

RESOURCE CONSENTS HEARINGS PANEL

MINUTES: of a meeting of the Resource Consents Hearings Panel which commenced at 9.03 a.m. in the Council Chamber, Centreway Road, Orewa on Monday, 15 March 2010.

PRESENT:

Chair	John Childs
Crs	Grahame Powell
	Wayne Walker

IN ATTENDANCE:

Reporting Planner	Jemma Hollis
Acting Team Leader	Erik Oosthuizen
Environmental Health Officer	Daniel Winter
Democracy Services Officer	Raewyn Morrison

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Note: John Childs replaced Alan Watson as Chairperson on the Panel.

15 March 2010

181/03/10 APOLOGIES**AGENDA ITEM NO.** 1

There were no apologies.

182/03/10 A NOTIFIED RESOURCE CONSENT APPLICATION UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991**AN APPLICATION TO VARY THE CONDITIONS OF RESOURCE CONSENT TPA910047, TO ALLOW 24 HOUR OPENING OF AN EXISTING SERVICE STATION RESULTING IN EXCEEDANCE OF THE MAXIMUM PERMITTED NOISE LIMIT RECEIVED BY THE NEIGHBOURING RESIDENTIAL ZONE**

Address: 641 Whangaparaoa Road, Stanmore Bay 0932

APPLICANT: SHELL NEW ZEALAND LIMITED**FILE REF** LAN55394**WARD** Hibiscus Coast**AGENDA ITEM NO.** 2

The applicant seeks consent to vary the hours of operation of a service station at 641 Whangaparaoa Road. Since the application was approved (1991) and the service station constructed (1994) the station has operated on a 24 hour basis contrary to the conditions of the original consent (6.00 a.m. to 12 midnight). This operation was recently queried by neighbouring property owners, and as a result of this the applicant had requested resource consent to legitimise the current 24 hour operation activity.

The applicant, Shell New Zealand Ltd, was represented by Keith Cullum a Senior Planner with Burton Planning Consultants.

Submitters: Paul and Diane Lambert, present.

9.03 a.m. The Chairperson opened the hearing and outlined the meeting procedure.

Keith Cullum distributed and read written evidence.

Mr Cullum outlined the background to the application. He said that since the service station had received resource consent (in 1991) and since the station had been constructed (in 1994), it had operated on a 24 hour basis. While the initial non-compliance could not be condoned it was relevant that in the period between 1994 and 2009 no complaints about 24 hour opening were received by Shell or the Council.

The fact that Shell was in breach of its resource consent was first raised in February 2009. The Council had received a letter from a local resident expressing concerns about noise generated by a newspaper distribution activity that was using the Shell property as a transfer point around 2.00 a.m. each morning. The matters raised were quickly dealt with by Shell and controls on the use of the carwash were also tightened. Since February 2009 the applicant, in conjunction with Burton Consultants, had undertaken consultation with local residents and arranged for specialist acoustic and light spill assessments.

15 March 2010

Mr Cullum discussed the effects on local residents and said that as a result of the consultation and notification process, the following responses had been received:

- Three residents living within 80 metres of the service station had provided their written approval.
- Two residents (including one of the above) had lodged submissions in support of the application.
- A further two residents had lodged submissions opposing the application.

Mr Cullum noted that none of the remaining six residents who were consulted on behalf of Shell, or any of the additional 18 parties that were notified by the Council, had opposed the application. He said that the key concerns expressed by the two parties who had submitted in opposition to the application related to noise created from petrol and LPG deliveries at night, and from people using the station with associated car stereo and communication sounds. Mr Cullum addressed the recommended conditions of consent and the noise standards.

In conclusion, Mr Cullum said that the service station provided a useful, and important, 24-hour service for local residents and passing traffic. The site was well suited to a service station activity and had operated on a 24-hour basis for many years without complaint. It was only the unofficial use of the site by another party that resulted in a complaint being lodged early in 2009.

Shell recognised that conditions designed to minimise night-time noise should form an essential part of a consent to open on a 24-hour basis. After taking into account the findings of the Hegley Associates noise assessment and with the proposed conditions in place, Mr Cullum said that he concurred with the view of the Council Planner that any adverse effects on the amenity value of the neighbouring residentially zoned area and people's health and safety would be no more than minor. Mr Cullum said that he was also in agreement with the Council Planner's recommendation that consent be granted to the application, subject to the proposed conditions.

In response to questions Mr Cullum said that:

- With regard to ignoring the conditions in the previous application, Shell was a large organisation and when there were staff changes it appeared that the appropriate checks and balances at head office were not taken. Things were very different in 2009 with regard to Shell's internal arrangements and the Council's enforcement arrangements.
- With regard to managing difficult people, if an attendant felt threatened there was the ability for the attendant to lock down the service station. There would need to be an ongoing management technique to deal with difficult customers but this was not a major issue, rather it was something that cropped up from time to time.
- The hours for tanker fuel delivery was something that Shell had got used to working with (7am – 10pm); it could be managed, but it would be difficult if the hours were any tighter than that because tankers wanted to avoid traffic peaks.
- Shell had an operations manual that covered delivery times to outlets so the Council could be assured in terms of delivery hours; once this was a clear condition of resource consent it would be clearly written into a procedural manual.
- There was also an operational manual specific to the service station.
- Shell saw it as an ongoing exercise to act in a neighbourly fashion. In order to be a good neighbour, and on an ongoing basis, they used their best efforts to make sure noise was not a nuisance.
- With regard to the issue of loud car stereos, employees had to weigh up whether it was alright to approach people or a situation.
- Shell had security contractors in place and employees had the ability to lock themselves off from the public, and if an issue arose, employees could call either the security company or the police.
- Security cameras covered the forecourt area.
- The application involved no building work.
- The applicant had been surprised that rubbish had been raised as an issue as they didn't consider it to be one. It was not typical of a service station to generate a lot of rubbish. Shell sold a normal range of convenience food and had rubbish bins for the purpose of disposal. The

15 March 2010

applicant didn't have a problem with being asked to control rubbish emanating from the site, and was not adverse to a condition in this respect.

- If there was to be signage in regard to expected behaviour, the applicant would need to take a more detailed look.
- A review condition to deal with some of the issues in regard to noise would be fair.
- A cleaning condition could comply with specified hours.

Ms Hollis noted that in the proposed conditions the ones relating to construction were to do with the 1991 consent. She considered the note on proposed condition 1 could be removed or struck out.

Submitters, Paul and Diane Lambert gave verbal evidence. The following was noted:

Mrs Lambert said that they did not live at the property they owned at 640A Whangaparaoa Road, but their son did. They had complained about the noise after many years of frustration. There were also issues with people doing right hand turns and 'wheelies', the right hand turns in particular made it very difficult to get out the driveway at 640A Whangaparaoa Road, especially at night. Mrs Lambert agreed that a review condition would be helpful but she believed that 24 hour operation of the service station would make their property much more difficult to sell. She said that it was difficult to control such things as banging on windows to get the service station attendant's attention and she didn't think it was possible to impose any conditions which would stop people gathering at a service station at night. She noted that the nightclub further up the road finished at 1.00 p.m. She considered a consent that exceeded the noise level could set a precedent for others. Mrs Lambert also had concerns in regard to amenity values with increased traffic to the station, and the right turning traffic which generated extra light effects. She considered that there would be adverse effects on health and safety in terms of disturbing the night time sleep environment. Although one could get used to background traffic noise it was one off noises that were of particular disturbance, such as the instance of people talking and loud bangs. Mrs Lambert said that she opposed 24 hour opening.

Mr Lambert noted that there were other 24 hour service stations a short distance away; one at Red Beach and one at Silverdale.

In response to questions from the Panel Mrs Lambert said that there were a few trees on their property but the house was further up the site so trees didn't offer much of a barrier and they didn't have, and weren't considering, a fence. Although there was no set pattern to the instances of loud noise, it appeared to be worse on Friday nights and such noises were loud enough to be woken from sleep. She didn't think signage in regard to appropriate behaviour would be very effective and she wondered whether Shell could put something on their site to reduce the impact of noise on neighbours. She also said that removing the ability to do right hand turns would help. Although they hadn't complained to the Council in the past, this was something they would do in future if they had any issues. Mrs Lambert said that they had owned the property for 7 years and they had not been aware of the hours of operation of the service station when they bought the property. Mrs Lambert said that the bedrooms in the house were located fronting the road and windows had to be open to get air at night. She acknowledged that there would not be such a big impact with regard to noise if the bedrooms were located at the back of the house. Mrs Lambert said that she and her husband did not raise the issue of rubbish.

Council Officers:

Jemma Hollis addressed the Panel.

Ms Hollis said that the main issue was the noise infringement in that it was above what was permitted in the District Plan. She said that two reports had been commissioned; one till 12.30 a.m. and then another for the whole night. Despite this extensive inquiry, when exceeding the District Plan noise requirements the activity was less than, and masked by, the noise of Whangaparaoa Road. She noted that controls had been put in place on the use of the car wash, the petroleum and LPG delivery times, and newspaper deliveries etc and she believed these activities could be effectively controlled by conditions of consent. Ms Hollis said that she stood by her recommendation to grant consent to the proposal and she believed the adverse effects on residential character and health and safety would be no more than minor. She

15 March 2010

considered that a review condition would be a good idea as well as incorporating specific controls on visitors in the operational manual.

Daniel Winter addressed the Panel.

Mr Winter said that he concurred with the reporting planner's comments and that the level of noise from Whangaparaoa Road was significant. Mr Winter said that it was not reasonable to expect the service station to operate at 40 decibels but he noted that later on in the evening the noise levels did comply with the District Plan requirements. Mr Winter said that the proposed conditions would further improve the situation. Mr Winter explained the difference between L_{max} and L_{eq} . He said that the L_{max} levels were imposed after 10.00 p.m., when one off noises were considered. Mr Winter said that there were already some controls on rubbish as the service station had a food licence which had to have two inspections a year and waste management had been looked at as part of that inspection. He said that there should be a suitable numbers of bins at each pump and a receptacle at the door.

Mr Cullum presented the right of reply.

Mr Cullum said that it was significant to note that the proposal had been well notified to the surrounding residents and businesses. He considered the proposal would have more of an effect on residents and yet only three had given their written consent. Mr Cullum said that there were a lot of people in close proximity who either supported the proposal or who had not seen fit to oppose it. If the issues in regard to adherence to consent had been raised earlier they would have been sorted out a long time ago. Mr Cullum said that he believed the service station served an important community function in providing 24 hour service in an area which was becoming busier and more populated, which in turn created more of a demand for such a facility. He believed the service station was also a useful and significant emergency facility.

In response to questions from the Panel, Mr Cullum said that the applicant would be more than happy to discuss things with any of the neighbours. He himself had talked to occupants and owners on the applicant's behalf and the offer remained to attempt to understand any neighbour concerns.

The Panel noted that liaison between Shell New Zealand and Mr and Mrs Lambert should be encouraged.

10.25 a.m. The Chairperson adjourned the hearing for the purpose of a site visit.

11.10 a.m. The Chairperson closed the hearing at the conclusion of the site visit.

The Panel resolved:

Childs/Walker

THE DECISION:

That pursuant to Sections 104 and 104B and 127 of the Resource Management Act 1991, the notified application for resource consent by Shell New Zealand Limited to vary conditions of consent to allow 24 hour operation of service station at 641 Whangaparaoa Road, Stanmore Bay, Lot 2 DP 153177 be granted consent.

REASONS FOR THE DECISION:

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

- a) **The activity is already legally established with certain limitations as to hours of operation, and this provides a baseline. The proposal is to increase the hours of operation. The exceedance of the District Plan noise requirements are largely a technicality due to the noise generated by traffic using Whangaparaoa Road. Providing appropriate measures are**

15 March 2010

put in place to control specific noise making activities at night the adverse effects on the amenity values of the neighbouring residential zoned area and people's health and safety are considered to be no more than minor.

- b) The Rodney District Plan 1993 and the Proposed District Plan 2000 allow for activities of this type providing the adverse effects on neighbouring residential zones, particularly in relation to noise, are minimised. Subject to conditions the adverse effects of the proposal are considered to be no more than minor, and the application is considered to be consistent with the objectives and policies of the District Plans.
- c) The proposal does not raise any concerns in relation to, and is considered to be consistent with, the objectives and policies of the Auckland Regional Policy Statement Proposed Change 6.
- d) The proposal is consistent with the intended 'Vision Rodney' community outcomes of 'Prosperous' and 'Distinctive', as the proposal is consistent with this document's intention that appropriate activities occur in the appropriate zone. The proposal is also consistent with the Whangaparaoa Structure Plan, which, given the site's zoning was reviewed and considered to be appropriate, provides a strong case for the proposed type of activity to occur in this area.
- e) The site does not contain any distinguishing characteristics, but the nature of the application for extended hours for an existing service station sets it apart from similar proposals. The proposal will not set a precedent, and will not significantly affect the integrity of the Council's consistent administration of the District Plans.
- f) The nature of the proposal means that there will be no implications in terms of the sustainable management of natural and physical resources as the service it offers will provide for the social and economic wellbeing of the local community. The proposal is considered to be consistent with Section 5 of the RMA.

**THE RELEVANT STATUTORY PROVISIONS THAT WERE CONSIDERED:
(Section 113(1) (AA))**

Overall this application was considered to be a **discretionary** activity and was considered in terms of sections 104, 104B, 127 and Part 2 of the Act.

**OTHER RELEVANT PROVISIONS THAT WERE CONSIDERED:
(Section 113(1) (ab))**

The provisions of the following documents were considered by the Hearings Panel in reaching this decision.

Auckland Regional Policy Statement Provisions

Proposed Regional Policy Statements Provisions

Plan Provisions

1993 Transitional District Plan

Industrial Zone Provisions

15 March 2010

Plan Change Number 62 Financial Contributions**Plan Change Number 55 Rural Provisions****Proposed Plan Provisions****Proposed District Plan 2000**

Issue 9.2.3
Objective 9.3.3
Policy 9.4.4
Policy 9.4.5

Other Documents**Vision Rodney
Whangaparaoa Road Structure Plan****PREAMBLE**

This consent seeks to regularise the 24 hours a Shell Service Station is open at 641 Whangaparaoa Road. The approved hours of operation on the original consent being 6 am to midnight. The application was limited notified. Four submissions were received; two in support and two in opposition.

**THE PRINCIPAL ISSUES THAT WERE IN CONTENTION:
(Section 113(1) (ac))**

- (1) The noise implications of the extension of operating hours.
- (2) Lighting implications of the extended operation.
- (3) The impact on amenity values, particularly the impact on adjacent sites in regard to the requested extended hours.

**SUMMARY OF THE EVIDENCE HEARD:
(Section 113(1) (ad))****EVIDENCE ON BEHALF OF THE APPLICANT WAS GIVEN BY:**

Mr Keith Cullum – Planning Consultant

Mr Cullum, a Senior Planner at Burton Consultants, appeared in support of the application.

He described the background to the current application indicating that the service station received resource consent in 1991 and that since 1994 it had operated on a 24 hour basis. This operation was therefore outside the original consent. Between 1994 and 2009 no complaints about the 24 hour operation had been received. When Shell was notified of the breach of consent in February 2009 the main issue related to the use of the forecourt by a newspaper distributor. This was quickly dealt with and the operator required to move elsewhere.

Since February 2009 Shell have been in consultation with local residents and arranged for suitable acoustic and lighting assessments to be undertaken.

He indicated that twelve owners / occupiers of residential properties had been contacted. Three residents gave written consent to the application.

15 March 2010

The concerns raised by the submitters were outlined, being the noise created by petrol and LPG deliveries at night, and from people using the station. He referred to the recommended conditions which limited deliveries to between 7 am and 10 pm, and no car wash use after 9 pm and before 7 am on any day. He also addressed limitations on non residential service station activities and best practical options to minimise noise to ensure excessive noise was controlled. He indicated that Shell would use its best endeavours to ensure these conditions would be satisfied.

He then discussed the noise standards and the two surveys which had been undertaken

1. Between 10 pm and 3 am the noise levels were at times above District Plan standards however at such times the background noise generated by passing vehicles was considerably in excess of the District Plan standard. At such times the measured levels of the boundary of adjacent residential properties were controlled by vehicles travelling on the road, not by the service station.
2. At quiet times of the night between 3 am and 7 am noise levels met the standards of the District Plan.

In conclusion he felt that the service station would provide a useful and important 24 hour service for local residents and passing traffic. He also said that the site was well suited to a service station and had been operating on a 24 hour basis for many years without complaint. He recognised that the conditions were designed to minimise night time noise and that they should be an essential part of the 24 hour consent.

Taking into account the noise report he concurred with the reporting planner that any adverse effects on the amenity values of the neighbouring residentially zoned areas and on people's health and safety would be no more than minor.

He also indicated that his client was prepared to accept a condition relating to rubbish. He advised that in relation to the recommended conditions that Shell could manage them. He also indicated Shell saw it as an on-going exercise to act in a neighbourly fashion so as to be a good neighbour.

Regarding security issues, Mr Cullum said that they could be dealt with by either Shells own security contractors or the police. There were also security cameras covering the forecourt area.

EVIDENCE ON BEHALF OF THE SUBMITTERS WAS GIVEN BY:

Mr Paul and Mrs Diane Lambert

They advised that their site at 640A Whangaparaoa Road was occupied by their son and they had complained about the noise after many years of frustration. They also had concerns about people doing right turns and "wheelies" in the vicinity of the service station. In relation to the noise, they saw that it was difficult to control such noises as banging on the station's windows for service etc and that it would be difficult to impose conditions which would stop people gathering at the service station at night.

They considered that if consent was granted it would set a precedent for others. Other issues they raised included effects on amenity values in relation to noise, the operation of the service station and the associated extra lighting. They had concerns with adverse effects on health and safety, particularly in terms of sleep disturbance. They said that background noise levels were something that people got used to but it was the operational effects of people talking and loud bangs on the site which were of concern. The issue particularly arose for their son who occupied the house and the position of the bedrooms being at the front of the property facing Whangaparaoa Road.

No other submitters attended the hearing.

15 March 2010

EVIDENCE ON BEHALF OF THE COUNCIL WAS GIVEN BY:

Ms Jemma Hollis - The Reporting Planner
Mr Daniel Winter - Environmental Health Officer

Ms Hollis's report outlined the nature of the application and the reasons for the consent.

She was satisfied that subject to conditions, consent could be given. She said that conditions should cover control over specific noise making activities including service station activities, the use of the car wash and petrol deliveries. She indicated that providing these conditions were imposed adverse effects would be no more than minor. She saw the proposal as consistent with the Auckland Regional Policy Statement, Vision Rodney and the District Plan.

Before the right of reply she indicated that two noise reports had been requested to ensure that the noise levels were assessed during the early hours of the morning and in the evening. They indicated that activities on the site could be controlled by way of conditions. She was satisfied that the adverse effects on residential character and health and safety of residents would be no more than minor. She supported a review condition.

Mr Winter concurred with the reporting planner's recommendations. As all the noise could not at all times be satisfied but this could be improved by conditions.

RIGHT OF REPLY

In the right of reply Mr Cullum indicated

1. The proposal had been well canvassed to surrounding residents and businesses.
2. The service station was an important community function operating 24 hours a day in an area that was becoming busier and more populated and this had created more demand for such a facility.
3. It was also a significant useful emergency facility.

He indicated that his client would be happy to talk to neighbours about their concerns.

**THE MAIN FINDINGS OF FACT:
(Section 113(1) (ae))**

The main findings of fact determined by the Hearings Panel that have led to the above decision and the reasons for that decision are as follows. They have been reached after considering the application, visiting the site, the evidence and submissions heard at the hearing, the report prepared by the reporting planner, all the relevant statutory and planning provisions, as well as the principal issues that were in contention.

1. Subject to conditions adverse noise effects can be mitigated.
2. Lighting effects will be minor.
3. There will be a minor effect on local properties. This can be mitigated by way of conditions.
4. A review condition will further assist in dealing with ongoing effects of the operation.
5. The service station provides a useful community facility particularly given its location near the centre of the Whangaparaoa Peninsula.

15 March 2010

This consent arose from a complaint from a local resident about the night time operations of a Shell Service Station.

The background is that the service station was granted consent in 1991 and was allowed to operate from 6 am to midnight on the basis that

“The Council considered that the proposal to extend the hours of operation to 24 hours would have an unreasonable impact on the amenities of adjacent residential properties.”

This was accepted by the applicant who reserved the right to apply for a variation of conditions. The facility has operated for over ten years on a 24 hour basis contrary to its original consent hence the need for this application.

The proposal involves no changes to the site or the buildings.

In relation to the District Plan issues the site is zoned Industrial 2 in the Operative District Plan and Mixed Business in the Proposed Plan. In terms of the zoning the Proposed Plan which was prepared under the Resource Management Act has more relevance.

The site is a corner property located on the south western side of Whangaparaoa Road being 1.9 hectares in area. It contains a service station, a large forecourt and an associated convenience retail outlet.

ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT

The Panel notes that in the Mixed Business zone a variety of commercial and related activities could be established from child care centres to offices and industry.

As indicated in the planning report the environmental effects relate mainly to residential character, amenity values and health and safety.

In relation to character, the surrounding area is mixed with the business type activities in the vicinity of the service station and residential development to the eastern side. The two areas are dissected by a main road, Whangaparaoa Road, which is the main vehicle route on the Whangaparaoa Peninsula it carries about 22,000 vehicles per day. The character of the area is complicated by the fact that the road is located in a valley with the land rising particularly to the north east. The residential buildings tend to overlook the site concerned and this includes the Lambert's site which is located very close to the road with its main outdoor living and bedroom areas facing towards the road.

In terms of effects on character, the service station has been built and there will be no changes to the building or the site. The Panel agrees with the reporting planner that the extension of the operating hours would not result in further impacts on the existing character and visual landscape of the area.

In relation to amenity values, this is one of the key issues because the increased hours of operation will result in increased traffic using the station which may increase light spill and noise generation. Information received from a lighting specialist indicates that light spill is not an issue and is within the Council limits.

The main amenity issue is noise. The Council requested detailed noise assessments for which two were undertaken both late in the evening and in the early morning to ascertain whether the District Plan noise levels will be satisfied. The noise reports indicated that traffic flows on Whangaparaoa Road are relatively high during the first part of the evening and as a result the traffic masks noise from the service station activities. This masking of noise reduces towards the morning but so does the noise from the service station so that in the early morning the service station noise satisfies service station noise rules. The report concludes that the noise effects will therefore be minor.

15 March 2010

The Panel does however recognise the concerns raised by Mr and Mrs Lambert and the 'one off' sounds coming from the service station during the evening; this includes the effects of people coming and going and talking in the forecourt and car radios.

The Panel considers on balance that, subject to conditions, these effects will be minor. These include controls on the non service station activities at night as well as no deliveries of petrol and controls on the car wash. It also proposes a review condition to ensure that these noise and operational effects are at an acceptable level. The Panel considers the effects on amenity values will be minor.

A further issue was raised by another submitter relating to rubbish and a condition to deal with rubbish from the service station is imposed.

HEALTH AND SAFETY

This mainly arises from the noise and the impacts on the health of surrounding residents in terms of sleep disturbance. The expert evidence which has been reviewed by Mr Winter indicated that subject to conditions these noise levels are acceptable.

In summary it is considered that subject to conditions the adverse effects on the environment will be minor.

DISTRICT PLAN MATTERS

The site is subject to two District Plans however given the stage the Proposed District Plan has advanced through the process the Panel has had more regard to it.

The relevant issues, objectives and policies include:

1. Issue 9.23 which is concerned that amenity values may be adversely affected by business activities through, amongst other things, noise and glare.
2. Policy 2.4.4 which relates to effects and noise effects on neighbouring zones.

For this application relevant objectives and policies are concerned with maintaining and safeguarding amenity values dealing with the effects of people that can arise from noise amongst other things. The Panel does note that Policy 9.4.5 indicates

"regarding residential areas in close proximity to business areas it must be recognised that living close to a business area will result in a higher noise environment than for more distant areas."

This is the reality of this particular site where there is a mixed use zone on one side of the road and a residential area on the other. It is complicated by the fact that the Lambert's property tends to have its main outlook and bedroom towards the service station. On balance the Panel are satisfied that the proposal is consistent with the objectives and policies of the District Plan.

AUCKLAND REGIONAL POLICY STATEMENT

As the site is located on the Metropolitan Urban Limits and is in a developed part of the city and no ARPS issues arise.

VISION RODNEY/STRUCTURE PLAN

In terms of Vision Rodney no issues arise. In relation to the Whangaparaoa Structure Plan which dates back to 1995 no particular issues arise.

15 March 2010

DISTRICT PLAN INTEGRITY AND CONSISTENT ADMINISTRATION

Given that service stations are anticipated in the zoning / environment applying to the land there are no issues in this matter.

PURPOSE AND PRINCIPALS PART II MATTERS

In this particular matter the proposal can be seen as consistent with Part II of the Act because

1. The land had already been modified.
2. It provides a useful community service.
3. Subject to conditions adverse effects on the community can be mitigated.

No Section 6 matters arise.

In terms of Section 7 the proposal can be seen as an efficient use of a developed resource.

Consent is therefore granted to the variation. However the Panel are mindful of the concerns of the Lambert's and other local residents that the noise is of concern to them. The conditions imposed endeavour to deal with this matter. A further condition relating to a review of the operational and noise effects can be initiated by the Council at any time.

LAPSING OF CONSENT

Pursuant to Section 125 of the Resource Management Act 1991, this resource consent will expire 5 years after the date of commencement of consent unless, before the consent lapses;

- (a) the consent is given effect to; or
- (b) an application is made to the Council to extend the period of consent, and the Council decides to grant an extension after taking into account the statutory considerations, set out in section 125(1) (b) of the Resource Management Act 1991.

CONDITIONS OF CONSENT:

Pursuant to Section 108 of the Resource Management Act 1991, this consent is subject to the following conditions:

Vary existing conditions as follows:

Replace with:

1. *(general) Except as amended by conditions below the development shall proceed in general accordance with the plans and application submitted (drawings dated December 1993/numbered 9028 sheet 1A, 2A) and the application submitted by Burton Consultants Ltd, dated June 2009, as well as the correspondence undertaken during the course of processing of the application.*
2. *(deliveries) tanker fuel and gas deliveries shall only be permitted between the hours of 7.00am to 10.00pm, seven days a week.*
3. *(car wash operation) the car wash shall only be permitted to operate on site between the hours of 7.00am to 9.00pm, seven days a week.*

15 March 2010

4. *(on-site activities) non-service station activities are not permitted to operate on the site between the hours of 10.00pm and 7.00am, seven days a week.*
5. *(noise control) the best practicable options to minimise noise shall be used to ensure excessive noise is controlled. This must include service station procedures to manage late night noise sources such as loud car stereos or people noise. The conditions of consent 2, 3 and 4 relating to control of specific noise generating activities, must also be incorporated into the operation manual.*
6. *(cleaning) cleaning of the service station forecourt area shall only be permitted between the hours of 7.00am to 10pm, seven days a week.*
7. *(review condition) pursuant to Section 128 of the Resource Management Act 1991, the Council may serve notice on the consent holder of its intention to review the conditions 2, 3, 4, 5 and 6 of this consent:*
 - i. *Within 6 months following the commencement of the activity and then at regular intervals as Council deem fit for the duration of the consent; and*
 - ii. *For the purpose of ensuring that the effects in terms of noise are mitigated.*

The actual and reasonable costs incurred by the Council in undertaking this review shall be paid by the resource consent holder within one month of being invoiced.

8. *(rubbish) appropriate facilities for rubbish disposal shall be provided onsite, including one rubbish disposal facility per pump bay. The facilities provided shall be sufficient to control rubbish on site to the satisfaction of Council's Environmental Health Officer.*
9. That all access, parking, and manoeuvring areas shall be paved in a permanent dust free (not metal) surface and marked, to the satisfaction of the Manager – Development (Engineering and Subdivisions), prior to the use commencing.
10. That a detailed landscape plan and implementation programme shall be submitted and approved by the Superintendent of Parks and Reserves prior to the issue of a building permit.

Such landscaping shall be implemented and maintained in accordance with the approved plan. The removal or pruning, with other than short-handled hand-operated secateurs, of trees shown on the plan shall not proceed without the prior consent of the Superintendent of Parks and Reserves.

11. That the applicant meets the full cost of extending the water reticulation to the site. This will involve a 150mm diameter service main from the Karepiro Drive corner together with valves, fittings and hydrants.

Note: The Council agrees to waive water reticulation upgrade levies on the development plan in recognition of additional capacity provided by a 150mm diameter line over the normal 100mm diameter fire service main.

12. That individually metered connections are made for the service station and the carwash, it being noted that the carwash is an extraordinary supply, under the Council's water supply bylaw, which may be disconnected in times of water shortage if required.
13. That wastewater from the carwash shall be discharged through approved petrol, oil and silt traps to the sanitary sewer. Such traps shall be regularly cleaned and maintained in an efficient operating condition.
14. That the carwash be roofed and the surrounding paved areas be graded away from the carwash pad to minimise the entry of stormwater to the sanitary sewer system.

15 March 2010

15. That all stormwater discharges from the site be piped to the public system through the site and that petrol and grease traps be installed on all stormwater discharge lines.
16. That the sales building shall be resited at least 1.5 metres clear of the existing public stormwater line adjacent to the western site boundary and that any building foundations within a horizontal distance of the pipeline equal to the invert depth of the pipeline (approximately 5.3m) shall be specifically designed to transfer all loads below the invert level of the pipeline.

Alternatively the pipeline may be resited clear of the proposed building at the full cost of the developer.
17. That the maximum width of the crossings from Whangaparaoa Road shall not exceed 9 metres and the crossings shall be formed in general compliance with the Council's standard details.
18. That the existing painted median on Whangaparaoa Road east of the site be extended to opposite the western site boundary (exclusive of taper) to the satisfaction of the Manager – Development at the applicant's expense prior to the use commencing, it being noted that when the median strip is installed on Whangaparaoa Road in the future, provision will not be made for turning movements in or out of this site.
19. (signage) A readable sign shall be erected on the forecourt requiring appropriate conduct from customers, including minimisation of noise during the night time hours. The sign shall be located in a position clearly visible to all customers utilising the facilities.

Advice notes

1. It is advised that the conditions of consent be incorporated into the service station operation manual, in order to ensure the sustainable ongoing management of the facility and acknowledging its close proximity to the existing residential environment.
2. It is further advised that the Council be provided with a copy of the updated operational manual.

Carried

The meeting closed at 11.10 a.m.

CONFIRMED AS A TRUE AND CORRECT RECORD THIS 27TH DAY OF MAY 2010

MAYOR

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