

MINUTES

TITLE Environment & Planning Subcommittee - Commissioner Hearing
DATE Wednesday, 9 December 2009
TIME 10.00 am
VENUE Tasman Council Chambers, 189 Queen Street, Richmond

PRESENT Crs M J Higgins (Chair), E J Wilkins, Mr G Rae

IN ATTENDANCE Consent Planner (L Davidson), Principal Resource Consents Advisor (J Butler), Executive Assistant (V M Gribble)

1. AWAROA LODGE LIMITED, AWAROA BAY - APPLICATION No. RM090015,

The application sought to retain buildings that are required to be removed per Resource Consent RM010247, and use them for a licensed food facility catering for lodge staff and passing Abel Tasman National Park trampers.

The application site is located at Awaroa Bay, being legally described as Lot 1 DP 390868, Lot 4 DP 12256.

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

TASMAN DISTRICT COUNCIL

Report and Decision of the Tasman District Council through Hearings Commissioners

Meeting held in the Tasman Room, Richmond on 9 December 2009 and on site at
Awaroa Bay on 18 December 2009

A Hearings Committee ("the Committee") of the Tasman District Council ("the Council") was convened to hear the application lodged by Awaroa Lodge Ltd ("the Applicant"), to retain buildings that are required to be removed per Resource Consent RM010247, and use them for a licensed food and alcohol facility catering for Lodge staff and passing Abel Tasman National Park trampers. The application, made in accordance with the Resource Management Act 1991 ("the Act"), was lodged with the Council and referenced as RM090015.

HEARINGS COMMITTEE Cr Michael Higgins, Chair
Cr Eileen Wilkins
Mr Gary Rae (Independent Commissioner)

APPLICANT: Mr B Walters (Applicant)
Mrs C Walters (Applicant)

REPORTING OFFICER: Mr L Davidson (Consent Planner, Land Use)

SUBMITTERS: Mr I and Mrs S Jones (Landowners)
Mr N McFadden (Counsel)
Ms B Monopoli (Landowner)
Mr D Monopoli(Landowner)
Mr S Olds (Witness from Awaroa Residents' Association)

IN ATTENDANCE: Mr J Butler (Principal Resource Consents Adviser) –
Assisting the Committee
Ms V Gribble (Committee Secretary)

1. SUMMARY

The Committee has **GRANTED** a resource consent, subject to conditions, to retain buildings that are required to be removed per Resource Consent RM010247, and use them for a licensed food and alcohol facility catering for Lodge staff and day visitors.

2. DESCRIPTION OF THE PROPOSED ACTIVITY

The application lodged by Awaroa Lodge Ltd seeks retrospective land use consent to retain buildings that were required to be removed under Condition 4 of consent RM010270, and use them for a licensed food facility that will cater for lodge staff in their leisure time and day visitors including passing Abel Tasman National Park trampers.

Awaroa Lodge is a privately owned facility located at Awaroa Bay within the Abel Tasman National Park. It is part of an enclave of privately owned land that is primarily used as holiday accommodation. The area has no roading infrastructure serving it and access is gained by boat, or by air using a small airstrip, or by foot.

The lodge site is a parcel of land zoned Rural Residential that is 19.9 hectares in area located approximately 400 metres back from the coast. It is provided with an access strip to the Awaroa Bay beach and a right of way through adjoining private land to Venture Creek and the Awaroa Inlet.

A considerable portion of the land is wetland and the lodge makes a feature of the views out over this from some of the guest accommodation. The balance of the land is vegetated in indigenous vegetation of varying quality, but this is sufficient to screen the lodge and its environs from adjoining properties.

The buildings in question are located towards the northern boundary of the site and the neighbours in that area are Harwood/Charlett and City and Provincial Properties. The latter property is essentially the Awaroa airstrip and there is no residential building close to this area. The Harwood/Charlett property has a dwelling that is located to the south west of this area, which is some 250 metres from the buildings.

The Lodge was established in 1990 as a smallish accommodation facility and since that time has been the subject of a number of resource consents that have permitted progressive upgrading and growth of the facilities. The most recent consent that was obtained that affected the operation of the Lodge was granted in 2001 (RM010270) and this consolidated a number of previous consents and approved an expansion of

the restaurant/bar area, guest accommodation and staff accommodation. It was envisaged this would cater for the operation of the Lodge for a number of years without the need to apply for additional consents.

Since that time, the Lodge changed hands and the current owners (Awaroa Lodge Limited) have been operating the facility since September 2008. In December 2008 the Council became aware some alterations had been carried out on two of the old buildings that were previously part of the staff accommodation area and a food outlet and bar area had been created. The buildings had been upgraded and decking added to provide a facility that was intended to cater for trampers on the Abel Tasman Track and for staff in their leisure time. This work was a breach of the Building Act and a Notice to Fix was issued.

In carrying out that work, the Lodge owners also found they had breached a condition of consent RM010270 (condition 4) that required:

“Redundant buildings that do not form part of the application as submitted, shall be dismantled and removed from the property upon completion of the replacement buildings”

It appears the Lodge owners recognised that they had breached both the condition of a resource consent and the Building Act. An application for resource consent and for a Certificate of Acceptance under the Building Act were lodged.

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 Residential Closed

Area(s): Land Disturbance Areas 1 and 2

The proposed activity breaches TRMP Rule 17.8.2.1 b (ii), extending a Commercial Activity in a Rural Residential Closed Zone.

While the applicant could have considered varying Condition 4 of RM010270, there would be some uncertainty about “extended commercial use” by using the two buildings in this location for the proposed use. It is more certain to apply to use buildings that were required to be removed by an earlier consent and to extend the commercial operation by providing food and refreshment facilities for off duty staff and day visitors.

Overall the proposal is a discretionary activity under the TRMP.

4. NOTIFICATION AND SUBMISSIONS RECEIVED

The application(s) was limited notified on 17 August 2009 pursuant to Section 94(1) of the Act. A total of four submissions were received. The following is a summary of the written submissions received and the main issues raised:

G M Harwood and V J Charlett

Mr Harwood and Mrs Charlett are the owners of a rural residential property to the south west of the Awaroa Lodge site. They lodged a submission confirming that they support the application and would like to see the Council approve it.

I and S Jones

Mr and Mrs Jones own a holiday home on a property on the northern side of Awaroa Lodge that is located approximately 300 metres from the proposed facilities. They lodged a submission opposing the application; principally on the grounds the conversion did not follow the correct procedure (obtaining the required approvals under the Building Act and Resource Management Act). They also allude to some sort of problem relating to access that has been the subject of discussion between the Lodge and themselves.

I C Athfield (New Zealand Settlement Company Limited)

Mr Athfield has an interest in a property at Awaroa to the north west of the Lodge that is approximately 600 metres from the site and he has been involved with earlier development of the Awaroa Lodge site. He opposed the current application and has listed seven areas of concern. Part of his submission related to the use of plans that he had previously prepared and he emphasised that he has not been involved in the preparation of the current proposal and the original plans did not include the use of these buildings. As such they would fall into the category of buildings to be removed when the staff facilities were completed as required by Condition 4 of the resource consent that covered that development. He also indicated dining facilities are already available for staff and considered that the toilets are poorly sited to serve people beyond the proposed food outlet. His submission indicated there was a problem with day trippers to the area when the café was open but does not clearly state what sort of problem was being created. Mr Athfield did not appear at the hearing to elaborate.

D J and B A Monopoli (City and Provincial Properties Limited)

David and Bronwyn Monopoli own a property adjoining the Lodge site that has a holiday home on it that is located near the western end, about 600 metres from the site. Their property includes part of the air strip that light planes and helicopters use. They lodged a submission opposing the application and stating three areas that are of concern to them. They considered the lodge caters adequately for both staff and casual visitors to the site, catering for up to 120 guests within the existing facilities on the site. They also object to buildings that were to be removed being retained and used for an expanded commercial operation associated with the lodge. They considered the existing "commercial heart" of the lodge is located in a position where it does not impact on other properties and the expanded operation would be in a position that can affect other properties through loud music, people wandering on to their property and an increase in litter in the area.

5. PROCEDURAL MATTERS

There were no procedural matters that required us to make a ruling.

6. EVIDENCE HEARD

We heard evidence from the applicant, 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 Walters stated that the Awaroa Lodge has earned a four star Qualmark rating. It was developed between 2003 – 2005 into a much larger complex than previously existed. The lodge is comprised of a reception area, a small lounge for in-house guests, a dining room, a conference room which becomes a dining room in summer, and a courtyard with outdoor furniture. The lodge is consented for 34 staff and 66 guests and then 120 people in the restaurant at any one time. Mr Walters said that the lodge is inundated from Boxing Day through to March and a large component of this is from passing traffic (trampers and boaties etc). There would be 200 day guests at its peak, and between 90 and 120 on a normal day. He said that in the peak time the Lodge becomes unmanageable. Mr Walters also said that the Lodge does not do cheap food and that it is about \$35 for a lunch.

Mr Walters said that there is a need for an alternative café which can serve cheaper food and refreshments to trampers, off-duty staff and other visitors to Awaroa. The café is proposed to be within the existing Awaroa Lodge complex but to the west where it will be closer to the staff accommodation and the Abel Tasman track. He said that the location is convenient as it is in the middle of the National Park and people will have been walking for two hours or more by the time they arrive at the café. During the trial (summer 2008/2009) it was used 90% of the time by staff to enjoy the ambience of the lodge location when not working.

Mr Walters then addressed some of the potential effects of the café. He said that there will be little or no rubbish as he uses biodegradable potato starch plates and bowls. Pizzas and other food will be brought down from the Lodge's kitchen in the morning and therefore will not be packaged.

Mr Walters said that the facility will fit in well with the Awaroa environment and the noise will be minimised by only having a small domestic amplified music system and he was happy with a 9.00 pm closing time. He said that the neighbours' houses are a long way away and through thick bushland. He emphasised that it is not to be a pub. He said that no more than three drinks are to be served to anyone and that people will have a pizza, a drink and then be on their way as they are constrained by tidal flow to get to and from Awaroa.

Mr Walters identified the parties that he has obtained written approvals from and, most notably, these included Mr and Mrs Harwood who own the adjoining land to the west.

In response to a question from Commissioner Rae, Mr Walters said that breakfast at the lodge is for residents only. He said that day guests can arrive at 8.00 am and he cannot cope with them. He said they then get a lot of trampers coming from 10.00 am.

Cr Higgins asked whether Mr Walters would require a start time of 10.00am. Mr Walters said that is not the time of day that his staff use it, but it would be the time

passing traffic approach the lodge, particularly in the summer months. He would like to request opening hours are from 10.00 am.

In addressing the concerns raised by submitters, Mr Walters said that walkways are clearly marked and private property is clearly marked. He said that music is attenuated so that it cannot be heard by his closest neighbours and he is happy for this to be monitored.

With regard to rubbish he said that not one complaint or scrap of evidence has ever been presented by a neighbour to suggest there is a problem with litter. Bins are provided and packaging is minimal.

Mr Walters said that users of the park are on their way past on the track and, during the trial period, there was not one intoxicated person. He said that the venue is not a pub and no spirits are on sale.

6.2 Submitters Evidence

Mr I and Mrs S Jones

Mr Jones stated that the two buildings are illegal and the conditions of resource consent RM010270 require that they be removed.

With regard to effects, Mr Jones stated that noise from people, music and generators can be heard when the wind comes from the south. There is also increased litter in the form of drink bottles and pizza packaging. He said that there is an increased fire risk and there are more odours from the sewerage system.

Mr Jones also stated that there are increasing problems with trespassers on their land and this is exacerbated by the pizzeria which is immediately opposite their land over the airstrip.

Mr Jones sought that the application be declined as it will have a negative impact on the Awaroa Bay and Inlet.

Following questions, Mr Jones confirmed the applicant's position about the busyness of Awaroa during the peak season. With regard to trespassers and the track that runs south from their holiday house, Mr Jones said that they do not want to fence it but do not want people all over their land.

Ms B and Mr D Monopoli

Mr McFadden, Counsel for the Monopolis, stated that the sort of people who will attend the café will be different to those who will occupy the Lodge itself. He confirmed that these buildings should have been demolished and remain illegally.

Mr McFadden expressed concern that the Awaroa Residents' Association, which was included in notification of the RM010270 consent application, was this time not included in the limited notification.

Mr McFadden said that the current Lodge site is tucked away and is compact. He said that this new facility will not be tucked away and will have greater effects on the

residents. Last summer there was loud music, increased litter, camping on private land, faecal waste and increased traffic to the beach.

Mr McFadden identified Sections 7(b), (c), (f), and (g) of the Act as being relevant components of Part 2. He said that duplication of facilities cannot be efficient use of resources and the consent should not be granted. Mr McFadden also referred to Chapter 5 of the TRMP and stated that adverse effects on amenity should be avoided.

Commissioner Rae asked if Mr McFadden had a view on whether the NZ Coastal Policy Statement (NZCPS) is relevant. Mr McFadden said it is relevant. If not for the coast, the area would not be put under the pressure it is. Commissioner Rae said looking at the map, buildings are located distant from lodge but close to staff accommodation. He asked if Mr McFadden's clients would be happier if the facility was located right at the lodge and secondly, whether that option is open to us as commissioners to impose it. Mr McFadden said that the NZCPS refers to clustering and appropriate development in the coastal environment. He considered that locating the café closer to the lodge would better meet the policies of the NZCPS. But he did not think that relocation could be required by way of condition as this would be outside the scope.

Cr Higgins asked, given evidence by the applicant, that as large numbers of people are going to Awaroa because they want to go there, how does he suggest the volume of people can be coped with? Mr McFadden said exactly the same as any other business. He said that if they are unable to cope with the numbers then they must turn them away. He did not see high demand as a justification to grant consent. The Environment Court has said that resource management is about effects, not need. The need element lies at the boardroom table.

Ms Monopoli said that the operation of the café over last summer had major impacts on the lives of residents and holiday makers. She said Council must consider this application in the light of the previous requirement for the buildings to be demolished. The existence of the buildings should not come into the decision-making process.

Ms Monopoli said that most passing trampers have no expectation of a "watering hole" on the track. She said it will not matter what conditions are placed on the facility, as she objects to a separate facility being established on the Lodge's land. The facility will be unwelcome and invasive. She also said that some of the character of the Lodge will be lost as guests at the Lodge like and appreciate seeing "real New Zealanders" and travellers visiting the lodge.

Mr Monopoli said that last summer the facility produced a fair amount of noise. He said that there were disruptions caused in what has traditionally been a quiet area.

Mr Monopoli said that he is concerned about people camping on the airstrip that is adjacent.

He said that he has concerns about the facility being promoted as mainly for staff because they already have cooking and dining facilities. He said that it is obvious they are looking at splitting the operation. The Lodge is discrete and the café will be 300 metres distant from that and closer to the residential landowners. His view was that the applicant is trying to develop another market.

Mr Monopoli also expressed concern that the Awaroa Residents' Association was not included in notification proceedings.

Finally, Mr Monopoli expressed concern that the facility will attract a different clientele including people arriving with their own spirits. He said that they have seen people coming out of the lodge and going into the park with six packs of beer and they do not want that to happen.

Mr McFadden said that in Mr Monopoli's view the cafe will attract a different market. Cr Wilkins asked if that could happen whether the facility was there or not? Ms Monopoli said it is unlikely. She said that it is operated almost as a pub that attracts a totally different type of day tripper. Mr Monopoli said it creates a culture of "let's go to Awaroa" as a destination.

Mr S Olds from the Awaroa Residents Association appeared as a witness in support of the Monopolis' submission. Mr Olds said that he was concerned about people arriving at Awaroa with chilly bins containing alcohol and then not being able to get back to the car park because the tide has changed. He said that the café has 360 degrees of access and egress and people walk everywhere.

Mr Olds said that he has been called to rescue intoxicated people many times in the estuary. Day traffic will expand dramatically as a result of the café and they have little or no concern for the environmental issues.

6.3 Council's Reporting Officer's Report and Evidence

Mr Davidson (Consent Planner, Land Use) said the two major issues that relate to this application are the preservation of the amenity of the Awaroa area, and the change in commercial activity on the site. He said that the café is clearly designed to cater for day visitors, passing trampers and off duty staff, and is not intended to be a night club. He said he would support an earlier closing time of 9.00 pm.

With regard to licensing he said that Awaroa Lodge holds an on-licence and this would likely be dealt with by the licensing authority as a redefinition, i.e. the areas of the licence would be redefined within the on-licence.

Mr Davidson said that it is difficult to police people walking onto private land at Awaroa. He said that there are no defined boundaries and no fences. He did not support the extensive use of signs to indicate private land.

Mr Davidson also said that he recommends that a review condition be added to his recommended conditions. Such a condition would be vital if consent is granted. He said that there is already a condition in the present consent that says there will be no overnight accommodation in tents or caravans on site, and that a condition could be added prohibiting overnight camping or other form of accommodation in relation to the use of the facility.

Cr Higgins asked Mr Davidson, in a general sense, is this facility going to help with a situation of high visitor numbers that already exists? Will it be an improvement and is it well located? Mr Davidson said that the tourist numbers that Golden Bay experiences, including Awaroa, will never be fully catered for. It creates problems elsewhere and people often pitch a tent anywhere they can find a spot. He said that it is entirely appropriate for the owner or manager of a facility to structure their

business operation so they can cater for varying levels of client demand, including overnight guests who pay for four star accommodation as well as people who choose to have a boat ride from Kaiteriteri, get dropped off at Awaroa to choose to have a \$10 lunch and be picked up and go back.

6.4 Applicant's Right of Reply

Mr Walters said that they do not sell liquor for taking off the premises. He said that all liquor sold on the premises is opened. With regard to rubbish he said that pizza is to be served on tissues, with no cutlery or packaging.

Mr Walters said that nobody has ever contacted him to say there are people trespassing on their land from Awaroa Lodge. He said that there is no evidence or complaints about people camping on the airstrip, excessive noise or people using private property for toilets.

Ms Walters also said that the applicant definitely does not encourage or condone private camping on the grounds of the Lodge, or on adjacent land, and there was no evidence to suggest the pizzeria would encourage camping to occur.

7. PRINCIPAL ISSUES AND MAIN FINDINGS OF FACT

The principal issues that were in contention and our findings on these issues are:

a) Should the application have been fully publicly notified? Should the Awaroa Residents Association been included in the notification proceedings?

Section 104(3)(d) prohibits us from granting the consents if we consider that it should have been publicly notified and was not. The decision on notification is delegated to Council staff. In this case we do not consider that there is any clear case for public notification and we are satisfied that the staff assessment that a limited notification pathway is appropriate should stand.

Our view is the same for the parties included in the limited notification process. Submitters questioned why the Awaroa Residents Association were included in the 2001 consent and not for this application. Although we were not involved in the decision because, again, it was made under delegation by Council staff, we make the point that the limited notification provision did not exist in the Act at the time the 2001 consent application was lodged and therefore there would have been fewer options available to the Council. Secondly, as set out below, we consider that the scope and potential effects on the environment of this proposal are significantly less than the scope of the 2001 application.

b) What is the legal status of the buildings that are proposed to be used and can we authorise them to be used for the stated purpose?

We agree that the buildings should have been removed under the 2001 consent. However, we are satisfied that as long as we assess the proposal without any credit being given to the ongoing existence of the buildings then it is in our jurisdiction to authorise their retention and use for the stated purpose. Essentially we must assess the proposal as if the site is clear of any buildings. If our decision, on that basis is to grant the consent, then there is no point in

enforcing the demolition of the buildings only to authorise their retention and ongoing use under this consent.

c) To what extent will the proposed café cause adverse noise effects?

No expert evidence was presented to us from any party so we must make a finding on this matter based on a “common sense” perspective and taking into account the site as it exists and the conditions that have been recommended by Mr Davidson and volunteered by Mr and Mrs Walters.

The house of the nearest opposing submitter is approximately 280 metres away. The houses of the other submitters are considerably further away. The vegetation cover is basically scrub (thick shrubland, regenerating native bush and gorse, along with some exotic trees). Mr and Mrs Jones told us that they could hear the café when the wind was blowing from the south. We do not consider this to be a significant adverse effect. The applicant has volunteered to meet the permitted activity standards in the TRMP and we consider this to be appropriate.

Overall, on the basis of the conditions, the fact that Mr and Mrs Harwood have signed their written approval and the separation distances and vegetation between the applicant’s site and the opposing submitters’ houses we find that the adverse noise effect will be less than minor.

d) To what extent will the proposed café cause greater litter and rubbish in the area?

We are persuaded by the applicant that he will do his utmost to minimise rubbish in the area. It is certainly in the applicant’s best interest to maintain its property in a tidy and rubbish free state. The minimal packaging that is used and the provision of prominent recycling bins which we observed on our site visit gives us reassurance on this point.

e) To what extent will the proposed café cause trespassing and camping on neighbours land, and to what extent is this a relevant matter in the consideration of this application?

The evidence on trespassing and camping was fairly inconclusive, but in any event we consider this matter to be a largely civil matter. We see the difficulties of the site as the Awaroa area is generally unfenced and the concept of property boundaries and property rights in this setting may be difficult to grasp for overseas travellers. However, in this regard no evidence was presented to us of an actual adverse effect on the property owners. We do not know the extent of the problem and suspect that it is low as most people are likely to use the track provided rather than heading off into the bush on an un-signposted track.

Similarly, we see it as unlikely that people will camp in the area solely as result of the proposed cafe. In any event, it seems unlikely that they will camp on the airstrip in the open. Regardless, we re-state that this is largely a civil matter and trespass is, technically an illegal activity. If landowners have concerns in this regard then fences, signs, gates or legal enforcement are the most appropriate avenues to address the matter.

f) To what extent will the proposed café adversely affect the rural residential landscape character and amenity of the Awaroa area?

The proposed café is positioned within mature kanuka shrub land and blends well into this vegetation type. It also sits immediately adjacent to the Lodge's extensive (and impressive) vegetable garden, and quite near to the staff accommodation and maintenance building. Therefore, we disagree with submitters who stated that the proposed site is not part of the existing developed area. We were told that the site is out on its own and therefore created another node of development. We do not find this to be the case. Further, the environment in this area is already dominated by the Lodge and the vegetable garden/sheds and the other buildings including staff accommodation and generator shed. We find that the proposed café compliments this development well and is a more efficient use of resources than if a similar development were to be set up in another location thereby creating another node of activity and development in a currently less developed location. Therefore, we do not consider that the café will be an intrusion into the landscape character of the area.

With regard to the amenity of Awaroa Bay and Inlet, we find that good numbers of tourists are already there; that much is clear from the submissions and evidence presented. For us to have concerns about the effect of this proposal with regard to the numbers and type of people we would have to be convinced that this proposal will create significant additional traffic, and consequent adverse effects, over and above what is already occurring. Alternatively, we would have to be convinced that this proposal will draw an entirely different visitor demographic from that which currently visits Awaroa. We are not convinced of either of these factors. We consider that the people are already there, that much is clear from the statements of Mr Walters and Mr Davidson, and indeed Mr and Mrs Jones. We think this café will fit well into the existing environment and provide a valuable and attractive service to the people who use the National Park. There may be many who use the park and currently go to the Awaroa Lodge who will, in future, also use this café. We do not see this as a serious adverse effect on the amenity of Awaroa over and above any effects already caused by the existing number and type of people already using the Lodge and the track.

g) To what extent will the proposed café have positive effects?

We believe the proposed café will provide a valuable and attractive service to many who use the park. It is clear that the Lodge has changed its focus such that many may feel unwelcome, uncomfortable or conspicuous when seeking breakfast, coffee, lunch or water at the Lodge. We consider that this will provide a considerable positive effect in providing a service to the already high numbers of people who pass by or use the Lodge's services. In keeping with resource management best practice, we feel that it is important that this considerable benefit to tourists not be lost sight of. A considerable benefit to economic development and the social well-being of Lodge workers resident at the site is also relevant.

8. RELEVANT STATUTORY PROVISIONS

8.1 Policy Statements and Plan Provisions

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

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

8.2 Part 2 Matters

In considering this application, we have 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.

9. DECISION

Pursuant to Section 104B of the Act, the Committee **GRANTS** consent subject to conditions.

10. REASONS FOR THE DECISION

Effects on the Environment

We consider any adverse noise and rubbish effects to be very minor. Conditions are imposed which restrict the scale and hours of the operation and, given its location, we do not see any great problem with drunkenness, parties or other antisocial behaviour. We see the facility having a considerable benefit for visitors to Awaroa.

We certainly see no adverse effect on the landscape character as we believe that it will fit very well into the existing environment and be part of the overall character and “node of development” that exists on the Awaroa Lodge property.

In terms of the amenity and busyness of Awaroa, we consider that the levels of tourists are already high. We acknowledge that this proposal may add to this by providing a more appropriate type and level of service that certain tourists, such as trampers, prefer. However, this is a positive aspect too as it allows for better management of the tourists. The purpose of the Act is not “no effects”, it is sustainable management of resources, and part of this is providing for the social and economic wellbeing of people while avoiding, remedying or mitigating adverse effects. We consider that this proposal meets this purpose.

NZCPS

We consider that the NZCPS is relevant in a limited way. The Awaroa environment is defined by and centred upon the beach and the sea. Even though the development is set well back from the sea and certainly one is not visible from the other, some consideration of the NZCPS is relevant.

Policy 1.1.1 of the NZCPS states that “It is a national priority to preserve the natural character of the coastal environment by:

- (a) encouraging appropriate subdivision, use or development in areas where the natural character has already been compromised and avoiding sprawling or sporadic subdivision, use or development in the coastal environment;
- (b) taking into account the potential effects of subdivision, use, or development on the values relating to the natural character of the coastal environment, both within and outside the immediate location; and
- (c) avoiding cumulative adverse effects of subdivision, use and development in the coastal environment.”

We consider that this proposal meets Policy 1.1.1 by concentrating this development in a location which has already been largely developed. In this sense the proposal can be seen a small increment to an already established larger development. This proposal certainly meets this policy better than, for example, a proposal to establish a café on the edge of the beach where it would be more visible or in another location in the park. In this regard we consider that the proposal is consistent with the NZCPS.

Objectives and Policies of the TRMP

We agree with Mr Davidson’s assessment of the relevant Objectives and Policies of the TRMP in relation to amenity values (Chapter 5) and it is not necessary to repeat those provisions here. We find that the operation of this café will not compromise the ability of the neighbouring landowners or other people at Awaroa to enjoy their land. We find that the proposal is not inconsistent with the relevant Objectives and Policies of Chapter 5 as set out by Mr Davidson in his staff report.

Other Matters

The Lodge’s wastewater system – which serves the toilets that have been constructed next to the proposed café – was mentioned at various times throughout the hearing. We have considered the matter of the toilets and find that they are largely separate to these proceedings. The construction of the toilets is a permitted activity, subject to standards in the plan. The discharge of wastewater to land is also a permitted activity, again, subject to conditions. Therefore, whether the applicant chooses to put the wastewater into its existing system (possibly subject to a variation of its existing discharge permit which has not been applied for) or discharge it to land via a separate system, is not a matter for this decision.

The toilets are only relevant to the matter we are considering in relation to the licensing of the premises for food and liquor. We have not investigated this further but advise the applicant that if it is to be able to operate the facility legally, appropriate approvals for food handling and liquor licensing will be required. Provision of functioning and legally authorised toilets may form part of gaining those approvals.

Purpose and Principles of the Act

In making our decision we have had particular regard to Sections 7(b), (c), and (f). We find that the proposal does constitute efficient use of natural and physical resources by concentrating development in an area that is already relatively highly

developed. We also find that the amenity values and quality of the environment will not be adversely affected to a more than minor extent.

Adopting a broad overall judgement approach to the purpose of the Act, we are satisfied that the proposal is consistent with Part 2 and achieves sustainable management of natural and physical resources as set out in Section 5 of the Act.

11. COMMENTARY ON CONDITIONS OF CONSENT

Several variations and permutations of the opening hours of the café have emerged through the resource consent process. In a response to a Section 92 request the applicant had stated on 16 April 2009 that acceptable opening hours would be 11.35 am to 8.00 pm. However, in the staff report Mr Davidson recommended approval of the café on the basis of opening hours of 12 midday to 10.00 pm. In the hearing Mr Walters stated that he would prefer hours of 10.00 am to 9.00 pm.

In the conditions we have limited the opening hours for the café 8.00 am to 9.00 pm for the following reasons. In regard to the closing time of 9.00 pm this was discussed at the hearing and this time was offered by Mr Walters to limit any adverse effects that may occur as a result of the café being open late into the evening. The submitters present, while disagreeing with the overall effects of the activity, did not provide any comment on a closing time of either 8.00 pm (as stated in the further information response), 9.00 pm as offered by Mr Walters, or 10.00 pm as suggested by Mr Davidson. We are satisfied that 9.00 pm is an appropriate closing time. We consider that in the summertime 8.00 pm closing is unrealistic and will likely cause compliance problems when there are no greater adverse effects with closing an hour later.

Although the 8.00 pm closing time is what was notified, we note that the staff report of Mr Davidson, which was sent to all parties, recommended the later closing time of 10.00 pm. We are therefore satisfied that the relevant parties have had reasonable opportunity to make their views known regarding the closing time.

With regard to the opening time, we heard evidence that trampers start arriving looking for coffee or breakfast quite early in the day; around 8.00 am. We consider that the café may be unduly limited by having an opening time of 10.00 am and although this is what the applicant volunteered we consider there to be no greater adverse effects of opening earlier and, indeed, positive effects of providing for the well-being and enjoyment of staff and passers-by. Again, we do not consider that any parties are prejudiced by these more relaxed hours. We see our role as only being to limit the activity where necessary to avoid adverse effects on the Awaroa environment. We do not see any need to particularly restrict hours in the morning.

12. LAPSING OF CONSENT

Pursuant to Section 125(1) of the Act, resource consents, by default, lapse in five years unless they are given effect to it before then.

13. EXPIRY OF CONSENT

Pursuant to Section 123 of the Act, land use consents have no expiry provided they are given effect to within the lapse period provided.

Issued this 13th day of January 2010

A handwritten signature in black ink, reading "Michael Higgins", with a long horizontal flourish underneath.

Michael Higgins
Chair of Hearings Committee

RESOURCE CONSENT

RESOURCE CONSENT NUMBER: RM090015

Pursuant to Section 104B of the Resource Management Act 1991 (“the Act”), the Tasman District Council (“the Council”) hereby grants resource consent to:

Awaroa Lodge Ltd
(hereinafter referred to as “the Consent Holder”)

ACTIVITY AUTHORISED BY THIS CONSENT: To retain buildings that are required to be removed per Resource Consent RM010247, and use them for a licensed food and alcohol café facility.

LOCATION DETAILS:

Address of property: 11 Awaroa Bay, Awaroa
Legal description: Lot 4 DP 12256
Certificate of title: 364800
Valuation number: 1871001505
Easting and Northing: 2551371E 6038118N (NZ Map Grid)

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

CONDITIONS

General

1. The scale of the activity and facility shall be in accordance with the application and plans provided in support of application RM090015, particularly plans A1.1 to A1.6. (Plan A1.3 is attached.) The customer area shall be limited to the buildings and deck shown, as well as the grassy area immediately in front of the two buildings and bounded by the walking track beyond, as shown on the Site Plan (Plan A1.1) dated 12 January 2010 (attached).
2. Sales of alcohol from the café/bar shall not include spirits or premixed beverages containing spirits.

Hours

3. The hours of operation of the café/bar shall be limited to between 8.00am to 9.00pm Monday to Sunday inclusive.

Noise

4. Noise generated by the activity, measured at the notional boundary of any dwelling, does not exceed:

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

Note Day = 9.00am to 9.00pm Monday to Friday inclusive and 9.00am to 6.00pm Saturday (but excluding public holidays).

Where compliance monitoring is undertaken in respect of this condition, noise shall be measured and assessed in accordance with the provisions of NZS 6801: 1991, Measurement of Sound and NZS 6802:1991, Assessment of Environmental Sound.

Notional Boundary means:

- a) a line 20 metres from the façade of any rural dwelling that is most exposed to the noise source; or
 - b) the legal boundary of the site of the dwelling, where this is closer to the dwelling than a).
5. The consent holder shall erect a sign in each of the two buildings where all staff members can see it. The sign shall be in plain english and shall remind staff:
- a) Of the closing time of the facility;
 - b) That there are neighbours who live nearby who may be disturbed by music or noise, particularly of a low frequency (a base beat) and particularly at night; and
 - c) Of the obligation under the Resource Management Act to avoid unreasonable noise;

Advice Note:

The sign should be at least of A2 size and in a sufficient font size to allow it to be read easily. Such a condition is warranted here as the background noise environment in a place such as Awaroa is such that noise may easily become unreasonable under Section 16 of the Act. Also, it is more difficult for complainants to obtain effective enforcement action from the Council in this relatively remote location.

Advertising

6. Any advertising of the café/bar and its products and services shall be discrete (any sign advertising the facility shall be no greater than 0.5 square metres in area) and shall be located on or within the Awaroa Lodge buildings or on their curtilage areas, but not on or near the beach front.

Advice Note:

For the avoidance of doubt this condition prohibits the erection of any signs advertising this facility on or near the consent holders buildings at the beach. The first advertising sign seen by customers arriving from the beach shall be at the Lodge proper.

Landscaping

7. Existing vegetation between the café/bar facilities and the northern boundary shall be retained to provide a visual screen when viewed from the adjoining property.

Waste and Rubbish

8. The consent holder shall provide recycling bins for all readily recyclable packaging and serving materials that are used on the site. Rubbish bins shall also be provided for all non-recyclable materials.
9. The consent holder shall use all practicable means for reducing the production of recyclable or rubbish materials.

Advice Note:

For example, water should continue to be served from a tap and foods brought from the kitchen at the Lodge should use the minimum of packaging. This condition is warranted in the case of this consent to minimise the volume of waste and rubbish present in the Abel Tasman National Park.

Review

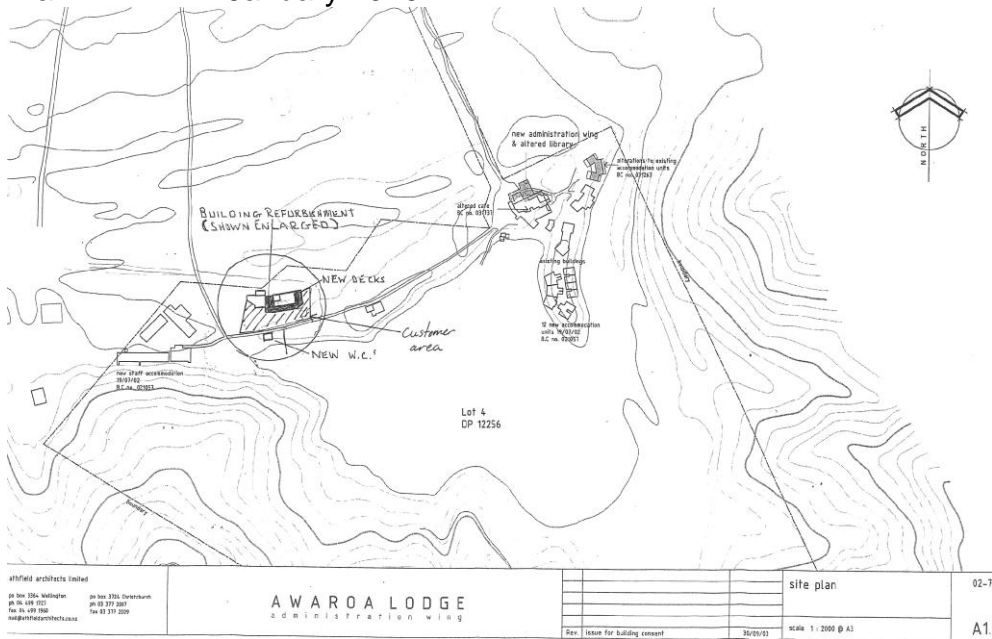
10. Pursuant to Section 128 of the Act, the Council may, during the month of February each year, serve notice of its intention to review the conditions of these consents for any of the following purposes:
 - a) to deal with any adverse effect on the environment which may arise from the exercise of these consents, and which it is appropriate to deal with at a later stage;
 - b) to require the Consent Holder to adopt the best practicable option to remove or reduce any adverse effect on the environment;
 - c) to change the compliance standards imposed by conditions of these consents to standards which are consistent with any relevant regional plan, district plan, National Environmental Standard, National Policy Statement or Act of Parliament.

ADVICE NOTES

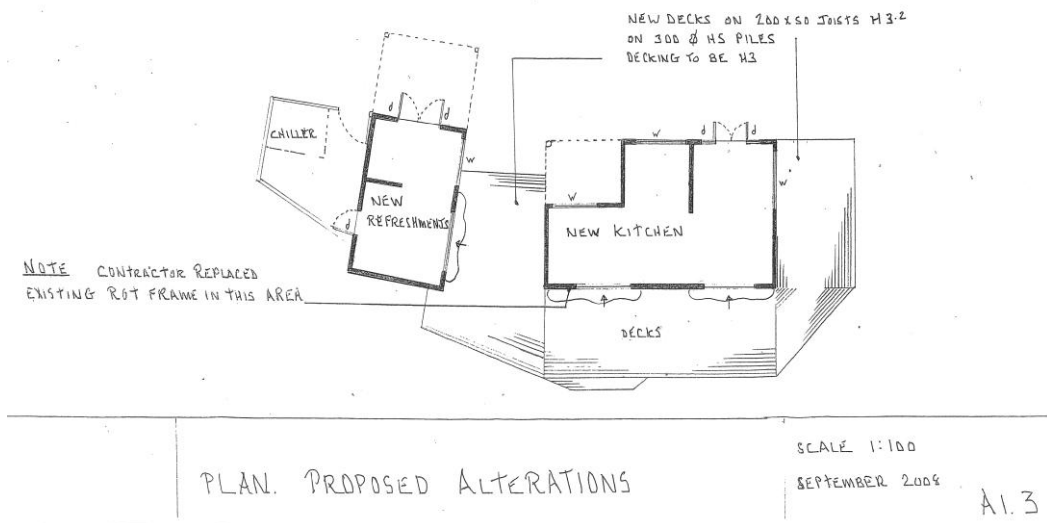
1. The applicants will only be able to operate the café as a licensed café after the appropriate re-definition of the licensed area has been granted by the District Licensing Agency under the Sale of Liquor Act.
2. The café is required to obtain a Certificate of Acceptance under the Building Act before this activity can be undertaken.
3. This resource consent only authorises the activity described above. Any matters or activities not referred to in this consent or covered by the conditions must either:
 1. comply with all the criteria of a relevant permitted activity rule in the Tasman Resource Management Plan (PTRMP);
 2. be allowed by the Resource Management Act; or
 3. be authorised by a separate resource consent.

4. Access by the Council or its officers or agents to the land subject to this resource consent is reserved pursuant to Section 332 of the Act.

Plan A1.1 – 12 January 2010



Plan A1.3 – September 2008



Issued this 13th day of January 2010

Michael Higgins
Chair of Hearings Committee

Date Confirmed:

Chair: