He suggested a mirror for people coming out of Gardens of the World so they can see to the left up Clover Road East.

Mr G Clark (Transportation Manager)

Mr Clark stated that it is appropriate that a 250 metre radius be taken to attribute accidents to the operation of the site. Further out than this other factors come into play.

Mr Clark addressed the NZTA's evidence. He considered that there is not a lack of visibility to the north at the Clover Road – SH6 intersection. He considered that from a safety and efficiency point of view there is no concern with that intersection.

With regard to trip generation, Mr Clark said that it is hard to find data and research in the application. However he said that there is not an issue with the traffic generated by the application and there is no issue with the volume of traffic on these roads. He also said that the traffic will be generated at off-peak times.

Cr Edgar said the Clover Road - SH6 intersection was raised by submitters about the right turn heading north from Brightwater into Clover and queuing in the middle of SH6. Mr Clark said if a vehicle was turning right. From a safety point of view, it is not an issue. It may be an efficiency issue but is only minor.

Mr G Caradus (Regulatory Services Coordinator)

Mr Caradus commented on noise. Mr Caradus considered that using an L₁₀ is more appropriate, rather than an L_{Eq} as it is easier to measure and it is in the TRMP.

With regard to liquor licensing he stated that any sales of liquor would require a licence and it would happen outside of the consent process. Any complementary provision would be seen as a sale. At a wedding the organiser can bring their own without a license. If you asked the function centre to provide food and alcohol a license would be required. A special license would be needed.

Mr L Pigott

Mr Pigott stated that there is some difficulty with determining the optimum height of a stack. Higher means that the contaminants will be better dispersed and therefore at a lower concentration. Lower means that the discharge is less visible.

Cr Ensor asked about mercury deposition on plants, rather than in soil, as being of concern. Mr Pigott said there is a possibility that mercury may adhere to the plant as dry deposition. As seen from testing, it revolatilises off and moves away. The only relevant research was done by UK Food Safety. They suggested that there is no risk to UK population from food grown near a crematorium.

6.4 Applicant's Right of Reply

Mr McFadden stated that the Committee has not heard any evidence of psychological issues. The Environment Court has said that death is part of the cycle of life, it cannot be avoided and it should not be hidden.

A crematorium is a non-complying activity in the Mixed Business zone and this is significant.

The Act does not say that there shall not be any effects; it says that to the extent that they are adverse they are to be avoided, remedied or mitigated. The conditions will do this. The reporting officers did not change their recommendations.

The Committee needs to make its decision on the evidence put before it. It must decide what is opinion, what is comment and what is evidence. There has been a great deal of opinion and comment. He found very little information supported by evidence. The only evidence that was challenged was the traffic evidence. The rest was unchallenged by expert testimony. None of the evidence presented came as a surprise to anyone but yet it remained unchallenged.

Mr McFadden stated that there are a large number of activities that can be undertaken as of right. There is also an implemented resource consent which forms part of the baseline. The consent has no limitations on many of the aspects of the functions that can be held on the site. The effects to be considered are those over and above what can be done as permitted.

In the case of Champion Road where a previous crematorium application was declined, the cremator was close to the parks. The exhaust vent was going to be 3 metres above the roof. The Council viewed the location as inappropriate and this was done so under different legislation (Town and Country Planning Act).

With regard to amenity, on this site all activities will occur on a large, treed, fully screened site and visibility into the site will be minimal.

Looking at Mr Greenhough's evidence in his table A4.2 and stating the default MRL is 0.01 mg/kg for BioGro compliance, and comparing this to 0.005 mg/kg put to you by Mr Iseli and it is clear that the Iseli figure is substantially less. Therefore, there could be no affect on organic status.

Mr McFadden stated that Objective 7.2.2 is relevant in this case and alternatives to productive uses are appropriate in the right locations. One must take all objectives and policies of a Plan. It is naïve to suggest that the Gardens will be removed. This cannot happen under this process and the community would not be thankful should it happen.

Demand or need is not a resource management matter. It must be assessed on the basis of effects. There are a large number of conditions that have been requested that are not based on any facts. The Newbury test requires that they be supported and reasonable and for a resource management purpose.

Mr McFadden addressed Mr Statham's evidence and stated that his data and calculations were contrived and unrealistic. His 85% increase is actually a 17% increase. There is also no analysis of why he came to the conclusion that the effects are more than minor.

It has been well established that if an application is for discretionary activity it is not necessary to demonstrate that adequate consideration has not been given to other sites. Alternatives raised by many submitters do not even have to be considered. It is not incumbent on the applicant.

Mr McFadden stated that Mr Greenhough made comment that if consent was granted it would open the door to commercial development. Any commercial development Mr Greenhough proposed on the site would require a new resource consent application. He further stated that knowing that a cremator was adjoining the site may affect his market and that establishment of crematorium may make marketing of wines problematic. Whether it does or does not will depend on perception of persons. We do not know and it is not relevant to the decision.

In summary, Mr McFadden stated that this is an opportunity to make multiple uses of a site that is already lost to farming, with easy access, and which is close to its centre of population. Where else should it be but close to the community it serves.

7. PRINCIPAL ISSUES

The principal issues that were in contention were:

- a) Has any part of the existing consent been given effect to?
- b) Is the crematorium and memorial garden an industrial, commercial or community activity?
- c) What productive values does the site have and to what extent is the site still available for productive use?
- d) To what extent will the proposal compromise the potential for productive use of the site in the future?

- e) To what extent will the proposal adversely affect the amenity of local residents?
- f) To what extent might there be reverse sensitivity issues between the proposed activities and the adjacent and nearby rural activities?
- g) What are the positive effects resulting from the proposal?
- h) To what extent will the discharge of smoke or a heat haze from the chimney of the crematorium have an adverse effect on the amenity of nearby residents?
- i) Will the discharge of mercury, PM₁₀ or any other contaminants have an adverse effect on the health or well being of the nearby residents?
- j) What effect will the discharge of mercury have on the organic status and perception of goods produced nearby?
- k) To what extent will the generation of traffic by the proposal adversely affect road safety?

8. MAIN FINDINGS OF FACT

The Committee considers that the following are the main facts relating to this application. The points made below are with reference to points a) to k) in the section above and should be read in conjunction.

- a) The existing consent 910069, to the extent that it allows “weddings and other functions”, has been given effect to while the construction and use of a reception centre has not been given effect to and consent for this aspect has consequently lapsed.

An argument was put forward by several submitters that the wording of the consent suggests that the operation of weddings and other functions was dependent on the construction of the reception centre and that since the reception centre was never constructed effect has not been given to the consent. The Committee can see some merit to this argument but only insofar as the wording of the consent is ambiguous. The Committee considers that the intent of the consent is to allow both a reception centre to be built and weddings and other functions to be held on the site (not necessarily in exclusive conjunction with the reception centre). The consent holder duly proceeded with the weddings and other functions and therefore it is considered that this aspect of the consent has been given effect to.

- b) The proposed crematorium and memorial garden is not an industrial activity. It does not meet the definition, and nor would it look or sound like an Industrial Activity.

While the crematorium and memorial garden have some elements that are consistent with the definition of a Community Activity, the Committee considers that the facilities can most appropriately be considered as a Commercial Activity. The primary purpose of the facilities is as a business and the fact that the nature of the business happens to fulfil some aspects of the Community Activity is incidental. In the day and age of internet banking the Committee agrees with Mr

Greenhough that it is illogical to suggest that because the actual transaction does not happen onsite that the operation is not a Commercial Activity.

- c) While no expert evidence was presented from any party on the productive value of the site the Committee understands that on the basis of the soils and the climate that the value of the land for productive purposes is very high. The definition of High Productive Value in the TRMP sets a very high standard by including topography, deep free-draining soils, inherent soil fertility and structure, and a favourable climate. In this case it appears that the climate is particularly favourable for successful growing.

Mr Zimmerman is correct that the Council has and does jealously guard the District's land that is zoned Rural 1 through the implementation of the TRMP. The TRMP contains a strong policy framework that protects the zone from subdivision and development that is inappropriate. In effect, for a non productive proposal to be granted on the best Rural 1 land the bar is set very high in achieving the requirements of Section 5 of the Act.

The Committee is aware that there are a number of instances where the Council has granted consents for wineries, tasting rooms, "cellar doors" and the like. In a recent decision (RM071217V1) for a cellar door (wine tasting and sales) on McShane Road the Committee stated that it "considers that this type of commercial activity, where the produce of the land is being marketed and sold in close connection to the place of growth and manufacture, is appropriate in highly productive areas of the district." The (current) Committee endorses that position. The applicant considers the proposed use of the land to be productive as it will be used to grow an attractive garden which will be used to generate revenue through the provision of the proposed services. The Committee takes a different point of view. It considers that the true value of this land is for high intensity food production. Wineries and the like can be appropriate but only as they are intrinsically linked to the food products that can be effectively and economically grown. Attractive gardens that would serve the needs of a commercial crematorium, café and function centre can be developed on the soils of other zones including the Rural 2 and Rural 3 zones. It is high quality food products that are considered to be a productive use on sites and soils such as the Gardens.

- d) The construction of a café/reception centre and the crematorium/chapel and memorial garden will fragment the site significantly. The definition of "land fragmentation" in the TRMP is slightly ambiguous. The definition appears to allow "land development activities such as buildings and roads" to be considered as a potential cause of land fragmentation. Certainly, past decisions of the Committee have considered that land fragmentation can result not only from subdivision but also from multiple dwellings on rural land and differing land uses and associated buildings on different parts of rural properties.

In this case the land will be fragmented by two very different uses that are, for all intents and purposes, physically separated. The entranceways are separate, the parking is separate, the facilities are separate and the activities are of limited compatibility. This is a clear case of land fragmentation by a process other than subdivision. The land fragmentation, the level of investment in the facilities, the durability of the buildings and the presence of ashes in the memorial garden

means that the site will, in effect, be entirely and forever lost from future production.

- e) The proposal heard by the Committee was comprised of a range of activities, from indoor/outdoor functions, a café, general tourist access to the gardens, cremations, funerals, and memorial garden visits. While some of these activities will have only minimal effects, the Committee considers that there is likely to be a significant cumulative effect on the rural character of the area and on the amenity of neighbours. From one source or another there is likely to be a more or less continuous level of traffic, people and noise. While a low trickle of people throughout the day are anticipated by the activities that are permitted (and consented) the breadth of the attractions and facilities will see this increase markedly, along with an increase in staff and service vehicles. While functions are currently authorised, if the proposal were to be granted a significant level of investment in the function facilities would be present and the applicant would necessarily market the site in a more efficient, deliberate and “corporate” fashion to attract regular functions. Also, functions will be better facilitated through patrons having the comfort of a “wet-weather option” and the supporting infrastructure. Currently there is a limited market for functions supported by minimal or non-existent facilities. The market for functions supported by a reception centre and café is undoubtedly bigger. These considerations take the functions beyond the permitted baseline set by the TRMP and by the existing consent. More regular functions will mean that the traffic and noise effects on the neighbours will increase substantially beyond what is currently permitted.
- f) The Committee accepts that rural emanations easements would be a useful mechanism to allow legitimate rural activities to continue. However, funerals, weddings (in part) and memorial garden visits do require a certain level of sensitivity and peace which the Committee does not consider that the Rural 1 zone can reasonably be expected or relied upon to provide. Rural 1 land used for productive purposes is usually intensively developed and managed with a greater level of activity and noise than in other rural zones. It is therefore likely that surrounding landowners may come under some pressure from the operator of the site, the patrons, or even just from their own conscience of not wanting to disrupt mourners and this will curtail their legitimate Rural 1 activities. With very regular funerals, this reverse sensitivity effect is not trivial and may cause significant tensions.
- g) The major positive environmental effect is the long-term securing of public access to the Gardens. It is acknowledged that it is likely that the gardens at the site will be maintained but there is no certainty that public access will be retained perpetually.
- h) The smoke or heat haze will have only a minor and short term effect on the amenity of the nearby residents. No evidence was presented on any psychological effects that may result from seeing the discharge. The Committee ventures that any such effect would quickly diminish with time as the screening grows and the discharge becomes an integrated part of the landscape. Contributing to this integration will be the very low visibility of the discharge due to the quality of the combustion and the heavily treed site.

- i) The evidence presented has clearly shown that, while there will be a discharge of mercury and other contaminants, the concentrations will be small and well below any concentration that could harm people or the environment.

The baseline (existing) concentration of mercury in the soil is low and the proposed rate of discharge will be far below that needed to elevate the concentration to anything approaching the health guideline levels. Studies presented by Mr Iseli showed that food grown in such areas contains only negligible levels of mercury which will be of no risk to human health. Similarly with regard to water supplies. Mercury is not soluble and the very small volumes that may be deposited on roofs will not be assimilated into the drinking water. The Committee understands that drinking water in the area is taken from the upper confined aquifer at a depth of between 20 and 30 metres. This aquifer is protected by a confining layer. Thus, there is no risk to drinking water in the aquifer.

Mr Iseli's evidence showed that most of the mercury that would be deposited on the land would be done within the site. He calculated that 0.06 mg/kg could be expected to be added to the soils on the site over the 35 year term of the consent. With a background mercury level of 0.06 mg/kg the total concentration could be expected to be around 0.12 mg/kg after 35 years. The (conservative) soil guideline level is 1 mg/kg.

- j) The issue of industry and consumer perception of the organic wines produced nearby, or in the case of Mr Greenhough right next to the crematorium, was raised by several submitters. Under Section 104 and the definition of Environment under Section 2 of the Act the Committee considers that this is a legitimate matter that can be taken into account in making this decision. However, aside from Mr Greenhough's description of the importance of perception and reputation in the industry, no expert or independent evidence was presented from any party. Therefore the Committee considers that it is a matter that must be taken into account but that cannot be given any primacy through a lack of information as to how the industry or consumers may or may not react to the presence of a crematorium next to an organic vineyard or other primary producers.

Similarly with regard to the issue of direct deposition of mercury on grapes. As discussed above the Committee considers that there is a negligible risk of the discharge causing the concentration of mercury in the soil to exceed organic limits. However, this is not necessarily the case with direct deposition of mercury onto the crop. The calculation to determine the quantity of mercury that may remain on the product as a residue is probably extremely complicated (presumably involving the growing season, the mercury accumulation rate, rainfall and absorption). The limit specified in the BioGro documentation provided by Mr Greenhough quotes a maximum residue limit of 0.01 mg/kg. Mr McFadden referred to Mr Iseli's paragraph 6.28 which stated research that vegetation concentrations would be 0.005 to 0.006 and therefore well below the limit. The Committee does not consider there to be sufficient information on this matter as the growing of grapes and the making of wine is a fundamentally different case to the vegetation that was measured near the Bournemouth crematorium as discussed by Mr Iseli. During deliberations a request for this information was considered but the Committee agreed that the information was

not pivotal (i.e. the expert information would not affect the decision one way or another).

- k) There are widely differing opinions on the magnitude of the increase in vehicle numbers resulting from the proposal. It is fair to say, and not unusually for a new venture of this type, that no one really knows how popular the café and function centre will be. The Committee considers that the applicant's calculated increase in traffic is low and that the true increase is likely to be somewhere between the applicant's estimate and that of Mr Statham.

The Committee accepts the evidence of Mr Clark and Mr Ley that Clover Road East and Paton Road are reasonably acceptable but that they do not meet the Engineering Standards and Policies 2009. However, the Committee considers that there are some significant problems with the traffic and parking situation. Parking on the road side (which clearly already occurs despite the large car park) is certainly not desirable from safety, visibility, amenity and rural character points of view. The Committee is aware that this is a popular area for recreation and there are a large number of vulnerable road users in the area. The lack of adequate shoulders on the edges of, in particular, Paton Road is a concern for those users.

The Committee accepts that there is likely to be only a minimal impact on the Clover Road East – SH6 intersection. The intersection is not particularly dangerous, although a concern certainly remains about traffic turning right off SH6 and into Clover Road East. While Mr Clark is correct that motorists should be paying attention at locations such as that, common sense and anecdotal information tells us that motorists that are stationary in the middle of the road are both a hazard and vulnerable in a high speed environment. Encouragement of such stationary vehicles is not desirable.

9. RELEVANT STATUTORY PROVISIONS

9.1 Policy Statements and Plan Provisions

In considering this application, the Committee has had regard to the matters outlined in Section 104 of the Act. In particular, the Committee has had regard to the relevant provisions of the following planning documents:

- a) Tasman Regional Policy Statement (TRPS); and
- b) the Tasman Resource Management Plan (TRMP).

The proposed activity contravenes Section 15 of the Act, and therefore the Council has also had regard to the matters outlined in Sections 105 and 107 of the Act.

9.2 Part 2 Matters

In considering this application, the Committee has taken into account the relevant principles outlined in Sections 6, 7 and 8 of the Act, as well as the overall purpose of the Act as presented in Section 5.

10. DECISION

Pursuant to Section 104B of the Act, the Committee **DECLINES** consent.

11. REASONS FOR THE DECISION

It is important to note at the outset that the decision of the Committee is based on a range of factors, concerns and considerations. This was a complicated case with a wide range of issues involved. The reasons for the decision principally concern the effects of the activity and include land productivity issues, traffic safety and efficiency, noise and amenity, and rural character. To a lesser degree there is concern about aspects of the discharge to air. In the following discussion there is not one aspect or adverse effect that is a “knock-out”, it is a holistic view and a set of effects that, on balance, have led the Committee to consider that it does not meet the purpose of Section 5 of the Act and, consequently, to refuse consent.

Effects on the Environment

Productivity and Land Fragmentation

The Committee considers that the loss of potentially productive land in the long term is unacceptable. As stated in Section 8 above the land is considered to be highly productive and the proposal will cause it to be fragmented and permanently removed from any future conventional productive purposes. The Committee acknowledges that the Gardens as they exist now and as they are proposed have some productive benefit from a biodiversity perspective and as an attractive setting for a successful business. But it is the capacity of the District’s high quality soils and sites to generate fast healthy growth, rotation after rotation, that is important for intensive soil-based production. Beautiful, tranquil gardens can be created in most locations. The constant biomass turnover of intensive productive land-uses cannot. It is for this reason that the importance of such Rural 1 sites from a productivity perspective cannot be overstated and must be the first consideration.

The loss of productive value on sites such as this may be acceptable if it is not permanent and the land is not fragmented. There is no obligation on any party to use land productively. In this case the land will be fragmented by two very different uses that are more or less physically separated. The entranceways are separate, the parking is separate, the facilities are separate and the activities are of limited compatibility. The site will certainly be a clear candidate for subdivision or even just separate management in the future. The Committee considers that allowing the development as proposed will permanently fragment this block. The Council’s planning policy and past decisions have generally been clear that any steps that fragment sites in the Rural 1 zone, whether by subdivision or development, are not supported except in very exceptional circumstances.

It has been stated that it is extremely unlikely that the site will ever be returned to productive use. The Committee is not satisfied with this argument. For example, it is unlikely that there would be any impediment to the area to the southeast of the house (where the grapefruit orchard currently is) being subdivided from the actual Gardens and amalgamated with an adjoining productive use. That would be a positive outcome. Productive use of the entire site may also be sought in the long term.

The rest of this subsection (effects on the environment) addresses various other effects. A recurring theme will be a lack of knowledge of the magnitude and nature of effects. Consideration alone of the known effects makes it difficult to support the proposal. But it is the scale of the unknown effects which are important in reaching the decision to refuse consent.

Noise, Amenity and Rural Character

The relevant expert witness for the applicant stated that the noise of the activity will not breach the noise standards of the existing consent. Mr Malthus considered that these would be the most relevant limits to be applied as conditions to the new consent. Mr Malthus considered that the noise effects of the proposal will be no more than minor with a number of qualifications: subject to compliance with appropriate noise limits, that design criteria for the reception centre/café should be implemented, and that procedures such as a shut-door policy should be implemented. With regard to the latter point Mr Malthus stated that the “physical improvements and mitigation measures will **largely** achieve compliance with the required limits” (emphasis added). He then recommended a number of management measures that, presumably, would be necessary to fully reduce the noise below the compliance limits. These included identification of persons responsible for managing noise, setting out hire conditions for managing noise, procedures to ensure that external doors and windows stay shut at night time, regulate noise levels in the reception centre, audibly monitor noise along the boundary of the site on Clover Road East, instruct all persons leaving the site at night-time to do so quietly, reinforcement with signs in the premises and car park, and compliance with any instruction of an officer of the Council.

The Committee considers that a number of the above qualifications and management requirements are unrealistic. Patrons will seek indoor – outdoor flow on warm evenings and it will be hard to ensure that doors are kept shut. People seated outside may be laughing or shouting until late (between 11:00 and 12:00 pm).

It would also largely be beyond the ability of the applicant to control noise and activity in the car park which is close to neighbouring houses. Mr Malthus appears to consider that noise levels emanating from the car park will only be contained within the noise limits of the existing consent with the use of management tools such as instructing people to leave quietly and placing signs in the car park. Again, the Committee considers that the management requirements are unrealistic. It is an unavoidable fact that many people leave functions in a noisy fashion. In the car park there is the very high likelihood of ongoing noise, particularly at night-time, including loud farewells, car doors slamming, horns tooting and lights shining. Mr Malthus, has not stated that if people do not behave quietly that the effects will be minor or within compliance limits.

It is commonly recognised that the rural zones, and particularly the Rural 1 zone, are not quiet places. This is true in the daytime. There is a significant amount of noise that can occur in the daytime and, according to the rules of the TRMP, through the night. However, realistically, night time in the Rural 1 zone is quiet. Traffic and people noise is less than in the urban or residential zones. It is against this quiet night-time backdrop that the noise of functions will have significant effect. In addition the “human noise”, that is the noise of humans, is very different and will have more impact on those nearby residents who will hear it.

The Committee is aware of the permitted baseline that exists for the site and which was explored in detail by Mr Quickfall. It is the effects which lie outside the permitted baseline which cause concern to the Committee. To be considered under the permitted baseline are the activities that have already been consented (under the existing consent) and given effect to. While the applicant is entitled to hold functions on the site the construction of a reception centre will facilitate and necessitate much more regular events. The applicant will be seeking a return on its investment and

there will be a more active corporate management towards seeking functions. Also, functions will be better facilitated through patrons having the comfort of a “wet-weather option” and the supporting infrastructure. As stated in Section 8 above, the market for functions supported by a reception centre and café is undoubtedly bigger than in just the Gardens alone. More regular functions will mean that the traffic and noise effects on the neighbours will increase substantially beyond what is currently permitted.

The Committee does not think that there is sufficient certainty as to the numbers of people that will attend the site, nor when the busy times will be. Conditions have been volunteered that limit the function centre to 80 and that seating in the chapel be for 25. This effectively puts no limit on the number of people that may attend the chapel and services as it restricts the seating rather than the attendees. It is simply not realistic to expect people to be turned away from funerals or memorial services due to numbers. The café is also an “unknown quantity” in terms of future popularity and represents a source of ongoing traffic, people and noise throughout the day. Further, in the event that the café is very successful (consider as a comparison the Mussel Inn at Onekaka, Golden Bay) there is little or no way of containing the effects through the use of a Section 128 review condition. While such a café would of course be a great outcome in any area the Committee does not consider that this would be an appropriate location and there can be no certainty that this would not happen.

To summarise the reasons associated with noise, greater numbers of functions, unknown numbers of people attending funerals and the café, and reliance on problematic and unreliable management measures in the case of the function centre, and more or less ineffective management measures in the case of the car park means that the Committee is not satisfied that the compliance limits for noise will be met or that the effects will be minor. Where there are adverse effects they should be avoided, remedied or mitigated. The Committee does not consider that there are any conditions that could be imposed which would be practicable and enforceable.

While a low trickle of people throughout the day are anticipated by the activities that are permitted (and consented) the breadth of the attractions and facilities will see this increase markedly, along with an increase in staff and service vehicles. The Committee considers that there is likely to be a significant cumulative effect on the rural character of the area and on the amenity of neighbours. From one source or another there is likely to be a more or less continuous level of traffic, people and noise. Also in relation to rural character, the Committee is also concerned that approving this development will encourage the site and its surrounds to be considered as a “node of development”. The site is in a very prominent nodal location and, given the value of the land in the immediate area for productive purposes and the only marginally satisfactory state of the road safety and efficiency, it is not considered desirable that such a node of development be encouraged.

Although the following is not a reason for refusal of the consent it is a relevant observation. The Committee considers that, with general lack of knowledge of what the eventual effects of the proposal will be, the Committee foresees that a grant of consent, subject to a range of site management requirements and difficult-to-enforce conditions, will place a burden on local residents. They will be forced to either tolerate any non-compliances whether they be rare or regular or to take on the unenviable role of watchdog. For example, if noise is regularly coming from the car park late at night without the knowledge of management they will be forced to complain. If the crematorium discharge is breaching its opacity limits they will be

forced to complain. In short, if granted, the Committee sees a future of complaints and disagreements as to effects. It is on this basis that the Committee considers that any conditions need to be clear and enforceable and to rely to an absolute minimum on management measures such as keeping doors shut to contain noise at night or people being quiet in the car park at night after a function.

Parking and Traffic

The lack of certainty about numbers and popularity is even more significant when traffic volumes are considered. Parking problems during events already contribute to the loss of rural character and amenity for residents (as evidenced by photographs presented by Mr Barry) and reduce the safety of the Clover Road – Paton Road intersection. The Committee does not consider that the applicant has adequately planned for growth and that traffic is likely to increase incrementally as the memorial garden is developed and the café becomes more popular etc. Again, it will not be practicable for the Council to control these effects in future under a review condition should it become necessary.

A number of management measures were proposed by the applicant to restrict the effects such as having funerals at certain times of day so as to restrict traffic generation to times that are, for example, outside school pick-up hours. The Committee considers that there is just too much “fudging” and trying to make things work when, in fact, the site and the surrounding roading is not suitable for this level of development.

Discharge to Air

During deliberations the Committee did not consider that it had sufficient information on the effect that the proposed mercury discharge would have on the organic status of, principally, Mr Greenhough. Requesting this information was considered but before doing so the Committee agreed that, even if the further information came back as the discharge having no effect on the organic status, it would still refuse the consent for the reasons stated above. Therefore it was considered appropriate that the information not be sought as it was not pivotal (i.e. the expert information would not affect the decision one way or another)

Objectives and Policies of the TRMP

The following Policies and Objectives have been considered relevant for this proposal:

- Chapter 5: Site Amenity Effects
- Chapter 7: Rural Environment Effects
- Chapter 11: Land Transport Effects
- Chapter 34: Discharges to Air

Chapter 5: Site Amenity Effects

Objective 5.1.2

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

Policies

5.1.3.1 To ensure that any adverse effects of subdivision and development on site amenity, natural and built heritage and landscape values, and contamination and natural hazard risks are avoided, remedied, or mitigated.

5.1.3.9 To avoid, remedy, or mitigate effects of:

- a) noise and vibration;
 - b) dust and other particulate emissions;
 - c) contaminant discharges;
 - g) vehicles;
 - h) buildings and structures;
- beyond the boundaries of the site generating the effect.

5.1.3.14 To provide sufficient flexibility in standards, terms and methods for rural sites to allow for the wide range of effects on amenities which are typically associated with rural activities, and which may vary considerably in the short or long term.

Objective 5.2.2

Maintenance and enhancement of amenity values on site and within communities throughout the District.

Policies

5.2.3.1 To maintain privacy in residential properties, and for rural dwelling sites.

5.2.3.9 To avoid, remedy or mitigate the adverse effects of signs on amenity values.

5.2.3.10 To allow signs in residential, rural residential, recreation and rural areas that are necessary for information, direction or safety.

The above objectives and policies confirm the need to protect amenity values and, whilst Chapter 5 policies and objectives cover all zones, it is clear that rural and rural/residential amenity values have to be safeguarded from adverse environmental effects.

The Committee considers that the proposal is generally not consistent with the above policies and objectives. In particular, it is not consistent with Policies 5.1.3.1, 5.1.3.9 (points a) and g)), and 5.2.3.1. The proposal is consistent with Objective 5.2.2 insofar as the wider community is concerned but does not meet the objective in relation to the local residents.

Chapter 7: Rural Environment Effects

Tasman District's land resource is largely rural. Rural character, amenity values, and the productive use of rural land underpin the social, economic and cultural well-being of the people of the District.

The fragmentation of rural land is the progressive breaking up of land parcels through subdivision in association with subsequent land use activities such as buildings, other structures and roads. Land fragmentation may occur for a variety of reasons. While fragmentation may allow for more intensive use of rural land for soil-based and other

rural activities, with resulting social and economic benefits, the principal effect of land fragmentation in the District has been the cumulative reduction in opportunities for the productive potential of land to be taken up, either within sites or over larger areas.

As new structures or services are established, the range of soil-based production activities that can be physically or economically undertaken, progressively reduces in scope. The reduction in productive potential of any land, together with the physical coverage of productive land, may reinforce the demand for further fragmentation. This effect is particularly significant for the relatively small amount of land in the District with high productive value (approximately five percent). This land is a finite resource and its loss through fragmentation is effectively irreversible.

Commercial activities in rural areas remove land from soil-based production. To date, these activities have not affected the viability of soil-based production. However, their presence can affect rural character and amenity values.

Commercial activities inevitably involve buildings and services development. This development brings with it effects which can detract from the environmental quality and rural character of the areas in which they are situated or through which they are serviced. The cumulative effects of such development can be the creeping "urbanisation" of rural areas.

An important aspect of managing rural environmental effects is recognising the qualities and character of rural areas, and the legitimacy of existing established activities and a range of potential future activities which involve the productive use of the land resource.

An issue Council has to consider is how to provide for non-soil-based production uses in rural areas, without diminishing the availability of the productive land resource and how to maintain an appropriate level of protection of rural character, ecosystems and amenity values.

Objective 7.1.2

Avoid the loss of potential for all land of existing and potential productive value to meet the needs of future generations, particularly land of high productive value.

Policies

7.1.3.2 To avoid, remedy or mitigate the effects of activities which reduce the area of land available for soil-based production purposes in rural areas.

7.1.3.3 To avoid, remedy or mitigate adverse actual, potential, and cumulative effects on the rural land resource.

Objective 7.2.2

Provision of opportunities to use rural land for activities other than soil-based production, including papakainga, tourist services, rural residential and rural industrial activities in restricted locations, while avoiding the loss of land of high productive value.

Policies

7.2.3.2 To enable site is specific location to be used primarily for rural industrial, tourist services, or rural residential purposes with any farming or other rural activity being ancillary, having regard to:

- c) outstanding natural features and landscapes;
- g) transport access and effects;
- j) efficient use of the rural land resources;

7.2.3.5 To ensure that activities which are not involved or associated with soil-based production do not locate where they may adversely affect or be adversely affected by such activities.

Objective 7.4.2

Avoidance, remedying or mitigation of the adverse effects of a wide range of existing and potential future activities, including effects on rural character and amenity values.

Policies

7.4.3.1 To ensure that there is sufficient flexibility for a wide range of productive rural activities to take place, while avoiding, remedying or mitigating adverse effects.

7.4.3.3 To provide for the maintenance and enhancement of local rural character, including such attributes as openness, greenness, productive activity, absence of signs, and separation, style and scale of structures.

7.4.3.4 To exclude from rural areas, uses or activities (including rural-residential) which would have adverse effects on rural activities, health or amenity values, where those effects cannot be avoided, remedied or mitigated.

7.4.3.5 To exclude from rural-residential areas, uses or activities which would have adverse effects on rural-residential activities, health or amenity values, where those effects cannot be avoided, remedied or mitigated.

7.4.3.6 To ensure that adequate physical or spatial buffers or other techniques are applied when allowing new allotments or buildings primarily or exclusively for residential purposes in rural areas, so that productive land use opportunities are not compromised.

Ms Harley and the applicant did not consider that this proposal would take land out of production and that it would use an existing resource that is located on land that has already had its productive potential diminished such that it is no longer used productively. The Committee agrees with the objectives and policies that Ms Harley considered to be relevant, but has added Policy 7.2.3.5 which seeks to ensure that incompatible activities are not placed beside one another.

Objective 7.2.2 is, of course, an important consideration in this matter. The Committee differs in its assessment insofar as it considers that the high productive value of the land is sufficient to consider that this is not an appropriate location of the proposed non-soil-based production activity. In other words, Objective 7.1.2 has primacy in this case. As productive value is not the sole reason for the decision

Objective 7.4.2 and its associated policies are also important in this consideration. Ms Harley considered these policies and came to the conclusion that the adverse effects, where they are referred to in each of the policies, could be adequately avoided, remedied or mitigated. It is on this point that the Committee differs in its opinion such that the proposal does not meet this objective and policies.

Chapter 11: Land Transport Effects

Objective 11.1.2

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

Policies

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

11.1.3.11 To ensure that signs do not detract from traffic safety by causing confusion or distraction to or obstructing the views of motorists or pedestrians.

The above objective and policies identify the need to avoid conflicts with traffic having particular regard to issues of traffic safety and efficiency, including the effects on existing roading, provision of adequate parking and amenity values.

In particular, the Committee does not consider that Policy 11.1.3.4 will be met due to noise, headlights, car movements late at night and parking and safety considerations as discussed in the subsection above. Furthermore, the Committee does not consider that the proposal will advance the goal set out in Objective 11.1.2.

Chapter 34: Discharges to Air

Objective 34.2.0

The discharge of contaminants to air in such a way that avoids, remedies or mitigates adverse effects while:

- a) maintaining existing air quality; and
- b) enhancing air quality where existing quality is degraded for natural or human uses or values.

Policies

34.2.1 To ensure that any discharges of contaminants to air are undertaken in a way that avoids, remedies, or mitigates any adverse effects on the receiving environment or surrounding activities.

34.2.1A To allow or regulate contaminant discharges to air in relation to their actual or potential contamination effects, including:

- (a) Adverse effects on human health.
- (b) Adverse effects on amenity values.
- (c) Contamination of adjacent sites.

34.2.2 To provide for contaminant discharges to air while maintaining or enhancing the ambient air quality.

34.2.6A To manage air quality to meet National Environment Standards for ambient air quality, especially in relation to concentrations of PM10.

34.2.6D To take into account national guidelines for air quality when considering applications to discharge contaminants into the air.

34.2.6F To take into account potential adverse effects on ambient winter-time PM10 concentrations in the Richmond Airshed of discharges to air that may enter the Richmond Airshed.

The proposed discharge to air is in general accordance with the objectives and policies of the TRMP. The objectives and policies provide for contaminant discharges to air while maintaining or enhancing the ambient air quality. The concerns with the discharge to air relate to the cross boundary effects discussed above.

Purpose and Principles of the Act

Considering the provisions of Part 2 of the Act. With regard to Section 6(g) which Mr Quickfall raised as potentially relevant. The Committee does consider that this clause relates to customary activities that are not inherently Maori. Cremation is relevant here but as the cremations are not, and never have been carried out at the site the refusal of this proposal is not contrary to this clause, particularly as there are two other crematoriums which allow this “customary activity” to be carried out.

The following matters are relevant and particular regard shall be had to:

Section 7(b) – “the efficient use and development of natural and physical resources”;

Section 7(c) – “the maintenance and enhancement of amenity values”;

Section 7(g) – “any finite characteristics of natural and physical resources”;

In relation to Section 7(b) Brookers legal commentary states that

“In light of the developing case law, “efficiency” has three dimensions:

- (a) Productive efficiency (output at a lower cost),
- (b) Allocative efficiency (resources allocated to production that society values the most), and
- (c) Dynamic or innovative efficiency (where technological change is encouraged and used to produce productivity gains).

Efficiency may also be assessed as the avoidance of waste: Canterbury Museum Trust Board v Christchurch CC EnvC C059/06.

It is the broad aspects of economic efficiency that are relevant to the considerations under para (b), rather than narrow considerations such as financial viability, the profitability of a venture, or maximum financial yield for a developer: NZ Rail Ltd v Marlborough DC [1994] NZRMA 70 (HC). “Efficiency” in s 7 is not restricted to economic matters. In its broadest sense **it may require an evaluation of not only a specific proposal, but also of the context for the proposal**, balancing issues and benefits under s 5: Sanford (South Island) Ltd v Southland RC EnvC C106/02.” (emphasis added)

The Committee accepts Ms Gepp's submission that, when faced with the quality of land in question, an assessment of the need for a development must be given some regard. Counsel for the applicant did address this matter but the Committee agrees with Ms Gepp that, in addition to the other effects identified, the proposal (principally the crematorium, chapel and memorial garden) is not an efficient use of high quality Rural 1 land. This discussion raises the issue of in what locations or zones in the District would the proposed use be an efficient use of resources. This is not a matter that is relevant to the decision of this Committee but, based on the rationale for refusing this consent, it appears that the Rural 2 or Rural 3 Zones or parts of the Light Industrial Zone may be more appropriate by providing for the requirements of the applicant and being supported by TRMP Objectives such as 7.2.2.

Finally, as a way of illustrating the reasoning behind the refusal, the Committee felt that individually many aspects of the proposal certainly had their merits, but equally there are problems with each aspect. As a whole it was considered that, on balance, the proposal did not promote the sustainable management of natural and physical resources as required by Section 5 of the Act.

12. SUMMARY AND CLOSING NOTES

In summary, this was a difficult decision. The Committee felt that the small but numerous adverse effects cumulatively added up to a proposal that was not suitable for the site. In addition, it was not considered practicable to write conditions which would sufficiently avoid, remedy or mitigate the effects when the extent and nature of many of the effects are uncertain. Conditions that were considered did not provide sufficient certainty and were problematic in their enforceability. The Committee felt that the diverse activities (viz. the café, the function centre, the gardens themselves, the crematorium, the chapel and the memorial garden) contributed to the uncertainty surrounding the traffic and noise effects arose. At the start of Section 11 it was stated that there is not any one aspect or adverse effect that is a "knock-out". With a significant review of the proposal to nullify some of the worst of the adverse effects (productivity, noise, rural character and amenity, parking and traffic) it may be possible that a future application may be successful.

Issued this 7th day of July 2009



Cr Noel Riley
Chair of Hearings Committee

Date Confirmed:

Chair: