MINUTES

of the

COMMISSIONER (RESOURCE CONSENT) HEARING MEETING

held

9.30 am, Wednesday, 24 February 2016

at

Tasman Council Chamber, 189 Queen Street, Richmond

1 OPENING, WELCOME

2 REPORTS

2.1 Allied Petroleum Limited

RESOURCE CONSENT DECISION
Decision of Hearing Commissioner
Hearing held in the Council Chambers, Richmond on Wednesday, 24 February 2016
Site visit undertaken on Wednesday, 24 February 2016
Hearing closed on Monday, 29 February 2016

A Hearing Commissioner was appointed to hear and determine an application lodged by **Allied Petroleum Limited** ("the Applicant"), for resource consent to erect an off-site directional sign associated with a consented truck stop at 16 Artillery Drive, Richmond. The application made in accordance with the Resource Management Act 1991 ("the Act"), was lodged with the Council in September 2015 and referenced as **RM150755**.

HEARING COMMISSIONER David Mountfort

APPLICANT:
Nigel McFadden, Legal Counsel
David Smith , Building Development Manager
Liz Gavin, Landscape Architect
Andy Carr, Traffic Engineer
Gary Rae, Planning Consultant

SUBMITTERS: No appearances

REPORTING OFFICERS:	Mike Mackiggan, Consent Planner – Land Rowena Cudby, Co-ordinator Land Use Consents
IN ATTENDANCE:	Michael Croxford, Principal Resource Consents Advisor Chris Thomsen, Council Solicitor

Summary of Decision	That the Application be granted, subject to conditions
Application Reference:	RM150755
Applicant:	Allied Petroleum Ltd
Site address:	Corner Lower Queen Street and Sandeman Road, Richmond
Legal Description:	Lot 1 DP 18918
Proposal:	To erect an off-site directional sign associated with a consented truck stop at 16 Artillery Drive, Richmond.
District Plan Zoning & Notations:	Zoned Light Industrial, denoted as part of "Richmond West Development Area", road widening designation on Lower Queen Street frontage.
Activity status:	Restricted Discretionary
Submissions:	Four in support
Date of Hearing:	24 February 2016

Introduction

1. This is an application by Allied Petroleum Ltd to erect a sign at the corner of Lower Queen Street and Sandeman Road to direct customers to its truck refuelling facility at 16 Artillery Drive, Richmond.

2. I have been appointed by the Tasman District Council as a Hearings Commissioner to hear and decide the application and submissions.

The Site

3. The site contains 2.0129ha. It is at present a vacant site.

4. The main features of the proposed sign are as follows:
   - 3.9 metres in height;
   - Double-sided; at right angles to the road;
   - $3m^2$ area per side
   - Simple wording and graphics, displaying the applicant's logo, the availability of 24-hour fuel and a directional arrow;
   - Illuminated at night;
   - Has capacity for similar signage by other businesses to be erected on it, but no other signage is currently requested under this application.

The Submissions

5. Submissions in support were lodged by
   - Hino Distributors (NZ) Ltd
   - STL Linehaul Ltd

- TW Transport Ltd
- Fuel Storage Systems Ltd

The Hearing

6. I conducted a hearing at the Council offices on 24 February 2016. A list of attendees is available at the front of this decision.

The Planning Framework

7. Before discussing the application and the planning framework in detail it is necessary to describe what is known as the "permitted baseline". This is a legal principle, set out in section 104 (2) of the Resource Management Act 1991. Under this, when deciding a resource consent, "*a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.* In order to use this principle, it is necessary to establish what permitted non-fanciful activities could occur on this site, then compare the adverse effects of what is actually proposed with the effects that could be created as of right. In other words, it is only the adverse effects over and above those of the permitted baseline which should be taken into account.

8. In this case the site is zoned Light Industrial and is in an area anticipated to be developed as part of the Richmond West Development Area. There are other industrial or business zonings in the immediate vicinity. If or when this vacant Light Industrial site comes to be developed under the zoning, it is highly likely that quite a significant number of signs would be provided all along both frontages of this corner site, particularly as the Lower Queen Street frontage is denoted as a retail frontage. The Tasman Resource Management Plan (the TRMP) provides for quite a variety of signage, as illustrated in the diagram contained in the s42A report, all of which could be erected as of right if they complied with the various requirements. Notably for this application this would include freestanding signs no more than $3m^2$ in area and up to 5m in height, and advertising the business on the site where the sign is located.

9. It is the adverse effects of such permissible signage which I may compare the adverse effects of this proposed sign to under the permitted baseline principle. I note that this is not a mandatory consideration. I may choose not to apply it. However, I see no reason why I should not exercise my discretion to apply the permitted baseline, as this case seems to be a straightforward application of it with no exceptional circumstances indicating it should not be applied.

10. I will return to this later under my assessment of the effects.

Rules

11. Mr Mackiggan and Mr Rae agreed that the applicable rule is 16.1.4.1. This has a number of components, but contains a subclause (f) which relates particularly to freestanding signs, as follows:

    (f) A freestanding sign complies with the following and the requirements indicated in Figure 16.1B:

        (i) freestanding sign is placed only on the site to which it relates, except as allowed for in (iv) below;

        (ii) only one freestanding sign may be placed on a site, with a maximum area of 3 square metres area and a maximum height of 5 metres;

(Refer to Schedule 17.2A in respect of a permitted single free-standing sign within the Three Brothers Corner Commercial Zone);

(iii) an additional freestanding sign bearing only the words "entry" or "exit" may be placed on a site, with a maximum area of 0.75 square metres and a maximum height of 1.5 metres, located near the site access in a position that does not limit visibility from the access;

(iv) commercial, mixed business or industrial premises provided that the sign is:

(a) no larger than 900 millimetres in height or 600 millimetres in width;
(b) made of flexible material;
(c) placed in such a position that at least 2 metres width of footpath remains available for pedestrian movement; and
(d) located on the road reserve where the speed limit is below 70 kilometres per hour".

12. Clearly the proposed sign infringes subclause (i) as it is not on the site to which it relates. What is not so clear is whether or not it also infringes subclause (ii). As applied for the sign was to be 3.9m^2, but the application was modified at the hearing to be 3.0m^2. I note that I am able to accept a modification which reduces the scale and effects of a proposal, as no party would be unfairly disadvantaged by such a reduction. A dispute arose at the hearing between the applicant's representatives and Mr Mackiggan as to how to measure the area of a doubled-sided sign. Mr Mackiggan considered that the areas of both sides should be measured and added together. Mr Rae and Mr McFadden were adamant that if a sign measured 3.0m2 on a single face it would comply. In support of this they cited some diagrams in the plan which seem to show the 3m^2 on a single face, and the definition of sign in the plan which states that a sign "may be double-sided".

13. I consider a definition is not actually part of a rule, it merely serves to illustrate and clarify how a rule is to be interpreted. In fact, it clarifies nothing for this issue. Beyond confirming that a sign may be double-sided, it says nothing about whether the size limit refers to one or both sides. With regard to the diagram, it may simply be an illustration of a single-sided sign with nothing on the reverse. With regard to the definition it only states that a sign may be double-sided, and says nothing about how it is to be measured. I consider that the applicant's interpretation is not actually supported by the provisions of the plan itself. If a sign actually contains 6m^2 of signage, then it seems to me to be very artificial and straining the ordinary meaning of the language to measure only half of what is actually intended by the application.

14. It is not necessary for me to actually decide this point. For what it is worth I believe the best interpretation is that the 3.0m^2 maximum in the rule is to include both faces of a double-sided sign. However, the plan is quite ambiguous on this point. If the sign is 6.0m^2 in area, it would therefore infringe against two provisions of the rule rather than one. It remains an application for a restricted discretionary activity which must be decided on its particular merits. I certainly have to consider the effects of both sides of the sign, whether it be technically measured as 3.0 or 6.0 m^2. There is no doubt that it actually contains 6.0m^2 of signage. So ultimately I found this argument rather artificial. I will return to the effects of a 6.0m^2 double-sided sign later.

15. A related issue arose, instigated mainly by myself, as to whether or not the applicant had actually applied for a double-sided sign. The plan of the sign illustrates only one side, although it is shown as perpendicular to the direction of the road, strongly implying that it is intended to be read on both sides. Mr Mackiggan was fair enough to say that the application is not "precise" as to whether it is single or double-sided, and that the

location plan shows that it is probably double-sided. He himself, in his report had understood it to be double-sided. I therefore accept that that is the case and take that matter no further.

16. As a restricted discretionary activity, the plan restricts the matters which can be taken into account under Rule 16.1.4.2 to:

> *(1) Location and legibility in relation to traffic safety; and*
>
> *(2) Any amenity effect on the surrounding area, including size and duration".*

The Submissions

17. The submitters, mostly operators of truck fleets say they need the sign to assist drivers many of whom are not local to find the site without mistakenly taking large rigs up the wrong streets and having difficulty turning.

Precedent

18. Under the TRMP, the issues for consideration are traffic safety and amenity. Before dealing with these I turn to a third issue raised by Mr Mackiggan. That is the potential precedent that this application, if granted, might create. He considered that if this application is successful then other parties would be encouraged to apply for off-site signs, specifically at this corner by other occupiers of this industrial development, but also elsewhere in the district. He considered that this could lead to a proliferation of signage and to undesirable visual clutter and provided some photographs of where this is already occurring. He considered that this would be an adverse effect on visual amenity, which is one of the matters to which discretion is occurred.

19. The problem with that approach is that it treats precedent as if it is an adverse environmental effect in itself, whereas adverse effects are usually considered to be physical effects directly arising from a proposed activity, such as on visual appearance, traffic safety, noise, dust, or pollution of water and air. Precedent is something that may or may not arise, depending on whether or not someone else relies on it at a future time. Mr Rae and Mr McFadden argued strongly that precedent has no place in the consideration of restricted discretionary activities and Mr McFadden cited a number of legal cases to this effect[1]. I have read those cases. The principle appears to be that on a restricted discretionary activity, application the Council may consider only those matters to which it has restricted its discretion. If precedent is not one of those matters it is not able to be considered at all. That seems to be now firmly established in the case law.

20. If others wish to have signs at this corner they will need to apply for resource consents of their own. At that time cumulative effects can be taken into account. Ms Gavin made the interesting observation that each succeeding application, if granted, would tend to increase the proliferation and the visual clutter, so each consent would be increasingly difficult to obtain. I think that approach is correct. There would come a tipping point when additional signage would have this effect. As always the difficulty would be in knowing when that point had been reached.

21. In summary, the applicant's position on the precedent argument is that it has no relevance to restricted discretionary activities but that if undesirable effects do start to

[1] Campbell v Napier CC EnvC W067/05
Kirton v Napier CC2013 NZEncC 66
Purse v Tasman DC 2011 NZEnvC 79

arise from subsequent applications then the Council has the power to deal with them. In saying this, the applicant's representatives and witnesses all fairly conceded that visual clutter and a proliferation of signage could be undesirable and that the Council is right to be wary of it. However, that situation has not arisen yet and will not arise with this application for a single sign in a location where there are no others.

22. This issue of precedent appears to be the Council's main reason for opposing this application, although Mr Mackiggan does consider that that it would have adverse visual and traffic safety implications on its own. I will return to that later. However, on this matter of precedent my conclusion is that there is no ability to take it into account on a restricted discretionary activity application, and that it should not be a concern in any case because if unsatisfactory cumulative effects do threaten to arise with subsequent applications, then the Council can deal with it at the time. In fact, if cumulative effects arise there would actually be no precedent at all, simply because the effects would be different and greater.

Visual Effects

23. For the applicant, Ms Liz Gavin, a qualified landscape architect gave evidence. It was her opinion that the proposed sign would not have adverse visual effects that were more than minor. I summarise her evidence as follows;

- The location and style of the zone is appropriate to the Light Industrial zone.
- Lower Queen Street already contains a mixture of rural, commercial and industrial character including two large factories and other businesses. Further industrial character is expected to develop.
- Signage is already present in the area.
- The proposed signage is appropriate in its particular contex.t
- The TRMP permits and encourages signage in industrial areas, recognising that this is part of the industrial character, while being aware of safety and amenity issues.
- The TRMP draws a distinction between industrial areas on the one hand, and rural, recreation and residential areas on the other, where signs are seen to detract from the character.[2]
- The number of signs associated with this business park should be limited and co-location should be required. The application may assist to achieve this by making space available for others if they wish to apply to use it.
- The sign may actually assist with traffic safety by giving drivers clear and timely notice and avoiding the need for sudden braking movements, reversing or difficult turning movements.

24. For the Council, Mr Mackiggan continued to support his position expressed in the s42A report that the sign would have adverse visual effects. He did not support this with any detailed or expert analysis.

25. As a Commissioner, faced with conflicting opinions such as this, it is very difficult for me not to prefer the detailed evidence of a qualified, expert and independent witness over the brief, unsubstantiated opinion of the Council's planner. I do have to make up my

[2] See Clause 5.2.30 As quoted in the s42A report para 7.2

own mind, but obviously uncontested expert evidence will almost invariably be more convincing than very brief and unsubstantiated expressions of opinion from a person who does not have expertise in the field. I hasten to add that Mr Mackiggan is perfectly entitled to hold and express his opinion. However, it is the matter of the relative weight to give to the two opinions that I must decide. I note that Ms Gavin did tend to stray into the planners' field by offering comments on the content and interpretation of the plan, as landscape architects commonly do in hearings such as this.

26. The reasons for the objectives and policies state, at Clause 5.2.30:

> *Signs are generally acceptable in the commercial and industrial areas because they are needed to advertise products and services. For this reason there is a more liberal approach to signage in these areas. However, signs on roofs and verandahs are restricted for amenity reasons.*
>
> *Advertising in rural, recreation and residential areas is often a detraction from the amenity of these areas and in these areas, signs are restricted as to scale and positioning.*

27. This is reflected in the fact that the scale and location of signs is more restrictive in Rural, Recreation and Residential zones, and signs which breach the standards are fully discretionary in the Residential zones, although they remain restricted discretionary in Rural and Recreation zones. Offsite signs are not permitted in any zones and the stated reason for this is to avoid proliferation of commercial signs.

28. It is therefore understandable that Mr Mackiggan reached the conclusion he did, when the reasons for the rules take such a strong position against off-site signs. However, the rules themselves are not as strong as the reasons, at least in the case of the industrial zones. By leaving offsite signs restricted discretionary, this prevents me from considering possible precedent. In addition, Mr Mackiggan has possibly overlooked that a single sign does not amount to proliferation.

29. It is possible that he is also influenced by the fact that the area is still partly rural in character. However, the Council itself intends that is to change and has zoned the area for industrial and retail activities.

30. That leaves the second rule infringement to be considered, which is the area of the sign. I have already concluded that it is 6.0m^2 in area rather than 3.0, because both sides need to be considered. However, only 3.0m^2 of this will be visible at a time. I asked Ms Gavin about this. She did not consider one direction more sensitive than the other and was satisfied that the appearance would not be adverse from either viewpoint. I accept and adopt this conclusion.

31. I find myself very influenced by the permitted baseline in this case. Mr Rae developed this theme by saying that the effects of an off-site sign such as this on visual amenity would be very similar to the effects of an on-site sign. I agree. There is nothing about this particular sign, considered purely by itself, that would be more adverse in appearance than complying onsite signs.

32. Therefore, if precedent cannot be considered, proliferation is not an issue with a single sign and there is a strong permitted baseline argument, then it is a matter of which opinion to prefer. I have concluded that I prefer Ms Gavin's opinion to that of Mr Mackiggan. I find that any adverse visual effects of this proposed sign would be less than minor.

Traffic Safety

33. Signage has the potential to cause driver distraction and therefore accidents. This can occur when signs are overly large, contain complex messaging or small lettering that is difficult to read, cause confusion with traffic signs or are in locations where drivers need to keep their eyes on the road. Ideally signage should be simple and able to be taken in and understood in a single quick glance. The rules in the TRMP on dimensions, lettering and location of signage are intended to achieve this.

34. For the applicant Mr Andy Carr, a qualified and experienced traffic engineer gave evidence. I summarise his evidence as follows.

    - There are no safety deficiencies due to the layout of the existing road network.
    - There are a number of existing signs in the vicinity.
    - Mr Carr carried out a detailed analysis of the sign against the recommendations of the NZTA Traffic Control Devices manual. This has detailed considerations of matters such as reflectivity, mimicking traffic control signs, colours, brightness, location, angles of view, sight distances and lettering size.
    - He also carried out an analysis of all the recorded accidents in the Nelson Urban area between 2006 and 2015 and found that in only 0.15% of cases was distraction from advertising signs recorded as a contributing factor.
    - There were only two infringements of the NZTA Manual's recommendations. These were that the sign would be 35 rather than the recommended 60m from the nearest existing advertising sign, and that it would be within 200m of several existing warning signs. The manual allows for professional judgement to be exercised and in Mr Carr's opinion the sign would not introduce any road safety risk.

35. For the Council Mr Mackiggan maintained his opinion that the sign would be a safety risk, but did not offer any detailed analysis or call any expert evidence.

36. For much the same reasons as I outlined above in regard to the disagreement between Mr Mackiggan and Ms Gavin on the visual amenity issue, I prefer the detailed evidence of a qualified, experienced and independent expert.

37. Finally, in regard to traffic safety, Mr Rae offered a condition which would increase lettering size to accord with the TRMP standards. Although Mr Carr did not discuss this, I consider this can only improve the situation.

Conclusion on Adverse Effects on the Environment.

38. My consideration of the adverse effects of this application is limited to the visual effects and traffic safety. Seen purely on its own merits I consider this proposed sign would have less than minor adverse visual or traffic safety effects on the environment. This case has been very coloured by the issues of precedent and the potential for proliferation of signage and resulting visual clutter. I have set out at length the reasons why I think precedent and proliferation are not relevant to this application and why these matters should be set aside.

Statutory considerations

Resource Management Act 1991

39. When considering an application for a restricted discretionary activity and any submissions received, the consent authority must have regard to the matters listed in Sections 104 and 104C of the Resource Management Act 1991. Subject to Part II of the Act, which contains the Act's purpose and principles, including matters of national importance, the consent authority shall have regard to:

> *Any actual and potential effects on the environment of allowing the activity.*
>
> *Any relevant provisions of a plan and of a national environment standard.*
>
> *Any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

40. Under Section 104C the consent authority must have regard only to those matters which the plan has restricted its discretion to, and may set conditions only in respect of those matters.

41. I have already found that the immediate effects on the environment would be less than minor. With regard to potential effects, it is the effects of any future and similar applications which could be adverse, not the effects of this one.

42. With regard to the provisions of the RMA plans and documents, the relevant objectives and policies appear to be in Chapter 5 which deals with Site Amenity Effects, and Chapter 11 which deals with Land Transport Effects.

> ***Objective 5.1.2.*** *Avoidance, remedying or mitigation of adverse effects from the use of land on the use and enjoyment of other land and on the qualities of natural and physical resources.*
>
> ***Policy 5.1.3.1*** *To ensure that any adverse effects of subdivision and development on site amenity, natural and built heritage and landscape values, and contamination and natural hazard risks are avoided, remedied, or mitigated.*
>
> ***Policy 5.1.3.9*** *To avoid, remedy, or mitigate effects of: …..*
>
> *(h) buildings and structures…. beyond the boundaries of the site generating the effect.*

Comment. These are general high level provisions and the application needs to be assessed against them. They are entirely focussed on adverse effects. The detailed examination of environmental effects carried out by Ms Gavin and Mr Carr and discussed above demonstrates that the two types of adverse effects able to be considered, namely amenity and safety would not arise in this case.

43. More specific provisions are found in Section 5.2

> ***Objective 5.2.2*** *Maintenance and enhancement of amenity values on site and within communities throughout the District.*
>
> ***Policy 5.2.3.9*** *To avoid, remedy or mitigate the adverse effects of signs on amenity values.*
>
> ***Policy 5.2.3.11*** *To enable a range of signs in commercial and industrial areas, subject to safety and access needs and visual considerations.*

Comment Again the assessment of effects carried out by Ms Gavin and Mr Carr and discussed above demonstrate a lack of adverse visual and safety concerns.

> ***Objective 11.1.2*** *A safe and efficient transport system, where any adverse effects of the subdivision, use or development of land on the transport system are avoided, remedied or mitigated.*
>
> ***Policy 11.1.3.11*** *To ensure that signs do not detract from traffic safety by causing confusion or distraction to or obstructing the views of motorists or pedestrians.*

Comment Mr Carr's analysis, which I have accepted demonstrates that the application would be consistent with these provisions.

44. I have also consulted Chapter 6.5, which deals with Land for Industrial Activities, but found little there which relates specifically to signage, or to amenity and safety, and concluded that these topics are dealt with in Chapters 5 and 11 while Chapter 6 is more concerned with wider strategic issues such as the purposes, location and supply of industrial land.

Part 2 of the Resource Management Act

45. Part 2 of the RMA sets out the purposes of the Act. In section 5 one of these purposes is enabling people and communities to provide for their social, cultural and economic well-being and their health and safety, noting that this purpose is constrained by the need to avoid remedy or mitigate adverse effects. Section 7 also draws attention to

- *(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:*

46. I consider that the proposal achieves these purposes and principles. It will provide for the well-being of the applicant and for future users of the area. It is an efficient use of the site. Amenity values and the quality of the environment will be maintained, and any adverse effects have been assessed as being less than minor. Therefore, the application is fully consistent with the purposes of the RMA as set out in Part II.

Conclusion under s104

47. For these reasons I consider the application is consistent with the requirements of Section 104.

Concluding Remarks

48. Finally, I do understand and support the Council's concerns about visual clutter, and also about precedent in a general sense. However, the way the TRMP is structured means that is very difficult to take the matter very far in this location and on a restricted discretionary activity. The application is a restricted discretionary activity under which matters of precedent are not able to be considered. The site is in an industrial zone and the plan is relatively permissive of signage in industrial zones. The objectives and policies do not give a strong steer about off-site signage, and the actual effects of the sign would be little different from the permitted baseline. In fact, the permitted baseline could well result in visual clutter from signage if it is developed as anticipated by the

plan. Some of the objectives and policies that deal with traffic safety are actually supportive of the application.

49. I also think that the Council may have allowed its legitimate concerns about proliferation of signage in the wider district to outweigh a realistic consideration of what the Richmond West Development Area may look like in a few years' time, and how insignificant this sign may seem then. If there is a precedent set by this decision, I consider that it would probably only apply in the Richmond Development Area or any similar urban growth areas if there are any.

50. If the Council wishes to take the matters of precedent and proliferation as seriously as it has with this application, I recommend that it look to the structure and content of the TRMP and strengthen it in the appropriate areas. It might be necessary to make off-site non-complying, because as I understand it precedent is not generally a consideration with fully discretionary activities either.

The decision

51. My decision therefore is that the application is granted, subject to the conditions set out below. The submissions in support are allowed and the submissions in opposition are disallowed, except to the extent that the proposal is to be modified under the conditions. My reasons for this decision have been stated throughout this text.

Signed by the Hearings Commissioner:

David Mountfort

Dated:11 March 2016

RESOURCE CONSENT

RESOURCE CONSENT NUMBERS: RM150755

Pursuant to Section 104C of the Resource Management Act 1991 ("the Act"), the Tasman District Council ("the Council") has granted resource consent to:

Allied Petroleum Limited
(Hereinafter referred to as "the Consent Holder")

ACTIVITIES AUTHORISED BY THESE CONSENTS:

RM100851 To erect an off-site directional sign associated with a consented truck stop at 16 Artillery Drive, Richmond.

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

1. Except as required by subsequent conditions the development shall proceed in accordance with the information and plans submitted with the application and modified at the hearing.

2. The sign shall comprise not more than 3.0m^2 on each face.

3. The lettering on the sign shall be increased to a minimum of 150mm in height.

The meeting concluded at

Date Confirmed: Chair: