

Application for change or cancellation of resource consent condition (S.127)

(Or Associated Consent Pursuant to the Resource Management Act 1991 (RMA)) Prior to, and during, completion of this application form, please refer to Resource Consent Guidance Notes and Schedule of Fees and Charges — [both available on the Council's web page](#).

1. Pre-Lodgement Meeting

Have you met with a council Resource Consent representative to discuss this application prior to lodgement?

☐ Yes ☐ No

If yes, who have you spoken with? Nikki Callinan and Liz Searle

2. Type of Consent being applied for

☒ Change of conditions (s.127)

3. Consultation:

Have you consulted with iwi/Hapū? ☐ Yes ☒ No

If yes, which groups have you consulted with?

Who else have you consulted with?

For any questions or information regarding iwi/hapū consultation, please contact Te Hono at Far North District Council tehonosupport@fndc.govt.nz

4. Applicant Details:

Name/s:

Paroa Bay Winery Limited

Email:

[REDACTED]

Phone number:

Work

[REDACTED]

Home

Postal address:

(or alternative method of service under section 352 of the act)

PO Box 89, Russell

Postcode

0272

Office Use Only
Application Number:

5. Address for Correspondence

Name and address for service and correspondence (if using an Agent write their details here)

Name/s:

Daniel Thorne, Town Planning Group

Email:

Phone number:

Work

Home

Postal address:

(or alternative method of service under section 352 of the act)

PO Box 2559, Queenstown

Postcode

All correspondence will be sent by email in the first instance. Please advise us if you would prefer an alternative means of communication.

6. Details of Property Owner/s and Occupier/s

Name and Address of the Owner/Occupiers of the land to which this application relates (where there are multiple owners or occupiers please list on a separate sheet if required)

Name/s:

Paroa Bay Winery Limited

Property Address/
Location:

Postcode

7. Application Site Details

Location and/or property street address of the proposed activity:

Name/s:

Sage Restaurant at Paroa Bay

Site Address/
Location:

Postcode

0272

Legal Description:

Lot 14 & 16 DP 322364

Val Number:

413/19811

Certificate of title:

89262

Please remember to attach a copy of your Certificate of Title to the application, along with relevant consent notices and/or easements and encumbrances (search copy must be less than 6 months old)

Site visit requirements:

Is there a locked gate or security system restricting access by Council staff? ☐ Yes ☒ No

Is there a dog on the property? ☐ Yes ☒ No

7. Application Site Details (continued)

Please provide details of any other entry restrictions that Council staff should be aware of, e.g. health and safety, caretaker's details.

This is important to avoid a wasted trip and having to re-arrange a second visit.

NB: Nikki Callinan as undertaken a recent site visit.

8. Detailed description of the proposal:

This application relates to the following resource consent: 2160031-RMALUC

Specific conditions to which this application relates:

Condition 7 - Hours of Operation

Describe the proposed changes:

Paroa Bay Winery Limited applies to vary consent 2160031-RMALUC so as to provide for the ability for seven-day trading in the peak season period of November-April at Sage Restaurant at 46 Otamarua Road, Russell.

9. Would you like to request Public Notification?

☐ Yes ☒ No

10. Other Consent required/being applied for under different legislation

(more than one circle can be ticked):

☐ Building Consent

☐ Regional Council Consent (ref # if known)

☐ National Environmental Standard consent

☐ Other (please specify)

11. Assessment of Environmental Effects:

Every application for resource consent must be accompanied by an Assessment of Environmental Effects (AEE). This is a requirement of Schedule 4 of the Resource Management Act 1991 and an application can be rejected if an adequate AEE is not provided. The information in an AEE must be specified in sufficient detail to satisfy the purpose for which it is required. Your AEE may include additional information such as Written Approvals from adjoining property owners, or affected parties (including consultation from iwi/hapū).

Your AEE is attached to this application ☒ Yes

12. Draft Conditions:

Do you wish to see the draft conditions prior to the release of the resource consent decision? ☒ Yes ☐ No

If yes, do you agree to extend the processing timeframe pursuant to Section 37 of the Resource Management Act by 5 working days? ☒ Yes ☐ No

13. Billing Details:

This identifies the person or entity that will be responsible for paying any invoices or receiving any refunds associated with processing this resource consent. Please also refer to Council's Fees and Charges Schedule.

Name/s: (please write in full) Paroa Bay Winery Limited

Email:

Phone number:

Work

Home

Postal address:

(or alternative method of service under section 352 of the act)

PO Box 89, Russell

Postcode

0272

Fees Information:

An instalment fee for processing this application is payable at the time of lodgement and must accompany your application in order for it to be lodged. Please note that if the instalment fee is insufficient to cover the actual and reasonable costs of work undertaken to process the application you will be required to pay any additional costs. Invoiced amounts are payable by the 20th of the month following invoice date. You may also be required to make additional payments if your application requires notification.

Declaration concerning Payment of Fees:

I/we understand that the Council may charge me/us for all costs actually and reasonably incurred in processing this application. Subject to my/our rights under Sections 357B and 358 of the RMA, to object to any costs, I/we undertake to pay all and future processing costs incurred by the Council. Without limiting the Far North District Council's legal rights if any steps (including the use of debt collection agencies) are necessary to recover unpaid processing costs I/we agree to pay all costs of recovering those processing costs. If this application is made on behalf of a trust (private or family), a society (incorporated or unincorporated) or a company in signing this application I/we are binding the trust, society or company to pay all the above costs and guaranteeing to pay all the above costs in my/our personal capacity.

Name: (please write in full)

Daniel Thorne

Signature: (signature of bill payer)

Date 06-Oct-2025

MANDATORY

14. Important Information:

Note to applicant

You must include all information required by this form. The information must be specified in sufficient detail to satisfy the purpose for which it is required.

You must pay the charge payable to the consent authority for the resource consent application under the Resource Management Act 1991.

Privacy Information:

Once this application is lodged with the Council it becomes public information. Please advise Council if there is sensitive

information in the proposal. The information you have provided on this form is required so that your application for consent pursuant to the Resource Management Act 1991 can be processed under that Act. The information will be stored on a public register and held by the Far North District Council. The details of your application may also be made available to the public on the Council's website, www.fndc.govt.nz. These details are collected to inform the general public and community groups about all consents which have been issued through the Far North District Council.

Declaration

The information I have supplied with this application is true and complete to the best of my knowledge.

Name: (please write in full)

Daniel Thome

Signature:

[Redacted Signature]

Date 06-Oct-2025

A signature is not required if the application is made by electronic means

Checklist (please tick if information is provided)

- ☐ Payment (cheques payable to Far North District Council)
- ☐ Details of your consultation with Iwi and hapū
- ☒ A current Certificate of Title (Search Copy not more than 6 months old)
- ☐ Copies of any listed encumbrances, easements and/or consent notices relevant to the application
- ☒ Applicant / Agent / Property Owner / Bill Payer details provided
- ☒ Location of property and description of proposal
- ☒ Assessment of Environmental Effects
- ☐ Written Approvals / correspondence from consulted parties
- ☒ Reports from technical experts (if required)
- ☒ Copies of other relevant consents associated with this application
- ☐ Location and Site plans (land use) AND/OR
- ☐ Location and Scheme Plan (subdivision)
- ☐ Elevations / Floor plans
- ☐ Topographical / contour plans

Please refer to chapter 4 (Standard Provisions) of the Operative District Plan for details of the information that must be provided with an application. This contains more helpful hints as to what information needs to be shown on plans.



Project: **SAGE AT PAROA BAY
OTAMARUA ROAD PAROA BAY**

Prepared for: **Town Planning Group
PO Box 2559
507 Malaghans Road
Queenstown**

Attention: **Daniel Thorne**

Report No.: **Rp 001 2015343A**

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Document Control

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Approved	01	-	30 Sept 2024	Peter Ibbotson	Micky Yang
Approved	02	Minor improvements	18 March 2025	Peter Ibbotson	External
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1.0 INTRODUCTION

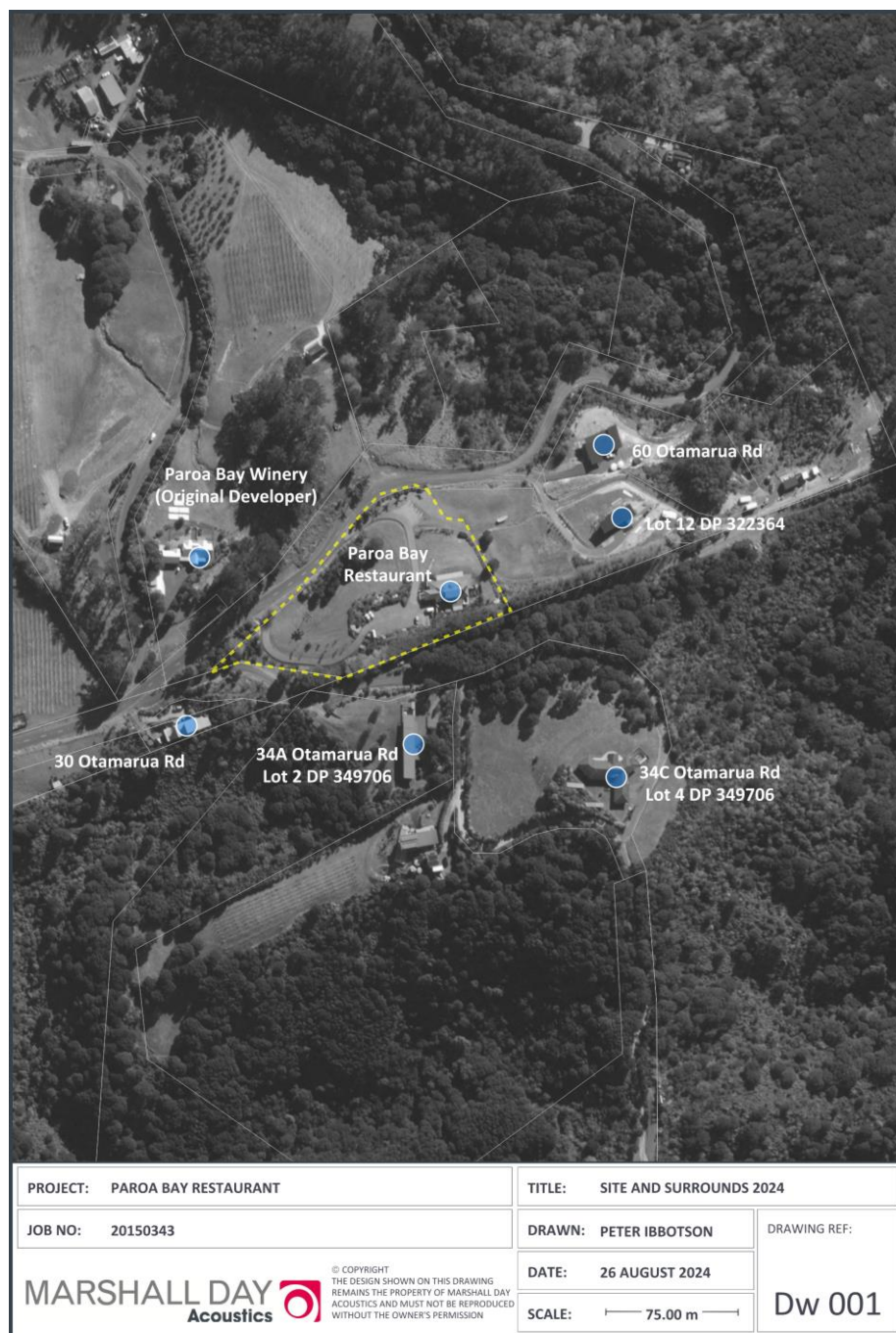
Marshall Day Acoustics has been engaged to predict and assess noise from dining activities and associated traffic at the existing Sage Restaurant at Paroa Bay, Russell, Northland.

It is proposed to alter the days of operation and provide for 'low-key' functions up to ten times per year on the shoulder seasons. This report provides our assessment of noise effects.

2.0 SITE DESCRIPTION

The site contains an existing fine dining restaurant. The consented hours of operation are between 11:30am and 10:00pm Wednesday to Sunday. The restaurant is located in a rural-residential area overlooking Paroa Bay near Russell. The site, surrounds, and existing noise environment has been discussed in our previous reports and evidence (refer Section 6.1).

Figure 1: Paroa Bay Restaurant



3.0 PROPOSED CHANGES TO THE OPERATION

The restaurant has been in operation for almost ten years. The original hearing for the establishment of the restaurant occurred in late 2015.

The original consent conditions were amended as part of a s127 application that was granted by Far North District council in 2021 (LUC 2160031-RMAVAR/C).

This current Section 127 application seeks to alter consent condition to enable a variation to the operation. We discuss these conditions below. **Note that the planning assessment should be referred to for the final proposed consent conditions as they may vary from those suggested below.**

3.1 Consented Hours of Operation

The current consent conditions limit the days of operation from Wednesday to Sunday on all days of the year:

7. *The restaurant and wine tasting bar hours of operation shall be restricted to:*

- 11.30 am – 10.00pm Wednesday to Sunday

The current s127 application proposes to alter these conditions to allow the following operation:

- 11:30am to 10:00pm on all days of the week, between November to April (inclusive)
- 11:30am to 10:00pm Wednesday to Sunday, between May to October (inclusive)

The proposed change to the hours of operation will not increase the time of day that the restaurant is open for, but will increase the number of days per week that operation can occur on (at least between November and April).

3.2 Maximum Patron Numbers

The current consent limits the maximum number of patrons to 60 as per the following condition:

9. *The maximum occupancy of the restaurant and wine tasting bar shall be restricted to 60 people.*

It is proposed to retain this limitation, with the exception of during the 10 temporary events discussed below where up to 110 patrons are applied for.

3.3 Temporary Events

The current consent conditions prohibit private events or functions.

8. *The restaurant and wine tasting bar shall not be used for single party private events or functions.*

It is proposed to provide for a small number of 'small scale temporary events'. These would be limited to the months of October to November and between March and May.

The temporary events would be limited to only **10 events per year**. These would typically replace a normal restaurant trading day. The functions are not expected to involve loud sources of noise (such as DJs or large bands), rather the activity would likely focus around food and beverages, as well as some light entertainment, typically with an acoustic guitar or other acoustic instruments. The functions are expected to operate as follows:

- No more than **ten temporary events** to be held (within a 12-month period), with events limited to the shoulder season period of **October-November and March-May**
- Acoustic instruments music only (as well as background music through the in-house loudspeakers – no loudspeakers are proposed to be located outdoors)
- No more than 110 guests at any one event

- Events to be held within the same approved hours of the restaurant of 11.30am-10.00pm;
- The use of the restaurant and outdoor dining area only, with all food and beverage (and staffing) to be provided by the restaurant. No marquees on site.
- Guest transportation to be provided by bus / larger passenger vehicles
- A range of event management controls, including provision for additional sanitary facilities if required
- Set up / pack down provided for on the days prior and following the event

The key differences between a typical day of trading and the proposed ten functions per year would be the additional guests (110 guests during a function vs the 60 guests during a normal day of trading). In addition, some music may be played, however this is expected to typically be acoustic in nature. DJs and large scale amplified bands are not proposed.

3.4 Outdoor Loudspeakers

Currently the consent provides only for internal music as per the following condition.

17. *Recorded music within the venue shall not exceed a level that enables a normal voice conversation at a distance of 600mm between two people conversing. If in doubt, the internal music noise level shall not exceed 60 dB L_{Aeq} at 1 metre from any loudspeaker. Loudspeakers shall not be located outside.*

The venue only provides background music. Our measurements of music on-site show that the noise level within the venue during normal trade is around 52 dB L_{Aeq} as a time-and-space average through the venue. The venue operates small loudspeakers and there is no significant low frequency (bass) noise present. This level of music allows normal voice conversation inside the restaurant. The above level of music is largely inaudible outside the restaurant and on the deck.

It is not proposed to alter the restriction that is in place for outdoor loudspeakers. The consent variation does not propose to locate loudspeakers outside during normal operation, or during functions.

4.0 NOISE CONDITIONS

4.1 Existing Consent Conditions

The site is subject to the following noise limits:

18. *The restaurant and wine tasting bar shall be managed and operated in a manner to ensure that the noise level measured at or within the notional boundary of any existing dwelling on Lot 12 DP 322364 (Lot 12 Otamarua Road), Lot 2 DP 349706 (34A Otamarua Road) and Lot 4 DP 349706 (34C Otamarua Road) shall not exceed 40 dB L_{A10} . Noise levels shall be measured in accordance with NZS 6801:1991 "Measurement of Sound" and assessed in accordance with NZS 6802:1991 "Assessment of Environmental Sound".*
- Note: The notional boundary is defined in NZS 6802:1991 "Assessment of Environmental Sound" as a line 20m from any part of any dwelling, or the legal boundary where this is closer to the dwelling.*

The site is subject to a noise limit of **40 dB L_{A10} at all times** at the notional boundary of dwellings to the south and east of the restaurant. This is a stringent noise limit, which provides for a high level of amenity to the surrounding neighbourhood.

This assessment considers whether the proposed changes to the consent will result in continued ongoing compliance with the above noise limits.

Note that 40 and 40a Otamarua Road now are addressed 34a and 34c Otamarua road respectively. The underlying deposited plan (DP) references have not changed.

4.2 Proposed District Plan

Although the site has an existing consent noise limit, a review of the Proposed District Plan noise rules is useful, as these are the likely limits that will be applied to the zone in the future.

The Proposed District Plan would zone the site and surrounds as a *Rural Production* zone. The Proposed District Plan would apply a noise limit at the notional boundary of dwellings. The proposed NOISE – S1 limits are as follows:

Noise generated in all zones, other than the zones in e) and f) below:

Noise shall not exceed the following rating noise levels within the notional boundary of any noise sensitive activity within the receiving property:

7.00 am to 10.00 pm (daytime): 55 dB L_{Aeq}

10.00 pm to 7.00 am (night-time): 40 dB L_{Aeq} and 70 dB L_{AFmax}

Noise shall be measured in accordance with NZS 6801:2008: Acoustics Measurement of Environmental Sound, and assessed in accordance with NZS 6802:2008: Acoustics Environmental Noise, unless otherwise specified elsewhere in the District Plan.

These noise limits are aligned with what is generally considered reasonable in most rural environments. However, we understand that these noise limits do not have legal effect yet, as they are yet to be considered through the appeals process.

It should be noted that the daytime noise limit of 55 dB L_{Aeq} proposed for this *Rural Production* zone at the notional boundary of dwellings is significantly higher than the consent allows for Paroa Bay Winery (40 dB L_{A10} – which in many cases will be equivalent to approximately 37-38 dB L_{Aeq}). This illustrates the stringent noise limit that has been applied to the consent.

4.3 Recommended Function Noise Limits

We consider that for the 10 proposed functions per year, it would be reasonable to permit noise levels of up to 50 dB L_{A10} in this environment. With the nature of the functions that are expected, it is unlikely that this noise level would ever be approached (noise levels during functions are expected to be 43 dB L_{A10} or below in almost all cases). A noise limit of 50 dB L_{A10} would provide a noise limit with a suitable margin of safety for the activity, however given that loud music is not proposed and the only noise will be from groups of people, noise levels are not expected to approach the limit.

While a noise level of 50 dB L_{A10} would be above the existing ambient and background noise level in this environment, we consider that the limited hours of operation, the limited number of functions per year and the limitation to the daytime period only will mean that this level of noise is unlikely to result in appreciable adverse effects on the surrounding area.

Having considered this, the applicant proposes to vary the consent to allow for a noise limit of 50 dB L_{A10} . Refer to the proposed consent conditions in Section 10.0 of this report for the proposed conditions.

5.0 AMBIENT AND SOURCE SOUND LEVELS

5.1 Previous measurements

Marshall Day Acoustics have previously visited the site on two occasions to measure ambient noise levels (in 2015) and noise emissions from dining (in 2019). The results of our measurement are summarised in the following documents:

- Marshall Day Acoustics *Report Rp 001 2015343 “Paroa Bay Winery”* dated 18 May 2015

- Evidence of Peter Ibbotson in the matter of *an application to change conditions of RC 32160031 relating to an established restaurant at Otamarua Road, Paroa Bay* dated 21 March 2019

Our initial report (prepared prior to the establishment of the restaurant) showed that ambient noise levels in the area could be low at times, especially during still winter conditions. While we did not recommend a 40 dB L_{A10} noise limit be applied at the notional boundary of adjacent dwellings, the consent was issued with this low noise limit, presumably to ensure that noise from the restaurant would remain low and in keeping with the existing low background noise levels.

Our measurements in 2019 illustrated that noise levels from the operation of the restaurant were compliant with the consented noise limit of 40 dB L_{A10} . In addition, we noted that the existing restaurant did not unreasonably affect the “aural amenity” of the established residential dwellings to the south and west of the restaurant. We noted that the Paroa Bay area does have a character that is “remote”, and during still conditions natural sounds such as crickets, cicadas, bird calls, vegetation noise and distant residential noises (e.g. children shouting) form part of the aural amenity of the environment. We noted that while noises from the operation of the restaurant (e.g. traffic, voices) would be audible at 40 and 40a Otamarua Road (now 34A and 34C Otamarua Rd) from time to time, we did not consider that patron noise would intrude onto these sites at a level that materially affected the enjoyment of the natural environment.

We concluded that the stringent noise limit of 40 dB L_{A10} that applies at all times provided certainty that the amenity of the area will be protected and that the enjoyment of natural sounds (such as bird calls, insects, etc) at the south-west boundary of the site was not affected by the presence of background noise from the restaurant or any transient noise from patrons present during our survey.

5.2 Recent Measurements

We visited the site again on 29 September 2024. The purpose of this visit was to ensure that there had been no material change to the noise emission from the existing restaurant. We also carried out measurements of the restaurant façade at this time – the purpose was to confirm the sound insulation of the existing restaurant when doors and windows are open.

5.2.1 Environmental noise survey results

There were no patrons visiting the restaurant during our visit, however around 6 to 8 staff were on site. A meeting was occurring on the outdoor deck. Noise from people was largely inaudible at surrounding measurement locations, although voices could infrequently be heard in the background.

Because no patrons were on site, our measurements primarily involved measurement of the façade sound insulation. However our measurements did involve brief measurements of the ambient noise levels in the absence of noise from the restaurant.

Table 1 summarises our results. Conditions during our survey were suitable for the measurement of noise. Winds were light air (estimated at 0.3 to 1.5 m/s from the south-west) and skies were clear. Temperatures were estimated at around 20 degrees Celsius). Measurements were in general accordance with New Zealand Standard NZS 6801:2008 *Acoustics – Measurement of environmental sound*¹.

¹ with the exception of the measurement duration which in some cases was abbreviated. For this reason, measurements are considered indicative of overall noise levels.

Table 1: Summary of Environmental Noise Level Measurements

Measurement Position and Location	Measured Noise Levels (dB)				Noise Sources and Comments
	LA10	LAeq	LA90	LAfmax	
1 4:37pm On Otamarua Road below 60 Otamarua Road	36	37	28	61	Birds, occasional foliage (wind) noise, distant surf, pinging of distant vehicle cooling.
2 5:35pm Behind Sage restaurant, in bush area north of 34a and 34C Otamarua Road	42	37	33	49	Birds
3 6:04pm On Otamarua Road below Sage Restaurant	38	36	34	41	Occasional foliage (wind) noise

All of the above measurements were short in duration² but show that ambient noise levels in the Paroa Bay area in the absence of noise from Sage Restaurant remain relatively low during fine, still meteorological condition.

5.2.2 Sound insulation measurement results

We also measured the sound insulation performance of the Sage at Paroa Bay restaurant façade with windows open on various façades. The results of these noise measurements show that there is a noise level difference of between 48 to 55 dBA between the time-and-space internal noise levels and received noise levels at accessible noise measurement positions to the south and east of the restaurant.

We used the results to validate and calibrate our noise model. The measurements suggest that our noise model has a high degree of accuracy.

6.0 CALCULATED SOUND LEVELS

6.1 Prediction Methodology

Using our noise model, we have calculated noise levels from the operation of the restaurant based on the following methodology:

- Calculations have been carried out using SoundPLAN v9.0 which implements the standard *International Standard ISO 9613-2:1996 "Acoustics - Attenuation of sound during propagation outdoors - Part 2: General method of calculation"*.
- Updated GIS data of the site and surrounds. We created a high-resolution digital elevation model to ensure the existing ground topography has been reliably taken into account.

Normal Dining

- While noise from normal dining is not proposed to change, an assessment of noise emissions was nonetheless carried out to confirm ongoing compliance would be achieved.
- For normal dining (i.e. normal day-to-day operation, as the restaurant is currently consented to carry out), calculations have been made allowing for 26 patrons in 'social conversation (normal

² It is typical during sound insulation to sample background and ambient noise levels for short periods. These measurements are nonetheless considered representative of typical ambient and background noise levels in the area, based on our observations.

raised voice)' on the deck at a sound power level of 87 dB L_{WA} . This is considered to consist of one in three people talking in a fairly animated fashion which is consistent with observations made at busy restaurant dining areas. The remainder of the patrons have been assumed to be dining normally inside at a reverberant noise level of 72 dB L_{A10} . In this situation, the recorded music is assumed to be set at the measured typical noise level of 52 dB L_{Aeq} .

- The busiest periods for normal service will occur over a 5-hour period. While there will be service and other activity occurring on site, noise levels will typically reduce appreciably during the non-lunch and dinner periods. 5 decibels of duration correction have been allowed for in calculating the rating noise levels in accordance with Clause 6.4 of New Zealand Standard NZS 6802:2008 *Acoustics - Environmental Noise*.

Proposed Functions

- For the proposed ten private functions, calculations have allowed for up to 110 patrons talking with 'raised voice' on the deck at a sound power level of 97 dB L_{WA} . This is considered to consist of one in three people talking with a vocal effort that is louder than would normally occur in a restaurant dining area. This situation may occur when all patrons are out on the deck or lawn during a fine and warm October, November, March, April or May afternoon. This level of vocal effort may occur when people are relaxed and enthusiastic in each other's company, as is more likely to occur in a private function.
- During functions, there may be periods when all patrons are located inside the building, e.g. during conditions when it is more comfortable to be indoors. In this situation, all 110 patrons may be standing and conversing with doors open (or a proportion of the patrons may be inside with the remaining patrons outside). In this situation, a reverberant noise level of 82 dB L_{A10} has been allowed for.
- Functions will not occur across the entire day. We have allowed for loud periods of functions to typically occur for up to 5 hours of the day period. A 5-decibel duration correction has been allowed for in calculating the rating noise levels in accordance with Clause 6.4 of New Zealand Standard NZS 6802:2008 *Acoustics - Environmental Noise*.

Appendix B shows our sound power and pressure data used in our assessment. The data is based on measurements we carried out for other restaurant and functions centres, or from methods developed and tested by us for the prediction of patron noise.

6.2 Prediction Results

Table 2 summarises our predicted noise levels from the operation of the site during both day-to-day operations and functions:

Table 2: Predicted Noise Levels from Restaurant Activity and Functions

	Rating Noise Level dB L_{A10} *	
	Normal Consented Restaurant Activity	Proposed Functions
34a Otamarua Road Lot 2 DP 349706	20	31
34c Otamarua Road Lot 4 DP 349706	19	29
Dwelling to east Lot 12 DP 322364	33	43

* includes duration adjustment as discussed previously. Note that the duration correction has been applied to the predicted noise level, rather than reducing the limit. This is in accordance with the 2008 version of NZS6802.

Figure 2 and Figure 3 on page 12 and 13 graphically shows our predictions. We find that:

- Normal consented restaurant activity will continue to comply with the consented noise limit of 40 dB L_{A10} . Compliance with a margin of at least 7 decibels is expected. Ongoing compliance with the consented noise limit will occur.
- Noise from functions of up to 110 guests have the potential to exceed the consented noise limit at the notional boundary of the dwelling at Lot 12 DP 322364 by a small margin of around 3 dB L_{A10} .
- Noise levels may only be above the existing consented noise level of 40 dB L_{A10} at the notional boundary of dwellings of **Lot 12 DP322364** and **60 Otamarua Road**. Noise levels are not expected to exceed 40 dB L_{A10} at any other dwelling. This would be the case even if patrons at a function generated noise levels of up to 50 dB L_{A10} at the dwelling at Lot 12 DP322364. Such high noise levels are not expected to occur (although the proposed consent conditions would allow for this to technically occur). Refer to Appendix C for further details.

6.3 Noise Effects Assessment

The changes proposed to the operation to increase the number of days that the restaurant can be open over the summer period (November to April inclusive) will not alter noise emitted from the restaurant during normal service. The proposed change to the operation only increases the number of days over which operation can occur and on which operational noise may be audible. However noise levels from the restaurant will continue to be low (likely no higher than 33 dB L_{A10}). As previously discussed, continued compliance with the stringent noise limit of 40 dB L_{A10} that applies during the daytime provides certainty that the amenity of the area will be protected, and that the enjoyment of natural sounds will not be affected from the restaurant.

A noise level of 43 dB L_{A10} during functions is not unreasonable during the daytime. This level of noise is still significantly lower than the Proposed District Plan daytime noise limit of 55 dB L_{Aeq} . Given that only **10 functions are proposed** (during the shoulder season only), that loud amplified music is not proposed, and given that functions will cease by 10pm, this is not considered an unreasonable level of noise. While this level of noise (if it does occur) would be clearly audible and may be noticeable during peak function times, it is unlikely to result in significant impacts on amenity at the neighbouring dwellings. It would also be unlikely to affect the sleep of nearby dwelling occupants, as functions would be required to cease by 10pm.

We consider that a noise limit of up to 50 dB L_{A10} would be reasonable in this environment for the 10 function activities proposed. A noise limit of 50 dB L_{A10} would provide a noise limit with a suitable margin of safety for the activity, however given that loud music is not proposed and the only noise will be from groups of people, noise levels are not expected to approach the limit.

7.0 TRAFFIC AND MECHANICAL PLANT

Traffic is not proposed to be varied by the consent. All cars leaving the carpark would continue comply with the consented noise limits.

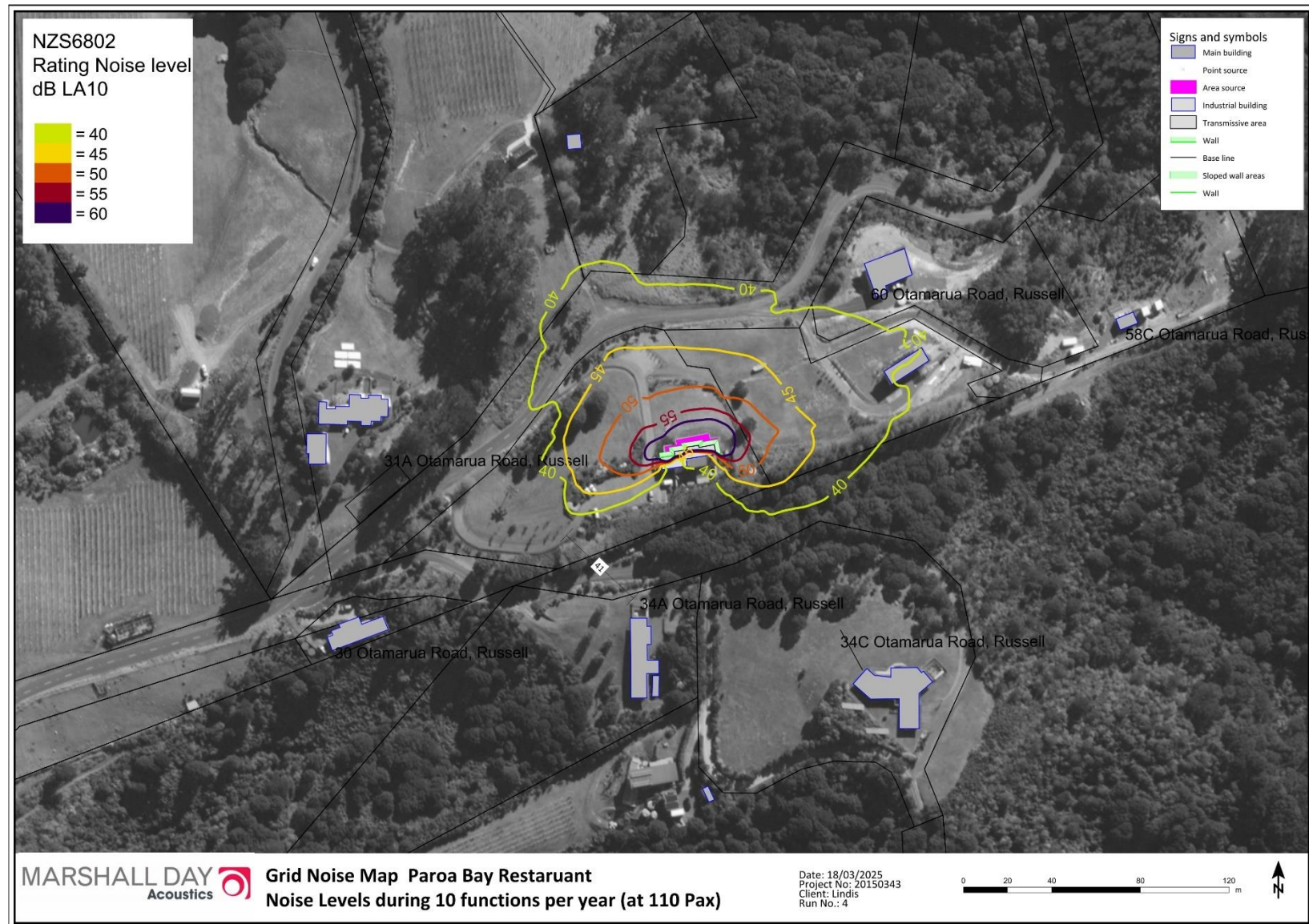
It is proposed to utilise busses and other forms of public transport during functions. The bus movements required to remove passengers after a function are also calculated to comply with the consented noise limits.

Mechanical plant will not require change as part of the proposed changes to the hours of operation of the proposed 10 functions. Noise levels will continue to comply with the consented noise limits.

Figure 2: Calculated Noise Levels from 'Normal Dining' at Sage Restaurant



Figure 3: Calculated Noise Levels from 'Function Activity' at Sage Restaurant



8.0 UPWARD NOISE RISKS

Noise from people carries more uncertainty than other sources of environmental noise as environmental and social / psychological factors often drive situational noise generation.

The noise levels calculated for functions allow for people socialising enthusiastically, but in a civil, polite, and neighbourly fashion. The calculations allow for all restaurant glazing to be open to the north and east as it is expected that free movement between the outdoor and indoor areas will be required.

This assessment does not allow for:

- belligerent or overly-enthusiastic behaviour such as shouting or loud singing
- the type of noise that may occur from a large group of patrons drinking in a 'vertical consumption³' manner
- loud music within or outside the venue, particularly with a strong bass component.

Such noise levels could risk breaching the proposed consent noise limit, and are less likely to be acceptable to neighbours if they routinely occurred. We understand these types of activity are **specifically not** intended by the Lindis Group and the venue will be managed to avoid them. The venue operates as a fine dining restaurant, not as a tavern, and the same approach to hospitality is anticipated to continue at the site, even during functions.

Based on the activity proposed by the applicant, we do not consider there are significant upward risks to noise generation and there would not be consequential risks of a breach of the proposed consent noise limit.

Ongoing noise management should be an important part of the day-to-day operation of the restaurant, especially during functions. The operation should continue to occur under the existing operational noise management plan. In addition, an event management plan should be prepared. We understand that a draft plan has been prepared by the applicant.

9.0 NOISE MANAGEMENT

Noise management of functions will be the most important factor in ensuring noise levels remain reasonable and well below the consented noise limits. Noise from people can vary significantly depending on a range of factors, and it is important for the risk factors to be identified and avoided.

The site is subject to a noise management plan (as required by the consent). We recommend this is updated to include specific noise management measures for events and functions. The following should form part of the noise management plan for functions:

- The risk of increased noise levels will increase with the following use of the space:
 - o large groups (that are known to each other) booking the site for a single function
 - o groups of inebriated, exhilarated or overly exuberant patrons.
- Management will need to remain vigilant to ensure the use of the space is kept to the use currently proposed and does not change during operation. This will require the following measures:

³ We use this term to describe groups of people standing (vertically) in close proximity where consumptive drinking is the activity being undertaken by most people (such as may occur in a busy urban beer garden). This venue does not intend to provide for this type of activity.

- o The building, outdoor decks and lawn will need to be managed during functions to ensure that guest behaviour remains suitable for the rural-residential environment and the type of behaviour expected by the Lindis Group.
- o Function goes seeking to use the restaurant as a 'tavern' should be directed to other more suitable premises.
- o Staff will need to pre-empt unneighbourly behaviour occurring and respond authoritatively in the event it does happen. Behaviour should be managed as part of good host responsibility. Visitors behaving in a non-neighbourly fashion should promptly be asked to leave. Patron noise management can be difficult to enforce, and a high level of staff vigilance is always required for venues serving alcohol in residential-rural environments.

10.0 RECOMMENDED CONSENT CONDITIONS

The following conditions changes can be considered. Refer to the planning assessment for the final suggested s127 condition amendments.

Operation

Condition 7

The restaurant and wine tasting bar hours of operation shall be restricted to:

- *11.30 am – 10.00pm Wednesday to Sunday **during the months of May through to October (inclusive); and***
- ***11.30 am – 10.00pm Monday to Sunday during the months of November through to April (inclusive).***

Condition 8

*The restaurant and wine tasting bar shall not be used for single party private events or function., **except for up to 10 temporary events per annum that may occur during the months of March, April, May, October and November, subject to adherence to the controls and parameters identified in the Event Management Plan.***

Condition 9

*The maximum occupancy of the restaurant and wine tasting bar shall be restricted to 60 people., **except for temporary events where the maximum occupancy shall be restricted to 110 people.***

Condition 18

*The restaurant and wine tasting bar shall be managed and operated in a manner to ensure that the noise level measured at or within the notional boundary of any existing dwelling on Lot 12 DP 322364 (Lot 12 Otamarua Road), Lot 2 DP 349706 (40 Otamarua Road) and Lot 4 DP 349706 (40a Otamarua Road) shall not exceed 40 dB L_{A10} , **except during the 10 temporary events per annum where the noise level shall not exceed 50 dB L_{A10} .***

Noise levels shall be measured in accordance with NZS 6801:1991 "Measurement of Sound" and assessed in accordance with NZS 6802:1991 "Assessment of Environmental Sound".

Note: The notional boundary is defined in NZS 6802:1991 "Assessment of Environmental Sound" as a line 20m from any part of any dwelling, or the legal boundary where this is closer to the dwelling.

11.0 CONCLUSIONS

Marshall Day Acoustics has undertaken an assessment of outdoor noise due to the proposed change in the consent for the Sage at Paroa Bay Restaurant.

The restaurant is calculated to continue to be readily compliant with the consented noise limits. During the proposed 10 functions per year, a minor exceedance of the consented noise limits is possible. However due to the limited nature of the functions, this exceedance is considered reasonable.

The change in days of operation is not expected to result in greater noise levels being emitted from the site during operation, as compared to the current condition; but would increase the days of the week over which noise is emitted from the site.

Continued compliance with the stringent noise limit of 40 dB L_{A10} that applies during the daytime provides certainty that the amenity of the area will be protected, and that the enjoyment of natural sounds will not be affected from the restaurant. The proposed 10 functions per annum will likely increase noise during these times, and a 50 dB L_{A10} noise limit is recommended for these activities. However noise levels will continue to be low during functions and the site will readily comply with recognised guidelines and the noise limits in the Proposed District Plan. Although noise from the site may be audible at adjacent properties intermittently, the level of noise and the duration over which it would occur during the daytime period is considered reasonable.

APPENDIX A GLOSSARY OF TERMINOLOGY

dB	<u>Decibel</u> The unit of sound level. Expressed as a logarithmic ratio of sound pressure P relative to a reference pressure of $P_r=20 \mu\text{Pa}$ i.e. $\text{dB} = 20 \times \log(P/P_r)$
dBA	The unit of sound level which has its frequency characteristics modified by a filter (A-weighted) so as to more closely approximate the frequency bias of the human ear.
A-weighting	The process by which noise levels are corrected to account for the non-linear frequency response of the human ear.
$L_{A10}(t)$	The A-weighted noise level equalled or exceeded for 10% of the measurement period. This is commonly referred to as the average maximum noise level. The suffix "t" represents the time period to which the noise level relates, e.g. (8 h) would represent a period of 8 hours, (15 min) would represent a period of 15 minutes and (2200-0700) would represent a measurement time between 10 pm and 7 am.
NZS 6801:1991	New Zealand Standard NZS 6801:1991 <i>"Measurement of Sound"</i>
NZS 6802:1991	New Zealand Standard NZS 6802:1991 <i>"Assessment of Environmental Sound"</i>

APPENDIX B NOISE LEVELS FROM PAROA BAY RESTAURANT

Table 3: Octave Band Noise Level Source Data

Source detail	Sound Power / Pressure Level							A
	Octave Band Centre Frequency (Hz)							
	63	125	250	500	1000	2000	4000	
Normal Dining (as currently consented)								
Outdoor area (sound power level)	65	77	78	85	83	79	72	87 dB L _{WA}
- around 26 visitors dining in seated groups of 3 to 4								
- “civil dining/tasting” with around 1 of 3 visitors talking with “normal raised” voices. No belligerent or overly-enthusiastic behaviour								
- No loud outdoor music (indoor background music only)								
Indoor dining (reverberant sound pressure level)	60	60	62	70	69	64	56	72 dB L _{A10} (reverberant)
- Around 34 visitors with groups seated at small tables talking enthusiastically								
- Kitchen noise								
- Background music at around 60 dB L _{A10} (enabling normal conversation inside)								
Functions								
Outdoor area (sound power level)	76	87	88	95	93	89	82	97 dB L _{WA}
- around 110 visitors outside, standing or seated								
- Around 1 of 3 visitors talking with “raised” voices. No belligerent or overly-enthusiastic behaviour								
- Outdoor music (if played) at a level that does not affect conversation level on the deck (a sound pressure level of 60 dBA at 10 metres)								
Indoor dining (reverberant sound pressure level)	70	70	72	80	79	73	65	82 dB L _{A10} (reverberant)
- Around 110 visitors with groups seated at small tables talking enthusiastically								
- Kitchen noise								
- Background music at around 60 dB L _{A10} (enabling normal conversation inside), or lightly amplified acoustic entertainment.								

APPENDIX C NOISE LEVELS AT OTHER DWELLINGS (EXPECTED AND WORST CASE PERMITTED BY CONSENT)

The following table shows that only noise levels at the notional boundary of Lot12 DP 322364 may be above the existing consent condition of 40 dB L_{A10} . Noise levels have the potential to also be above 40 dB L_{A10} at 60 Otamarua Road notional boundary, noting that the existing consent condition does not strictly apply to this dwelling. Noise levels at all other dwellings will be below 40 dB L_{A10} , irrespective of whether noise levels are as expected, or are as high as the consent would technically allow then to be.

Rating Noise Level dB L_{A10} *		
	Expected noise level from functions	Worst Case Noise Level (not expected, but technically would be permitted by proposed consent variation)
34a Otamarua Road Lot 2 DP 349706	30	37
34c Otamarua Road Lot 4 DP 349706	29	36
Dwelling to east Lot 12 DP 322364	43	50
30 Otamarua Road	20	27
58C Otamarua Road	31	38
60 Otamarua Road	40	47



**RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD**

**Guaranteed Search Copy issued under Section 60 of the Land
Transfer Act 2017**




R.W. Muir
Registrar-General
of Land

Identifier 89262
Land Registration District North Auckland
Date Issued 17 August 2006

Prior References
NA134A/76

Estate Fee Simple
Area 9470 square metres more or less
Legal Description Lot 14 Deposited Plan 322364
Registered Owners
Paroa Bay Winery Limited

Estate Fee Simple - 1/7 share
Area 1023 square metres more or less
Legal Description Lot 16 Deposited Plan 322364
Registered Owners
Paroa Bay Winery Limited

Interests

Appurtenant hereto is a right of way created by Transfer B876712.4

Appurtenant hereto is a right of way specified in Easement Certificate C400151.1 - 31.7.1992 at 2.41 pm

Appurtenant hereto is a right of way, and rights to convey water and transmit electricity specified in Easement Certificate D644100.5 - 27.9.2001 at 2.49 pm

The easements specified in Easement Certificate D644100.5 are subject to Section 243 (a) Resource Management Act 1991 6993523.3 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 17.8.2006 at 9:00 am

Subject to Section 241(2) Resource Management Act 1991 (see DP 322364)

Appurtenant hereto are right of way & right to convey water easements created by Easement Instrument 6993523.7 - 17.8.2006 at 9:00 am

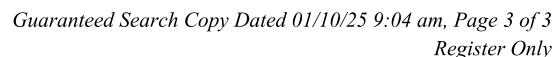
The easements (excluding any appurtenancy to Lot 16) created by Easement Instrument 6993523.7 are subject to Section 243 (a) Resource Management Act 1991

Land Covenant in Transfer 7397497.1 - 31.5.2007 at 9:00 am

9830337.2 Encumbrance to Paroa Bay Management Limited - 30.9.2014 at 4:25 pm

10696222.1 Variation of Consent Notice 6993523.3 pursuant to Section 221(5) Resource Management Act 1991 - 13.2.2017 at 10:47 am

Guaranteed Search Copy Dated 01/10/25 9:04 am, Page 2 of 3
Register Only



IN THE MATTER of the Resource
Management Act 1991:

AND

IN THE MATTER of an application
under the aforesaid Act, 1991 by
the Paroa Bay Winery Limited

APPLICATION NUMBER RMALUC-2160031

HEARING FOR A DISCRETIONARY ACTIVITY APPLICATION TO CONSTRUCT
AND OPERATE A RESTAURANT WITH WINE TASTING BAR, RESIDENTIAL
UNIT, AND ASSOCIATED CAR PARKING; AND

TO CHANGE CONSENT NOTICE CONDITION CONO 6993523.3 (bullet point 3) TO
ALLOW THE RESTAURANT BUILDING TO BE FINISHED IN SPECIFIC COLOURS
THAT DO NOT FALL WITHIN THE COLOURS SPECIFIED BY THE CONSENT
NOTICE IN THE GENERAL COASTAL ZONE.

HEARING

Before the Hearings Commissioner of the Far North District Council, on the
8 December 2015.

Hearings Commissioner William Smith was appointed to hear the application by
Paroa Bay Winery Limited. The Application was lodged in accordance with the
Resource Management Act 1991 ("the Act") with the Far North District Council
and referenced RMALUC-2160031.

This hearing was due to be held on Tuesday, 8 December 2015 and did commence
at 9.30am on that day but was adjourned to enable the applicant to consider a
number of issues raised by the legal representative for some of the submitters.

Present: **Hearings Commissioner William Smith**

Applicant: **Paroa Bay Winery Limited**

Richard Magides, Applicant
Leonard Dissanayake, Planning Consultant, LMD Planning
Consultancy
Steven Turner, Chartered Professional Engineer
Simon Cocker, Landscape Architect
Peter Ibbotson, Acoustic Consultant
Noel Martin, Architect

Consent Authority: **Far North District Council**

Wayne Smith, Team Leader – Resource Consents
Mandy Wilson, Reporting Planner
Rex Shand, Resource Consents Engineer

Submitters: Julian Dawson, Barrister representing Benjamin Smith, Deborah Ginger- Moore, Alex Medawar, Gregory and Natalia Roach.
Nevil Hegley, Acoustic Engineer as Expert for submitters
Jeff Cartridge

In Attendance: R Smythe, Senior Hearings Administrator
Didi Paraone and Jeanette Bosman, Observing proceedings

Description/Summary of the Proposed Activity

This summary has largely been taken from the hearing report as I consider that it provides a good summary of the proposal. The original application which was limited notified was to construct a restaurant with wine tasting bar and residential unit (44m²) with associated car parking.

The restaurant is to have a gross floor area of 197m² plus an outdoor covered deck dining area of 140m², and was designed to accommodate a maximum of 78 patrons. The restaurant development provides 31 carparks on site, two of which are mobility spaces (refer to the 'Site Plan' for car park locations).

The applicant proposed to open the restaurant to the public between the hours of 11:30 am – 3:00pm for lunch service and 6:00pm – Midnight for dinner service. The applicant advised that the restaurant will not cater for events or functions.

Otamarua Road is a public road which is currently only sealed to the Paroa Bay Winery gate (31 Otamarua Road). The applicant proposes to extend the existing seal of Otamarua Road to the proposed new entrance to the restaurant.

The proposal included an application to change condition 3 (written against bullet points) of consent notice CONO 6993523.3 as the colour chosen for the exterior cladding (James Hardie Linea weatherboards) is not one of the specified British Standard colours. The proposal was assessed as a Discretionary Activity and this status was accepted and agreed by all the planning experts at the hearing.

Changes following Notification

Following notification and in response to the issues raised by the submissions received the applicant's representative advised the Council that the applicant wanted to amended aspects of the proposal as follows:

Scale of Activity: The maximum number of restaurant patrons has been reduced from 78 to 60.

Operating Dates and Hours: The proposed opening dates are from the 3rd Friday in October to the last day of April, with the opening hours being 11:30 – 3:00pm (Lunch) and 6:00pm – 10:00pm (Dinner).

Revised Site Plan: A revised site plan (referenced sk02-E 15/10/2015) which shows a restaurant seating plan that limits the number of persons dining to a maximum of 60. Of these 26 are shown to be seated outside within covered deck area and the remaining 34 seated inside.

The changes do not change the overall discretionary status of the proposal.

Site and Surrounding Locality Description

The site is legally described as Lot 14 DP 322364 and Lot 16 DP 322364 (1/7th share). Lot 16 DP 322364 is an access strip and has no physical connection to Lot 14 DP 322364. The proposed development will be wholly contained within Lot 14 DP 322364. The total area of the site is 9470m² (not including Lot 16 DP 322364). There are a number of interests including easement instruments and a consent notice registered against the certificate of title (CFR No 89262). The site is part of a cluster of twelve similar sized lots created by subdivision in 2002. An aerial photograph of the site and adjacent area was shown on page 15 of the hearing report.

The application site is located on the southern side of Otamarua Road, approximately 500m from the intersection with Paroa Bay Road. The site has expansive views of the coast to the north, which at its nearest location is approximately 1km north of the site.

The site is predominately covered in grass and slopes gently to moderately to the north and north-west. The southern boundary is defined by a mature 'coniferous' shelterbelt. The northern boundary of the site is bounded by Otamarua Road. Amenity planting has been undertaken on the site along the northern boundary which consists of a mix of native and exotic plantings. The site is accessed directly from Otamarua Road. There are no buildings on the site except a small platform near the south eastern corner.

The surrounding area generally consists of residential buildings, undeveloped rural lifestyle sites, bush/scrub, forestry and pastoral lands. The applicant's Paroa Bay Winery and vineyards are located to the north of the site and the Paroa Bay Chalets are located at the corner of Otamarua Road and Paroa Bay Road.

Reasons for the Application

The site is located within the General Coastal zone (Zone Map 36). There are no resource features affecting the site (Resource Map 36).

A resource consent was required for the following reasons (as shown on pages 17 and 18 of hearing report) and both planning experts at the hearing were in agreement about the reasons why consent was required:

"Chapter 10.6 General Coastal Zone"

- 10.6.5.1.1 Visual Amenity

The proposal breaches permitted standards (a) and (b) of the rule. The gross floor area (GFA) exceeds 25m², and the exterior colour has a reflectance value of more than 30%. This aspect of the proposal is a discretionary activity.

- 10.6.5.1.3 Scale of Activities

More than four (4) persons will be catered for on the site at any one period of time, which exceeds the permitted standard for 'Scale of Activities'. The proposal complies with the discretionary activity rule for 'Scale of Activities'. This aspect of the proposal is a discretionary activity.

- 10.6.5.1.7 Setback from Boundaries

Two stepped timber retaining walls will be constructed at the rear of the building to retain the cut slope. Approximately 10.8m long section of the lower retaining wall is located closer than 10m from the eastern boundary and has a height that exceeds 1.5m (but not higher than 2m). Any retaining wall more than 1.5m above ground level is defined as a building in the District Plan and as such is subject to the 'Setback from Boundaries' rule. The proposal does not comply with the permitted standard for 'Setback from Boundaries' and is a restricted discretionary activity.

- 10.6.5.1.8 Traffic Intensity

For a restaurant, Appendix 3A of the District Plan specifies 60 daily one way vehicle movements per 100 GFA. The total GFA of the restaurant is 197m² (the traffic intensity for the single residential unit is exempt). The Traffic Intensity Factor (TIF) for the proposed development will be 118.2 daily one way traffic movements. The proposal does not comply with the permitted standard of 30 daily one way movements but does comply with the discretionary standard of 120 daily one way movements. This aspect of the proposal is a discretionary activity.

Note: The covered outdoor deck dining area has not been included in the calculation for GFA because less than 50% of the perimeter of the covered deck is enclosed and as such it is excluded as per the definition in the District Plan.

- 10.6.5.1.6 Stormwater Management

The gross site area is 9616m² (consisting of 9470m² for Lot 14 DP322364 which is the application site, and 146m² which is a 1/7th share of Lot 16 DP 322364). The application report advises there are no existing impermeable surfaces on Lot 16 DP 322364. The application originally stated that the proposed development would result in 1166m² of impermeable surfaces (roof and paving) and 487m² of permeable surfaces (permeable paving). Despite being labelled as a 'permeable vehicle surface' on the Site Plan, the District Plan definition of Impermeable Surfaces states that a "surfaced area used for parking, manoeuvring, access or loading of motor vehicles" is an impermeable surface and as such it must be included in the calculation.

The applicant subsequently clarified the impermeable surfaces for the development and provided revised calculations. The total area of impermeable surfaces will be 1784m² (which equates to 18.5% of the gross site area). The Suitability Report (prepared by Richardson Stevens, dated 26th August 2015) has been amended to reflect the changes to the impermeable surface calculation.

The proposal does not comply with the permitted standard of 10% gross site coverage or the controlled activity standard of 15% and is a discretionary activity.

Chapter 12.3 Soils and Minerals

- 12.3.6.1.2 Excavation and/or Filling

The total volume of excavation and filling required has been calculated as being approximately 3500m³. The maximum cut face will be 4.5m and the maximum fill face 1.8m. The proposal does not comply with the permitted or restricted discretionary standards for 'Excavation and/or Filling' as the volume of earthworks exceeds 2,000m³ in any 12 month period and involves a cut face that exceeds 1.5m. This aspect of the proposal is a discretionary activity.

Overall, the application is a discretionary activity".

Notification and Submissions Received

The application proceeded through a Limited Notification process with those parties shown on page 19 of the hearing report as being identified as adversely affected and the reasons given for this in the hearing report were:

"The proposed development may adversely affect adjoining properties in a minor and potentially more than minor way. The adverse effects relate to the scale of the activity and include noise effect, traffic effects, loss of amenity and privacy, and visual effects."

Submissions closed on 15 October 2015. At the close of submission period, a total of 2 submissions were received. Of the submissions received 1 submission opposed the proposed development and 1 submission opposed the development but suggested amendments to the application if approval was given. Full copies of the submissions

were attached to the S42A Report and a summary of the submissions together with the relief sought by the submitters was set out in the hearing report.

One late submission was received on the 24 October 2015 and a report setting out a *'Determination as to whether the timeframe for receiving submissions should be extended to accept a late submission'* was included in the hearing report and the determination to accept the late submission was made by me on the 20 November 2105.

No written approvals were provided with the application and no pre-hearing meetings were held.

Other Reports

An Engineering Report had been prepared by Council's Resource Consents Engineer, Mr Rex Shand and this was attached (as Appendix 3) to the hearing report and had been taken into account by Ms Wilson when making her recommendation.

Site Visit

I undertook a site visit and visit to the surrounding area before the hearing on 7 December 2015.

Summary of Evidence and Procedural Issues

Prior to the hearing I received and read the application, attachments and assessment of effects, the Council's planning officer's section 42A report and recommendation and conditions and the supporting information contained within it, the Council's Engineers report, the applicants expert evidence which had been circulated to all parties. No expert evidence had been received from the submitters. I had prepared a number of issues/questions in preparation for the hearing.

After formally opening the hearing, introducing myself and outlining the process that would be followed for the hearing Mr Dawson sought to raise a number of procedural issues that he considered may affect the hearing process. I asked the Applicant and his representatives if there were any issues that they wished to raise and at that stage there was none. Mr Dawson tabled a copy of his opening legal submissions, a copy of the title and land covenant (Encumbrance) and a copy of a minute dated 4 December 2015 of the Paroa Bay Management Limited signed by the Directors. A copy of each document is on Council's file. Mr Dawson spoke to paragraphs 1 to 27 of his submissions.

In summary the issues raised included the following and where required decisions made by me have been included in the summary.

Mr Dawson said that he was only instructed last week and requested that Mr Hegley be able to present and give his evidence and it was an important issue as the only expert noise evidence is that supplied by the applicant. I asked the applicant and his representatives if they had any issues with accepting evidence from Mr Hegley. Mr Dissanayake said that he did not agree, that no expert evidence should be presented without it having first been circulated but he did agree that Mr Hegley could discuss his evidence with Mr Ibbotson. Mr Magides said he was happy to hear anyone and wants everything to be open and on the table.

After a brief discussion and with agreement of both Acoustic experts I directed that Mr Hegley and Mr Ibbotson should have a discussion to discuss/canvas their respective expert evidence and Mr Hegley and Mr Ibbotson left the hearing to carry

out their discussions with the intention of returning to give their evidence at the appropriate time.

On a second procedural issue Mr Dawson said that Mr and Mrs Roach were going to put in a submission but had been overseas and that they did not expect the application to get this far. In his view there were two options; I could accept a late submission from Mr and Mrs Roach or Mr Roach could be called as a witness. There would be no undue prejudice to the applicant, Mr Roach and his wife do have concerns, they are the closest dwelling and Mr Roach has prepared a short submission.

In reply to a question from me Mr Magides said he was happy to hear everybody.

After obtaining the date of the closing of submissions and taking into consideration the views of the applicant and the requirements of the Act I decided that I would not allow the late submission but that Mr Dawson (as he is allowed) could call Mr Roach as a witness.

Mr Dawson said that he and the submitters did not think that the application should have got this far as there is a land covenant that prevents commercial activities on the site. He referred to specific parts (see below) of the covenant and also the minute of the Paroa Bay Management Limited (Company):

- Clause 2.1 – must be solely for residential purposes
- Clause 2.4 - no businesses
- Clause 2.5 – no commercial use.
- Clause 2.9 – no signs
- Clause 2.11 – restrictions on lighting & noise

Mr Dawson said there may be more minor less technical issues but the clauses itemised were the significant ones as we are here hearing an application for a commercial venture and that the Management Company cannot give permission for a commercial activity.

I asked Mr Dawson why these issues had not been raised earlier and brought to the attention of the Council and applicant and he said that he was only requested to represent the submitters last week, that it should have been raised in the application by the applicant and that Council staff should have raised it as it is shown on the Certificate of Title. Mr Dawson said no one has raised it, neither the applicant nor the Council staff and the Management Company has confirmed that it is in breach and Mr Medawar will enforce the breach if necessary.

Mr Dawson quoted from two cases previously heard in the Environment Court, *Director-General of Conservation (Nelson-Marlborough Conservancy) v Marlborough DC* and *Cornerstone Group Limited v North Shore City Council* and undertook to email both cases to the Hearings Administrator for circulation. The cases related to decisions (in part) on the assumption that the resource consent process occurs independently of any private property rights issues. In this case and taking into account the court decisions his opinion was that it was futile to grant consent and that the application should not proceed.

Mr Dawson said he was seeking a ruling from me on whether to let the hearing proceed. He said that nowhere in the application is the land covenant mentioned apart from a vague reference in the AEE, the implications are not addressed and this is a fundamental and misleading omission.

Mr Dawson also said that the Council had advertised the application on a Limited Notified basis and failed to consider those affected by the covenant, all parties

affected by the covenant are affected by the application and if the hearing proceeded it would be open to judicial review. Neither the Council Planner nor the Applicant has considered the land covenant and their assessments have been completed and formulated on a false premise.

Mr Dawson said that the resource consent and covenant was for one dwelling on each site not a restaurant.

Mr Dawson sought that I either adjourn the hearing to seek advice or that the hearing should not proceed.

After speaking to the applicant and his representatives and the Council staff I adjourned the hearing at 10.12am to enable the parties to have time to read and consider Mr Dawson's submissions and to have the right to present their views to me when we reconvened at approximately 10.30am.

I reconvened the hearing at 10.35am and asked the applicant for comment on the issues raised by Mr Dawson.

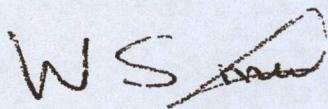
Mr Magides said he was not here to create wars; he had bought the land off Mr Roach who was aware that he wanted to build a restaurant and had not said anything about the covenant. He said he did not know that the management company existed, he had never been made aware of it, there are several lots available for sale and in his view the management company does not exist in practice. Mr Magides said he was here to create tourism and create something beautiful and provide employment and that he had contributed significantly the economy. Mr Magides sought an adjournment to reassess his options.

As a result of a question from Mr Dawson I asked the council staff if they were aware of the covenant and Mr Smith said that Council were not aware of it and had not been provided a copy and if the applicant proceeded they would need to look at re-notifying the application to all parties involved in the document.

I adjourned the hearing at 10.50am on the understanding that Mr Magides would discuss the issues raised with his representatives and advise Council staff of the outcome so that ALL parties could be advised.

Taking into account the Christmas and New Year holiday period and the necessity of giving the applicant time to discuss and decide what action he wishes to take I have decided to set a time and date of 4pm on Friday, 29 January 2016 for the applicant to advise the Council what action he wishes to take with his application. Once that decision is conveyed to the Council the Council staff will advise ALL parties.

Issued this 9 day of December 2015

A handwritten signature in black ink, appearing to read 'W S' followed by a stylized flourish.

Mr W Smith
Commissioner

Report on re-convened hearing held on Friday 15 April 2016 and Decision on Application

As a result of my direction (see page 7) made on 9 December 2015 Counsel for the Applicant Ms Katia Fraser of Berry & Co advised the Council in a letter dated 28 January 2016 that the Applicant wished to proceed with the hearing, that the applicant

had decided to further reduce the scale of the proposal and that the information would be provided to Council for circulation to the submitters prior to the reconvening of the hearing. A copy of Ms Fraser's letter is on Council's files but in summary her opinion was that the:

- covenants are private property matters;
- planning officer correctly did not take the covenants into account when making a decision on notification and drafting her section 42A report;
- covenants should not be taken into account when a decision is made under section 104;
- application should not be re-notified;
- consent notice does not restrict buildings to dwellings only; and
- hearing of the application should proceed.

In line with my Direction and decision of the Applicant to proceed with the hearing I expected the Council to arrange to reconvene the hearing and this was subsequently completed and all parties advised that the hearing was to be continued at 10am on Friday 15 April 2016.

Attendance at Reconvened Hearing

Present:	Hearings Commissioner William Smith
Applicant:	Paroa Bay Winery Limited Richard Magides, Applicant Katia Fraser, Counsel Leonard and Marion Dissanayake, Planning Consultants, LMD Planning Consultancy Steven Turner, Chartered Professional Engineer Simon Cocker, Landscape Architect Peter Ibbotson, Acoustic Consultant Noel Martin, Architect
Consent Authority:	Far North District Council Pat Killalea, Principal Planner Mandy Wilson, Reporting Planner Rex Shand, Resource Consents Engineer
Submitters:	Julian Dawson, Barrister representing Benjamin Smith, Deborah Ginger- Moore and Alex Medawar. Nevil Hegley, Acoustic Engineer as Expert for submitters Jeff Cartridge
In Attendance:	R Smythe, Senior Hearings Administrator Bradley Hedger and Jeanette Bosman, Observing proceedings

Second Site Visit

During the hearing on 15 April Mr Dawson said that the submitters (Ms Ginger-Moore and Mr Smith and Mr Medawar) would like me to visit their properties and also the house at 40A to get an understanding of the effects on them and their properties. This issue was discussed during the hearing and with agreement of all parties I (accompanied by Ms Smythe) undertook a second site visit and visit to the surrounding area including the submitter's properties and house at 40A after the hearing was

adjourned on 15 April 2016. The visit enabled me to view and observe the traffic and condition of the Opua to Russell Road, Paroa Bay Road and Otamarua Road and the location of the proposed Restaurant Wine Tasting Bar in relation to the submitter's properties, the other buildings/developments in the area, having read and heard the evidence from all parties.

Summary of Evidence

Prior to the reconvened hearing I received and read the application, attachments and assessment of effects, the Council's planning officer's section 42A report and her addendum report dated 9 March 2016, the recommendation and conditions and the supporting information contained within it, the Council's Engineers report, the applicants legal submissions which had been provided to me and the expert evidence which had been circulated to all parties. I was also provided with legal submissions from Mr Dawson on behalf of submitters and the Expert evidence of Mr Hegley which had been circulated to all parties.

In addition I also heard legal submissions from Ms Fraser and Mr Dawson, evidence on behalf of the applicant, from the Council's Reporting Officer and other expert staff in attendance and also from submitters.

The vast majority of evidence was in writing and forms part of the Council's records on this hearing. As the expert evidence had been pre-circulated and read by me I was able to question the experts, where necessary, without the need for them to read their evidence out. I have carefully listened to all the evidence presented, read all the other evidence and revisited the evidence and submissions during the writing of this decision.

The evidence forms part of the public record and it is not necessary to restate it. However, the following is a summary of the main points.

Evidence on behalf of Council

The Planners S42A report and her Addendum, ("the Report") application and supporting information which was circulated to all parties before the hearing was taken as read.

In regards to details about re-notification and the reconvening of the hearing Ms Wilson at paragraph 1.3 stated:

"Council received email correspondence with an attached letter from Mr Dawson dated the 9th February 2016 which questioned Councils intention to reconvene the hearing. However it was determined by Council that the hearing should be reconvened as requested by the applicant and Mr Dawson was advised of this decision on the 18th February 2016. Further correspondence was received from Mr Dawson on the 25th and 26th of February 2016. In that correspondence Mr Dawson cited Green v Auckland City Council [2013] HC as a relevant case to be considered with regard to limited notification.

Ms Fraser requested copies of the correspondence between Mr Dawson and council officers relating to RC2160031. That information was provided on the 1st March 2016. Ms Fraser emailed Council later that day reiterating that the applicant had followed Commissioner Smith's direction and outlined reasons why the hearing should proceed regardless of the matters raised by Mr Dawson.

Council notified the submitters and Mr Dawson by email of Council's decision to reconvene the hearing on the 4th April 2016. The email included details of the revisions to the proposal.

Copies of correspondence referred to above have been attached to this report (refer to Attachment 6.10)"

In her Addendum report dated 9 March 2016 Ms Wilson at paragraph 2.1 Summary stated:

"The key changes to the proposal are as follows:

- Floor areas
*Gross floor area of the restaurant – 172m² (reduced from 197m²)
Outdoor dining area – 120m² (reduced from 140.5m²)*
- Scale of Activity
The maximum seating capacity has been reduced from 60 to 45. The maximum number of staff is reduced from 8 to 6.
- Traffic and Parking
The traffic intensity has been reassessed as 103 daily (reduced from 118). The parking requirement has been reassessed as 28 car parks (not 31)
- On-site Wastewater Disposal
The maximum daily design flow will be 2955 Litres/Day (reduced from 4760 Litres/Day). The reduction in daily design flow means that a discharge consent from the Northland Regional Council will no longer be required.
- Stormwater Management
The impermeable and permeable surfaces are 1076m² and 601m² (reduced from 1166m² and 6018m²).
- Landscape Plan
Appendix 2 of the 'Assessment of Landscape, Natural Character and Visual Effects Report' prepared by Simon Cocker has been revised to incorporate the changes to the site plan.
- Noise Assessment
The revised report from Marshall Day Acoustics provides recommended conditions to mitigate adverse effects.

1.1 Section 104 Assessment

The revisions do not alter the discretionary activity status of the proposal. The revisions are considered to somewhat reduce the potential adverse effects when compared to the original proposal, particularly those effects relating to the scale of the activity (traffic, parking and noise) and stormwater management. The revisions do not introduce any new effects. Therefore no further assessments of potential adverse effects are considered necessary.

My overall conclusion, that the adverse effects of the proposal will be no more than minor, is unchanged. Taking into consideration the expert written evidence received prior to the 8th December hearing, the reduced scale of the proposal, and the revised technical reports, the recommended conditions of consent have been revised and amended (refer to section 5.0).

My assessment of the proposal against the relevant provisions of the New Zealand Coastal Policy Statement, the Proposed Regional Policy Statement for Northland and the Far North District Plan is unchanged. However, due to the reduced scale of the proposal there is longer a requirement for a discharge permit under the Regional Water and Soil Plan for Northland.

The proposal is still considered to be consistent with Part 2 of the Act and represents sustainable management of natural and physical resources"

The Engineering Report from Mr Shand primarily focused on the impacts that the proposed development could have on access, parking, stormwater, wastewater, earthworks and noise. The Report also covered and addressed the imposition of engineering conditions for the proposed development in accordance with the relevant Council Engineering Standards.

Procedural Issues

After outlining the procedure for the reconvened hearing Mr Dawson raised the issues of the Council not re-notifying the application, the assessment by Ms Wilson under s95 and his concerns with the Council's procedures. Mr Dawson was of the opinion that the application should have been limited notified at the very least to all landowners benefiting from the restricted covenant. He was also concerned that the Council has ignored his concerns regarding re-notification.

I advised Mr Dawson that once the applicant had advised the Council that he wished to proceed with the hearing that that was what was required in my direction and that I assumed Council had looked at the need to re-notify the application but had decided that it was not necessary or could not be done. I also advised that because of concerns raised that I had questions for Ms Wilson regarding her assessment under S95E (1) of the RMA and also questions about 104 (3) (d) which I intended to ask when she was giving her response.

Mr Dawson said that in proceeding I had to be satisfied that the Council had addressed the issues raised and I said that at this stage I was satisfied that the hearing should continue I will be questioning Ms Wilson regarding any concerns I may need to have answers to to enable me to make a decision.

Ms Fraser said that under natural justice, we are here to hear the application.

Applicant – Paroa Bay Winery Limited

Ms Fraser tabled and read her written submissions and introduced the evidence that had been provided by the expert witnesses. A copy of the original consent notice was provided to Ms Fraser who considered that you cannot compare a consent notice and the covenant and in her opinion the covenant was not imposed to cover environmental effects. Ms Fraser said that the applicant had made substantial amendments to the application since it was first lodged which included:

- restaurant reduced from 197m² to 172m² and outdoor dining area reduced from 140.5m² to 120m².
- a reduction in the maximum seating capacity from 78 to 45 and the number of staff from 8 to 6.
- hours of operation reduced to 11.30am – 3pm for lunch and 6pm – 10pm for dinner instead of midnight.
- opening dates reduced from all year to between the 3rd Friday in October to last day in April.
- traffic intensity reduced from 118 to 103 one way daily movements and parking reduced from 31 to 28.
- a discharge consent from the NRC no longer being required.
- impermeable and permeable surfaces reduced from 1166m² and 618m² to 1076m² and 601m².
- landscaping plan revised to incorporate changes to site plan.

Ms Fraser commented on the submissions received to the application noting that one was in support subject to amendments/conditions and that the applicant had amended the application accordingly and was also happy to accept a condition which requires him to maintain the height of the planting so it does not disrupt the views of the Bay of Islands from 40 Otamarua Road. She said that issues raised have all been discussed by the applicants' expert witnesses who have concluded that the proposed mitigation measures will ensure that any potential adverse effects are no more than minor.

Ms Fraser referred to the submission made by Mr Dawson in December and said that she disagreed with his analysis of the law and that the covenant was neither relevant

or necessary to determine effects under the Act. Her opinion was that the covenant is an irrelevant property agreement, was not imposed to protect environmental effects, does not directly influence or modify the expectations of the General Coastal zone and is not part of the permitted baseline against which effects must be assessed.

Ms Fraser said that the underlying consent is relevant in regards to a dwelling as it does refer to a maximum of one dwelling but it does not refer to other buildings. The District Plan rules restrict a restaurant but in her opinion the consent notice does not.

Mr Turner's evidence dated 23 November 2015 and 15 March 2016 had been pre-circulated to all parties and read by me and he spoke to his addendum to his statement of evidence. He said that with the reduced number of patrons, the proposed upgrading of the intersection of Otamarua Road and the proposed earthworks that the proposal will not result in negative environmental impacts on surrounding properties.

During questioning Mr Turner said that in his opinion the condition regarding upgrading the entry exit angle to 90° refers to the district plan engineering standards, that the 70° referred to in evidence is for traffic coming from one direction and he was happy and could support an angle of 70° or even a little less.

As a result of a question from me Mr Shand said that the district plan refers to an old engineering standard, that the preferred angle is 90° with a variation of plus or minus 20°.

Mr Turner said the waste water now comes under the threshold with less numbers at the restaurant which means consent is no longer required and that any sediment control would come under the earthworks conditions proposed in the report. In regards to Traffic Management – normally if any work is done on a Council road a traffic management plan would need to be provided and that he did not see any issues from a traffic management or safety point of view and again these are covered in proposed conditions of consent. Mr Turner said that any works were pretty standard stuff when you are working on a Council asset.

Mr Turner said that overall he considered the scale of the proposal to be like a high end subdivision, that he did not consider there to be any road safety issues as the roads were capable of taking the additional traffic and that he was very comfortable from an engineering point of view.

In reply to a question Mr Shand confirmed that all his recommendations in his report have been adequately covered by conditions.

Mr Cocker's evidence dated 23 November 2015, his addendum evidence dated 16 March 2016 and the landscape plans which support his evidence had been circulated to all parties and had been read by me. Mr Cocker referred to his original evidence at paragraphs 8.1 & 8.3, to highlight that 3 properties identified as having moderate adverse visual effects initially did not make a submission.

In answers to questions Mr Cocker said:

- That there were minor changes to the planting plan. These are minor changes to accommodate the reduced size of the building.
- Yes, he had looked at the underlying subdivision consent and the condition and change to that condition and he is happy that the proposal will comply, and considered that the changes will have a positive effect.

Mr Cocker confirmed that his opinions, recommendations and conclusions expressed in his Primary SoE remained unchanged and that any effects of the proposal will be less than minor.

Mr Ibbotson's evidence dated 23 November 2015 and 15 March 2016 had been circulated to all parties and had been read by me. He also tabled evidence dated 15 April 2016 which was a response to Mr Hegley's evidence. He also provided me with 2 A3 plans showing notational boundaries and topographical lines which were attached as A4 copies to his evidence and as a result of a request from me agreed to provide, with the Right of Reply, a copy of the 2 plans combined into one. Mr Ibbotson read his evidence dated 15 April 2016.

During questioning from me Mr Ibbotson said that:

- In his opinion an expert should not change his opinion unless issues are raised that had not been considered during caucusing.
- If a dwelling was built on the property he did not believe that anything other than what is in the district plan would/could be imposed.
- An acoustic fence is effective if it interrupts the line of sight and it would make a difference in this instance but there were other means of reducing noise.

Mr Ibbotson referred to his email dated 14 March 2016 to Mr Hegley (attached to his evidence dated 15 March 2016) and said that in regards to proposed condition 16 – recorded music etc.; that it would be better if changes were made as per the email. He said that the remainder of the conditions are as originally agreed.

As a point of clarification I allowed Mr Dawson to ask Mr Ibbotson a question. Mr Dawson asked that if the district plan noise standards apply at the boundary, does it mean that the noise limits should be at all boundaries. In reply Mr Ibbotson said Yes.

In summary Mr Ibbotson said that:

"In summary, I do not agree with Mr Hegley's opinion in this matter and I do not consider his recommend conditions appropriate. The District Plan noise rules provide an appropriate degree of protection in this instance and there is no need for further restrictions. Notwithstanding this, a further noise limit of 40 dB La10 could be applied at the notional boundary or site boundary of 40 and 40A Otamarua Road (Lot 2 and Lot 4 DP 349706) if the Commissioner considers this an appropriate approach to provide certainty to those residents"

As a result of a question to the applicant Ms Fraser said that the applicant would accept such a condition and this would be covered in her right of reply.

Mr Dissanayake evidence dated 24 November 2015 and 16 March 2016 had been circulated to all parties and read by me. His conclusion was that the effects from the proposal on the environment will be no more than minor and any potential effects can be mitigated through appropriate conditions, the proposal is consistent with the objectives and policies of the District Plan and other relevant statutory documents and is also consistent with the principles of sustainable management and that the application should be approved subject to conditions.

In answer to a question from me regarding the covenant and consent notice and whether Mr Dissanayake; if he had had the covenant before he made the application would he have changed his opinion. Mr Dissanayake said that his opinion is still the same, that he believed that the covenant had nothing to do with the application and was a private property matter.

In answer to a question regarding the height of the proposed building Mr Martin said he had not measured it exactly because it is so far below the limit; about a metre and a half below. He referred me to plan number sk04-F by Martin Design (2006) Ltd which showed the building significantly below the District Plan limit of 8m and the Consent Notice limit of 6.5m

Mr Migades said he has always treated neighbours with respect that he does not intend to ruin the environment that everyone enjoys, that they will conduct themselves professionally and respect the neighbours.

Mr Ibbotson tabled a Statement of Evidence by Mr Hegley dated November 2012 for a wedding venue in the Russell area with his comments and as a result of a question said that the point of tabling the document is to show and make it clear that background noise varies with location and time, it goes up and down and this is what he has said in his evidence.

Submitters

Mr Dawson, rather than present his written submissions at this stage requested that Mr Hegley give his evidence as Mr Ibbotson has just completed his. Mr Hegley's evidence dated 8 December 2015 and 23 March 2016 had been circulated to all parties and read by me. Rather than read his further statement of evidence Mr Hegley spoke regarding a number of issues. In regards to the contour plan that Mr Ibbotson had just produced he said that he has a concern with the deck area which does not include any screening to mitigate effects of the diners on the deck. During Mr Hegley's evidence I took the opportunity of clarifying, where possible, noise issues with both Mr Hegley and Mr Ibbotson and some of the other witnesses.

In reply to questions from me Mr Martin said screens could be incorporated into the design of the building and Mr Ibbotson confirmed that appropriate acoustic screens would decrease the noise and pull the decibel contours back from the boundary.

Mr Hegley said that the suggested screening makes this practical for the properties to the south of the site. However, he is not suggesting accepting the 35 decibels at boundary as an acceptable solution. In regards to the northern side of the site there is no screening at all, that due to the height of the deck they will have to have a balustrade and suggested that a glass screen would provide some noise mitigation to the north.

Mr Ibbotson said erecting an appropriate balustrade could achieve 35 decibels to the north, it is a practical solution that can achieve 35 decibels at the boundary of the site and as a general rule if you lose line of sight you gain 5 decibels.

Mr Hegley said that he considered that at this stage Mr Ibbotson was making statements that have not yet been tested. He considered 35 decibels in this environment would be intrusive but he agreed that 35 decibels could possibly be achieved at the boundary if they put in the suggested measures. Mr Hegley said that if the application was approved these measures should be required.

Mr Dawson said there is a difference between ambient noise and background noise and traditionally background noise should not exceed 35dBa.

In regards to the erection of a bund around the back of the building Mr Hegley said as long as they meet the 35dBa it doesn't matter how they do it. Mr Hegley said there should be a way of monitoring the noise and if the noise limit is not being complied with it needs to be clear what can be done. Mr Hegley's conclusions were shown in Section 4 of his evidence dated 23 March 2016 and although he considered that the application should be refused he did provide some draft conditions which he considered would provide at least some degree of protection for the residents. In regards to actual noise limits he proposed a maximum of 35dBA L10 between 0700 to 2200 hours and 30dBA L10 and 65dBA Lmax between 2200 to 0700 hours.

Mr Dawson tabled and read a synopsis of Opening Legal Submissions of Counsel for Submitters. Mr Dawson read from paragraph 11.

Mr Dawson said that the covenant is the clearest covenant he has read, and asked why the Council is continuing to proceed. The applicant and counsel have acknowledged that the covenant will need to be amended. In regards to the comment by Ms Fraser that covenants usually came about for marketing tools Mr Dawson asked if she thought that these types of covenants were there for marketing but are then ignored. He said that the consent notice and covenant went hand in hand of what was meant to be a residential subdivision; it would not have entered anyone's mind that a restaurant would be built within the subdivision. A commercial activity was never anticipated. Mr Dawson said that the applicant would, sooner or later, be confronted with the consent notice and covenant.

Mr Dawson said that there was no town planner representing the submitters but Mr Benjamin Smith and Deborah Ginger-Moore will be able to tell you what effects this proposal has done to them and how it will affect them. He said that the onus is on me to determine whether traffic safety issues have been traversed and that the submitters will give evidence of what it is like to drive and use the roads.

Mr Dawson asked that para 53, in reference to Mr Roach be deleted as he no longer represented Mr Roach.

In regards to the recommended Conditions Mr Dawson said that: –

- Hours of operation remain extant
- Cond 8 – cannot be used for single party or functions. This is problematic what if 3 tables are booked for a 21st it is still a large group – what is envisaged if someone books out the entire restaurant is that a private party,
- What if the restaurant was booked out by 2 large groups there will be an impact of noise
- Max occupancy – compliance issue.
- Cond 11 in contention – no work is undertaken outside – this needs more exploration, the concerns would be when those people leave. Needs management to intervene ie no wheelies in car park.

Mr Dawson said that using the district plan performance standards for noise as a permitted activity for a house is a dangerous comparison as this is not a residential activity.

Mr Smith (resident at 40A Otamarua Road and witness for Deborah Ginger-Moore) tabled and read his Statement of Evidence. Mr Smith outlined his professional qualifications and background and referred to:

- expert witnesses evidence conflicts; he cited the predicted dry spell for the summer and stated that all the experts got it wrong. Expert witnesses don't deal with reality.
- the fact that they want to continue living in their quiet environment.
- his concerns with the Paroa Bay Chalets and cats and dogs brought to the area.
- his expectation that the ambient noise level would remain very quiet, would not exceed the 26dB region which is typical for the area.
- his expectation of noise and traffic generated by the proposal.
- Council should not be ignoring the covenant and his expectation of Council upholding its own guidelines and respecting land covenants.

Ms Deborah Ginger-Moore tabled and read her Statement of Evidence and during her evidence invited me to do a site visit to their home and their property, with or without them being home. Ms Ginger-Moore referred to:

- her property being right above the restaurant/wine tasting bar and the winery itself in the valley which has an existing wine-tasting bar with room for a restaurant.
- her background and purchase of the property.
- her driving background, use of the roads in the area, traffic safety and deaths (she referred to 3 since she bought her property in October 2012) on the roads.
- vermin that will be generated by the restaurant.
- noise and the effects that this will have as Paroa Bay is an incredibly quiet neighbourhood that is tranquil and sublime.
- the noise assessment etc carried out by Mr Ibbotson.
- her research and comparison of other vineyards/restaurants etc in the Northland area.
- the effect on the use and enjoyment of the outside areas of her house for bbqs, meals etc and use of most of the living space which faces north.

Both witnesses live in the local area and gave evidence describing their experience of the frequent use of Otamarua Road and Paroa Bay Road, traffic issues, the amenity of the area, the tranquillity of the surrounding area. In particular, they both emphasised their concerns regarding road safety, the effects of noise and the effects on the amenity they presently enjoy.

Mr Dawson tabled correspondence from Mr Medawar which I have read and taken into account whilst writing this report and decision. Mr Dawson said that Mr Medawar would also like me to visit his properties.

I asked if the applicant had any objection to my undertaking another site visit and visit to the submitters properties and Ms Fraser said no as long as no one is home.

Ms Ginger-Moore said no one will be home and I confirmed that I would visit the site and properties later in the day in the company of Ms Smythe.

During questioning I referred to para 18 noise from extraction fans in Ms Ginger-Moore's evidence and said that there was a recommended condition that dealt with that. - condition 13 mechanical plant and asked her that if he was going to approve the application what else would Ms Ginger -Moore like to mitigate effects. She said that the problem is that the restaurant is below them and noise travels up. Also, the roads are very dangerous.

In regards to the submission on agenda Page 61 I asked how the activities of the existing winery that is already there should be taken into account in relation to the issues raised. In reply Ms Ginger-Moore said that it has nothing to do with them, it is in a valley and they cannot hear any noise from it.

Mr Dawson said that the existing vineyard was not part of the Drexel Estate.

Mr Cartridge said that the issues in his original submission have been addressed. He said his objections were hours of operation but asked if the 10pm time meant that the restaurant closes or area is vacated at that time.

At my request the applicant provided comments on Mr Cartridge's concerns. Mr Magides said the plan is to have the building vacated by 10.00pm and Ms Fraser said there are multiple ways of ensuring hours are adhered to.

In regards to noise, Mr Cartridge said that the car park is on the other side of the hedge from their house. The overall traffic noise readings were taken from one car that is a big difference to 110 cars. In regards to views, if the trees in front of their house grow for 3 – 5 years their views will be compromised.

Mr Magides said that he had agreed that Mr Cartridge could maintain the height of the trees and it was the previous owner that would not allow them to be trimmed. If approval is given, the landscape plan will ensure that Mr Cartridge does not lose his view. Mr Cartridge said he would like it to be a condition.

Council Officers

Ms Wilson said that she still supported her recommendation to approve consent subject to some changes to the conditions which she will have to amend:-

- View – reference condition 16
- Relook at condition 8.
- Clarify condition 7 regarding hours of operation.

I requested that Ms Wilson amended her recommended conditions which would then be circulated to me and other parties for their information and for the applicant when providing the right of reply.

I asked Ms Wilson if, after hearing the submissions and evidence, was she still happy with her assessment under Section 95 (particularly section 95 E (1) and her decision to limit notification and in regards to the covenants, did she still stand by that assessment. Ms Wilson responded yes, she said she agreed with Ms Fraser's comments that the covenants were not relevant in this case.

In regards to the evidence presented by Mr Hegley and Mr Ibbotson I asked Ms Wilson which evidence did she prefer and she said that she preferred Mr Ibbotson evidence because she was satisfied that the district plan standards were appropriate for this activity.

In response to issues raised by Mr Dawson Mr Killalea said that section 7 of his submissions refers to Green v's Auckland City but this is a case involving a consent notice not a private covenant. In respect of a private covenant Mr Killalea referred to a decision of the Environment Court in Schofield v's Auckland Council (Formerly North Shore City Council) – Decision No. [2012] NZEnvC 68 and quoted paragraph 9 of this decision. A copy of this decision was tabled and provided to the parties and Mr Dawson was given the opportunity of reading paragraph 9 which for the record states:

"Running hand-in-hand with the resource management issues is the vexed issue of whether or not the cross-lease permits the building of the deck in any event. The law is clear that disputes about private property rights are outside the Environment Court's jurisdiction and are not generally considered in determining a resource consent application. In this case, the appellants accept that if they were to be successful in their appeal to this Court, it should be conditional upon the cross-lease permitting it, a topic to be determined in another forum, on another day."

In regards to Mr Dawson's paragraph 16, Mr Killalea said that the Council has a responsibility to process the application and the applicant has a right to be heard. The consent notice referred to in Para 31 specifies a maximum of one dwelling, it does not talk about buildings, just a dwelling. He noted that the original subdivision application was a non complying application and that everyone has the opportunity to make a resource consent application.

Mr Dawson said that as far as he was aware Mr Killalea did not have a law degree and wanted his comment re the Schofield v's Auckland Council paragraph 9 struck out. I said that I would accept the decision tabled by Mr Killalea and would give it the appropriate weighting when making my decision.

Ms Fraser said that it was just another case to consider, there are many similar.

In regards to engineering issues including roading Mr Shand said that looking at the number of patrons in the restaurant, it was not likely that there will be less than 2 persons in a car which equates to only 45 traffic movements. Mr Shand said he had required that the seal be extended and it will help mitigate noise and dust and that the actual car park will not be gravel. The speed in car parks is generally lower and therefore the noise will be less. He was satisfied that subject to the conditions that he had recommended that the application could be approved.

I directed that Ms Wilson have her amended recommendations completed by Wednesday 20 April at 4pm and circulated to all parties and that Ms Fraser have her Right of Reply in writing by 29 April 4pm which would then be circulated to all parties for their information.

The hearing was adjourned at 1.55pm and Ms Smythe and I travelled to Paroa Bay to carry out second site visit and visit to submitter's properties and surrounding area.

As requested by me Ms Wilson produced an amended list of recommended conditions that she could support for my consideration. This list was circulated to all parties for their information and made available to the applicant for consideration when completing the right of reply.

Applicant's Right of Reply

As requested by me Ms Fraser provided the applicants' right of reply in writing on 29 April 2016 and this was circulated to all parties for their information. A copy of the right of reply is on Councils files. Ms Fraser said she had had input from the applicant and the relevant experts. The right of reply focused on the following matters:

- the overall evidence provided by submitters
- notification and her opinion that the application was correctly assessed as only requiring limited notification.
- noise issues including that evidence has shown that a reasonable and acceptable level of noise will be emitted, that noise will comply with district plan standards and that noise conditions suggested by Mr Hegley were inappropriate.
- the existing environment, the difference issues in dispute between Mr Ibbotson and Mr Hegley, the existing permitted noise standards which she said set out what is anticipated and expected in the zone, what was reasonable, that the existing environment was not limited to what is currently occurring on the land, that the permitted noise limits are relevant and that they should not be disregarded when carrying out my assessment.
- noise mitigation measures – such as wing wall and glass balustrades.
- Section 16 of the RMA and the duty to avoid unreasonable noise and her opinion (supported by Mr Ibbotson's evidence) that the noise standards suggested by Mr Hegley are neither reasonable or practicable.
- the discretionary activity of the proposal.
- the covenant and her opinion that the covenant is not relevant to the proposal, was not imposed to protect the environment, issues with some of Mr Dawson's submissions, notification of the application to parties covered by the covenant, the non influence of the covenant on the General Coastal zone and that the covenant is not part of the permitted baseline.
- consent notice and her disagreement with Mr Dawson's interpretation.
- recommend conditions.

- the discretion under section 104B

The right of reply also included documents regarding the recommended conditions of consent, a new landscape plan and an amended contour plan.

Close of Hearing

After considering all of the information before I determined that I had all I required or needed to make a decision and closed the hearing on Wednesday 4 May 2016 and requested the Council to advise all parties.

Statutory Assessment and Principal Issues

The Act requires that for all applications for resource consent that the Council must have regard to the matters set out in section 104 of the Act, subject to Part 2 of the Act. In accordance with section 104 of the RMA I have had regard to the relevant statutory provisions including the relevant sections of Part 2 of the RMA and sections 104, 104B, 106, 108 and 220.

A statutory assessment and assessment of the principal issues that were in contention and which I have taken into consideration when making this decision were covered in the Reports, in the evidence before me and I do not intend to repeat them here. I note that there was agreement between the planning experts regarding the status of the application, the assessment of environmental effects and that the effects of the proposal were no more than minor. The experts appearing for the applicant considered that the potential adverse effects of the proposal (subject to conditions) would be no more than minor and that the application was not contrary to the relevant objectives and policies of the Operative Far North District Plan.

After analysis of the application and evidence (including proposed mitigation measures), undertaking the site visits, reviewing the Council planning officer's recommendation report, reviewing the submissions and concluding the hearing process, the proposed activity raises a number of issues for consideration.

The first issue for me to deal with is the legal submissions from both the submitters counsel and the applicants counsel regarding the status and effect (if any) of the consent notice and covenant on my consideration and determination of the application. I note at this point that during questioning both Ms Wilson and Mr Dissanyake both considered that the covenant was not relevant from a resource management perspective and that they supported their planning assessments and recommendations.

Mr Dawson for the submitters first raised the issue of the consent notice and covenant at the hearing on 9 December 2015 and his opinion, which has not changed, was that the proposal is a clear breach of the Land Covenant registered on the title and his legal submissions dated 8 December 2015 clearly spelt out his reasoning and he reiterated his reasoning and opinion in his submissions dated 15 April 2016. In addition Mr Dawson tabled a copy of a facsimile dated 8 April 2016 from Keegan Alexander, Barristers and Solicitors to the Council regarding the breach of the covenant and stating that enforcement action will be undertaken by Paroa Bay Management Limited (PBML) to preserve and uphold the provisions of the Land Covenant. Part of the attachments was a document dated 4 December 2015 and signed by Linda Yee and Warwick Jones both shown as Directors of PBML and I note that they were identified as affected parties as part of the limited notified procedures of the application but, for whatever reason, did not make a submission.

In addition I was told at the hearing in December 2015 by Mr Magides that Mr Roach had sold him the property and he was aware that Mr Roach knew what he was going to use the property for. Mr Roach was identified a affected party as part of the limited

notification and did not make a submission although I acknowledge he did attend the hearing in December 2105 and requested me to accept a late submission (nothing was tabled in writing) and I refused and suggested that he could be called as a witness by one of the submitters. He chose not to attend the hearing on 15 April 2016 and I observed during my second site visit that there was a For Sale sign outside his property.

For the applicant Ms Fraser in her letter date 28 January 2016, her legal submissions dated 15 April 2016 and the right of reply dated 29 April 2016 had a different opinion/view to Mr Dawson and considered that the covenants which were imposed over 10 years ago were not imposed to protect environmental effects, were private property matters and it was not open to me to determine whether the proposal might be in breach of a contractual obligation under the covenants. Ms Fraser differed with Mr Dawson regarding the effects of the covenant and said that a district plan cannot be modified by the terms of a covenant. However, Ms Fraser did acknowledge that if an applicant obtains consent for land which is subject to a restrictive covenant, then the applicant will need to comply with the restrictive covenant until such time as the covenant is removed or amended and that the applicant did have options to consider.

Both counsels provided or referred to legal cases which covered the issue of the importance and relevance, if any, of restrictive covenants. In addition at the hearing on 15 April 2016 Mr Killalea tabled a case which he said supported the Council's staff view/opinion that the covenant is not relevant when considering the application.

During the writing of this report and the decision I have re-read the legal submissions and attachments, the legal cases referred to or provided to me and I have determined that for my assessment of the application and determination that the covenant is a private property issue and any dispute about it is outside my authority and jurisdiction and should be dealt with, if necessary, in another forum. I have included an Advice Note to the decision which refers to the enforcement of the Land Covenant.

I note that the various potential adverse effects of the proposal have been assessed by Ms Wilson and Mr Dissanyake, and they reached agreement that those effects will be acceptable and no more than minor. The issues of contention are those that remain between the noise experts the submitters, and the conclusions of the applicant and the Council, being:

- amenity values (noise – general, road noise, visual);
- the quality and safety of the roads and general traffic effects.

In regards to the engineering issues, the Council's engineering staff member had reviewed the application and had recommended conditions of consent if consent was granted. He had also read and heard the evidence at the hearing and confirmed his recommendations to me. The recommended conditions were supported by both planning experts and we did not hear or receive any expert evidence in opposition although I acknowledge that the submitters did table and read evidence on engineering comments about the roads and their own experiences of living, driving, walking etc on the roads). They also gave their own account of the amenity of the area and the peace and tranquillity which they enjoy.

I note that the application does not include any parking associated with the operation of the restaurant and wine tasting bar to be permitted on the roads. Carparks are to be provided on site and traffic issues are to be addressed via a comprehensive Traffic Management Plan (TMP), to be imposed as a condition of consent, and that both Mr Turner and Mr Shand at the hearing were in agreement regarding the traffic effects of the proposal. Following the hearing of evidence, I visited the site again,

travelled along the Opua to Russell Road, Paroa Bay Road and Otamarua Road, the submitters driveways and properties and the actual site itself. At the time of my visit there was very little traffic on the roads, there were some roadworks on Paroa Bay Road, the roads were all sealed, appeared to be in good condition and similar to a lot of other rural roads in New Zealand. I spent some time looking at the road and traffic and in particular the traffic issues raised. I agree with the suggestions/recommendations of Mr Turner and Mr Shand and the proposed conditions of consent. Both engineers were of the view that the proposed access to the site is adequate as was the ability of the surrounding network to accommodate the increased movements.

Noise mitigation measures were proposed and these were spelt out in the evidence of both Mr Ibbotson and Mr Hegley (who although his opinion was that the application should be refused provided some draft conditions for my consideration). Mr Ibbotson for the applicant told me that the proposal will be able to comply with the noise limits set out in the District Plan. However, in paragraph 6.1 of his evidence dated 15 April 2016 he did refer to a further noise limit of 40db LA10 for me to consider if I thought appropriate to provide certainty to the residents at 40 and 40A Otamarua Road. In Mr Hegley's evidence at paragraph 4.3 i) he provided draft condition for me to consider and recommended that the proposal should be designed and conducted to ensure that noise from the site shall not exceed the following noise limits as measured at or within the boundary of any other site with a limit of 35dBA L10 between 0700 to 2200 hours and 30dba L10 and 65dBA Lmax between 2200 to 0700 hours.

During my site visits I looked at the site from a number of different viewpoints including the submitters properties and accept that some will have a partial view of the site and acknowledge that noise will be heard but I accept the evidence from the planning experts that the noise limits in the District Plan are appropriate for the zone and the site and accept the evidence of Mr Ibbotson that those limits could be complied with. However, both acoustic experts referred to either providing some degree of protection to residents or providing certainty to some residents and I accept the recommendation of Mr Ibbotson in paragraph 6.1 of his evidence and the acknowledgement made at the hearing by the applicant that he would accept a further noise limit of 40dBL10 at the notional boundary or site boundary of 40 and 40A Otamarua Road and have imposed a condition (condition 19) as part of the consent.

I have also re-read section 16 of the RMA and I understand the requirements of section 16 (1) however, it is also my view that section 16 (2) allows a district plan to prescribe noise emission standards and it is not limited by section 16 (1). The district plan has set permitted noise standards for what is anticipated in the zone and although the restaurant and wine tasting bar are not permitted I do not agree that I should disregard the rule or not use it as a benchmark. I also do not agree that I should accept as a limit (as there is none stated) what the residents/submitters expectations are in regards to noise.

I find that, subject to the imposition of appropriate conditions of consent, including noise monitoring, that the actual and potential noise effects on other parties can be managed so that they are acceptable and will ensure that an appropriate amount of aural amenity will be achieved.

During my site visits it was also apparent that the area has undergone or is undergoing changes with the establishment of the vineyard and other amenities including rental accommodation one of which is across the road from the site, the subdivisions, and the establishment of the Paroa Bay rental chalets which are very prominent. I also note from the approval of the Oyster Cove Park Limited approval dated 11 February 2002 that the reasons for the decision refer to in part "*The site is*

within a coastal area where the natural character has been modified by previous land practices" and "_____ whilst allowing additional development in the less sensitive inland part of the property"

The proposed building has the character and appearance of a large dwelling and any adverse effects of the building can be mitigated through appropriate conditions of consent, the proposed planting, and the use of exterior colours and materials which will be consistent with what is already developed in the area.

I consider that other amenity effects will be minor because of the opening days and hours, the size and nature of the restaurant and wine tasting bar, the comprehensive landscaping plan that is to be implemented as part of the conditions. The expert evidence of Mr Cocker, which was not challenged, provided a comprehensive assessment of the landscape, the natural character and visual effects and included a Landscape Plan and Landscape Implementation Plan, which was amended for the hearing on 15 April and took into account some of the submitters concerns. In the right of reply Ms Fraser outlined the changes made by the applicant to take cognizance of the concerns of Mr Cartridge.

In regards to the engineering issues Mr Turner for the applicant considered that there were no engineering reasons why the application should not be approved. The Council's Engineer staff member (Mr Shand) had reviewed the application and read and heard the evidence of the experts witnesses and submitters and had recommended conditions of consent should the application be consented to. He stood by his recommendation after hearing the evidence at the hearing. The roads to/from the site are presently sealed and the seal is to be extended along Otamarua Road to the new entry/exit crossings to remove the potential for dust and noise to the adjoining properties. No concerns were identified by either Mr Turner, Mr Shand or the Council's Development Engineer regarding the safety or suitability of the roads to the site being able to cater for the increase in traffic.

The overall view of the experts for the applicant was that the effects would either be no more than minor or not more than minor with appropriate conditions and that it would not result in adverse effects. In respect of the above, I accept the advice of the reporting officers and the applicant that the potential effects, with appropriate conditions, will not be significant and no more than minor. I adopt their assessments and do not repeat them in this report. The effects of the development had been carefully considered and the effects on adjoining landowners/occupiers were considered minor and could be further mitigated by appropriate conditions of consent. Having considered everything before me I am in agreement with this view.

In accordance with section 104(1)(b)(i)-(vi) of the RMA, I have had regard to the relevant policy statements and plan provisions (including plan changes). The objectives and policies of the relevant plans etc. required to be considered under Section 104 were also comprehensively covered in the Reports and taking everything into account and considering the Reports in detail I am of the view that the proposal is generally consistent with the relevant objectives and policies and where effects from the development are created these effects can be avoided, remedied or mitigated by conditions of consent to be not more than minor. Overall, I find that with the adoption of the mitigation measures proposed and required through conditions, the potential adverse effects of the proposal will acceptable and no more than minor.

Section 104B gives me the power to grant or refuse an application on merit. In accordance with my findings in relation to section 104, I am generally supportive of the application subject to the imposition of appropriate conditions of consent to protect the amenity of the surrounding environment.

Relevant Planning Provisions

I have had regard to the following statutory instruments:

- New Zealand Coastal Policy Statement
- Proposed Regional Policy Statement for Northland
- Regional Water and Soil Plan for Northland
- The Far North District Plan

I have considered the relevant planning provision which were assessed by the applicant's expert and by Ms Wilson and concur with their conclusions that the proposal will be generally consistent with, and not contrary to, the relevant provisions of the planning documents considered.

The Main Findings of Fact:

(Section 113(1) (ae))

The main findings of fact determined by me that have led to the decision and the reasons for that decision are as follows. They have been reached after considering the application, visiting the site and surrounding area twice, the evidence and submissions heard at the hearing, the Reports prepared by the reporting planner and her assessment of effects, all the relevant statutory and planning provisions, the information provided by the applicant and submitters as well as the principal issues that were in contention. I find that:

- Having read and listened to the evidence and studied the objectives and policies I am of the view that the application is not contrary to the objectives and policies of the Plan.
- The analysis provided in the Reports on the application correctly, set out the matters needing consideration by me in making this decision.
- The adverse effects of the activity on the environment will be no more than minor and/or can be avoided, remedied, or mitigated by the imposition of conditions of consent.
- Overall it is considered that having regard to all the relevant section 104 matters that consent will have^{no} more than minor adverse effects on the environment.
- The assessment made by Council under section 95 E (1) was not flawed and there was no need for me to make a decision under section 104 (3) (d) of the Act to not grant consent because the application should have been notified and was not.
- In terms of section 5 of the Act, it is considered that the application does promote sustainable management and it will not result in adverse effects.
- In all the circumstances the proposal is considered consistent with the sustainable management purposes of the Act and its principles, as included at Part 2 of the Act. It would not result in adverse effects on the environment; it would maintain and enhance the amenity values or the quality of the local environment.
- In regard to entranceways and vehicle access, traffic and other engineering related issues, I accept the expert advice that the proposal will have no more than minor adverse effects.

Part 2 Assessment

The purpose of the Act is to promote the sustainable management of natural and physical resources and consideration needs to be given as to whether the activity is allowing people and communities to provide for their social, economic, and cultural

wellbeing and for their health and safety while:

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

There were no section 6 Matters of National Importance considered relevant to the application. The 'Other Matters' under section 7 were also not considered to be relevant and the development is considered to maintain the amenity values of the local area as the establishment of the childcare centre on the sites is consistent with the existing activities (including the School and existing Childcare Centre) in the surrounding area.

Section 8 Treaty of Waitangi was not considered to be relevant to the application.

Part 2 considerations

The proposal is considered to be consistent with the purpose of the Act as it represents and promotes the sustainable management of natural and physical resources. The physical components of the proposal will ultimately maintain and enhance amenity values. It is considered that the proposal meets the requirements of Part 2.

As stated the purpose of the Act is to promote the sustainable management of natural and physical resources (Part 2, Section 5), and the Purpose of the Act accords pre-eminence to promoting sustainable management of natural and physical resources, not just their "management".

After Section 5, Sections 6 – 8 of the RMA provide guidance with respect to the making of a decision on a hierarchy of considerations, being:

- i. Matters of national importance
- ii. Other matters that must be given particular regard
- iii. Principles of the Treaty of Waitangi that must be taken into account

The matters set out in Sections 6 – 8, while important are all subordinate to the overall purpose of the RMA, set out in Section 5 and all decisions for resource consents are subject to, or subordinate to Part 2 of the RMA and Part 2 considerations are critical in the process of decision-making (Section 104(1)).

When making a decision an overall broad judgement based on a weighting of the factors contained within Part 2 is required to be undertaken, recognising the hierarchy of considerations within Part 2. Therefore, any decision-making process should focus on the avoidance, remediation or mitigation of adverse effects in order to promote 'sustainable management' (Section 5(2)(c)). Also, some terms in Part 2 are defined and some are not, therefore the application of all matters requires a degree of local interpretation.

In this instance, I have taken into account the Purpose and Principles outlined in sections 5, 6, 7 & 8 of the Act. Due to the conclusions reached I consider that this resource consent application does achieve the Purpose of the Act.

DECISION:

That, pursuant to Section 104 and 104B of the Resource Management Act 1991, the Limited Notified application for a discretionary activity by Paroa Bay Winery Limited to construct and operate a restaurant with wine tasting bar, residential unit, and associated car parking and to change consent notice condition CONO 6993523.3 (bullet point 3) to allow the restaurant building to be finished in specific colours that do not fall within the colours specified by the consent notice in the general coastal zone is granted consent for the following reasons and subject to the following conditions:

Reasons

Pursuant to Section 113 of the Resource Management Act 1991, the reasons for my decision are as follows:

- (a) Subject to the imposition of conditions of consent for the proposal there are no apparent conflicts with the purpose of the act or with the matters noted in sections 6, 7, and 8 of the Act.
- (b) The applicant proposes to incorporate appropriate methodologies and measures and with the imposition of the conditions listed below, I find that the restaurant and wine tasting bar can operate and adequately avoid, remedy or mitigate adverse effects on the environment associated with noise, traffic safety, visual landscape and amenity values to an acceptable level.
- (c) The proposal will be consistent with Part 2 of the RMA as the proposal does constitute sustainable management of natural and physical resources. In particular, the applicant can avoid, remedy or mitigate all the adverse effects of the proposal on the environment arising from the development. In particular the main issues in contention can be mitigated by appropriate conditions of consent and will result in the activity having no more than minor effects.
- (d) The revised scale and operation hours of the activity are considered to be appropriate and are not considered to be incompatible with the surrounding residential activities and the other activities in the area.
- (e) The proposal is generally consistent with the objectives and policies of the District Plan, none of the Proposed Far North District Plan Changes shown on page 19 of the hearing report are relevant to the proposal and the proposal offers a scale of development appropriate for the area.
- (f) The proposal is considered to be consistent with the purpose of the Act as it represents and promotes the sustainable management of natural and physical resources and I consider that the proposal meets the requirements of Part 2 of the Act.

CONDITIONS

1.0 RECOMMENDED CONDITIONS OF CONSENT

Decision A

Activity in Accordance with Plans

1. Subject to any changes required by the conditions of consent, the development shall be carried out in general accordance with the information and reports submitted with the application, including the approved plans attached to this consent with the Council's 'Approved Stamp' affixed to them. Specifically:

Title	Prepared By	Reference	Date
Site Plan	Martin Design (2006) Ltd	Proposed Restaurant Paroa Bay Winery Sk01-F	11/01/16
Part Site Plan	Martin Design (2006) Ltd	Proposed Restaurant Paroa Bay Winery Sk02-F	11/01/16
Floor Plan - Restaurant	Martin Design (2006) Ltd	Proposed Restaurant Paroa Bay Winery Sk03-F	11/01/16
Floor Plan – Residential Unit	Martin Design (2006) Ltd	Proposed Restaurant Paroa Bay Winery Sk04-F	11/01/16
Elevations	Martin Design (2006) Ltd	Proposed Restaurant Paroa Bay Winery Sk05-F	11/01/16
Landscape Plan	Simon Cocker Landscape Architecture	Proposed Restaurant/Wine Tasting Bar, Otamarua Road, Paroa Bay, Figure 6e: The Proposal – Landscape Plan from Appendix 2 of the <i>Assessment of Landscape, Natural Character and Visual Effects Report</i> dated July 2015	n.d
Landscape Implementation Plan	Simon Cocker Landscape Architecture	Appendix 1 (pages 14-16) of the <i>Assessment of Landscape, Natural Character and Visual Effects Report</i> dated July 2015	n.d

Visual Amenity and Landscaping

2. Prior to the issue of a Code Compliance Certificate for the building, or prior to its use and/or occupation (whichever comes first), the following schedule of colours and materials (as provided in the application) shall be utilised in the finishing of the building and must be maintained for the duration of the consent:

Title	Colour	LRV (Approx.)
Roof	Colorsteel 'Weathered Copper'	11%
Joinery	Duralloy 'Kauri'	20%
Exterior Cladding:		
• Weatherboards (Linea 180)	Dulux 'Kauri Cliffs'	66%
• Trim	Dulux 'Black Giants'	17%

Any change to the approved colour schedule shall require the written approval of Councils duly delegated officer.

3. All timber retaining walls are to be stained black within 6 months of construction or within six months of the issue of a Code Compliance Certificate (whichever comes first).
4. Within six months of the issue of a Code Compliance Certificate for the building, or within six months of its occupation (whichever comes first), the landscaping/planting specified by the approved landscaping plan '*Proposed Restaurant/Wine Tasting Bar, Otamarua Road, Paroa Bay, Figure 6e: The Proposal – Landscape Plan*' prepared by Simon Cocker Landscape Architecture is to be implemented and maintained thereafter in accordance with the approved Landscape Implementation Plan. Plants requiring removal due to damage,

disease or other cause shall be replaced with a similar specimen before the end of the next planting season (1st May to 30th September).

5. The existing mature shelterbelt on the southern boundary of the subject site (as detailed on the Site Plan) shall be retained. Should any tree that forms part of the shelterbelt die, it shall be replaced before the end of the next planting season, except that replacement shall not be required if the vegetation planting on and near the southern boundary has achieved an average similar height to that of the shelterbelt.
6. That the maximum height of the mitigation planting within the site, from the southernmost point of the lot to a point 40 metres to the east along the southern boundary, shall not exceed a horizontal plane set at a height of 4 metres above the existing ground level measured at the eastern end of this line on the southern boundary of the site. The reference points of these height restrictions are shown in the approved landscape plan

Operation

7. The restaurant and wine tasting bar dates of operation shall be restricted to between the 3rd Friday in October to the last day of April (inclusive).
8. The restaurant and wine tasting bar hours of operation shall be restricted to:
 - 11:30am – 3:00pm (Lunch), Monday to Sunday, and
 - 6:00pm – 10:00pm (Dinner), Monday to Sunday.
9. The restaurant and wine tasting bar shall not be used for single party private events or functions.
10. The maximum occupancy of the restaurant and wine tasting bar shall be restricted to 45 people.
11. All refuse collections and deliveries to the site by heavy goods vehicle shall be limited to between the hours of 8:00am to 5:00pm. Waste shall only be placed/disposed of in bins during these times as well.
12. Staff shall not begin working on site before 8:00am. No work shall be undertaken by staff outside the restaurant building after 10:00pm.

Noise

13. Prior to the Building Consent application being lodged the plans prepared by Martin Design (2006) detailed in condition 1 above shall be amended to show the following; the exterior wall extended, or an alternative acoustic barrier constructed, along the southern edge of the eastern end of the outdoor dining deck.

14. In conjunction with the Building Consent application being lodged, provide to Council, written evidence from a suitably qualified acoustic engineer that the restaurant building has been designed to incorporate sufficient acoustic treatment to the restaurant ceiling and outdoor dining area to ensure that the reverberant noise levels generated by the operation of the restaurant will be compliant with the District Plan permitted activity noise thresholds within the General Coastal Zone.

The architectural solutions shall include materials that will control reverberant noise to reduce noise levels within the restaurant and the level of breakout noise to the surrounding area as detailed in the Marshall Day Acoustics Report, dated 29/01/2016 (and submitted in support of RC2160031).

15. In conjunction with the Building Consent application being lodged provide to Council's duly delegated officer for review, a written statement from a suitably qualified acoustic engineer that the noise from mechanical services plant/equipment proposed on site has been reviewed to ensure that the cumulative noise levels from the site do not exceed the District Plan permitted activity noise thresholds within the General Coastal Zone.
16. Prior to the operation of the restaurant and wine tasting bar, provide a 'Noise Management Plan' prepared by a suitably qualified acoustic engineer for the approval of Council's Duly Delegated officer.

The 'Noise Management Plan' plan shall address the following:

- Provide details of the operation and management of the restaurant and wine tasting bar to ensure that both internal and external activities comply with the District Plan permitted activity noise thresholds within the General Coastal Zone. The report shall be in general accordance with the Marshall Day Report dated 29/01/2016, and incorporate measures to ensure that the assumed noise levels for both recorded and live music are not exceeded.
 - The type of patron and staff behaviour expected by the establishment on the deck and when departing the site, including measures that will be taken to address this if behaviour does not meet expectations.
 - Identification of the staff member who is responsible for noise management (i.e. duty manager, maître d')
17. The Noise Management Plan approved under condition 16 shall be adhered to on an ongoing basis and shall not be altered or amended without the written approval of Council's duly delegated officer.
18. Recorded music within the venue shall not exceed a level that enables a normal voice conversation at a distance of 600mm between two people conversing. If in doubt, the internal music noise level shall not exceed 60dB L_{Aeq} at 1 metre from any loudspeaker. Loudspeakers shall not be located outside.

19. The restaurant and wine tasting bar shall be managed and operated in a manner to ensure that the noise level measured at or within the notional boundary of any existing dwelling on Lot 2 DP 349706 (40 Otamarua Road) and Lot 4 DP 349706 (40a Otamarua Road) shall not exceed 40 dB LA10.

Noise levels shall be measured in accordance with NZS 6801:1991 "Measurement of Sound" and assessed in accordance with NZS 6802:1991 "Assessment of Environmental Sound".

Note: The notional boundary is defined in NZS 6802:1991 "Assessment of Environmental Sound" as a line 20m from any part of any dwelling, or the legal boundary where this is closer to the dwelling.

Signage

20. Prior to the operation of the restaurant and wine tasting bar install signage that clearly directs visitors to the restaurant entrance. The signage shall be installed to clearly indicate that the arm of Otamarua Road leading to the ROW that serves 40A-D Otamarua Road is not the entrance to the restaurant.

Parking and Access

21. Provide separate formed and sealed entry and exit vehicle crossings to the lot which complies with the Councils Engineering Standard FNDC/S/6, 6B, and section 3.3.17 of the Engineering standards and NZS4404:2004. Seal the entry and exit plus splays for a minimum distance of 5m from the existing carriageway edge.
22. Provide formed, surfaced, marked and drained access, manoeuvring, and parking for 28 vehicles as detailed on the Site Plan prepared by Martin Design (2006) Ltd Dwg Sk01-F dated 11/01/16.

Plans, As-builts and Compliance

23. The consent holder shall submit plans and details of all works on legal road and works which are to vest in Council for the approval of Council's duly delegated officer prior to commencing construction. Such works shall be designed in accordance with the Council's current Engineering Standards and NZS4404:2004.

In particular the plans and details shall show:

- a) The legal road upgraded and sealed to comply with the council standard for a Type A Rural Road between the end of the existing seal and the property entrance off Otamarua Road.
- b) The upgraded section sealed with a 2 coat (grade 3 and grade 5) chip seal.
- c) Re-alignment of the Otamarua Road intersection with the arm of Otamarua Road that leads to the ROW which serves 40A-D Otamarua Road to provide a minimum intersection angle of 70° or an alternative acceptable to Council.

- d) Vegetation removal or trimming to improve sightlines for vehicles exiting the arm of Otamarua Road.
- e) Signage and road markings.
- f) The proposed stormwater control works to be in place prior to and during construction.
- g) Permanent stormwater control structures proposed
- h) Earthworks including proposed erosion and sediment control measures required to undertake the development of the site.

24. Following approval of the plans and selection of the contractor, provide to Council:

- a) Details of the successful contractor
- b) Details of the planned date and duration of the contract
- c) Details of the supervising engineer
- d) A Traffic Management Plan (TMP).

25. That at least 10 working days prior to undertaking bulk earthworks for the internal roading and site development, the consent holder shall submit for the approval of Council's duly delegated officer, an Erosion and Sediment Control Plan (ESCP). The plan is to contain information on the site management procedures for the following matters:

- a) The measures proposed to minimise silt and sediment runoff during earthworks, and location of such measures. Such mitigation measures shall include interception drains, collection drains, silt fences, settlement ponds and points of discharge to vegetated areas.
- b) The timing of civil engineering, including hours of operation and key project and site management personnel and their contact details;
- c) The transportation of materials to and from the site, loading and unloading of materials and associated controls on vehicles through sign posted site entrances and exits;
- d) The excavation and filling works, including any retaining structures and any necessary de-watering requirements/methods, to be prepared by a Chartered Professional Engineer with suitable geotechnical qualifications and expertise;
- e) Control of dust and any appropriate avoidance or remedial measures;
- f) Prevention of earth, mud, gravel or other material being deposited on adjoining roads by vehicles exiting the site; and remedial measures should that occur.

26. A copy of the approved ESCP shall be held on-site for the duration of the works and until all exposed surfaces are either revegetated or covered by an erosion resistant surface.
27. Provide to Council as-built plans complying with schedule 1D of NZS 4404:2004 and section 1.5.2.5 of Councils Engineering Standards and Guidelines.
28. Upon completion of the works specified in condition 23 above, provide certification of the work from a chartered professional engineer that all work has been completed in accordance with the approved plans.

Stormwater

29. The consent holder is to install a stormwater retention tank with a flow attenuated outflow as detailed within the *Suitability Report – 31 Otamarua Road, Russell* prepared by Richardson Stevens Consulting Engineers, dated 29 January 2016. The consent holder is to provide the final design and details of the system for the approval of Council's duly delegated officer prior to the Building Consent application being made.

Review Condition

30. In accordance with section 128 of the Resource Management Act 1991, the Far North District Council may serve notice on the consent holder of its intention to review conditions. The review may be initiated for any one or more of the following purposes:
 - a) To deal with any adverse effects on the environment that may arise from the exercise of the consent, where it is appropriate to deal with such effects at a later stage (i.e. visual amenity, noise, lighting, signage, traffic and parking).
 - b) To deal with any other adverse effects on the environment that the exercise of the consent may have an influence on.
 - c) To deal with any inadequacies or inconsistencies the Far North District Council or duly delegated Council Officer considers there to be in the conditions of the consent following the establishment of the restaurant and wine tasting bar.
 - d) To deal with any material inaccuracies that may in future be found in the information made available with the application (notice may be served at any time for this reason).

The review may occur within the first 12 months of the consent being given effect to and on an annual basis thereafter. All costs associated with the review are to be met by the consent holder.

Advice Notes

1. All archaeological sites are protected pursuant to the 'Heritage New Zealand Pouhere Taonga Act 2014'. It is an offence pursuant to the Act to modify, damage

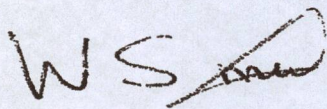
or destroy any archaeological site without an archaeological authority issued pursuant to that Act. Should any site be inadvertently uncovered, the procedure is that work should cease, with the Trust and local iwi consulted immediately. The New Zealand Police should also be consulted if the discovery includes koiwi (human remains). In relation to the site of the proposed works, Heritage New Zealand Pouhere Taonga is satisfied that archaeological issues have been addressed and works can proceed using a standard 'Archaeological discovery protocol'.

2. The proposal is required to comply with consent notice conditions of CONO 6993523.3 registered on the Computer Freehold Register (89262) except where the wording of the consent notice has been amended by a decision of the Far North District Council in accordance with section 221(3) of the Resource Management Act 1991.
3. It is the responsibility of the consent holder to apply to the Register General of Land to vary the conditions of consent notice CONO 6993523.3 registered on the Computer Freehold Register (89262).
4. Council does not enforce private Land Covenants. It is the responsibility of the consent holder to address any issues relating to the establishment of the restaurant and wine tasting bar and compliance with the Land Covenants registered on the Computer Freehold Register (89262).

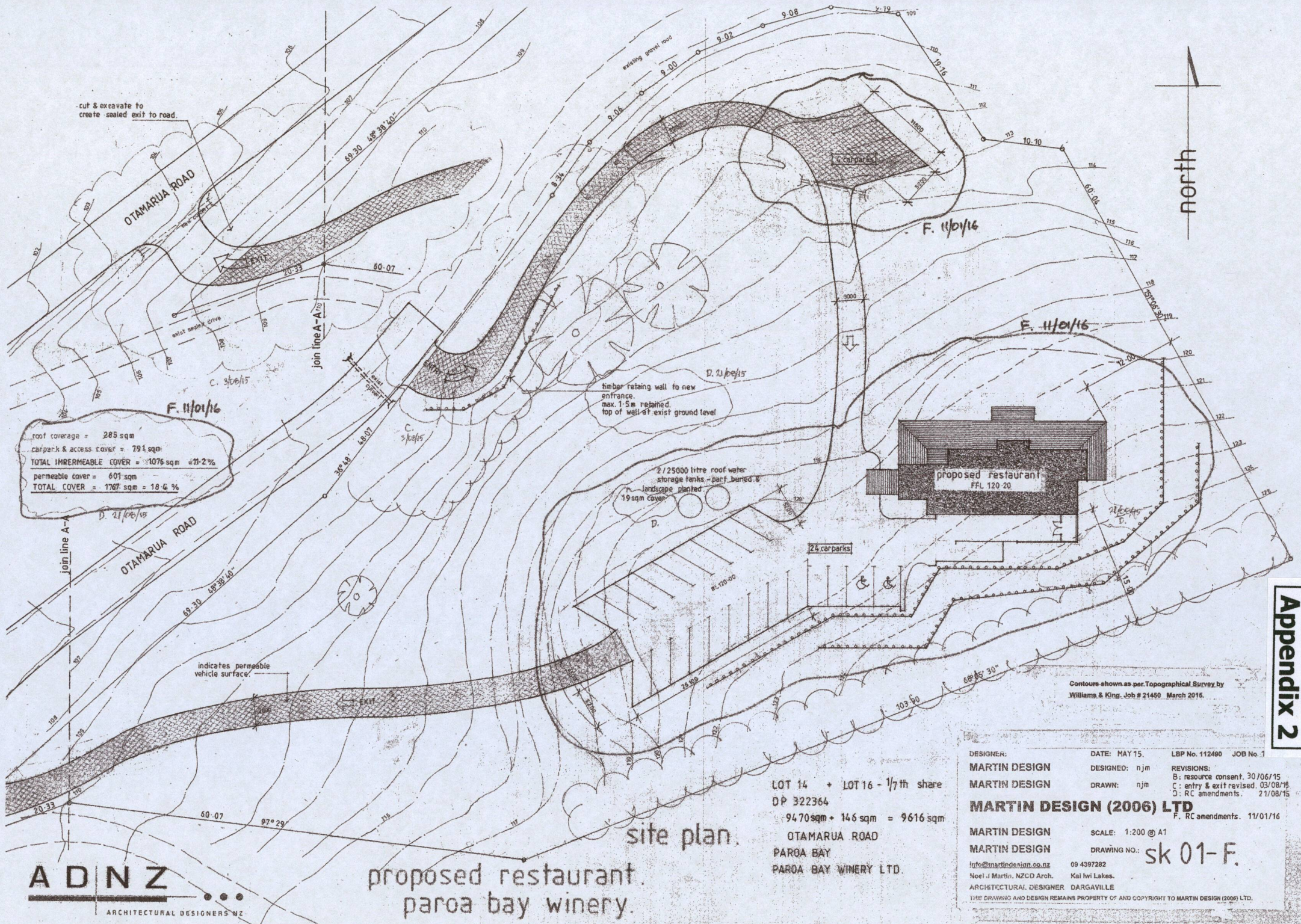
Decision B

THAT pursuant to sections 37 and 37A of the Resource Management Act 1991, Far North District Council extends the timeframe for receipt of the submission by Alexander Medawar, by six working days to 26th October 2015.

Issued this 11 day of May 2016

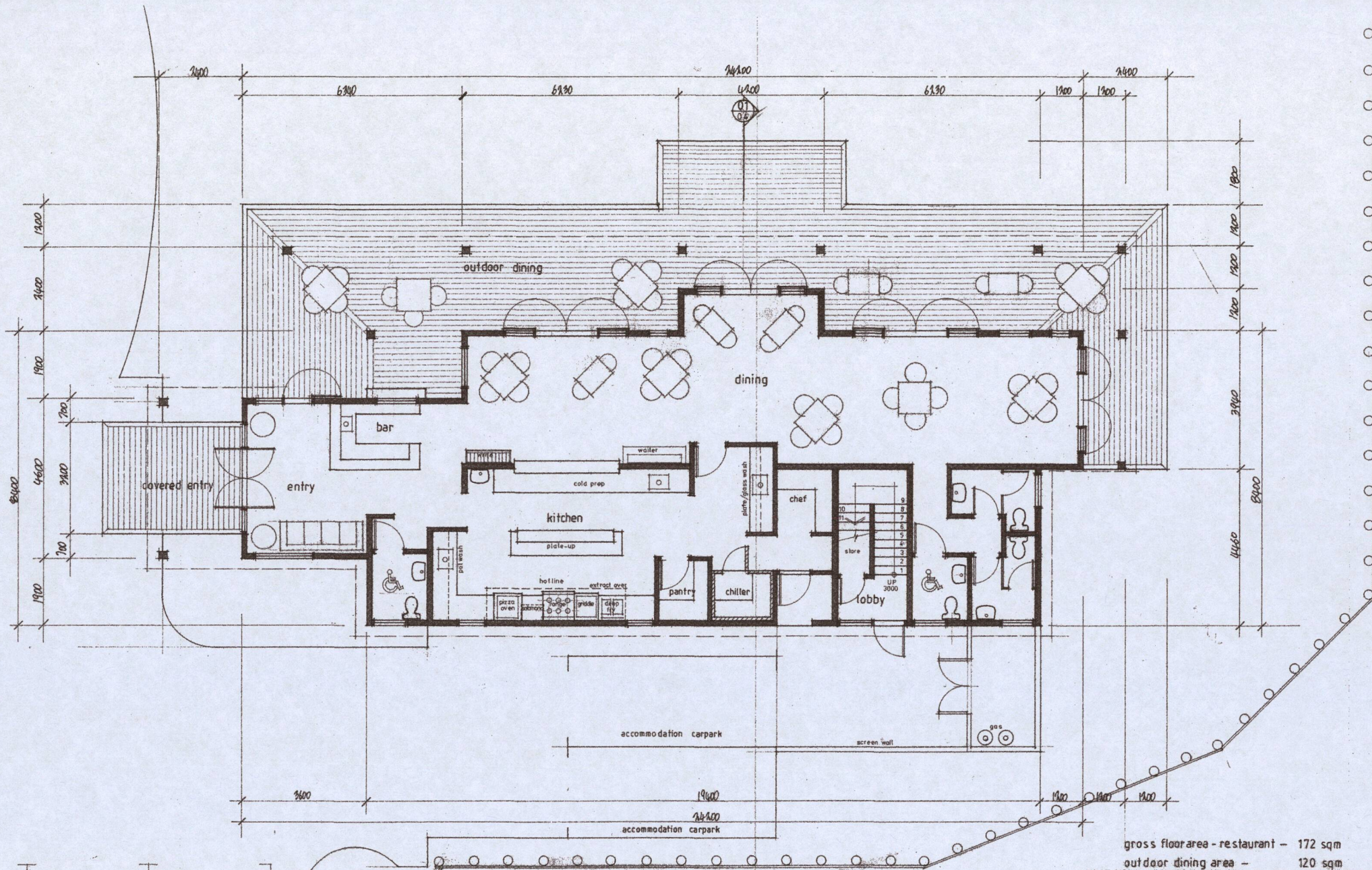
A handwritten signature in dark ink, appearing to read 'W S' followed by a stylized flourish or surname.

Mr W Smith
Commissioner



LOT 14 + LOT 16 - 1/7th share
DP 322364
9470sqm + 146 sqm = 9616 sqm
OTAMARUA ROAD
PAROA BAY
PAROA BAY WINERY LTD.

DESIGNER: MARTIN DESIGN	DATE: MAY 15.	LBP No. 112490 JOB No. 1
MARTIN DESIGN	DESIGNED: njm	REVISIONS: B: resource consent. 30/06/15 C: entry & exit revised. 03/08/16 D: RC amendments. 21/08/15
MARTIN DESIGN (2006) LTD	DRAWN: njm	F. RC amendments. 11/01/16
MARTIN DESIGN	SCALE: 1:200 @ A1	
MARTIN DESIGN	DRAWING NO.: sk 01-F.	
Info@martindesign.co.nz	09 4397282	
Noel J Martin, NZCD Arch.	Kai Iwi Lakes.	
ARCHITECTURAL DESIGNER	DARGAVILLE	
THE DRAWING AND DESIGN REMAINS PROPERTY OF AND COPYRIGHT TO MARTIN DESIGN (2006) LTD.		



gross floorarea - restaurant - 172 sqm
 outdoor dining area - 120 sqm
 maximum allowable seating - 45 persons

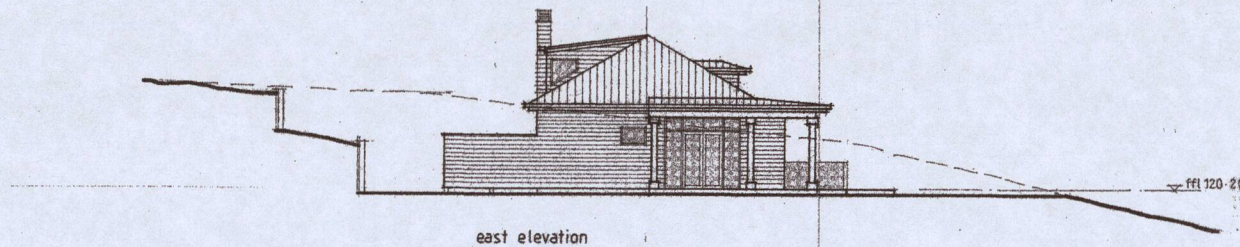
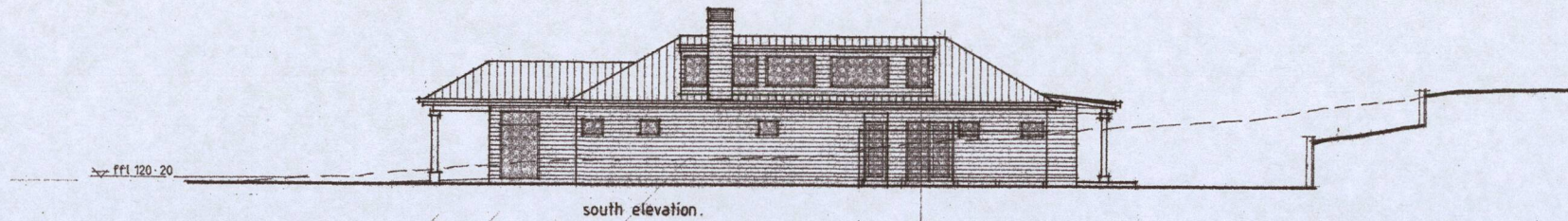
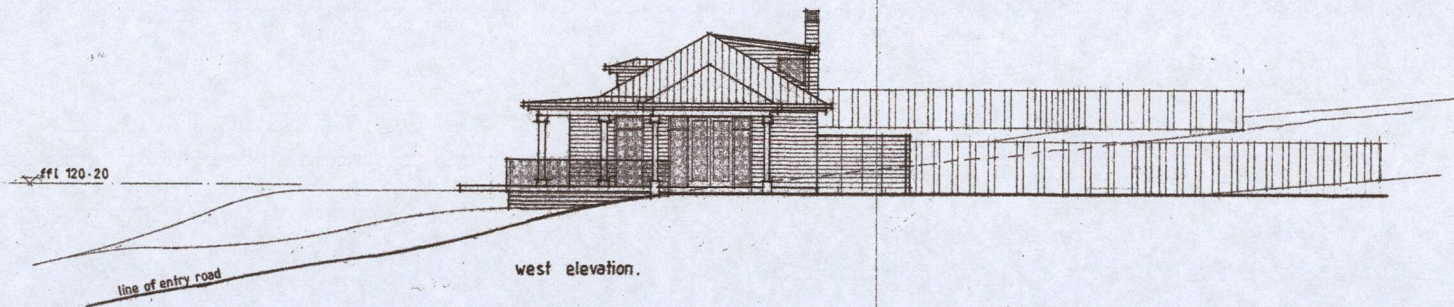
DESIGNER: MARTIN DESIGN
 DATE: jan. 16
 LBP No. 112490
 JOB No. 15 M02
 REVISIONS: 15 M02
 DRAWN: njm F - RC amendment. 11-01-16

MARTIN DESIGN (2006) LTD

MARTIN DESIGN SCALE: 1:50 at A1
 DRAWING NO.: sk 03-F
 info@martindesign.co.nz 09 4397282
 Noel J Martin, NZCO Arch. Kai Iwi Lakes
 ARCHITECTURAL DESIGNER DARAVILLE
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proposed restaurant.
 paroa bay winery.

ADNZ
 ARCHITECTURAL DESIGNER



DESIGNER: MARTIN DESIGN
 DESIGNED: rjm
 DRAWN: njm

DATE: Jan. 16
 REVISIONS: F. R.C. amendments
 LBP No. 112490
 JOB No. 15 M 02
 11/01/16

MARTIN DESIGN (2006) LTD

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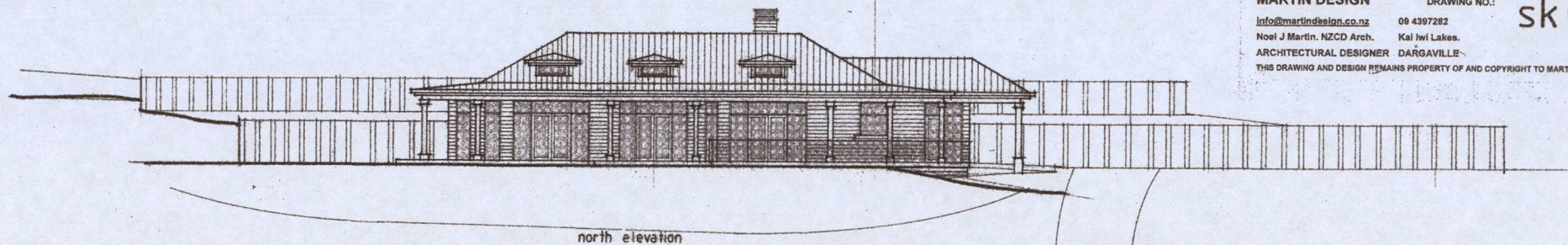
info@martindesign.co.nz 08 4397282

Noel J Martin, NZCD Arch. Kai Iwi Lakes.

ARCHITECTURAL DESIGNER DARGAVILLE

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sk05-F.



ADINZ ...

proposed restaurant.
 paroa bay winery.

IN THE MATTER of the Resource Management Act 1991:

AND

IN THE MATTER of an application under the aforesaid Act, 1991 by the Paroa Bay Winery Limited

APPLICATION NUMBER RMAVAR/B-2160031

HEARING

Before the Independent Hearings Commissioner of the Far North District Council, on Friday, 22 March 2019.

Independent Hearings Commissioner William (Bill) Smith was appointed to hear the application by Paroa Bay Winery Limited. The Application was lodged in accordance with the Resource Management Act 1991 ("the Act") with the Far North District Council and referenced RMAVAR/B:2160031.

Present: **Independent Hearings Commissioner William (Bill) Smith**

Applicant: **Paroa Bay Winery Limited**

Laura Bielby, Legal Counsel
Jade Magrath, Legal Counsel
William Hudson, Group General Manager, Lindis Group
Rachel Thwaites, Restaurant Manager - Sage.
Leonard Dissanayake, Planning Consultant

Consent Authority: **Far North District Council**

Pat Killalea, Principal Planner – Resource Consents
Esther Powell, Reporting Planner
Rex Shand, Resource Consents Engineer

Submitters: Deborah Ginger- Moore and Benjamin Smith and , Jennifer Johnston

In Attendance: R Smythe, Senior Hearings Administrator

Description/Executive Summary

Part of the Summary in the s42A Report outlined that the application was for following:

"The applicant seeks to amend the existing resource consent to extend the operating hours of a restaurant, to reduce the number of required car parks and to vary the landscaping plan. The change to the existing consent relates to the operating hours and period of operation of the restaurant which were placed on the application at the time of the original limited notification of the consent and reduced as a result of the original hearing.

Overall the application is a Discretionary activity in accordance with section 127 of the Resource Management Act 1991 (RMA)

The applicant has provided an amended landscape plan and seeks that those references to the landscaping plan are updated to reflect the amended plan.

The proposed activity is also to amend Conditions 7 and 8 of RC 2160031RMALUC to allow the restaurant and wine tasting bar to operate from 11.30am to 10.00pm (without a break between lunch and dinner periods) during the approved months, and also to operate on 3 days a week (Friday, Saturday and Sunday) from 11.30am - 10.00pm for the remainder of the year.

The required car parking spaces (28) are proposed to be reduced to 23.”

The application (under section 127 of the Act) to change or cancel conditions of consent, was treated as if the application was an application for a resource consent for a discretionary activity and had been assessed as such by the two expert planners. This was also supported by Ms Bielby in her legal submissions where she also pointed out that the effects which are to be considered and assessed are the effects of the change of conditions, rather than the effects of the already consented activity.

Changes following Notification and release of the s42A Report

Following notification, receipt of submissions and release of the s42A Report the applicant's representative advised in evidence and submissions that the applicant wanted to amended aspects of the application as follows:

Operating Dates and Hours: The proposed opening dates are from the 3rd Friday in October to the last day of April, with the opening hours being 11:30 to 10.00pm Wednesday to Sunday and 11.30am to 10.00pm, Friday, Saturday and Sunday for the remainder of the year.

Parking: the number of carparking spaces to be provided to be 27, all spaces to be formed and two accessible spaces to be included as part of the 27 spaces.

Revised/Updated Landscape Plans: provision of revised/updated landscape, landscape implementation and site plans.

The changes do not change the overall discretionary status of the proposal.

Site and Surrounding Locality Description

The site and surrounding locality were described in the s42A Report (sections 4.0) in the application documentation and in the evidence at the hearing. The site is legally described as Lot 14 DP 322364 and Lot 16 DP 322364 (1/7th share). Lot 16 DP 322364 is an access strip and has no physical connection to Lot 14 DP 322364. The existing restaurant/wine tasting building is wholly contained within Lot 14 DP 322364. The total area of the site is 9470m² (not including Lot 16 DP 322364). There are a number of interests including easement instruments and a consent notice registered against the certificate of title (CFR No 89262).

The site is part of a cluster of twelve similar sized lots created by subdivision in 2002. An aerial photograph of the site and adjacent area was shown on figure 1 of the Report and views of the site and existing building on site were shown in figures 2, 3, 4, 6 and 7 of the of the hearing report.

The application site is located on the southern side of Otamarua Road, approximately 500m from the intersection with Paroa Bay Road. The site has expansive views of the coast to the north, which at its nearest location is approximately 1km north of the site.

The site of the existing restaurant/wine tasting bar (approximately 172m² plus an outdoor deck of 120m²) is predominately covered in grass and slopes gently to moderately to the north and north-west although there is some existing planting on the site and vegetation that has been planted as required by the original consent. There are 23 formed/concreted carparking spaces and four unformed spaces.

The southern boundary is defined by a mature 'coniferous' shelterbelt which has also had further vegetation added to the site between the existing building and the boundary and other landscaping has been completed as per Mr Cocker's evidence and further landscaping is to be implemented during the next planting season. The northern boundary of the site is bounded by Otamarua Road. Amenity planting has been undertaken on the site along the northern boundary which consists of a mix of native and exotic plantings. The site is accessed directly from Otamarua Road and on my site visit I was able to easily find and locate the existing building. There are no other buildings on the site except a small platform near the south eastern corner which was there on my last visits.

Otamarua Road is a public road, sealed for the whole length up to the entrance to the restaurant and the seal was extended to the entrance to the restaurant as part of the original consent conditions.

As one approaches the site from Paroa Bay Road to and along Otamarua Road the surrounding area generally appears to consist of vineyards (with extensive vineyards to the west and a smaller area to the east), the Paroa Bay Chalets (which are very prominent), the applicant's Paroa Bay Winery and Lodge, residential buildings, undeveloped rural lifestyle sites and once you get to the restaurant the building on site there are more undeveloped residential sites along the unsealed section of Otamarua Road.

Reasons for the Application

A resource consent was required to change the conditions of consent and both planning experts at the hearing were in agreement about the reasons why consent was required:

Notification and Submissions Received

The application proceeded through a Limited Notification process with those parties shown on page 13 of the hearing report as being identified as adversely affected.

Submissions closed on 19 December 2018. At the close of submission period, a total of 2 submissions were received. Both submissions were in opposition. A summary of the submissions was shown in Section 6.2 of the 42A report and a full copy of each of the submissions was attached to the S42A Report and were read by me before the hearing and have been reviewed during the writing of this decision. The summary shown in the report is as follows:

“

Submitter One:	Issues and Relief Sought
Jennifer Maree Johnston	• <u>Traffic Effects</u>: The volume of traffic disturbs my property. It is peaceful over the winter restaurant shut down period and that

Lot 4 DP 140342 30 Otamarua Road Requests to be heard	is how it should be in the General Coastal zone. • <u>Privacy</u>: Visitors to the restaurant look into my property. Functions held at the restaurant in breach of their resource consent cause the parking lot to be at capacity so that patrons park on the road (photo provided). I observed 2 – 4 persons per car and am concerned that the occupancy is exceeding the maximum of 45 people. I have had to erect a partial fence to provide privacy. Relief Sought: <i>Seeks decline of variation to increase operating hours and period.</i>
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Submitter Two:	Issues and Relief Sought
Deborah Ginger-Moore & Benjamin Smith Lot 4 DP 349706 34C Otamarua Road Requests to be heard	• <u>Rural Amenity & Character</u>: the restaurant is not in keeping with the localities lifestyle block character. Our rural lifestyle and the peace and quiet associated with the setting has been diminished. The restricted hours and operation (no functions) approved under the previous consent was to protect our lifestyle. We feel that this variation will “grind away” that protection. We are also concerned that the restaurant does not appear to be operating within approved conditions as it holds functions and events. Increased operating hours will result in more traffic. • <u>Traffic & Car Parking</u>: We note that the applicant wants a reduction in the required carparks but we have observed that the restaurant parking overflows with patrons parking on Otamarua Road. We feel that increased operating hours will increase the car parking demand not diminish it. With increased operating hours the traffic will increase. • <u>Noise</u>: We are concerned that the additional operating hours will increase the noise and disruptions experienced on our property and particularly the noise generated by the helicopter flying over our property and landing at the restaurant. We do not agree with the Marshal Day report commissioned by the applicant and resubmit the expert evidence originally provided at the original application hearing. • <u>Economic Benefits</u>: We do not believe that increasing the restaurant's hours of operation will benefit the local economy. No evidence is supplied. Relief Sought: <i>Seeks decline of variation to increase operating hours and period and the decrease in the number of carparks required.</i>

Ms Powell also referred to some other matters that were raised within the submissions and which she considered outside the scope of the application such as the comments relating to non-compliance with conditions of consent for the site. Ms Powell comments are shown below:

“While I have assessed these comments in relation to the general amenity of the area, I also recognise the frustration of the submitters in these matters and have informed the Council's Compliance Team to investigate further.

I note that the submission of Deborah Ginger-Moore and Benjamin Smith relates to the limited notification of the application to Lot 4 DP 349706 (34C Otamarua Road) and their having received notification of the application as owners of that property. I note that I mistakenly included the owner in my s95 report as Paroa Bay Station Limited therefore the submission of Deborah Ginger-Moore and Benjamin Smith is appropriate and accepted.

The submission of Deborah Ginger-Moore and Benjamin Smith referenced the private covenant on the Certificate of Title. This was discussed extensively during the first hearing for the original consent. The conclusion was that only Resource Management Act (RMA) matters can be considered by the Far North District Council in making a recommendation for resource consent. Therefore the assessment of effects and considerations of the relevant objectives and policies within this report will address only the relevant RMA matters as required.

Deborah Ginger-Moore and Benjamin Smith comment on the lack of evidence regarding the positive economic effects of the activity. I concur that the evidence is light and therefore have not relied on it when making my overall assessment of effects."

One written approval was provided in support of the application before the hearing from Claire and Richard Pearson of 34b Otamarua Road. At the hearing written support from Patricia Colmore-Williams and Karen Hall of 59 Paroa Bay Road, Reuben Lynn of 5284 Russell Wharapaka Road and Paul and Morgan and Amanda Phillips were tabled and maps of the location of the properties were also tabled. Ms Bielby's submission included comment that Mr Morgan and Ms Phillips own one of the properties closest to the site, were one of seven parties notified of the application and have confirmed their support for the application.

I was told that no pre-hearing meetings were held.

Other Reports

I was told that engineering comments had been prepared by Council's Resource Consents Engineer, Mr Rex Shand for RC 2160031RMAVAR/A and they had been taken into account by Ms Powell when making her recommendation. Mr Shand's comments included confirmation that the road upgrade and signage as required by conditions of consent for the restaurant had been completed to the satisfaction of the Council. Mr Shand also provided comment that the road is nowhere near operating at capacity.

Site Visit

I undertook a site visit and visit to the surrounding area before the hearing on Thursday 21 March 2019. I had previously visited the site and surrounding area when considering the application to establish the restaurant so I am well aware of the changes that have taken place. The previous visits were on 7 December 2015 and the 15 April 2016 when I also visited some individual submitter sites to observe the site and surrounding area.

The site visits have enabled me to view and observe the traffic and the condition of the Opuia to Russell Road, Paroa Bay Road and Otamarua Road and the location of the proposed Restaurant/Wine Tasting Bar (before and after being established) in relation to the submitter's properties, the other buildings/developments in the area, the character of the area and how the building fits into the landscape.

Summary of Evidence

Prior to the hearing I received and had read the application, attachments and assessment of effects, Ms Powell's section 42A report and recommendation and the supporting information contained within it. I had also read the Council's Engineers comments, the applicant's expert evidence (from Mr Dissanayake and Mr Ibbotson) which had been circulated to all parties. As I have said earlier, no expert evidence had been received from the submitters although I do acknowledge that Ms Ginger-Moore did attach to her submission some expert evidence from Mr Nevel Hegley that was in relation to the original application to establish the restaurant and it did not relate to this application. I had prepared a number of issues/questions in preparation for the hearing.

I also heard legal submissions (opening and right of reply) from Ms Bielby, evidence on behalf of the applicant from Mr Hudson and Ms Thwaites and expert evidence from Mr Dissanayake, from the Council's Reporting Officer and other expert staff in attendance and also from the submitters; Ms Johnston, Ms Ginger-Moore and Mr Smith.

The vast majority of evidence was in writing and forms part of the Council's records on this hearing. As the expert evidence had been pre-circulated and read by me I was able to question the experts (Ms Powell and Mr Dissanayake) without the need for them to read their evidence out. I have carefully listened to all the evidence presented, read all the other evidence and revisited the evidence and submissions during the writing of this decision.

In regards to the expert evidence from Mr Ibbotson I had read the evidence included with the application and also his pre-circulated evidence and his expert evidence was not refuted by any other expert. His evidence was clear and easily understood and if, as a result of issues raised at the hearing, there was a need to speak to him he was available via telephone.

The evidence forms part of the public record and it is not necessary to restate it. However, the following is a summary of the main points.

Evidence on behalf of Council

The Planners S42A report and the supporting information which was circulated to all parties before the hearing was taken as read. Ms Powell said that she did not wish to make any changes to her report or recommendation until she heard from the Applicant and Submitters and in answer to a question from me she said that she considered that 27 carparks as now proposed are sufficient.

The Engineering comments from Mr Shand primarily focused on the impacts that the proposed development could have on traffic and parking.

Applicant – Paroa Bay Winery Limited

Ms Bielby tabled and read her written submissions, introduced the applicant's other representatives and the evidence that had been provided by the expert witnesses.

Ms Bielby commented on the submissions received to the application. She said that issues raised have all been discussed by the applicants' expert witnesses who have concluded that the proposed mitigation measures will ensure that any potential adverse effects are no more than minor and she is not aware of any expert evidence from the submitters.

Ms Bielby said that the change of opening hours (Wednesday to Sunday) was a business related decision only and that not opening on Monday and Tuesday will go some way to addressing some of the submitters concerns. She advised that copies of the letters of support (Item 7) are attached to Mr Hudson's evidence.

In reference to item 8.5 of her submission, Ms Bielby said that only the Titoki trees had not been planted and they will be planted in the next planting season and they believed that any potential effects on amenity have been mitigated although there is some confusion in the reporting planner's final conclusion on the amenity and sought clarity from the Reporting Planner.

Ms Bielby referred to the site visit, measurements and assessment by Mr Ibbotson who had been back on to the site and his view as outlined in section 8.11 (a), (b) and (c) and to her knowledge Mr Ibbotson's evidence is the only noise evidence that has been prepared in relation to this application.

In regard to the proposed amendments to the parking requirements Ms Bielby said that a total of 27 carparks on site meets the rules in the District Plan, however, the District Plan also requires two accessibility parks that the restaurant currently only has one but applicant is happy to discuss this matter. She also referred to the s42A Report saying that the effects of reducing the number of car parking spaces on site would not result in a less than minor effect on traffic safety and maneuvering.

Mr Ibbotson's evidence dated 8 March 2019 had been circulated to all parties and had been read by me. His evidence was easily understood and there was no other expert evidence presented in regards to the application for the change in conditions. Mr Ibbotson had provided expert evidence in relation to the original consent and had carried out a number of site visits. In his evidence for this application he stated that:

- he had measured and assessed the sound emissions from the restaurant and the noise from the operation of the restaurant for dining and wine tasting generates low levels of noise that will comply with the consent conditions.
- sound from the restaurant is adequately controlled by the existing consent conditions and noise does not intrude significantly onto the amenity of the established residential properties.
- he considered that the amenity of the area is well protected by the stringent noise limits in place under the existing consent that as the restaurant does not result in unreasonable effects on the amenity of the area that he considers that the operating hours can be extended as proposed without risk that this will be compromised.

In regards to Mr Ibbotson written evidence he stated that he had visited the restaurant on Sunday 3 March 2019 which he had been told was a busy time and carried out a sound survey, he referred also to his previous sound assessment dated 3 September 2018. He referred to the weather being appropriate for noise measurements, the background noise, the occupancy of the restaurant and where patrons were seated and what he had observed and measured. He also provided some suggestions in relation to noise from the kitchen.

Mr Ibbotson evidence was that once insect noise was filtered out, that noise levels of 35 to 39 dB La10 were measured around the site boundaries. In relation to the properties at 40 and 40A Otamarua Road that he had used his noise measurements to determine the level of noise that is likely to be received at the notional boundaries of the two properties and that these would be in the order of 37 dB La10 for number 40 and in the order of 28 dB La10 for number 40A and that the restaurant would be compliant with consent condition 19.

Mr Hudson tabled and read a Statement of Evidence and during this time he and Ms Thwaites answered some questions from me.

Ms Thwaites said that the helicopter company phones 15min before leaving the helipad and lands in the winery, the customers are then transported by van to the restaurant. She also said that she has a good rapport with the helicopter company and they know not to land on the restaurant site and also know to approach from the seaward side. Mr Hudson and Ms Thwaites also stated that there are other privately owned helicopters in the area and they do not have any control over them

Ms Thwaites and Mr Hudson also confirmed that the advertising on pages 170 and 171 of the hearing report and referred to by Ms Ginger-Moore were related to the estate as a whole – not just the restaurant, that restaurant staff are re-allocated to assist at the winery estate when there is an event. All events are held at the Villas and the one event that was held at the restaurant was a charity event and was a 'one off' event.

At this stage Ms Bielby confirmed that due to delayed flights, Mr Ibbotson may not arrive until 11.30, that in the meantime he would be available by telephone if needed and if it is possible to reach him to answer any questions that the Commissioner have.

In relation to the issue of Mr Ibbotson's evidence at paragraph 3.2 referring to 26 guests (outside) and 34 guests (inside) making a total of 60 guests; in answer to this Ms Thwaites said staff keep a running total of numbers in the bookings diary so they don't breach the allowed numbers being 45 patrons and referred to Mr Ibbotson's wording being 'may'. She confirmed that in winter that no one would be seated outside.

I also sought clarification of the properties that noise measures were taken from as I had noticed that there was a typing error in the Planner's Report on agenda page 13, in the Lot numbers and confirmation was given that the measurements were from 40 and 40A Otamarua Road or 34A and 34C as shown in the s42A Report.

Mr Dissanayake evidence dated 8 March 2019 had been circulated to all parties and read by me. His conclusion was that the effects from the proposed changes to conditions of consent on the environment will be no more than minor, the proposal is consistent with the objectives and policies of the District Plan and other relevant statutory documents and is also consistent with the principles of sustainable management and that the application (as amended) should be approved.

In regards to the accessibility carpark, Mr Dissanayake said that there has not been any clear direction on whether the offer had been accepted, that at the time the resource consent was granted there was no requirement for accessibility car parking and he said he felt it was better that the applicant provide an accessible car park. The District Plan dimensions have changed, the standards will be met and the applicant will provide two accessible car parks.

In regards to Mr Dissanayake's evidence at section 10 on page 6 under the heading 'Traffic effects', Mr Dissanayake said the effects are now less because of the changes. In response to questioning from me regarding paragraph 14.10 on Page 9 of his evidence Mr Dissanayake said this proposal complies with the District Plan and the effects will be minor. He said he had considered more Objectives and Policies, that the reporting planner's report contradicts itself as it refers to the assessment under the RPS that the 'natural character' is not considered relevant in this situation as development is existing.

In regards to the Natural Character of the area, I asked Mr Dissanayake if this is the natural character or has the character already been changed and he said the character has changed and will continue to change.

Submitters

Mrs Johnston referred to the following:

- comments in regards to the website and the wedding held, she said the guests were at the restaurant, they were seen at the restaurant and she saw the wedding car leave.
- her submission was about her quality of life.
- in regards to traffic intensity, the Kiwi event started about 4pm – cars were parking down the road, the intensity of the traffic at a particular time of day affects her quality of life, there is no privacy on her deck.
- the road sign is not adequate; it needs to draw traffic towards the restaurant. There is constant traffic, the restaurant van constantly travels between the winery and restaurant and skids in the loose metal coming out of the winery, this all affects her quality of life, at least, currently, over winter it can be 2 hours without cars on the road.
- that two helicopters have landed in vineyard near the fence and she believed that they had to be 200m from the boundary.

At this stage and as a result of comments from the applicant's representatives said to Ms Johnston that the applicant had advised that there would be no helicopters at restaurant, and asked if this was acceptable? Mrs Johnston responded, yes but that means more cars.

In regards to a question from me regarding what days did she want changed if I was of a mind to approve the application, Mrs Johnston said they propose to operate in the weekend, if they didn't it would be great. Mrs Johnston said that she can only hear laughter, and occasionally bottles being binned but said that didn't worry her.

Ms Deborah Ginger-Moore tabled and read her Statement of Evidence (copy of the original submission which I had read). Ms Ginger-Moore referred to:

- the written approvals; 59 Paroa Bay Road, probably has a house high on a hill and they don't hear traffic.
- Sunday 17th at about 9.20am when an orange and white helicopter flew over their house and landed in the winery, it flew very low over their house and she found it obtrusive. She was concerned about helicopters flying to the restaurant as it was never envisaged.
- the changes now made to the car parking was okay but the change in opening hours is a slight of hand – there are no changes.
- the applicant did not ask for helicopters in their original Resource Consent and they are now using them and that the wine tasting bar which used to be down below is now in the restaurant.
- the comment from the applicant that there is a strong demand for the restaurant to be open between 3pm and 6pm, what evidence is there she asked.
- her use of the roads in the area and traffic safety issues.
- the noise effects and the fact that Paroa Bay is an incredibly quiet neighbourhood that is tranquil and sublime and which she enjoys.

- the noise assessment carried out by Mr Ibbotson and the report attached to her submission from Mr Hegley.
- the use and enjoyment of the outside areas of her house for bbqs and meals and socialising and how this is affected.

Mr Smith read his Statement of Evidence. Mr Smith outlined his professional qualifications and background and referred to:

- what he thought was an agreement they had with the applicant and how that agreement had been broken.
- criticism of Mr Ibbotson report and assessment, the fact that he had only visited once while they live there permanently.
- comment about parties and functions taking place on site and helicopters landing. Reason why no complaints have been made to Council and reference to complaints about helicopters having to be made to the CAA.
- criticism and concerns with Mr Dissanayake evidence, concerns with the proposed hours of operation, the lack of parking and parking on Otamarua Road.
- the summer period is in fact 200 days. Comment on the proposed new hours of opening, what hours the restaurant is open now, the proposed increase and % increase in days/hours. The fact that the applicant does not open the restaurant to the extent the existing conditions allow.
- them not presenting expert evidence; it is the evidence of Mr Hegley from the previous hearing which should be acknowledged.
- the fact that they want to continue living in their quiet environment and be able to have some time outside without noise, that they want some respite from the commercial activity.
- there being no evidence of anyone benefiting from the restaurant and the letters of approval are from people who live a long way away.
- the applicant was aware of the restrictions and agreed with them at the time and the restriction should not be eroded.

In reply to a question from me regarding if I was of a mind to approve the application was there anything he wished me to consider, Mr Smith said that he did not want any winter opening hours. He asked that the application to remain open between 3pm and 6pm be declined as it is their only relief. He said they can operate 7 days a week just not between 3 to 6pm.

All of the witnesses live in the local area and the location of their properties were shown on the map on page 13 of the s42A Report. They gave evidence describing their experience of the use of Otamarua Road and Paroa Bay Road, traffic issues, the amenity of the area, the tranquillity of the surrounding area before and since the restaurant has been established, their concerns regarding road safety, the effects of noise and the effects on the amenity they presently enjoy.

Council Officers

Mr Killalea said that in regards to the helicopter landing within 200m of any boundary, he quoted the rule in the district plan and there was no such restriction in any of those zones. He also stated that helicopters were a permitted activity in the zone and, as I had rightly pointed out, the applicant has never and is not applying to have helicopter's landing on the restaurant site.

In regards to the comments regarding the rural lifestyle area, this is a General Coastal zone which is what we have to measure this application against and also take into account what is there now and what development could take place in the future.

Ms Powell said that after hearing all parties she would like to change her recommendation to:

- Allow for full hours during summer, as traffic is the main effect, she said she believed that the effects will be reduced as the traffic movements will be dispersed over a longer period, therefore less intense at particular times of the day.
- Parking 27 including 2 accessible.
- Noise Amenity she accepted the Marshall Day report.
- Winter months, she did not support the opening in winter months.
- Summer – supported what has been offered Monday Tuesday closed.

The hearing was adjourned at 12.14pm.

Applicant's Right of Reply

As requested by me Ms Bielby provided the applicants' right of reply in writing on 27 March 2019 and this was circulated to all parties for their information only. A copy of the right of reply is on Councils files. The right of reply focused on the following matters:

- the changes to the application, changes made by the Council Officer to her recommendation and comment that the only part of the application which the Council Officer recommends be declined is to enable the restaurant and wine tasting bar to open from May to October, between 11.30am to 10.00pm on Friday, Saturday and Sunday.
- a summary of and comments on the environmental effects, as the applicant saw them being traffic, noise, privacy, rural amenity and character, car parking and economic benefit.
- noise issues including that evidence has shown that a reasonable and acceptable level of noise is being emitted, that noise from the operation of the restaurant is complying with the stringent noise limits imposed under the original consent and well within the district plan noise limits under Rule 10.6.5.1.10.
- in regards to privacy, that the Council Officer concludes that if the landscaping is completed in accordance with Mr Cocker's May 2018 plan, effects on amenity can be effectively mitigated.
- commentary on rural amenity and character, the anticipated environmental outcomes for the zone, reference to the comments in the Council Officer's report that development in Paroa Bay has not occurred in a manner anticipated by the current zone with a greater density of residential development having taken place.
- comment on the increase in hours which the applicant's evidence is that there will be no overall increase in hours in the operating hours during the currently

approved period and a 42.8% per week increase for the remainder of the year.

- comment on the car parking to be provided, that no one has disputed the number of 27 including two accessible parking spaces and provided wording for an amended condition 22 of the original consent.
- the economic benefits of the restaurant to the area and commentary on the staff numbers and where they presently come from.
- comments on there being no valid reason for the Council Officer to recommend that the opening during winter hours be declined.
- the criticism of Mr Ibbotson's evidence and his integrity and reference to his compliance with the Code of Conduct for Expert Witnesses in the Environment Court and that his evidence is within his expertise.
- comments on the operating days/hours in the event that the Council's amended recommendation is accepted.
- her conclusion that the application should be granted.

Close of Hearing

I determined that I had all I required or needed to make a decision and closed the hearing at 4pm on Friday 29 March 2019 and requested the Council to advise all parties. I had advised the parties at the hearing that once I closed the hearing that I had 15 working days in which to finalise my decision and for the Council to release to the parties.

Statutory Assessment and Principal Issues

As the application is for a variation pursuant to section 127 of the Act to change conditions of consent it is to be treated as if the application were for a discretionary activity. Also, it is important to ensure that the effects which are being considered and assessed are the effects of the change of the conditions, rather than the effects of the already consented activity.

The Act requires that for all applications for resource consent that the Council must have regard to the matters set out in section 104 of the Act, subject to Part 2 of the Act.

A statutory assessment and assessment of the principal issues that were in contention and which I have taken into consideration when making this decision were covered in the application, the s42A Report, in the evidence and submissions before me and I do not intend to repeat them here. I note that there was in, the end, general agreement between the planning experts regarding the status of the application, the assessment of environmental effects and the effects of the change in conditions.

After an analysis of the application, evidence and submissions, undertaking the site visit, reviewing the Council Officer's recommendation report and her amendments after hearing the parties, reviewing all the information and concluding the hearing process, the application raises a number of issues for consideration.

Condition 1 - Updated Landscape Plans

In relation to the application to amend Condition 1 as it relates to the updated landscape, landscape implementation and site plans there was agreement between all the experts that the application should be approved and I heard no evidence to refute their opinions. The amendment is fairly straight forward and takes into account what has happened 'on the ground' and what further landscaping is to be carried out.

The application noted that the landscape planting undertaking was not in accordance with the landscape plan approved under the original consent, that a review of landscaping had been done by Mr Cocker, who recommended that further landscaping was required in order to meet the intent of the original landscaping plan. Mr Cocker's review noted that the landscaping on site diverged from that as required by condition 4 and did not address the matters raised within Mr Cocker's original assessment, which included landscaping to address effects on the submitters' properties which has not been completed.

Mr Cocker's evidence in the application was that if the planting as detailed in the revised report was undertaken, then the objectives of the approved landscape plan will have been achieved and in his opinion condition 4 of RC 2160031 RMA LUC can be regarded as having been fulfilled. However, in his letter dated 19 March 2019 Mr Cocker did confirm that some further planting (planting of the row of the titoki) which is planned for the next planting season (April – September) and that once these were planted Mr Cocker's opinion was that the objectives of the approved landscape plan will have been achieved.

In Ms Powell's report she stated that *"In terms of the assessment of amenity, it is therefore concluded that on completion of the supplementary planting recommended by Mr Cocker that the effects on amenity can be effectively mitigated by the variation to the condition of consent."* This opinion was also supported by Mr Dissanayake and I agree with their opinions and agree that Condition 1 should be amended accordingly.

Condition 22 – Car Parking

The original amendment sought was to reduce the number of car parking spaces to be provided from 28 vehicles including two accessible car parks. The applicant currently provides 23 formed car parks including one accessible car park - a dispensation of five car parking spaces including one accessible car park. The proposal also sought to maintain the area which was previously to be formed as four car parks, as lawn for overflow car parking. Ms Powell noted in her report that the area is moderately sloped and probably not contoured to be appropriate for car parking and has a *Griselinia lucida* hedgerow planted through the designated area. I was able to observe the area during my site visit and agree with her view.

Both of the submitters expressed their concern relating to car parking in their submission and evidence at the hearing and provided a photograph showing parking on the roadside. Their concerns primarily related to the functions and events held at the restaurant which cannot be accommodated by the existing car parking and that overflow car parking occurs on the road reserve.

In the application, as submitted, the reason that the restaurant wished to reduce the number of car parking spaces was not because the site is unable to provide the required spaces, but that the demand for car parking does not warrant the number of car parking spaces required by the original consent. The application also provided a number of reasons why the existing car parking spaces are sufficient, and offered a review clause to reassess the car parking at a future time.

By the time of the hearing and during the hearing the applicant's representatives confirmed that the applicant still wished to reduce the 28 car parking spaces required but that it would comply with the car parking requirements in the District Plan - these being 27 car parking spaces including two accessible car parking spaces.

The number of 27 spaces was accepted by Ms Powell who recommended to me that I support the change as now requested.

At the hearing the subject of car parking and parking on the roadside was raised as an issue by the submitters and I did point out that although the number of carparks available for the use of the restaurant/wine tasting bar reflects the potential maximum occupancy of the building that there is nothing (at the moment) to stop people parking on the public road although it may not be desirable.

Ms Bielby, in her right of reply, at paragraph 4.19 provided some wording for the condition for me to consider.

Based on the evidence before me my view is that that the effects of reducing the amount of car parking spaces available on site from 28 to 27 would result in a less than minor effect on traffic safety and manoeuvring and that Condition 22 should be amended accordingly.

Traffic

The potential increase in adverse traffic effects due to increased operating days/hours is an assessment criteria under section 11.1 (d)-(f) of the District Plan and Ms Powell at section 9.5 of her report outlined the which are as follows:

- “(d) The ability of the immediate environment to cope with the effects of increased vehicular and pedestrian traffic.*
- (e) The location and design of vehicular and pedestrian access, on site vehicle manoeuvring and parking areas and the ability of those to mitigate the adverse effects of additional traffic.*
- (f) Location in respect of the roading hierarchy - the activity should be assessed with regard to an appropriate balance between providing access and the function of the road.”*

Also, Mr Shand, Council Engineer who was involved in the original application and provided evidence at the hearing had visited the site and reviewed the site and application. His evidence is reproduced below:

“With respect to the application to extend the opening time and the operating period for the restaurant and wine tasting I have confined my comments to the adequacy of the parking and the Traffic Intensity Factor (TIF).

The current consent established a restaurant and wine tasting limited to 45 patrons within an indoor area of 172m² and an outdoor area of 120m². The proposed variation does not change the area and because the District Plan calculation for both Parking and TIF is determined by the Floor Area, the number of parking spaces to be provided and the assessment of TIF remain unchanged. Both of these are satisfied by the conditions applied to the existing consent.

The Otamarua Road carriageway has been upgraded and sealed as required to comply with conditions applied to the current consent. Condition 27 and 28 of the original consent have been satisfied and the As-built Plans and the sign off by a Chartered Professional Engineer have been received by Council.”

Ms Powell also rightly noted in her report that when the original consent was assessed, the engineering standards applied were the same as if the restaurant would be operating full time, rather than the reduced hours of operation that were offered by the applicant at the hearing and which were eventually approved.

Ms Powell also referred to the both submitters raising concerns relating to traffic effects - in particular amenity, privacy and noise and these issues were also raised at the hearing.

Ms Powell confirmed in her report that Mr Shand's opinion was that conditions 27 and 28 of the original consent were met (relating to the upgrading of the road) and stated that taking into consideration the above assessment, it is considered that the adverse effects of the potential increase of traffic over an extended duration is not likely to have a more than minor effect.

Based on the evidence before me I concur with Ms Powell's opinion that the potential increase in traffic over an extended period will not likely have a more than minor effect – this was also supported by Mr Dissanayake's opinion and although I did hear from the submitters I did not receive or hear any expert evidence to refute their opinions.

Noise – General

Noise mitigation measures were extensively covered in the original application hearing with expert evidence considered from Mr Ibbotson and Mr Hegley (who although his opinion at that time was that the application should be refused he did provide some draft conditions for my consideration). Mr Ibbotson's view was that the application would be able to comply with the noise limits set out in the District Plan, but he also referred to a noise limit of 40db LA10 if I thought appropriate to provide certainty to the residents at 40 and 40A Otamarua Road. This is the limit that was set and which the restaurant/wine tasting bar has to operate under, while the district plan has set noise standards in the zone at a much higher limit.

Ms Powell and Ms Dissanayake, as did the submitter's, raise the issue of the proposed increase in duration and operating hours having the potential to create a longer duration of noise. Ms Powell referred to her consideration under section 11.1(h) of the District Plan – *'Noise generation and the extent to which reduction measures are used'*.

Ms Powell also referred to the fact that noise was extensively debated and considered at the hearing of the original application and as a result a number of conditions controlling noise were included in the consent decision. This included a Noise Management Plan (condition 16 of the original consent) which was submitted to Council on 27 April 2018 and sets out how complaints and onsite noise will be managed. She also stated that there have been no noise complaints lodged against the restaurant. I acknowledge here the comments of Mr Smith about his view on making complaints to Council.

The purpose of the existing conditions relating to noise is not to remove all noise from the activity, but instead to manage any excessive or unreasonable noise, the existing conditions allow this to be managed and also enables complaints to be made if warranted.

Traffic noise is a reasonable effect to hear on any road and Otamarua Road is no different. While the activity (and proposed increase in operating days/hours) will cause an increase of traffic on the roads, the volume of noise created by this traffic is not of a sufficient level to be determined unreasonable. I note that Mr Shand had provided comment stating that the road is 'nowhere near' operating at capacity, which is when consideration of the noise effects would generally occur.

Also, Mr Ibbotson did acknowledge in his evidence, that there will be an increase in general traffic noise in the area but was of the same opinion as Ms Powell and concluded that any traffic noise will be at a reasonable level.

The noise generated by the activity as measured and outlined by Mr Ibbotson in his evidence is within the limits set by the original consent conditions.

Ms Powell's evidence referred to the restaurant noise itself not being an expected part of the General Coastal Zone and could detract from the amenity of the area and referred to the amenity currently being restored during the hours of the day and the months that the restaurant is not operating and the proposed variation will remove this mitigation. She also referred to no other mitigation measures having been offered to off-set this potential loss of amenity.

The subject of noise was also raised by the submitters in relation to traffic, helicopter activity and the increased hours of the activity.

In regards to helicopter noise there was no assessment carried out as no application has been received to carry out helicopter activities to/from the site and the evidence from the applicant is that no application has/or is being made to allow helicopters to land on site. Any helicopters transporting patrons, who wish to use this type of transport to/from the site to visit the restaurant/wine tasting bar, land at the winery site and are transported to the site via a van provided. Also, I note that use of helicopters is a permitted activity in the zone, is subject to Council and CAA controls and that if there are any issues with the flying of helicopters that complaints should be reported to the appropriate authority.

Although the restaurant and wine tasting bar are not permitted in the zone as of right the activity has been legally established and the evidence has shown that the activity is complying with the conditions of consent in relation to noise. The District Plan limits cannot be ignored and do set out the noise limits anticipated in the zone.

I find that, subject to the existing conditions of consent, including noise monitoring, that the actual and potential noise effects on other parties can be managed so that they are acceptable and will ensure that an appropriate amount of aural amenity will be achieved.

The application notes that the noise issue was extensively debated at the original application hearing and as a result, a number of conditions were included in the consent decision and that these conditions have now been complied with including an ongoing Noise Management Plan. The application also included an acoustics report by Marshall Day Acoustics with the conclusion at page 5 stating:

"The change in operating hours is not expected to result in greater noise levels being emitted from the site during operation, as compared to the current condition; but would increase the duration over which noise is emitted from the site."

The evidence of Mr Ibbotson, which was not refuted by any other expert, was based on his assessments and actual measurements taken on site when the restaurant/wine tasting bar was in operation. His opinion was that the restaurant generates low levels of noise and that the amenity of the area is well protected by the stringent noise limits already in place, with these noise limits being more stringent than those permitted in the District Plan.

Ms Bielby's submission was that the restaurant is likely to generate less noise over the winter months as guests will be more likely to be seated indoors.

My view based on the evidence before me is that the increase in duration and hours of operation will not create potential adverse noise effects.

Amenity, Character and Privacy

Ms Powell referred to amenity values in section 9.1 of her report and stated that Amenity values is defined in the Act as:

“means those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes”.

Ms Powell referred in her report to the reduction of privacy and the visual/aural reminders which the restaurant is part of and how people interact and appreciate the area. Therefore these effects are part of the wider amenity effects to be considered.

She also referred to the zone being characterised in Chapter 10 of the District Plan as having a predominately natural character of plantation or pasture and little development. Ms Powell also stated that while people live and work in the area, the dominant attribute and amenity value is the open space, vacant lots and lack of people and that this is affected by restaurant noise and patrons travelling to and from the site. Based on the other evidence before me and having carried out a visit to the site and surrounding area I do not agree with the description of the area which has seen significant changes from what the zone anticipated. My view is that the restaurant does not occupy a prominent location in the landscape/locality and I do not consider that the increase in days/hours will result in a loss of amenity. The s42A report also did not identify those who would be affected, how they would be affected and to what extent.

In relation to the two objectors, I have visited the site and area three times and have actually visited, at the request of the submitter, one of the properties, One of the properties is located approximately 100 metres from the site, the boundary does not directly adjoin the site, there is an existing hedge growing along the boundary and further vegetation has been planted between the restaurant/wine tasting bar and the property. The other property is about 130 metres from the restaurant and has some planting between it and the site. In addition Ms Johnston at the hearing stated that the only noise they hear is a bit of laughter and noise from bottles although I acknowledge she did raise the issue of noise from helicopters.

I also do not agree that the restaurant occupies a prominent location in the landscape and again, based on the evidence before me, do not consider that an increase in operating days/ hours could potentially see an increased loss of amenity due to an increase in customers over an extended period of time. Ms Powell also referred to the mitigating measure for amenity (and the associated privacy) in the original resource consent application being the limited hours and period of operation. However, these mitigation measures were offered by the applicant at the hearing although the expert evidence at the time was that they were not needed. The applicant at the time of the original consent offered to reduce the days/hours of operation as it was not sure about the economic viability of the operation at that time.

In section 9.2 of her report Ms Powell’s opinion was that once the landscaping is completed in accordance with Mr Cocker’s landscape plan and evidence that the effects on amenity can be effectively mitigated. Evidence was provided at the hearing that (apart from planting of the titoki trees) that the landscaping has been completed

to a high standard. Mr Hudson also gave evidence that until the titoki trees were planted that the applicant would not seek to rely on the amended hours.

My view, based on the overall comments in the s42A report, evidence of Mr Dissanayake and other evidence, is that any effects due to the increased days/hours on the privacy of neighbours will be effectively mitigated and that they will be further mitigated in the winter months due to most of the visitors to the restaurant being seated indoors.

In my view the submitters are sufficiently removed from the restaurant/wine tasting bar such that any amenity effects will continue to be no more than minor.

I consider that other amenity effects will be minor because of the opening days/hours, the size and nature of the restaurant and wine tasting bar, the comprehensive landscaping plan (that is or has been to be implemented) as part of the original conditions and as amended by this application. I also acknowledge that the expert evidence of Mr Cocker was not challenged and provided a comprehensive assessment.

In regards to the change in recommendations to me from Ms Powell I have considered her s42A report, her original recommendation, her recommendation after considering all of the evidence and note some of the inconsistent recommendations in relation to amenity effects and prefer the expert evidence from Mr Dissanayake, Mr Cocker and Mr Ibbotson that there is no reason why the application as amended should not be approved, that the effects will be effectively mitigated through the conditions of consent.

Ms Powell's opinion and amended recommendation to me was that she was satisfied that any adverse effects of operating the restaurant/wine tasting bar five days per week (Wednesday to Sunday) between 11.30am to 10pm had been effectively mitigated. In this regard she has accepted that there will be no adverse effects during the summer months based on the days/hours of opening and the conditions of consent and I do not accept, based on all the evidence before me, that there will be any adverse effects over the winter period and days/hours of operation. My view is that the changes to the conditions and the ongoing conditions of consent demonstrate that the application is consistent with the relevant planning documents and will result in no more than minor adverse effects.

As the site is in the General Coastal Zone the proposal has to be assessed under the appropriate controls which in this case refer to the controls on development to preserve the natural character of the environment and to protect it from inappropriate subdivision and use. The outcomes are covered in Chapter 10 and are primarily 10.6.2.1, 10.6.2.2 and 10.6.2.3. The s42A report and other expert evidence, in my view, correctly points out that the development that has taken place in Paroa Bay is not in a manner anticipated by the zone and that the area is characterised by a greater density of development and this development was able to be observed during my site visit. The existing restaurant is part of this environment and my view is that the increase in days/hours and continued use of the restaurant/wine tasting bar is an appropriate use and will not result in adverse effects on the character of the coastal environment.

Although I note that Ms Powell did (in part of her s42A Report) refer to the additional hours not being compatible with the character of the area I also note that under her assessment under the RPS that natural character was not considered relevant as the development is existing.

Both Mr Dissanayake and Ms Powell (in her s42A Report) considered that the adverse effects due to the increase of traffic over an extended duration would not likely have a more than minor effect on the environment.

In regards to the engineering issues that were assessed in the original application the experts agreed that there were no engineering reasons why the application should not be approved. In regards to this application Mr Shand has reviewed the application and raised no concerns regarding the safety or suitability of the roads to the site being able to cater for the increase in traffic due to the increase in the days/hours.

Economic benefits

This issue was raised and questioned by submitters and covered by Ms Bielby in the right of reply. Although not a significant issue it is worth recording that the evidence of Mr Hudson and Ms Thwaites and submission from Ms Bielby referred to the economic benefits the extended days/hours would bring, the jobs that would be lost if not granted, the existing workforce employed at the restaurant and the background of some of the staff including how many are from Northland and from local iwi.

General

The effects of the development have been carefully considered and the effects on adjoining landowners/occupiers (including the submitters) were considered minor and any possible adverse effects could be appropriately avoided, remedied or mitigated. Having considered everything before me I am in agreement with this view.

In accordance with the RMA, I have had regard to the relevant policy statements and plan provisions. The objectives and policies of the relevant plans etc. required to be considered under Section 104 were covered in the application and s42A Report and taking everything into account and considering the evidence before me I am of the view that the proposed changes to conditions are generally consistent with the relevant objectives and policies and where effects from the development are created these effects can be avoided, remedied or mitigated by the new and existing conditions of consent to be not more than minor.

Section 104B gives me the power to grant or refuse an application on merit. In accordance with my findings in relation to section 104, I am generally supportive of the application subject to the imposition of the amended conditions of consent and the existing conditions of consent to protect the amenity of the surrounding environment.

Relevant Planning Provisions

I have had regard to the following statutory instruments:

- New Zealand Coastal Policy Statement
- Proposed Regional Policy Statement for Northland
- Regional Water and Soil Plan for Northland
- The Far North District Plan

I have considered the relevant planning provisions which were assessed by the applicant's expert and by Ms Powell and concur with their conclusions that the proposal will be generally consistent with, and not contrary to, the relevant provisions of the planning documents considered.

The Main Findings of Fact:

(Section 113(1) (ae))

The main findings of fact determined by me that have led to the decision and the reasons for that decision are as follows. They have been reached after considering

the application, visiting the site and surrounding area (once for this application and two previous visits), the evidence and submissions heard at the hearing, the Reports prepared by the reporting planner and her assessment of effects, all the relevant statutory and planning provisions, the information provided by the applicant and submitters as well as the principal issues. I find that:

- Having read and listened to the evidence and studied the objectives and policies I am of the view that the application is not contrary to the objectives and policies of the Plan.
- The analysis provided in the Reports on the application correctly, set out the matters needing consideration by me in making this decision.
- The adverse effects of the activity on the environment will be no more than minor and/or can be avoided, remedied, or mitigated by the imposition of conditions of consent.
- Having regard to all the relevant section 104 matters that consent will have no more than minor adverse effects on the environment.
- It is considered that the application does promote sustainable management and it will not result in adverse effects.
- In all the circumstances the proposal is considered consistent with the sustainable management purposes of the Act and its principles, as included at Part 2 of the Act. It would not result in adverse effects on the environment; it would maintain and enhance the amenity values or the quality and character of the local environment.
- In regards to engineering related issues, I accept the expert advice (which was not refuted by any other expert) that the proposal will have no more than minor adverse effects.

Part 2 Assessment

The purpose of the Act is to promote the sustainable management of natural and physical resources and consideration needs to be given as to whether the activity is allowing people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while:

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

There were no section 6 Matters of National Importance considered relevant to the application. The 'Other Matters' under section 7 were also not considered to be relevant and the development is considered to maintain the amenity values of the surrounding area.

Section 8 Treaty of Waitangi was not considered to be relevant to the application.

Part 2 considerations

As per current case law, an assessment of relevant matters under Section 104 is subject to Part 2. A council must have regard to the provisions of Part 2 when it is appropriate to do so. In this case, the application and the matters requiring assessment therein are largely confined to issues addressed in Sections 6(a) and 6(e), and Sections 7(a), 7(b), 7(c), Section 7(f) and Section 8.

There is no suggestion that the effects that have been identified and assessed, and the relevant planning provisions that require assessment, do not reflect those relevant matters in Sections 6, 7 and 8 (where appropriate). On that basis, it is not considered appropriate or necessary to undertake a detailed assessment of Part 2 matters.

As I have already said, the principle purpose of the Resource Management Act (RMA) is to promote the sustainable management of natural and physical resources (Part 2, Section 5), and the Purpose of the Act accords pre-eminence to promoting sustainable management of natural and physical resources, not just their “management”.

When making a decision an overall broad judgement based on a weighting of the factors contained within Part 2 is required to be undertaken, recognising the hierarchy of considerations within Part 2. Therefore, any decision-making process should focus on the avoidance, remediation or mitigation of adverse effects in order to promote ‘sustainable management’ (Section 5(2)(c)). Also, some terms in Part 2 are defined and some are not, therefore the application of all matters requires a degree of local interpretation.

The application had been assessed against the relevant provisions of the Regional Policy Statement for Northland and the Far North District Plan, and my view based on the evidence before me is that the proposal is consistent with these plan provisions. Since the principles of Part 2 are embodied in both these documents, I considered that a further assessment of Part 2 of the RMA is unnecessary in view of the above mentioned Court of Appeal judgement.

Due to the conclusions reached I consider that this resource consent application for an amendment to conditions of consent achieves the Purpose of the Act.

DECISION:

That the application (RMAVAR/B: 2160031) by Paroa Bay Winery Limited to:

1. Extend the period of opening and operating hours of the restaurant at Lot 14 DP 322364, 46 Otamarua Road, Paroa Bay is approved subject to the days/hours of opening and operation being restricted to 11.30am to 10.00pm on Wednesday to Sunday during the period between the 3rd Friday in October to the last day of April and between 11.30am to 10pm on Friday to Sunday for the remainder of the year; and
2. The application to amend Condition 1 and subsequent references in Condition 4 of RC 2160031-RMALUC to replace the originally approved Landscape Implementation Plan, by Simon Cocker Landscape Architecture, dated July 2015 with the Landscape Implementation Plan by Simon Cocker Landscape Architecture, dated 21 May 2018 is approved; and
3. The application to amend the carparking spaces from 28 to 27 (including two accessible car parking spaces) is approved.
4. That the consequential amendment to Condition 4 needed as a result of the amendments to the references included in Condition 1 be approved pursuant to Section 127 of the RMA 1991..

The conditions of consent for RC 2160031-RMALUC are recommended to be varied in accordance with the above decision and the amended conditions are attached as Appendix A to this decision report. The changes are underlined. ~~Strikeouts~~ are changes/cancellations.

Reasons

Pursuant to Section 113 of the Resource Management Act 1991, the reasons for my decision are as follows:

- (a) The amendments to the conditions of consent do not raise any apparent conflicts with the purpose of the act or with the matters noted in sections 6, 7, and 8 of the Act.
- (b) I find that the restaurant and wine tasting bar can operate and adequately avoid, remedy or mitigate adverse effects on the environment associated with noise, traffic safety, visual landscape, and character and amenity values to an acceptable level.
- (c) The proposal will be consistent with Part 2 of the RMA as the proposal does constitute sustainable management of natural and physical resources. In particular, the applicant has or can avoid, remedy or mitigate all the adverse effects of the proposal on the environment. The revised operating days/hours of the activity are considered to be appropriate based on the evidence before me.
- (d) The proposal is generally consistent with the objectives and policies of the District Plan and the Regional Policy Statement for Northland.
- (e) The proposal is considered to be consistent with the purpose of the Act as it represents and promotes the sustainable management of natural and physical resources and I consider that the proposal meets the requirements of Part 2 of the Act.

Issued this 8day of April 2019

A handwritten signature in black ink, appearing to read 'WS' followed by a stylized surname.

Mr William (Bill) Smith
Independent Hearings Commissioner

Decision A

Activity in Accordance with Plans

1. Subject to any changes required by the conditions of consent, the development shall be carried out in general accordance with the information and reports submitted with the application, including the approved plans attached to this consent with the Council's 'Approved Stamp' affixed to them. Specifically:

Title	Prepared By	Reference	Date
Site Plan	Martin Design (2006) Ltd	Proposed Restaurant Paroa Bay Winery Sk01-F	11/01/16
Part Site Plan	Martin Design (2006) Ltd	Proposed Restaurant Paroa Bay Winery Sk02-F	11/01/16
Floor Plan - Restaurant	Martin Design (2006) Ltd	Proposed Restaurant Paroa Bay Winery Sk03-F	11/01/16
Floor Plan – Residential Unit	Martin Design (2006) Ltd	Proposed Restaurant Paroa Bay Winery Sk04-F	11/01/16
Elevations	Martin Design (2006) Ltd	Proposed Restaurant Paroa Bay Winery Sk05-F	11/01/16
Landscape Plan	Simon Cocker Landscape Architecture	Proposed Restaurant/Wine Tasting Bar, Otamarua Road, Paroa Bay, Figure 6e: The Proposal – Landscape Plan from Appendix 2 of the <i>Assessment of Landscape, Natural Character and Visual Effects Report</i> dated July 2015	n.d <u>Revised</u> <u>21/05/2018</u>
Landscape Implementation Plan	Simon Cocker Landscape Architecture	Appendix 1 (pages 14-16) of the <i>Assessment of Landscape, Natural Character and Visual Effects Report</i> dated July 2015	n.d
<u>Landscape Implementation Plan</u>	<u>Simon Cocker Landscape Architecture</u>	<u>2160031 RMALUC Condition 4 compliance</u>	<u>21/05/2018</u>

Visual Amenity and Landscaping

2. Prior to the issue of a Code Compliance Certificate for the building, or prior to its use and/or occupation (whichever comes first), the following schedule of colours and materials (as provided in the application) shall be utilised in the finishing of the building and must be maintained for the duration of the consent:

Title	Colour	LRV (Approx.)
Roof	Colorsteel 'Weathered Copper'	11%
Joinery	Duralloy 'Kauri'	20%
Exterior Cladding: • Weatherboards (Linea 180) • Trim	Dulux 'Kauri Cliffs' Dulux 'Black Giants'	66% 17%

Any change to the approved colour schedule shall require the written approval of Councils duly delegated officer.

3. All timber retaining walls are to be stained black within 6 months of construction or within six months of the issue of a Code Compliance Certificate (whichever comes first).
4. Within six months of the issue of a Code Compliance Certificate for the building, or within six months of its occupation (whichever comes first), the landscaping/planting specified by the approved landscaping plan '*Proposed Restaurant/Wine Tasting Bar, Otamarua Road, Paroa Bay, Figure 6e: The Proposal – Landscape Plan*' – Revised 21/05/2018 prepared by Simon Cocker Landscape Architecture is to be implemented and maintained thereafter in accordance with the approved Landscape Implementation Plan – referenced 2160031 RMALUC Condition 4 compliance.. Plants requiring removal due to damage, disease or other cause shall be replaced with a similar specimen before the end of the next planting season (1st May to 30th September).
5. The existing mature shelterbelt on the southern boundary of the subject site (as detailed on the Site Plan) shall be retained. Should any tree that forms part of the shelterbelt die, it shall be replaced before the end of the next planting season, except that replacement shall not be required if the vegetation planting on and near the southern boundary has achieved an average similar height to that of the shelterbelt.
6. That the maximum height of the mitigation planting within the site, from the southernmost point of the lot to a point 40 metres to the east along the southern boundary, shall not exceed a horizontal plane set at a height of 4 metres above the existing ground level measured at the eastern end of this line on the southern boundary of the site. The reference points of these height restrictions are shown in the approved landscape plan

Operation

- ~~7. The restaurant and wine tasting bar dates of operation shall be restricted to between the 3rd Friday in October to the last day of April (inclusive).~~
8. The restaurant and wine tasting bar hours of operation shall be restricted to:
 - ~~11:30am – 3:00~~ 10.00pm (Lunch), Monday Wednesday to Sunday, during the period between the 3rd Friday in October and the last day of April and
 - ~~6:00pm~~ 11.30am – 10:00pm (Dinner), Monday Friday to Sunday for the remainder of the year.
9. The restaurant and wine tasting bar shall not be used for single party private events or functions.
10. The maximum occupancy of the restaurant and wine tasting bar shall be restricted to 45 people.

11. All refuse collections and deliveries to the site by heavy goods vehicle shall be limited to between the hours of 8:00am to 5:00pm. Waste shall only be placed/disposed of in bins during these times as well.
12. Staff shall not begin working on site before 8:00am. No work shall be undertaken by staff outside the restaurant building after 10:00pm.

Noise

13. Prior to the Building Consent application being lodged the plans prepared by Martin Design (2006) detailed in condition 1 above shall be amended to show the following; the exterior wall extended, or an alternative acoustic barrier constructed, along the southern edge of the eastern end of the outdoor dining deck.
14. In conjunction with the Building Consent application being lodged, provide to Council, written evidence from a suitably qualified acoustic engineer that the restaurant building has been designed to incorporate sufficient acoustic treatment to the restaurant ceiling and outdoor dining area to ensure that the reverberant noise levels generated by the operation of the restaurant will be compliant with the District Plan permitted activity noise thresholds within the General Coastal Zone.

The architectural solutions shall include materials that will control reverberant noise to reduce noise levels within the restaurant and the level of breakout noise to the surrounding area as detailed in the Marshall Day Acoustics Report, dated 29/01/2016 (and submitted in support of RC2160031).

15. In conjunction with the Building Consent application being lodged provide to Council's duly delegated officer for review, a written statement from a suitably qualified acoustic engineer that the noise from mechanical services plant/equipment proposed on site has been reviewed to ensure that the cumulative noise levels from the site do not exceed the District Plan permitted activity noise thresholds within the General Coastal Zone.
16. Prior to the operation of the restaurant and wine tasting bar, provide a 'Noise Management Plan' prepared by a suitably qualified acoustic engineer for the approval of Council's Duly Delegated officer.

The 'Noise Management Plan' plan shall address the following:

- Provide details of the operation and management of the restaurant and wine tasting bar to ensure that both internal and external activities comply with the District Plan permitted activity noise thresholds within the General Coastal Zone. The report shall be in general accordance with the Marshall Day Report dated 29/01/2016, and incorporate measures to ensure that the assumed noise levels for both recorded and live music are not exceeded.

- The type of patron and staff behaviour expected by the establishment on the deck and when departing the site, including measures that will be taken to address this if behaviour does not meet expectations.
 - Identification of the staff member who is responsible for noise management (i.e. duty manager, maître d')
17. The Noise Management Plan approved under condition 16 shall be adhered to on an ongoing basis and shall not be altered or amended without the written approval of Council's duly delegated officer.
18. Recorded music within the venue shall not exceed a level that enables a normal voice conversation at a distance of 600mm between two people conversing. If in doubt, the internal music noise level shall not exceed 60dB L_{Aeq} at 1 metre from any loudspeaker. Loudspeakers shall not be located outside.
19. The restaurant and wine tasting bar shall be managed and operated in a manner to ensure that the noise level measured at or within the notional boundary of any existing dwelling on Lot 2 DP 349706 (40 Otamarua Road) and Lot 4 DP 349706 (40a Otamarua Road) shall not exceed 40 dB L_{A10} .

Noise levels shall be measured in accordance with NZS 6801:1991 "Measurement of Sound" and assessed in accordance with NZS 6802:1991 "Assessment of Environmental Sound".

Note: The notional boundary is defined in NZS 6802:1991 "Assessment of Environmental Sound" as a line 20m from any part of any dwelling, or the legal boundary where this is closer to the dwelling.

Signage

20. Prior to the operation of the restaurant and wine tasting bar install signage that clearly directs visitors to the restaurant entrance. The signage shall be installed to clearly indicate that the arm of Otamarua Road leading to the ROW that serves 40A-D Otamarua Road is not the entrance to the restaurant.

Parking and Access

21. Provide separate formed and sealed entry and exit vehicle crossings to the lot which complies with the Councils Engineering Standard FNDC/S/6, 6B, and section 3.3.17 of the Engineering standards and NZS4404:2004. Seal the entry and exit plus splays for a minimum distance of 5m from the existing carriageway edge.
22. Provide formed, surfaced, marked and drained access, manoeuvring, and parking for 287 vehicles including accessible carparks as detailed on the Site Plan prepared by Martin Design (2006) Ltd Dwg Sk01-F dated 11/01/16.

Plans, As-builts and Compliance

23. The consent holder shall submit plans and details of all works on legal road and works which are to vest in Council for the approval of Council's duly delegated

officer prior to commencing construction. Such works shall be designed in accordance with the Council's current Engineering Standards and NZS4404:2004.

In particular the plans and details shall show:

- a) The legal road upgraded and sealed to comply with the council standard for a Type A Rural Road between the end of the existing seal and the property entrance off Otamarua Road.
- b) The upgraded section sealed with a 2 coat (grade 3 and grade 5) chip seal.
- c) Re-alignment of the Otamarua Road intersection with the arm of Otamarua Road that leads to the ROW which serves 40A-D Otamarua Road to provide a minimum intersection angle of 70° or an alternative acceptable to Council.
- d) Vegetation removal or trimming to improve sightlines for vehicles exiting the arm of Otamarua Road.
- e) Signage and road markings.
- f) The proposed stormwater control works to be in place prior to and during construction.
- g) Permanent stormwater control structures proposed
- h) Earthworks including proposed erosion and sediment control measures required to undertake the development of the site.

24. Following approval of the plans and selection of the contractor, provide to Council:

- a) Details of the successful contractor
- b) Details of the planned date and duration of the contract
- c) Details of the supervising engineer
- d) A Traffic Management Plan (TMP).

25. That at least 10 working days prior to undertaking bulk earthworks for the internal roading and site development, the consent holder shall submit for the approval of Council's duly delegated officer, an Erosion and Sediment Control Plan (ESCP). The plan is to contain information on the site management procedures for the following matters:

- a) The measures proposed to minimise silt and sediment runoff during earthworks, and location of such measures. Such mitigation measures shall include interception drains, collection drains, silt fences, settlement ponds and points of discharge to vegetated areas.
- b) The timing of civil engineering, including hours of operation and key project and site management personnel and their contact details;

- c) The transportation of materials to and from the site, loading and unloading of materials and associated controls on vehicles through sign posted site entrances and exits;
 - d) The excavation and filling works, including any retaining structures and any necessary de-watering requirements/methods, to be prepared by a Chartered Professional Engineer with suitable geotechnical qualifications and expertise;
 - e) Control of dust and any appropriate avoidance or remedial measures;
 - f) Prevention of earth, mud, gravel or other material being deposited on adjoining roads by vehicles exiting the site; and remedial measures should that occur.
26. A copy of the approved ESCP shall be held on-site for the duration of the works and until all exposed surfaces are either revegetated or covered by an erosion resistant surface.
27. Provide to Council as-built plans complying with schedule 1D of NZS 4404:2004 and section 1.5.2.5 of Councils Engineering Standards and Guidelines.
28. Upon completion of the works specified in condition 23 above, provide certification of the work from a chartered professional engineer that all work has been completed in accordance with the approved plans.

Stormwater

29. The consent holder is to install a stormwater retention tank with a flow attenuated outflow as detailed within the *Suitability Report – 31 Otamarua Road, Russell* prepared by Richardson Stevens Consulting Engineers, dated 29 January 2016. The consent holder is to provide the final design and details of the system for the approval of Council's duly delegated officer prior to the Building Consent application being made.

Review Condition

30. In accordance with section 128 of the Resource Management Act 1991, the Far North District Council may serve notice on the consent holder of its intention to review conditions. The review may be initiated for any one or more of the following purposes:
- a) To deal with any adverse effects on the environment that may arise from the exercise of the consent, where it is appropriate to deal with such effects at a later stage (i.e. visual amenity, noise, lighting, signage, traffic and parking).
 - b) To deal with any other adverse effects on the environment that the exercise of the consent may have an influence on.
 - c) To deal with any inadequacies or inconsistencies the Far North District Council or duly delegated Council Officer considers there to be in the conditions of the consent following the establishment of the restaurant and wine tasting bar.

- d) To deal with any material inaccuracies that may in future be found in the information made available with the application (notice may be served at any time for this reason).

The review may occur within the first 12 months of the consent being given effect to and on an annual basis thereafter. All costs associated with the review are to be met by the consent holder.

Advice Notes

1. All archaeological sites are protected pursuant to the 'Heritage New Zealand Pouhere Taonga Act 2014'. It is an offence pursuant to the Act to modify, damage or destroy any archaeological site without an archaeological authority issued pursuant to that Act. Should any site be inadvertently uncovered, the procedure is that work should cease, with the Trust and local iwi consulted immediately. The New Zealand Police should also be consulted if the discovery includes koiwi (human remains). In relation to the site of the proposed works, Heritage New Zealand Pouhere Taonga is satisfied that archaeological issues have been addressed and works can proceed using a standard 'Archaeological discovery protocol'.
2. The proposal is required to comply with consent notice conditions of CONO 6993523.3 registered on the Computer Freehold Register (89262) except where the wording of the consent notice has been amended by a decision of the Far North District Council in accordance with section 221(3) of the Resource Management Act 1991.
3. It is the responsibility of the consent holder to apply to the Register General of Land to vary the conditions of consent notice CONO 6993523.3 registered on the Computer Freehold Register (89262).
4. Council does not enforce private Land Covenants. It is the responsibility of the consent holder to address any issues relating to the establishment of the restaurant and wine tasting bar and compliance with the Land Covenants registered on the Computer Freehold Register (89262).

Decision B

THAT pursuant to sections 37 and 37A of the Resource Management Act 1991, Far North District Council extends the timeframe for receipt of the submission by Alexander Medawar, by six working days to 26th October 2015.



**FAR NORTH OPERATIVE DISTRICT PLAN
DECISION ON APPLICATION TO CHANGE CONDITIONS OF A RESOURCE CONSENT
(Section 127)**

Resource Consent Number: 2160031-RMAVAR/C

Pursuant to section 127 of the Resource Management Act 1991 (the Act), the Far North District Council hereby grants resource consent to:

Paroa Bay Winery Limited

The activity to which this decision relates:

To change the conditions of RC 2160031, being Discretionary Activity application to construct and operate a restaurant with wine tasting bar, residential unit and associated car parking.

Subject Site Details

Address: 46 Otamarua Road, Russell 0272
Legal Description: Lot 14 DP 322364 having 1/7 SH in Lot 16 DP 322364
Certificate of Title reference: CT-89262

The following changes are made to the consent conditions:

Condition 8 (7) amended to read:

The restaurant and wine tasting bar hours of operation shall be restricted:-

- 11.30 am – 10.00pm Wednesday to Sunday, ~~during the period between the 3rd Friday in October and the last day of April and~~
- ~~11.30am – 10.00pm Friday to Sunday for the remainder of the year.~~

Condition 10 (9) amended to read:

The maximum occupancy of the restaurant and wine tasting bar shall be restricted to ~~45~~ 60 people.

Condition 18 amended to read:

The restaurant and wine tasting bar shall be managed and operated in a manner to ensure that the noise level measured at or within the notional boundary of any existing dwelling on Lot 12 DP 322364 (Lot 12 Otamarua Road), Lot 2 DP 349706 (40 Otamarua Road) and Lot 4 DP 349706 (40a Otamarua Road) shall not exceed 40 dB LA10.

For the purpose of clarity, the complete amended conditions of consent are as follows:

Decision A

Activity in Accordance with Plans

1. Subject to any changes required by the conditions of consent, the development shall be carried out in general accordance with the information and reports submitted with the application, including the approved plans attached to this consent with the Council's 'Approved Stamp' affixed to them. Specifically:

Title	Prepared By	Reference	Date
Site Plan	Martin Design (2006) Ltd	Proposed Restaurant Paroa Bay Winery Sk01-F	11/01/16 24/07/19
Part Site Plan	Martin Design (2006) Ltd	Proposed Restaurant Paroa Bay Winery Sk02-F	11/01/16
Floor Plan - Restaurant	Martin Design (2006) Ltd	Proposed Restaurant Paroa Bay Winery Sk03-F	11/01/16
Floor Plan – Residential Unit	Martin Design (2006) Ltd	Proposed Restaurant Paroa Bay Winery Sk04-F	11/01/16
Elevations	Martin Design (2006) Ltd	Proposed Restaurant Paroa Bay Winery Sk05-F	11/01/16
Landscape Plan	Simon Cocker Landscape Architecture	Proposed Restaurant/Wine Tasting Bar, Otamarua Road, Paroa Bay, Figure 6e: The Proposal – Landscape Plan from Appendix 2 of the <i>Assessment of Landscape, Natural Character and Visual Effects Report</i> dated July 2015	n.d Revised 21/05/2018
Landscape Implementation Plan	Simon Cocker Landscape Architecture	2160031_RMALUC Condition 4 compliance	21/05/2018

Visual Amenity and Landscaping

2. Prior to the issue of a Code Compliance Certificate for the building, or prior to its use and/or occupation (whichever comes first), the following schedule of colours and materials (as provided in the application) shall be utilised in the finishing of the building and must be maintained for the duration of the consent:

Title	Colour	LRV (Approx.)
Roof	Colorsteel 'Weathered Copper'	11%
Joinery	Duralloy 'Kauri'	20%

Exterior Cladding:		
• Weatherboards (Linea 180)	Dulux 'Kauri Cliffs'	66%
• Trim	Dulux 'Black Giants'	17%

Any change to the approved colour schedule shall require the written approval of Councils duly delegated officer.

3. All timber retaining walls are to be stained black within 6 months of construction or within six months of the issue of a Code Compliance Certificate (whichever comes first).
4. Within six months of the issue of a Code Compliance Certificate for the building, or within six months of its occupation (whichever comes first), the landscaping/planting specified by the approved landscaping plan '*Proposed Restaurant/Wine Tasting Bar, Otamarua Road, Paroa Bay, Figure 6e: The Proposal – Landscape Plan*' – Revised 21/05/2018 prepared by Simon Cocker Landscape Architecture is to be implemented and maintained thereafter in accordance with the approved Landscape Implementation Plan – referenced 2160031 RMALUC Condition 4 compliance. Plants requiring removal due to damage, disease or other cause shall be replaced with a similar specimen before the end of the next planting season (1st May to 30th September).
5. The existing mature shelterbelt on the southern boundary of the subject site (as detailed on the Site Plan) shall be retained. Should any tree that forms part of the shelterbelt die, it shall be replaced before the end of the next planting season, except that replacement shall not be required if the vegetation planting on and near the southern boundary has achieved an average similar height to that of the shelterbelt.
6. That the maximum height of the mitigation planting within the site, from the southernmost point of the lot to a point 40 metres to the east along the southern boundary, shall not exceed a horizontal plane set at a height of 4 metres above the existing ground level measured at the eastern end of this line on the southern boundary of the site. The reference points of these height restrictions are shown in the approved landscape plan

Operation

7. The restaurant and wine tasting bar hours of operation shall be restricted to:
 - 11.30 am – 10.00pm Wednesday to Sunday
8. The restaurant and wine tasting bar shall not be used for single party private events or functions.
9. The maximum occupancy of the restaurant and wine tasting bar shall be restricted to 60 people.
10. All refuse collections and deliveries to the site by heavy goods vehicle shall be limited to between the hours of 8:00am to 5:00pm. Waste shall only be placed/disposed of in bins during these times as well.

11. Staff shall not begin working on site before 8:00am. No work shall be undertaken by staff outside the restaurant building after 10:00pm.

Noise

12. Prior to the Building Consent application being lodged the plans prepared by Martin Design (2006) detailed in condition 1 above shall be amended to show the following; the exterior wall extended, or an alternative acoustic barrier constructed, along the southern edge of the eastern end of the outdoor dining deck.
13. In conjunction with the Building Consent application being lodged, provide to Council, written evidence from a suitably qualified acoustic engineer that the restaurant building has been designed to incorporate sufficient acoustic treatment to the restaurant ceiling and outdoor dining area to ensure that the reverberant noise levels generated by the operation of the restaurant will be compliant with the District Plan permitted activity noise thresholds within the General Coastal Zone.

The architectural solutions shall include materials that will control reverberant noise to reduce noise levels within the restaurant and the level of breakout noise to the surrounding area as detailed in the Marshall Day Acoustics Report, dated 29/01/2016 (and submitted in support of RC2160031).

14. In conjunction with the Building Consent application being lodged provide to Council's duly delegated officer for review, a written statement from a suitably qualified acoustic engineer that the noise from mechanical services plant/equipment proposed on site has been reviewed to ensure that the cumulative noise levels from the site do not exceed the District Plan permitted activity noise thresholds within the General Coastal Zone.
15. Prior to the operation of the restaurant and wine tasting bar, provide a 'Noise Management Plan' prepared by a suitably qualified acoustic engineer for the approval of Council's Duly Delegated officer.

The 'Noise Management Plan' plan shall address the following:

- Provide details of the operation and management of the restaurant and wine tasting bar to ensure that both internal and external activities comply with the District Plan permitted activity noise thresholds within the General Coastal Zone. The report shall be in general accordance with the Marshall Day Report dated 29/01/2016, and incorporate measures to ensure that the assumed noise levels for both recorded and live music are not exceeded.
 - The type of patron and staff behaviour expected by the establishment on the deck and when departing the site, including measures that will be taken to address this if behaviour does not meet expectations.
 - Identification of the staff member who is responsible for noise management (i.e. duty manager, maître d')
16. The Noise Management Plan approved under condition 16 shall be adhered to on an ongoing basis and shall not be altered or amended without the written approval of Council's duly delegated officer.

17. Recorded music within the venue shall not exceed a level that enables a normal voice conversation at a distance of 600mm between two people conversing. If in doubt, the internal music noise level shall not exceed 60dB L_{Aeq} at 1 metre from any loudspeaker. Loudspeakers shall not be located outside.
18. The restaurant and wine tasting bar shall be managed and operated in a manner to ensure that the noise level measured at or within the notional boundary of any existing dwelling on Lot 12 DP 322364 (Lot 12 Otamarua Road), Lot 2 DP 349706 (40 Otamarua Road) and Lot 4 DP 349706 (40a Otamarua Road) shall not exceed 40 dB L_{A10} .

Noise levels shall be measured in accordance with NZS 6801:1991 "Measurement of Sound" and assessed in accordance with NZS 6802:1991 "Assessment of Environmental Sound".

Note: The notional boundary is defined in NZS 6802:1991 "Assessment of Environmental Sound" as a line 20m from any part of any dwelling, or the legal boundary where this is closer to the dwelling.

Signage

19. Prior to the operation of the restaurant and wine tasting bar install signage that clearly directs visitors to the restaurant entrance. The signage shall be installed to clearly indicate that the arm of Otamarua Road leading to the ROW that serves 40A-D Otamarua Road is not the entrance to the restaurant.

Parking and Access

20. Provide separate formed and sealed entry and exit vehicle crossings to the lot which complies with the Councils Engineering Standard FNDC/S/6, 6B, and section 3.3.17 of the Engineering standards and NZS4404:2004. Seal the entry and exit plus splays for a minimum distance of 5m from the existing carriageway edge.
21. Provide formed, surfaced, marked and drained access, manoeuvring, and parking for 287 vehicles including accessible carparks as detailed on the Site Plan prepared by Martin Design (2006) Ltd Dwg Sk01-F dated 11/01/16.

Plans, As-builts and Compliance

22. The consent holder shall submit plans and details of all works on legal road and works which are to vest in Council for the approval of Council's duly delegated officer prior to commencing construction. Such works shall be designed in accordance with the Council's current Engineering Standards and NZS4404:2004.

In particular the plans and details shall show:

- a) The legal road upgraded and sealed to comply with the council standard for a Type A Rural Road between the end of the existing seal and the property entrance off Otamarua Road.
- b) The upgraded section sealed with a 2 coat (grade 3 and grade 5) chip seal.

- c) Re-alignment of the Otamarua Road intersection with the arm of Otamarua Road that leads to the ROW which serves 40A-D Otamarua Road to provide a minimum intersection angle of 70° or an alternative acceptable to Council.
- d) Vegetation removal or trimming to improve sightlines for vehicles exiting the arm of Otamarua Road.
- e) Signage and road markings.
- f) The proposed stormwater control works to be in place prior to and during construction.
- g) Permanent stormwater control structures proposed
- h) Earthworks including proposed erosion and sediment control measures required to undertake the development of the site.

23. Following approval of the plans and selection of the contractor, provide to Council:

- a) Details of the successful contractor
- b) Details of the planned date and duration of the contract
- c) Details of the supervising engineer
- d) A Traffic Management Plan (TMP).

24. That at least 10 working days prior to undertaking bulk earthworks for the internal roading and site development, the consent holder shall submit for the approval of Council's duly delegated officer, an Erosion and Sediment Control Plan (ESCP). The plan is to contain information on the site management procedures for the following matters:

- a) The measures proposed to minimise silt and sediment runoff during earthworks, and location of such measures. Such mitigation measures shall include interception drains, collection drains, silt fences, settlement ponds and points of discharge to vegetated areas.
- b) The timing of civil engineering, including hours of operation and key project and site management personnel and their contact details;
- c) The transportation of materials to and from the site, loading and unloading of materials and associated controls on vehicles through sign posted site entrances and exits;
- d) The excavation and filling works, including any retaining structures and any necessary de-watering requirements/methods, to be prepared by a Chartered Professional Engineer with suitable geotechnical qualifications and expertise;
- e) Control of dust and any appropriate avoidance or remedial measures;
- f) Prevention of earth, mud, gravel or other material being deposited on adjoining roads by vehicles exiting the site; and remedial measures should that occur.

25. A copy of the approved ESCP shall be held on-site for the duration of the works and until all exposed surfaces are either revegetated or covered by an erosion resistant surface.
26. Provide to Council as-built plans complying with schedule 1D of NZS 4404:2004 and section 1.5.2.5 of Councils Engineering Standards and Guidelines.
27. Upon completion of the works specified in condition 23 above, provide certification of the work from a chartered professional engineer that all work has been completed in accordance with the approved plans.

Stormwater

28. The consent holder is to install a stormwater retention tank with a flow attenuated outflow as detailed within the *Suitability Report – 31 Otamarua Road, Russell* prepared by Richardson Stevens Consulting Engineers, dated 29 January 2016. The consent holder is to provide the final design and details of the system for the approval of Council's duly delegated officer prior to the Building Consent application being made.

Review Condition

29. In accordance with section 128 of the Resource Management Act 1991, the Far North District Council may serve notice on the consent holder of its intention to review conditions. The review may be initiated for any one or more of the following purposes:
 - a) To deal with any adverse effects on the environment that may arise from the exercise of the consent, where it is appropriate to deal with such effects at a later stage (i.e. visual amenity, noise, lighting, signage, traffic and parking).
 - b) To deal with any other adverse effects on the environment that the exercise of the consent may have an influence on.
 - c) To deal with any inadequacies or inconsistencies the Far North District Council or duly delegated Council Officer considers there to be in the conditions of the consent following the establishment of the restaurant and wine tasting bar.
 - d) To deal with any material inaccuracies that may in future be found in the information made available with the application (notice may be served at any time for this reason).

The review may occur within the first 12 months of the consent being given effect to and on an annual basis thereafter. All costs associated with the review are to be met by the consent holder.

Advice Notes

1. All archaeological sites are protected pursuant to the 'Heritage New Zealand Pouhere Taonga Act 2014'. It is an offence pursuant to the Act to modify, damage or destroy any archaeological site without an archaeological authority issued pursuant to that Act. Should any site be inadvertently uncovered, the procedure is that work should cease, with the Trust and local iwi consulted immediately. The New Zealand Police should also be consulted if the discovery includes koiwi (human remains). In relation to the site of the proposed works,

Heritage New Zealand Pouhere Taonga is satisfied that archaeological issues have been addressed and works can proceed using a standard 'Archaeological discovery protocol'.

2. The proposal is required to comply with consent notice conditions of CONO 6993523.3 registered on the Computer Freehold Register (89262) except where the wording of the consent notice has been amended by a decision of the Far North District Council in accordance with section 221(3) of the Resource Management Act 1991.
3. Council does not enforce private Land Covenants. It is the responsibility of the consent holder to address any issues relating to the establishment of the restaurant and wine tasting bar and compliance with the Land Covenants registered on the Computer Freehold Register (89262).

Reasons for the Decision

1. The Council (via an Independent Hearings Commissioner) has determined (by way of an earlier report and resolution) that the adverse environmental effects associated with the proposed changes are no more than minor and that there are no affected persons or affected order holders.
2. In particular, the restaurant and wine tasting bar and its proposed increased capacity and operating hours can operate and adequately avoid, remedy or mitigate adverse effects on the environment associated with noise, traffic, landscape, character and amenity to an acceptable level.
3. In accordance with an assessment under s104(1)(b) of the RMA the proposal is consistent with the relevant statutory documents.
 - a) New Zealand Coastal Policy Statement 2010;
 - b) The Northland Regional Policy Statement 2016;
 - c) Regional plans (including proposed);
 - d) Far North District Plan 2009.
4. In terms of the New Zealand Coastal Policy Statement, the proposal is considered to be an appropriate activity in the Coastal Environment for the following reasons:
 - a. OBJ1 – The proposal has limited impact on the integrity, form, functioning and resilience of the Coastal Environment.
 - b. OBJ2 – The proposal preserves the natural character of the Coastal Environment through various conditions of consent, such as landscaping and existing building design and finishing.
 - c. OBJ3 – The proposal has considered the role of tangata whenua who have actively commented on the various applications to Council.
 - d. OBJ4 – The application makes no provision for public space as it is not located at a location where this is required.
 - e. OBJ5 – The site is elevated above the shore away from coastal hazard risks.
 - f. OBJ6 – The proposal finds the appropriate balance for social, economic and cultural well-being, through the design of the existing proposal and consent conditions suite.
 - g. OBJ7 – This objective is not relevant.
5. The relevant policies echo the sentiments of the objectives and overall, the proposal is considered to be consistent with the New Zealand Coastal Policy Statement.

6. In terms of the Regional Policy Statement for Northland, for the following reasons the application is considered to be consistent with its Objectives and Policies:
- a) Fresh and coastal water – the amended proposal does little to impact fresh and coastal water given its location.
 - b) Indigenous ecosystems and biodiversity – although a varied approach is proposed, the amended proposal avoids effects on indigenous biodiversity as the increased occupancy and timeframes do not affect biodiversity at all.
 - c) Economic potential and social wellbeing – the amended proposal provides for economic development through potentially increased jobs. The change proposed has primarily been in relation to the COVID-19 economic effects seen for tourism type activities.
 - d) Regional form – The amended development has been designed to consider the broader activities and previous applications have provided appropriate infrastructure and servicing arrangements.
 - e) Tangata whenua – the amended proposal has been considered by Kororareka Marae and Ngāti Kuta who have raised no issues.
 - f) Natural hazards – There are no known natural hazards which affect the proposed use.
 - g) Natural character, features / landscapes and historic heritage – Landscape consent conditions remain appropriate to the development.
7. In terms of the Far North District Plan, there are no specific matters that have not already been canvassed in the higher policy documents above. The proposal is considered to meet the Environmental Outcomes Expected and not be inconsistent with the Far North District Plan Objectives and Policies.

Approved for Submission to Independent Hearings Commissioner:

This resource consent has been prepared by Steven Sanson (Sanson & Associates), and is approved for submission to the appointed Independent Hearings Commissioner from the Far North District Council by:



Pat Killalea, Principal Planner

Date: 20/08/2021

Approval

This resource consent is granted under delegated authority (pursuant to section 34A of the Act) from the Far North District Council by:



William (Bill) Smith, Independent Hearings Commissioner

Date: 23rd August 2021

Right of Objection

If you are dissatisfied with the decision or any part of it, you have the right (pursuant to section 357A of the Resource Management Act 1991) to object to the decision. The objection must be in writing, stating reasons for the objection and must be received by Council within 15 working days of the receipt of this decision.

Lapsing of Consent

You should note that the granting of this consent for a change or cancellation of conditions does not affect the lapsing date of the underlying consent for the proposed activity.



TOWNPLANNING
GROUP

**Application for Resource
Consent to the Far North
District Council
Paroa Bay Winery Limited**

Variation of 2160031-RMALUC to enable
seven-day trading in peak season at Sage
Restaurant, 46 Otamarua Road, Paroa
Bay, Russell

5 October 2025

Document prepared by:

Town Planning Group (NZ) Limited

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Offices in Tāhuna & Ōtautahi

Use and Reliance

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Supporting Information

- [A]** Record of Title
- [B]** 2160031-RMALUC
- [C]** 2160031-RMAVAR/B



- [D] 2160031-RMAVAR/C
- [E] Marshall Day Acoustic Assessment



1 Introduction

Paroa Bay Winery Limited (**the Applicant**) applies to vary consent 2160031-RMALUC so as to provide for the ability for seven-day trading in the peak season period of November-April at Sage Restaurant at 46 Otamarua Road, Russell (**the site**).

The current conditions of consent specify limits on the days and hours of operation of Sage, namely trading hours of 11.30am-10.00pm Wednesday to Sunday. The Applicant is seeking the opportunity to increase trading days in the peak season period only.

The site is located within the General Coastal Zone under the Operative Far North District Plan (**District Plan**), and the Rural Production Zone under the Proposed District Plan (**PDP**). It is noted that there are no PDP provisions of relevance to the application that have immediate legal effect. Overall, the proposed activity requires resource consent under Section 127 of the RMA as a **Discretionary Activity**.

In summary, this Assessment of Environmental Effects (**AEE**) report considers the effects of the proposal and determines that the additional trading days will have less than minor adverse effects on the environment, while enabling efficient use of the site and contributing to the local economy. The well-established nature of the restaurant, and the existing parameters and controls in place will ensure that any potential adverse effects are insignificant in nature, and there are no parties considered to be adversely affected. The proposal will be entirely appropriate in the context of the receiving environment and accords with the relevant objectives and policies of the District Plan and PDP.

Overall, the proposal represents an efficient use of the natural and physical resource and will be undertaken in a manner which avoids, remedies and mitigates potential adverse effects on the environment. The overall conclusion is that the proposal is consistent with the purpose and principles of the Resource Management Act 1991 (**the RMA**) and accords with the definition of sustainable management.

2 Site and surrounds

The site is located at 46 Otamarua Road, Paroa Bay, and is legally described as Lot 14 DP 322364 and Lot 16 DP 322364 (1/7th share) as held in Record of Title 89262. The Record of Title is enclosed as **Attachment [A]**.

The site is located on the southern side of Otamarua Road (refer **Figure 1**), approximately 500m from the intersection with Paroa Bay Road. The site and building have a northerly outlook, with wide views towards the coast, which at its nearest location is approximately 1km north of the site. The total area of the site is 9470m² (excluding Lot 16 DP 322364). The existing restaurant/wine tasting bar is approximately 172m² in area, plus an outdoor deck of 120m².



Figure 1 Site Aerial (Google Earth)

Sage operates as part of the wider Paroa Bay Winery and Estate, which features luxury accommodation villas and a boutique vineyard, both located on the northern side of Otamarua Road.

The immediately surrounding area is predominately covered in grass and slopes gently to moderately to the north and north-west. This area contains landscaping and plantings established as per the conditions of 2160031-RMALUC. There are 27 formed carparking spaces including two accessible parking spaces, with the site having multiple access points to Otamarua Road. The southern boundary is defined by a large and mature shelterbelt, as identified in **Figure 2**.



Figure 2 Sage Restaurant

The wider environment of Paroa Bay Road to and along Otamarua Road consist of vineyards (with extensive vineyards to the west and a smaller area to the east), the Paroa Bay Chalets visitor accommodation, the Paroa Bay Winery and accommodation immediately to the north, residential buildings on rural lifestyle lots, and undeveloped rural and rural lifestyle sites.

3 Resource consent background

The restaurant was originally granted resource consent in 2016, and since that time multiple variations have been obtained. The relevant consent background is detailed as follows.

- 2160031-RMALUC was granted 11 May 2016 (refer **Attachment [B]**) and authorised the establishment of a restaurant with wine tasting bar, a residential unit and associated car park and facilities at the site. 2160031-RMALUC was processed on a limited notified basis, with resource consent granted subject to 30 conditions addressing a range of built form, amenity, operational and engineering related matters. It is noted that the resource consent approved seven-day trading during the peak season, with separate lunch and dinner services (11.30am-3.00pm and 6.00pm-10.00pm).

The restaurant and wine tasting bar subsequently opened in October 2017 under the name 'Sage' and operates in partnership with the Applicant's existing winery and luxury accommodation development on the opposite side of Otamarua Road (collectively known as Paroa Bay Winery and Estate).

- 2160031-RMAVAR/B was granted 8 April 2019, refer **Attachment [C]**) to extend the operating hours of the restaurant, reduce the number of car parks to 27 and vary the approved landscape plan. RMAVAR/B:2160031 was processed on a limited notified basis.
- 2160031-RMAVAR/C was granted 20 August 2021, refer **Attachment [D]**) extending the operational days to Wednesday to Sunday year-round, and to increase the restaurant occupancy to 60 people.

In addition to the above, it is noted that a further resource consent application variation (assigned the reference 2160031-RMAVAR/D) is presently on hold with FNDC, with this seeking to extend trading days in the peak season and host ten temporary functions annually from the site. The Acoustic Assessment enclosed as **Attachment [E]** has been prepared for 2160031-RMAVAR/D, however remains relevant to the limited focus of the present application (which is limited to an extension of trading days in the peak season).

4 Description of the proposal

The proposal is to vary the conditions of 2160031-RMALUC under Section 127 of the RMA to provide for the ability of seven-day trading in the peak season period of November-April (inclusive) at Sage Restaurant, with trading presently limited to Wednesday to Sunday. No changes are proposed to the existing approved hours of trading, which are 11.30am-10.00pm, or the trading days for the balance of the year, with no change in the occupancy of the restaurant.

No physical changes are proposed to the site, building, access or car parking as part of the present proposal, with the changes simply seeking to provide additional flexibility and utilisation of the existing facilities on site.

To facilitate the proposal, the following change is required to the consent conditions of 2160031-RMAVAR/C (~~strike through~~ represents text to be deleted and **bold and underlined** represents text to be added):

Condition 7

The restaurant and wine tasting bar hours of operation shall be restricted to:

- 11.30 am – 10.00pm Wednesday to Sunday **during the months of May through to October (inclusive); and**
- **11.30 am – 10.00pm Monday to Sunday during the months of November through to April (inclusive).**

The above changes simply serve to provide for seven-day trading in the peak season, with no changes to the building and associated facilities required. No other changes to the conditions of 2160031-RMALUC are considered necessary.

5 Statutory provisions

Section 127 of the RMA sets the requirements for applications to change or cancel conditions of resource consents.

Section 127(3)(a) of the RMA requires that applications for changes to resource consent conditions be presented as if the application were for a discretionary activity, and thus an assessment of any effects that the proposed changes may have on the environment in accordance with section 88 of and the Fourth Schedule to the RMA follows. Section 127(3)(b) stipulates that only the change of conditions and the resultant potential effects of these changes are to be considered.

Whilst acknowledging that an application to vary consent conditions under Section 127 of the RMA is to be assessed as a **Discretionary Activity**, for completeness, an assessment against the District Plan has been undertaken with respect to the proposed changes, with this detailed as follows:

5.1 District Plan Review

Far North District Council is currently undertaking a review of the District Plan, with the Proposed Far North District Plan ('PDP') publicly notified on 27 July 2022. Under the PDP, the site is zoned Rural Production under the PDP, and within the Coastal Environment Overlay. At this point in time, hearings have commenced and are expected to continue until late 2025 (with decisions to follow in 2026). None of the provisions in the PDP with immediate legal effect are beached as a result of the proposal. To this end, the assessment against the relevant rules of the District Plan is limited to that of the Operative District Plan.

5.2 Operative Far North District Plan

The site is located within the General Coastal Zone (Zone Map 36) under the District Plan, as identified by **Figure 3**. There are no resource features affecting the site (Resource Map 36).

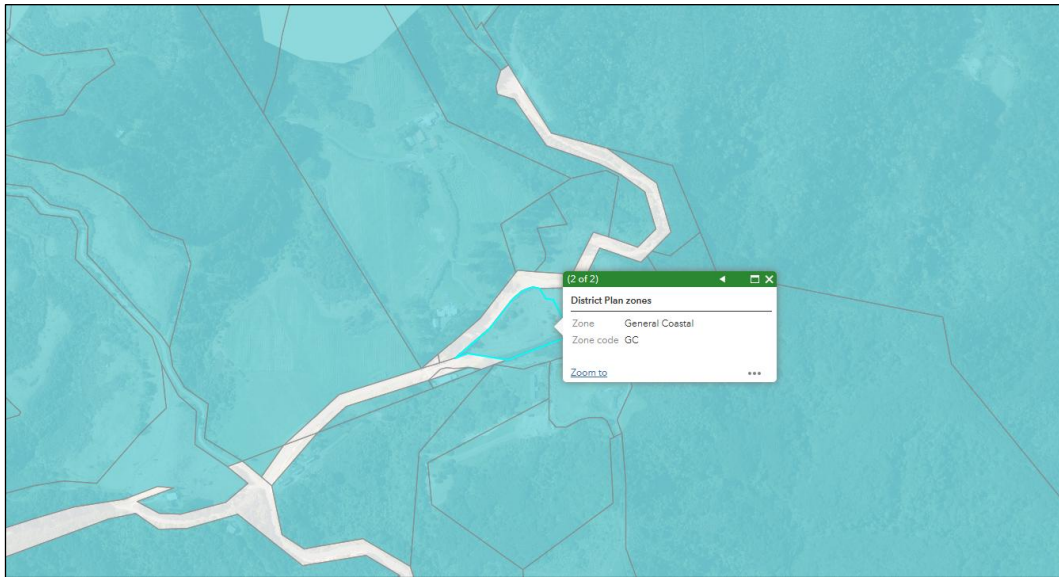


Figure 3 Operative District Plan Map – General Coastal Zoning

An assessment against the District Plan has been undertaken with respect to the proposed changes, with this detailed as follows:

Rule	Explanation / Requirement	Activity Status / Compliance / Comment
Chapter 10.6 General Coastal Zone		
10.6.5.1.1	VISUAL AMENITY <i>The following are permitted activities in the General Coastal Zone:</i> <i>(a) any new building(s) not for human habitation provided that the gross floor area of any new building permitted under this rule, does not exceed 50m² or for human habitation provided that the gross floor area does not exceed 25m²; and</i> <i>(b) the exterior is coloured within the BS5252 standard colour palette range with a reflectance value of 30% or less or are constructed of natural materials which fall within this range; or</i> <i>(c) any alteration/addition to an existing building which does not exceed 50m², provided that any alteration/ addition does not exceed the height of the existing building and that any alteration/addition is to a building that existed at 28 April 2000; or</i> <i>(d) renovation or maintenance of any building.</i> <i>Note: The effect of this rule is that a resource consent is needed for any new building(s) not for human habitation with a gross floor area of greater than 50m² or any building(s) for human habitation with a gross floor area of greater than 25m²</i>	N/A The additional operating days do not involve any new buildings.
10.6.5.1.3	SCALE OF ACTIVITIES	N/A



Rule	Explanation / Requirement	Activity Status / Compliance / Comment
	<i>The total number of people engaged at any one period of time in activities on a site, including employees and persons making use of any facilities, but excluding people who normally reside on the site or are members of the household shall not exceed 4 persons per site or 1 person per 1ha of net site area whichever is the greater.</i> <i>Provided that:</i> <i>(a) this number may be exceeded for a period totalling not more than 60 days in any 12 month period where the increased number of persons is a direct result of activities ancillary to the primary activity on the site; and</i> <i>(b) this number may be exceeded where persons are engaged in constructing or establishing an activity (including environmental enhancement) on the site; and</i> <i>(c) this number may be exceeded where persons are visiting marae.</i> <i>In determining the total number of people engaged at any one period of time, the Council will consider the maximum capacity of the facility (for instance, the number of beds in visitors accommodation, the number of seats in a restaurant or theatre), the number of staff needed to cater for the maximum number of guests, and the number and nature of the vehicles that are to be accommodated on site to cater for those engaged in the activity.</i> <i>Exemptions: The foregoing limits shall not apply to activities of a limited duration required by normal farming and plantation forestry activities, provided that the activity shall comply with the requirements of s16 of the Act.</i>	The proposal does not seek to increase the number of guests or staff on site at any one time.
10.6.5.1.8	TRANSPORTATION <i>Refer to Chapter 15 – Transportation for Traffic, Parking and Access rules.</i>	Refer to assessment against Chapter 15 below.
10.6.5.4.3	SCALE OF ACTIVITIES <i>Where the total number of people engaged at one period of time in activities on a site, including employees and persons making use of any facilities, but excluding people who normally reside on the site or are members of the household, does not comply with Rule 10.6.5.1.3 it is a discretionary activity.</i>	N/A The proposal does not seek to increase the number of guests or staff on site at any one time.
Chapter 15 Transportation		
15.1.6A	TRAFFIC Table 15.1.6A.1 MAXIMUM DAILY ONE WAY TRAFFIC MOVEMENTS <i>The table below provides the Traffic Intensity threshold values and relevant classes of activity</i>	

Rule	Explanation / Requirement	Activity Status / Compliance / Comment																		
	for all zones in the District Plan. This table must be used in conjunction with the permitted, controlled, restricted discretionary, discretionary and non-complying Traffic Intensity rules located in Rules 15.1.6A.2 through 15.1.6A.6. <table><tr><th>Zone</th><th>Permitted Activity</th><th>Controlled Activity</th><th>Restricted Discretionary Activity</th><th>Discretionary Activity</th><th>Non-Complying Activity</th></tr><tr><td colspan="6">Coastal Environment</td></tr><tr><td>General Coastal</td><td>30</td><td>-</td><td>-</td><td>120</td><td>More than 120</td></tr></table>	Zone	Permitted Activity	Controlled Activity	Restricted Discretionary Activity	Discretionary Activity	Non-Complying Activity	Coastal Environment						General Coastal	30	-	-	120	More than 120	
Zone	Permitted Activity	Controlled Activity	Restricted Discretionary Activity	Discretionary Activity	Non-Complying Activity															
Coastal Environment																				
General Coastal	30	-	-	120	More than 120															
15.1.6A.2.1	TRAFFIC INTENSITY The Traffic Intensity threshold value for a site shall be determined for each zone by Table 15.1.6A.1 above. The Traffic Intensity Factor for a proposed activity (subject to the exemptions identified below) shall be determined by reference to Appendix 3A in Part 4. This rule only applies when establishing a new activity or changing an activity on a site. However, when considering a new activity or changing an activity, the Traffic Intensity Factor for the existing uses (apart from those exempted above) on site need to be taken into account in order to address cumulative effects.	Permitted Table 15.1.6A.1 identifies that within the General Coastal Zone, the traffic intensity threshold value is 30 one way traffic movements per day. Whilst the existing restaurant activities exceed this requirement (and are authorised through 2160031-RMALUC), the relevant traffic intensity figure is based on gross business area, for which no changes are proposed. To this end, the proposal does not increase the numbers of diners, and achieves compliance.																		
15.1.6B.1.1	ON-SITE CAR PARKING SPACES Where: (i) an activity establishes; or (ii) the nature of an activity changes; or (ii) buildings are altered to increase the number of persons provided for on the site; the minimum number of on-site car parking spaces to be provided for the users of an activity shall be determined by reference to Appendix 3C, unless an activity complies with the exemptions below.	Permitted The site provides for ample parking for the number of guests and staff on site on a daily basis. The increase of trading days does not impact the number of parks required, and therefore complies.																		

The proposed increase in trading days in the peak season does not breach any of the relevant rules under the General Coastal Zone of the District Plan. To this end, pursuant to Section 127 of the RMA, the proposal is considered a **discretionary activity**.



6 Assessment of environmental effects

In accordance with Section 88 and 127, and Schedule 4 of the RMA an assessment of any actual or potential effects on the environment that may arise from the proposed changes is required, with any details of how any adverse effects may be avoided, remedied, or mitigated.

In brief, it is considered that any actual or potential adverse effects of the proposed additional peak season trading days need to be considered in light of the existing and approved activities at Sage, authorised through 2160031-RMALUC (and associated variations). In this respect, the following outlines the existing features, nature and scale of the approved activities on site, with this assisting in focusing consideration of the actual effects of the proposed changes to 2160031-RMALUC:

- approved award-winning restaurant and wine bar, operating successfully on the site since 2017;
- a large well apportioned car parking area, with attractively landscaped grounds;
- safe and well-designed multiple access points to Otamarua Road;
- approved operational hours of 11.30am to 10.00pm, Wednesday to Sunday;
- regular live music;
- approved capacity for up to 60 guests;
- existing Noise Management Plan and associated detailed controls in relation to management of noise associated with restaurant operations.

The key differences in actual or potential environmental effects between those authorised and the proposed changes sought are confined to those associated with the additional restaurant trading days (Monday and Tuesday) during the peak season. The actual and potential adverse effects associated with these changes are considered to raise matters relating to noise, visual amenity, transport, and cumulative effects, with these matters addressed as follows.

6.1 Noise effects

The actual or potential adverse noise effects of the restaurant have been extensively canvassed through the previous applications, expert reports and evidence and subsequent consent decisions, all of which has been given particular consideration as part of the present proposed changes and assessment of the same. Further to this, Marshall Day have undertaken a recent specific Acoustic Assessment in relation to 2160031-RMAVAR/D, with this enclosed as **Attachment [E]**. It is noted that the Acoustic Assessment has considered the potential for temporary functions to be held at the site as per the proposal 2160031-RMAVAR/D, however the present application is focused on only the proposed increase in peak season trading days.

In the first instance, it is noted that the matter of noise (and changes to hours of operation) was given particular attention within the Commissioner's decision on RMAVAR/B:2160031, with the key conclusions / determinations identified as follows:

The purpose of the existing conditions relating to noise is not to remove all noise from the activity, but instead to manage any excessive or unreasonable noise, the existing conditions allow this to be managed and also enables complaints to be made if warranted.

Although the restaurant and wine tasting bar are not permitted in the zone as of right the activity has been legally established and the evidence has shown that the activity is complying with the conditions of consent in relation to noise. The District Plan limits cannot be ignored and do set out the noise limits anticipated in the zone.

I find that, subject to the existing conditions of consent, including noise monitoring, that the actual and potential noise effects on other parties can be managed so that they are acceptable and will ensure that an appropriate amount of aural amenity will be achieved.

My view based on the evidence before me is that the increase in duration and hours of operation will not create potential adverse noise effects.

It is considered that the above conclusions remain pertinent to the present proposed changes. As identified Marshall Day have undertaken an assessment of noise effects for 2160031-RMAVAR/D (refer **Attachment [E]**), with this informed by additional noise measurements undertaken at the site, with these measurements also confirming the sound insulation of the existing restaurant. In addition, the Acoustic Assessment has considered the prior findings and measurements undertaken at the site over the last ten years. The Acoustic Assessment provides a comprehensive appraisal of any actual and potential adverse effects arising from the proposed changes to the restaurant trading days, with the key findings summarised as follows:

The changes proposed to the operation to increase the number of days that the restaurant can be open over the summer period (November to April) will not alter noise emitted from the restaurant during normal service. The proposed change to the operation only increases the number of days over which operation can occur and on which operational noise may be audible. However noise levels from the restaurant will continue to be low (likely no higher than 33 dB LA10). As previously discussed, continued compliance with the stringent noise limit of 40 dB LA10 that applies during the daytime provides certainty that the amenity of the area will be protected, and that the enjoyment of natural sounds will not be affected from the restaurant.

Based on the findings of the Acoustic Assessment, no changes are proposed to the noise limits for standard restaurant operations, with Marshall Day confirming that these are readily compliant with the consented noise limits.

It is noted that the restaurant currently operates in accord with a Noise Management Plan, which includes monitoring of patron activities, and the closure of windows and doors where necessary to manage excess noise concerns. No changes are proposed to the existing consent conditions relating to the Noise Management Plan, or indeed those conditions which specify detailed noise management measures. The restaurant is well known within the immediate community, with well-established communication channels should any complaints arise, allowing prompt action and response by staff.



Overall, for the reasons outlined above, it is considered that the proposed increase in restaurant trading days during the peak season can be undertaken in a manner that does not give rise to unreasonable levels of noise in the receiving environment.

6.2 Visual amenity effects

In brief, the proposed increase in the scale of the activities on site is considered to be relatively small, associated with additional trading days during the peak season. Given the well-established nature of the restaurant, the car parking provision on site, the capacity of Otamarua Road, the design and location of the restaurant with outdoor decking area to the north, the landscaping established, and the comprehensive nature of the consent conditions, any adverse effects on amenity, character and privacy arising from the proposed changes are considered to be less than minor.

For completeness, the key conclusions relating to amenity, character and privacy within the Commissioner's decision on RMAVAR/B:2160031 in relation to extended opening hours are identified as follows, with these matters largely responding to various opposing conclusions of the s42A Report:

I also do not agree that the restaurant occupies a prominent location in the landscape and again, based on the evidence before me, do not consider that an increase in operating days/ hours could potentially see an increased loss of amenity due to an increase in customers over an extended period of time.

My view, based on the overall comments in the s42A report, evidence of Mr Dissanayake and other evidence, is that any effects due to the increased days/hours on the privacy of neighbours will be effectively mitigated and that they will be further mitigated in the winter months due to most of the visitors to the restaurant being seated indoors...

The existing restaurant is part of this environment, and my view is that the increase in days/hours and continued use of the restaurant/wine tasting bar is an appropriate use and will not result in adverse effects on the character of the coastal environment.

Overall, for the reasons outlined above, it is considered the proposal will remain compatible with the receiving environment and that any adverse effects of the proposal are able to be continued to be effectively avoided, or mitigated such that the adverse effects on any persons are less than minor.

6.3 Transportation effects

The proposal has the potential to increase the traffic generated to the site, albeit limited to the increased number of trading days during the peak summer months, however this will not increase the traffic intensity on a daily basis as the number of patrons (daily) has not increased. We understand that Otamarua Road is considered to have sufficient capacity to cater for the increase in trading days, noting that Council's Resource

Consents Engineer has previously identified that Otamarua Road is nowhere near operating at capacity¹.

The location and design of the existing access and the function of the road are not considered to be at issue in this context, being matters that have been addressed through the existing consent, and that the effects of the changes are not a substantial departure from the existing environment.

The existing parking on site is considered sufficient, fully satisfying the existing and proposed daily demand of the restaurant patrons.

Overall, it is considered that the proposed increase in trading days will not give rise to any adverse transportation effects on the safe and efficient operation of Otamarua Road.

6.4 Cumulative effects

In broad terms, cumulative effects are those effects that would result if the activity for which consent is sought is approved, in combination with the effects of other activities and/or effects which are likely to arise over time. Whilst subject to significant and wide-ranging case law, in this instance, reference to cumulative effects can be seen to be focused around the 'incremental effects' arising from the changes proposed (i.e. the additional trading days in the peak season) on the receiving environment.

With respect to the above, we note the proposed activity is understood to be the only restaurant and wine tasting activity present in the surrounding environment. The potential for 'cumulative adverse effects' associated with the proposal, and other unrelated activities in the environment, is therefore not considered to be an issue. In terms of the matter of the incremental effects, the assessment provided within the application is focused on such effects (both individually and collectively), noting Section 127(3)(b) of the RMA identifies that only the potential effects of the changes can be considered. Notwithstanding this, we provide the following further assessment and commentary.

Any adverse incremental effects from the proposed increase in trading days of the restaurant has been considered within the application, with assessment provided in relation to traffic, noise, and overall amenity, character and provide effects. The conclusion reached is that any adverse effects from the incremental changes both individually and collectively are able to be appropriately avoided and mitigated, and will be less than minor. The following key points are noted:

- No changes are proposed to the existing building or parking areas on site. The overall nature and scale of the activity, in the context of the rural living character of the site and surrounds, the building, and associated north facing deck which

¹ Page 16, s42A Officer Report RMAVAR/B:2160031

affords screening from the closest neighbouring residential properties, will ensure that any incremental effects are appropriately avoided or mitigated.

- As identified in the Acoustic Assessment, the proposed changes to the restaurant trading days during the peak season are readily compliant with the existing stringent noise conditions. The increased trading days will not result in significant impacts on amenity at the neighbouring dwellings, and will not result in unreasonable levels of noise.

Overall, no physical changes are proposed to the site, with the retention of the existing restrictive noise limit for the restaurant operation ensuring that any incremental effects associated with the additional peak season trading days are effectively managed, and appropriate in the context of the receiving environment. To this end, for the reasons outlined above, it is considered that the cumulative and/or incremental effects of the proposal will have less than minor adverse effects on the environment.

6.5 Positive effects

A relevant matter to take into account as part of the context for this proposal is the resilience of the activity to be more adaptive and resistant to economic downturns, with these arising from fluctuations in patronage that are beyond the reasonable control of the operator. The COVID-19 pandemic and Cyclone Gabrielle has had a considerable impact on the Northland tourism market, with the region's growth behind that of national levels². The proposed changes seek to utilise the existing building / facilities on site in a manner that expands the trading period in the peak season. These changes provide flexibility and greater confidence that the operations are resilient to changes (beyond its control) that can affect patronage, assisting in staff retention and providing significant social and economic benefits.

6.6 Conclusion

Overall, for the reasons outlined above and within the Acoustic Assessment, any actual and potential adverse effects of the proposed changes are considered to be insignificant, and able to be appropriately avoided and mitigated through the existing consent conditions in place.

² <https://rep.infometrics.co.nz/northland-region/tourism/gdp>

7 Statutory assessment

7.1 Section 127, RMA

Section 127 of the RMA sets the requirements for applications to change or cancel conditions of resource consents.

- (1) *The holder of a resource consent may apply to a consent authority for a change or cancellation of a condition of the consent, subject to the following:*
 - ...
 - (b) *no holder of any consent may apply for a change or cancellation of a condition on the duration of the consent*
 - ...
- (3) *Sections 88 to 121 apply, with all necessary modifications, as if—*
 - (a) *the application were an application for a resource consent for a discretionary activity; and*
 - (b) *the references to a resource consent and to the activity were references only to the change or cancellation of a condition and the effects of the change or cancellation respectively.*
- (4) *For the purposes of determining who is adversely affected by the change or cancellation, the local authority must consider, in particular, every person who—*
 - (a) *made a submission on the original application; and*
 - (b) *may be affected by the change or cancellation.*

In terms of scope, we note that in ‘Body Corporate 97019 v Auckland City Council (2000 NZRMA 202)’ it was determined that:

“In deciding whether an application for variation is in substance a new application, the consent authority should compare any differences in the adverse effects likely to follow from the varied proposal with those of the activity in its original form. Where the variation would result in a fundamentally different activity, or one having materially different adverse effects, a consent authority may decide the better course is to treat the application as a new application.”

It is considered that the proposed changes do not result in an activity that is materially different in nature to that approved by 2160031:RMALUC, and there are no significant differences in adverse effects on the environment compared to those authorised under the same. As such, it is considered the proposed changes can be treated as a variation to the original consent under Section 127 of the RMA.

Section 127(3)(a) of the RMA requires that applications for changes to resource consent conditions be presented as if the application were for a discretionary activity, and thus an assessment of any effects that the proposed changes may have on the environment in accordance with section 88 of and the Fourth Schedule to the RMA has been provided. Section 127(3)(b) stipulates that only the change of conditions and the resultant potential effects of these changes are to be considered.

Section 127(3) forms the first of two limbs of the test for the application. The second limb of the test is described in Section 127(4), where it is stated that the local authority must consider the effects of the changes upon any affected parties. In this respect, we note that the original application 2160031-RMALUC was processed and granted on a limited notified basis, with the following parties identified as adversely affected:

- Lot 4 DP 14032
- Lot 12 DP 322364
- Lot 4 DP 322364
- Lot 2 DP 349706
- Lot 9 DP 322364
- Lot 4 DP 349706
- Ngati Kuta Management Unit.

A total of three parties submitted in opposition to the original application (J Cartridge of On Edge Holdings Limited (Lot 2 DP 349706), D G Moore (Lot 4 DP 349706) and A B Medawar (Lot 9 DP 322364)). RMAVAR/B:2160031 was processed on a limited notified basis to the same parties (refer **Figure 4**, identifying affected parties taken from the s42A Officer Report), with only two submissions in opposition received (D G Moore (Lot 4 DP 349706) and J M Johnstone (Lot 4 DP 14032)), both located to the south of the site (and highlighted in yellow).

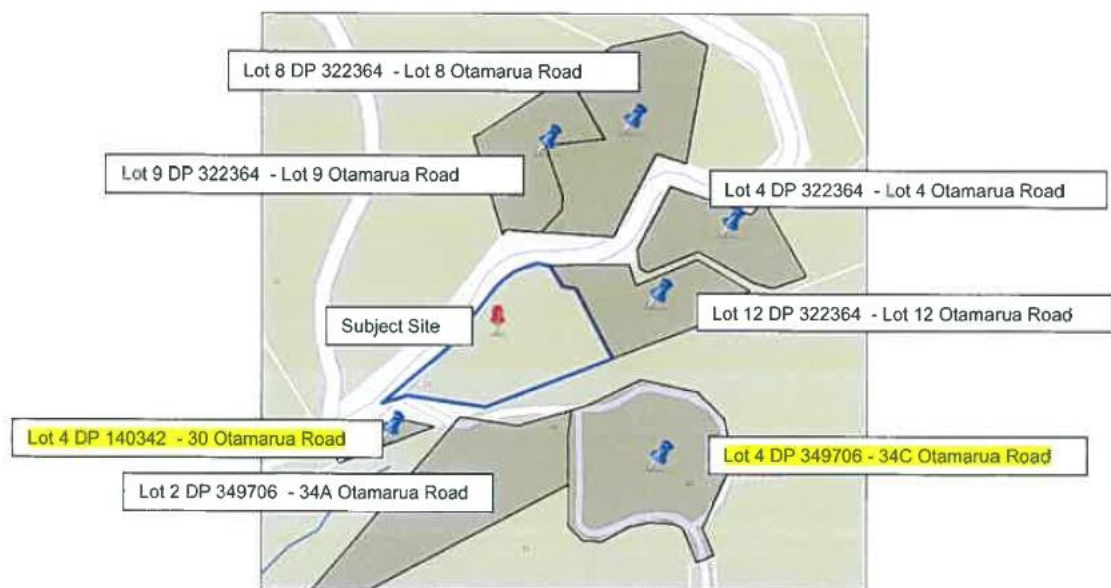


Figure 4 Affected Parties – 21060031-RMAVAR/B Section 42A Officer Report

Careful consideration has been had to the owners and occupiers of adjoining properties, and in particular those persons who have previously lodged submissions in opposition. In summary, it is considered that any actual or potential adverse effects of the proposed changes on those persons will be less than minor, as described in **SECTION 6** and summarised as follows:

- The restaurant operations will remain readily compliant with the existing stringent noise limits;
- Any increases in road noise or nuisance effects are reasonable, mitigated by virtue of the road being sealed to the site.

- The existing configuration of the building and the associated noise attenuation it provides to adjoining properties will not change.

Whilst the original application for Sage was limited notified with a small number of submissions received, the nature and extent of any adverse effects arising from the additional peak season trading days are considered to be insignificant. To this end, there are considered to be no potentially affected parties to the present application, with matters relating to Section 95 of the RMA further detailed below.

7.2 Section 95, RMA

7.2.1 Section 95A Assessment

Section 95A of the RMA considers the need for public notification and sets out four steps in a specific order to be considered in determining whether to publicly notify.

In terms of Step (1), public notification is not requested, Section 95C pertaining to notification in the event that further information is not provided under Section 92 is not applicable, and the application is not being made jointly with an application to exchange recreation reserve land under Section 15AA of the Reserves Act 1977.

In terms of Step (2), the proposal is for a discretionary activity, and there are no relevant rules in the District Plan that preclude public notification. We therefore move to Step (3).

Moving to Step (3), notification is not required by a rule in a Plan or a NES, and as demonstrated in **SECTION 6** of this report, the adverse effects on the environment are considered to be less than minor.

Lastly, in terms of Step (4) as no special circumstances are considered to apply public notification is not required under any of the pathways in Section 95A.

7.2.2 Section 95B Assessment

While public notification is not necessary, any effects of the proposal on the local environment and upon particular parties must still be considered. This is addressed through Section 95B of the RMA, which has four steps similar to Section 95A.

In terms of Step (1), there are no affected protected customary rights or customary marine title groups in terms of Subclause (2), nor is the proposed activity on or adjacent to, or may affect land that is the subject of a statutory acknowledgement made in accordance with an Act specified in Schedule 11 in terms of Subclause (3).

In terms of Step (2), there are no relevant provisions within the District Plan precluding limited notification. We therefore move to Step (3).

Step (3) requires the consent authority to determine, in accordance with Section 95E, whether there are any affected parties as a result of this proposal. Section 95E states that a person is an affected person if the consent authority decides that the activity's

adverse effects on the person are minor or more than minor (but are not less than minor). There are not considered to be any affected persons in this instance for the reasons given in **SECTION 6** and **7.1** of this report. Overall, any actual or potential adverse effects of the proposal are considered to be less than minor.

In terms of Step (4), no special circumstances exist therefore the application may be processed on a non-notified basis.

With respect to the above, in consideration of the conclusions of the AEE, it is concluded that the proposal will result in less than minor adverse effects on the environment, and there are no other circumstances requiring or warranting public or limited notification.

7.3 Section 104(1), RMA

Section 104(1) of the RMA requires that the consent authority must, subject to Part 2, have regard to a range of matters when considering an application. **SECTION 6** of this report addresses the matters contained in Section 104(1)(a) and (ab). There are no other matters under Section 104(1)(c) that are considered relevant and reasonably necessary to determine the application.

7.4 Section 104(1)(b), RMA

Section 104(1)(b) requires that the provisions of any national policy statement, the Operative Plan, or any other matter the consent authority considers relevant and reasonably necessary, to be considered when assessing an application. In this instance, the relevant planning documents are considered to be the District Plan and the PDP.

7.4.1 Operative Far North District Plan

The principal planning document is the Operative Far North District Plan. The objectives and policies for the General Coastal Zone are aimed at preserving natural character and protecting it from inappropriate subdivision, use and development. In broad terms, the natural character of Paroa Bay has been modified by rural lifestyle subdivision and development, with the existing restaurant forming part of this modified natural coastal environment. The most relevant objectives and policies of the District Plan are identified as follows:

Objectives

- 10.6.3.1 *To provide for appropriate subdivision, use and development consistent with the need to preserve its natural character.*
- 10.6.3.2 *To preserve the natural character of the coastal environment and protect it from inappropriate subdivision, use and development.*
- 10.6.3.3 *To manage the use of natural and physical resources (excluding minerals) in the general coastal area to meet the reasonably foreseeable needs of future generations.*

Policies

- 10.6.4.1 *That a wide range of activities be permitted in the General Coastal Zone, where their effects are compatible with the preservation of the natural character of the coastal environment.*
- 10.6.4.2 *That the visual and landscape qualities of the coastal environment in be protected from inappropriate subdivision, use and development...*
- 10.6.4.4 *That controls be imposed to ensure that the potentially adverse effects of activities are avoided, remedied or mitigated as far as practicable...*

With respect to the above, the proposal seeks to utilise the well-established restaurant by extending the trading days during the peak summer period. No changes are required to the site, grounds or building to facilitate the proposal, with suitable parameters retained to avoid any adverse effects on the natural character of the coastal environment. Further, the nature of the existing consent conditions will ensure that any actual or potential adverse effects on the immediate receiving environment are avoided or mitigated, and consistent and comparable to those associated with the operations of the existing and approved restaurant. To this end, the proposal is considered to be aligned with the above objectives and policies.

7.4.2 Proposed Far North District Plan

It is noted that the PDP was publicly notified in 2022, and is presently subject to hearings, with a decision expected in 2026. Whilst there are no rules having immediate legal effect that are relevant to the proposal, regard must be given to the relevant objectives and policies. To this end, we note the following.

The site is zoned Rural Production under the PDP, and within the Coastal Environment Overlay. The objectives and policies for the Rural Production Zone are aimed at providing for primary production activities and other activities that support primary production and have a functional need to be located in a rural environment. Given the discrete nature of the proposal and utilisation of the existing restaurant, the relevant objectives and policies within the PDP are considered to be focused, with these identified and assessed as follows.

RPROZ-O4 *The rural character and amenity associated with a rural working environment is maintained.*

RPROZ-P7 *Manage land use and subdivision to address the effects of the activity requiring resource consent, including (but not limited to) consideration of the following matters where relevant to the application:*

- a. *whether the proposal will increase production potential in the zone;*
- b. *whether the activity relies on the productive nature of the soil;*
- c. *consistency with the scale and character of the rural environment;*
- d. *location, scale and design of buildings or structures;*
- e. *for subdivision or non-primary production activities:*
- f. *scale and compatibility with rural activities;*
- g. *potential reverse sensitivity effects on primary production activities and existing infrastructure;*
- h. *the potential for loss of highly productive land, land sterilisation or fragmentation*
- i. *at zone interfaces:*
- j. *any setbacks, fencing, screening or landscaping required to address potential conflicts;*
- k. *the extent to which adverse effects on adjoining or surrounding sites are mitigated and internalised within the site as far as practicable;*

- l. the capacity of the site to cater for on-site infrastructure associated with the proposed activity, including whether the site has access to a water source such as an irrigation network supply, dam or aquifer;*
- m. the adequacy of roading infrastructure to service the proposed activity;*
- n. Any adverse effects on historic heritage and cultural values, natural features and landscapes or indigenous biodiversity;*
- o. Any historical, spiritual, or cultural association held by tangata whenua, with regard to the matters set out in Policy TW-P6.*

The proposal is focused around the utilisation of an existing restaurant for extended trading days during the peak season. The proposal does not require any changes to the site or buildings, and rather utilises the existing infrastructure of the restaurant and avoids any adverse effects on the rural working environment.

The nature of the receiving environment is largely that of a modified rural coastal environment, with numerous lifestyle properties evident, with the restaurant operating as part of the wider Paroa Bay Winery & Estate (and as an avenue to present wines grown and produced by the grounds, and locally sourced food). To this end, the proposal is considered an appropriate response to the relevant objectives and supporting policies of the Rural Production Zone.

7.5 Part 2, RMA

We understand from recent case law that a consent authority is generally no longer required to consider Part 2 of the RMA beyond its expression in the relevant statutory documents. Notwithstanding this, and noting the requirements of Schedule 4 of the RMA, we provide the following assessment against Part 2 of the RMA.

The purpose of the RMA is to promote the sustainable management of natural and physical resources, and consideration needs to be given as to whether the activity is allowing people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while:

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

The proposal seeks to enable the existing restaurant to open for additional trading days in the peak season, with appropriate controls in place to manage any actual or potential adverse effects. To this end, the proposal is considered to be an efficient use of the existing natural and physical resources of the site, and able to be managed so as to avoid any actual or potential adverse effects on the environment.

Given the nature of the proposed changes with no physical changes involved, there are no Section 6 Matters of National Importance or Section 8 Treaty of Waitangi matters considered relevant to the application.

Section 7 of the RMA requires that particular regard be given to a range of identified other matters, relevant to this application being:

- (b) *the efficient use and development of natural and physical resources:*
- (c) *the maintenance and enhancement of amenity values:*
- (f) *maintenance and enhancement of the quality of the environment:*

As identified above, the proposal is considered to represent an efficient use of the existing natural and physical resources of the site, with suitable controls in place to avoid and mitigate any adverse effects. To this end, the proposal is considered to appropriately maintain amenity values and the quality of the environment.



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Supporting Information:

SHAREFILE LINK:

[SAGE TRADING DAYS - RC APPLICATION AND SUPPORTING DOCUMENTS](#)

- [A] Record of Title**
- [B] 2160031-RMALUC**
- [C] 2160031-RMAVAR/B**
- [D] 2160031-RMAVAR/C**
- [E] Marshall Day Acoustic Assessment**