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HASTINGS DISTRICT COUNCIL

DECISION RELATING TO:-

A NOTIFIED APPLICATION FOR LAND USE CONSENT TO ERECT A 720M² RESTAURANT

AT 114 HAVELOCK ROAD, HAVELOCK NORTH, BEING LOT 7 DP 1028 (CT HBC4/1405)

(RMA20060096 / NRC189).

RESOLVED BY THE HEARINGS COMMITTEE - AT A MEETING HELD ON 2 JUNE 2006.

A DECISION PURSUANT TO SECTION 113 OF THE RESOURCE MANAGEMENT ACT 1991

ON AN APPLICATION BY GLEN ETIVE COTTAGES TO ESTABLISH AND OPERATE A RESTAURANT.

STATUTORY PROVISIONS THAT WERE CONSIDERED BY THE COMMITTEE

(Section 113(1)(aa):

1.

Resource Management Act 1991:

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Part II of the Act

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Sections 104, 104B AND 104D.

THE FOLLOWING PLAN OR POLICY PROVISIONS WERE CONSIDERED BY THE COMMITTEE (section 113(1)(ab):

The Operative Hastings District Plan:

1.

The Objectives, Policies and other Provisions of Section 6.0 - Plains Zone.

2.

Provisions of Section 14.1 - Traffic Sightlines, Parking, Access and Loading.

The Proposed Hawke's Bay Regional Resource Management Plan:

1.

Not Considered Relevant

EVIDENCE AND SUBMISSIONS WERE PROVIDED BY THE FOLLOWING WITNESSES AND SUBMITTERS DURING THE HEARING:

Name

Qualifications/Experience

Position

Mr Holder

BRP, Grad NZPI

On Behalf of the Applicant

Mr and Mrs Dale

Unknown

Submitter

Mr Horn

Unknown

Submitter

Mr Hill

BSc, PGCertSc,

PGDipSocSc, BSocSc(Hons),

PGDipREP, MNZPI

Reporting Officer

Kathleen Wright, R and C

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THE PRINCIPAL ISSUES THAT WERE IN CONTENTION AND A SUMMARY OF THE EVIDENCE HEARD; AND THE MAIN FINDINGS OF FACT BY THE COMMITTEE ARE AS

FOLLOWS (Section 113(1)(ac), (ad) and (ae)):

1.

Permitted Activity Baseline:

Given the site size and the proximity to Hastings and Havelock North, both Mr Holder and Mr Hill considered that weight should be given to the permitted baseline. The Hearings Committee agreed. The Committee considered that the permitted activity baseline for this proposal is the 100m² serving area for an entertainment facility, servicing no greater than 40 patrons at anyone time.

2.

Traffic Concerns:

Both the applicant's consultant Roothing Engineer and Council's Roothing Engineer agreed that subject to upgrading the existing vehicle crossing (and additional roading marking), safe and efficient access to the site can be maintained. Mr and Mrs Dales' written submission disagreed with the applicant's consultant Roothing Engineer.

The Committee agreed with both the applicant's consultant Roothing Engineer and Councils Roothing Engineer.

3.

No-complaints covenant:

The applicant proposed a no-complaints covenant to be registered against the title to address reverse sensitivity issues. Mr Hill agreed that such a covenant would help address reverse sensitivity issues.

Mr Horn's written submission (and verbal evidence during the hearing), requested that the no-complaints covenant be amended to include patrons that may visit the site. In addition, he stated that this did not protect his operation from accidental spray drift. Mr Hill did not recommend amending the covenant to allow for accidental spray drift or to cover patrons to the site (as they were third parties to this application and as such could not be subject to a condition of consent).

The Hearings Committee agreed with Mr Hill.

4.

Shelter Belt setback:

The applicant proposed to erect a shelter belt 3 metres from the north western and north eastern boundaries. Affected persons consent had been given for the intrusion along the north western boundary and the submitter on the north eastern boundary explicitly allowed for this in his submission.

Both Mr Holder and Mr Hill agreed that this would not result in a more than minor effect. The Hearings Committee agreed with this.

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5.

Noise:

Mr Hill and Mr Holder agreed that subject to conditions, any noise created by the proposal would be no more than minor. Mr and Mrs Dale's written submission (and verbal evidence at the hearing) suggest that noise effects would be more than minor.

Given the proposed conditions, permitted baseline and existing noise environment, the Hearings Committee agreed with Mr Hill's and Mr Holder's evidence.

6.

Remaining Effects, Provisions of Plan and Part II of the Act:

Mr Hill and Mr Holder agreed that all remaining effects (subject to conditions) were no more than minor, that the proposal was consistent with the provisions of the Plan and Part II of the Act.

Mr and Mrs Dale's written submission (and verbal evidence at the hearing) suggest that noise effects would be more than minor.

Given the proposed conditions, the small site size, that some affected persons consent had been provided, that Mr and Mrs Dale's house is located 300 metres from the proposed building, the permitted baseline and the existing environment, the Hearings Committee agreed with Mr Hill and Mr Holder that the effects of the proposal were no more than minor and that the proposal was consistent with the provisions of the Plan and Part II of the Act.

7.

Section 104

Mr Hill and Mr Holder agreed that the application passed both gate tests ways of Section 104D, enabling the hearings committee to grant the proposal. Both also agreed that the proposal should be granted. The Hearings Committee agreed with Mr Hill and Mr Holder and granted consent pursuant to Section 104B.

DECISION:

A.

That pursuant to Rule 6.7.5 of the Hastings District Plan (Operative June 2003) and Section 104B of the Resource Management Act 1991, consent be Granted to Glen Etive Cottages to erect a 720m² building at 114 Havelock North, being Lot 7 DP 1028 (CT HBC4/1405) consisting of a:

- 560m² indoor restaurant
- a 160m² covered terrace,
- creation of 45 on site car parks,
- entertain 100 patrons,
- to erect a shelterbelt on the north eastern and north eastern boundary
- employing 10 on site staff and
- operating from 9am to 11pm from Tuesday to Sunday.

B.

That the submissions requesting that Council decline the proposal from the following parties *BE DISALLOWED* in so far as consent be granted:

- Alfred and Susan McCallum, 20 Millar Road
- Lothar Herzog, 405 St Georges Road
- Roland and Anne Dale, 28 Millar Road

C.

That the submission requesting that Council grant the proposal (subject to conditions) from the following party *BE ALLOWED* in so far as consent be granted:

- David Morgan, Havelock Road
- Gale and Dorothy Curtis, unknown address
- Raiford and Coral Gardiner, unknown address
- The West Gate Company Ltd, 96 and 98 West Gate Company Ltd
- Stewart and Gay Horn/ Waitohi Trust

SUBJECT TO THE FOLLOWING CONDITIONS:

1. That unless otherwise modified by the following conditions the development proceeds in accordance with the plans and information submitted in the application; (ref: 114 Havelock North, Property 59404, Resource Consent RMA 20060096, dated 3/3/2006).

2. That the marquee shown on the original plan shall be removed from the proposal.
3. The applicant shall construct a vehicle crossing on road reserve to serve the site in accordance with the Hastings Engineering Code of Practice (November 1997).
4. That the parking area on site shall be formed, and marked in accordance with the requirements of section 14.1.8.4(4) and appendix 14.1.2 of the Hastings District Plan (see attached), to the satisfaction of the Manager, Resource Management, Hastings District Council.
5. That a Memorandum of Encumbrance or a Deed of Covenant (at the election of Hastings District Council and in a form acceptable to the Hastings District Council) providing (inter alia) stating:

This property is located in a productive rural area where agricultural management practices such as agrochemical spraying, use of farm machinery, the operation of bird scarers and other similar activities may occur.

Where landuse activities in the surrounding area are carried out in accordance with the relevant plan requirements, the property owner, or their successor in title shall not:

Bring any proceedings for damages, negligence, nuisance, trespass or interference arising from the use of that land; or

(I) Make nor lodge; nor

(II) Be party to; nor

(III) Finance nor contribute to the cost of;

Any application, proceeding or appeal (either pursuant to the Resource Management Act 1991 or otherwise) designed or intended

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to limit, prohibit or restrict the continuation of the operations of any rural activity on surrounding land, including without limitation any action to require the surrounding landowners/occupiers to modify the rural operations carried out on their land.

The covenant shall be registered at the Applicant's cost against the Certificate of Title of the subject site, with such Memorandum or Deed to be prepared by Council and returned duly executed by the applicant within three (3) months of the date of issue of this consent.

6.

That the activity shall be so conducted as to ensure that noise from the site shall not exceed the following noise limits:

- 65 dBA L10 at the site boundary at all times.
- 50 dBA L10 within any 'Notional Boundary' from 7am-7pm Monday- Friday and 7am –12noon Saturday.

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40 dBA L10 within any 'Notional Boundary' at all other times and public holidays.

- 65 dBA Lmax within any 'Notional Boundary' 10pm to 7pm on the following day.

That noise levels will be measured in accordance with the New Zealand Standards NZS 6801:1991 "measurement of sound" and NZS 6802:1991 "assessment of environmental sound" or any subsequent amendment to these standards.

Notional Boundary means a line 20 metres from the façade of any dwelling house, or any building being part of a residential activity, visitor accommodation, hospital, education facility, marae or church or the legal boundary whichever is closer to the dwelling house or building.

7.

That a noise management plan shall be prepared by the applicant (or an agent acting on behalf of the applicant) and including the provision for ongoing review of the

management plan to the satisfaction of the Manager, Resource Management prior to the operation opening.

8.

That the noise management plan prepared in accordance with Condition 7 (and modified by Council staff if necessary), shall be implemented prior to the operation opening and in accordance with this plan thereafter.

9.

All external lighting shall be shaded or directed away from residential buildings and Havelock Road, and shall be less than 8 lux spill measured at a height of 1.5 metres above the ground at the boundary of the site.

10.

That the applicant shall plant an evergreen shelter belt:

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no closer than 3 metres from the north western boundary (in accordance with the application) and,

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no closer than 3 metres from the north eastern boundary (but along entire north eastern boundary),

prior to the commencement of operations to the satisfaction of the Manager, Resource Management, Hastings District Council.

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11.

That in regard to Condition 10 above, the shelter belt shall be established with plants no smaller than 2 metres high, to satisfaction of the Manager, Resource Management, Hastings District Council.

12.

That in regard to Condition 10 above, the landscaping shall be maintained to the satisfaction of the Manager, Resource Management, Hastings District Council.

13.

That a monitoring deposit of \$105 (including GST) shall be payable to cover the reasonable costs of monitoring compliance with the above conditions in accordance with Council's schedule of charges.

In the event of non-compliance being detected by monitoring or justified complaint and/or the costs of monitoring consent exceeding the deposit, the costs to Council of any additional monitoring shall be paid by the consent holder in accordance with the Council's advertised schedule of fees.

WITH THE REASONS FOR THIS DECISION BEING:

1.

Conditions 1, 2 and 3 ensure compliance with the approved plans.

2.

Condition 3 ensures that the safety of the Road Network will not be compromised.

3.

Condition 4 ensures that car parks are satisfactorily designed.

4.

Condition 5 ensures that legitimate adjoining landuses are not restricted in operating into the future.

5.

Conditions 6 - 8 ensure that the activity will be operated until any mitigation actions are carried out.

6.

Condition 9 ensures that any external night lighting does not adversely affect neighbouring residents or traffic safety.

7.

Conditions 10 – 12 will help with softening the effect of the building and help address reverse sensitivity and noise issues.

8.

The adverse effects of this proposal are considered to be no more than minor, generally consistent with the Objectives, Policies and other provisions of the Hastings District Plan and consistent with the provisions of Part 2 of the Act in that in that:

- a) The amenity of the area will be maintained.
- b) Safe and efficient access onto Havelock Road will be achieved.
- c) Any reverse sensitivity effects are considered to be no more than minor.
- d) The site is too small for independent economic primary production.
- e) The site is almost completely screened from Havelock Road by mature vegetation.

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- f) There will be economic benefits for those involved in the construction of the complex and from any profit with the on going operation of the complex.
- g) The proposal will provide for the social wellbeing of the community by providing an additional entertainment resource within the District
- h) Havelock Road comprises of a mixture of rural, lifestyle, residential and commercial activities and is not typical of the wider Plains Zone.
- i) The building will be single storey and complies with the distance from boundaries and height provisions of the Plan.
- j) Additional landscaping is proposed to help soften the effect of the building.
- k) Affected persons consents from most of the adjoining neighbours have been obtained.
- l) The development is a sustainable use of this undersized Plains Zone Site and is compatible with the existing on site activities, being visitor accommodation units.

2. The proposal meets the provisions of the Resource Management Act 1991.

CERTIFIED BY:

Ian Macdonald

ENVIRONMENTAL MANAGER

RESOURCE MANAGEMENT

13 June 2006

Advisory Notes

1.

In terms of Condition 3 above, please contact Council staff to discuss the exact design for the crossing, prior to commencement of any work.

2.

In regard to condition 11, the maintenance of the landscaping means the replacement of any dangerous, dead or dying matter, and the general preservation of the landscaping to a healthy standard

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