

MINUTES

TITLE: Environment & Planning Committee
DATE: Monday, 5 May 2008
TIME: 9.30 am
VENUE: Council Chamber, 189 Queen Street, Richmond

PRESENT: Crs T B King (Chair), S J Borlase and M J Higgins

IN ATTENDANCE: Principal Consents Planner (J Butler), Transportation Manager (R Ashworth), Consent Planner (J Shaw), Administration Officer (B D Moore)

1. ARTHUR WAKEFIELD MOTOR INN, 294 QUEEN STREET, RICHMOND, RM070294

1.1 Proposal

- (i) To dispense with the car parking requirements for 17 off site car parks and the requirement for part payment of cash-in-lieu for five car parks. These were both conditions of resource consent T2/9/92-45.
- (ii) The requirement for off site car parking required by the previous Condition (i) is considered ultra vires and void and further to this, on the basis of available car parking in the vicinity the requirement for 17 off site car parks is not considered necessary. The cash in lieu for five car parks as required by condition (ii) is not considered necessary either as a payment of \$17,034.30 was paid to the Council in 1987 under consent 8/85/4 as a cash- in- lieu payment for 20 car parks.
- (iii) The application also seeks to clarify the District Plan parking requirements for the development to enable proper consideration of the actual District Plan parking shortfall with the proposal. In our opinion the correct parking requirement for the original restaurant and the 20 unit motel complies with 30 spaces, and not the 35 spaces and then 33 spaces as subsequently assessed by the Council Officers following a site meeting on 2 October 1985.

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

The Committee reserved its decision.

RESOLUTION TO EXCLUDE THE PUBLIC

Moved Crs Borlase / King
EP08/05/01

THAT the public be excluded from the following parts of the proceedings of this meeting, namely:

Arthur Wakefield Motor Inn

The general subject of the matter to be considered while the public is excluded, the reason for passing this resolution in relation to the matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for passing this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under Section 48(1) for the passing of this resolution
Arthur Wakefield Motor Inn	Consideration of a planning application	A right of appeal lies to the Environment Court against the final decision of Council.

Moved Crs Higgins / King
EP08/05/02

THAT the open meeting be resumed and the business transacted during the time the public was excluded be adopted.
CARRIED

2. ARTHUR WAKEFIELD MOTOR INN, 294 QUEEN STREET, RICHMOND, RM070294

Moved Crs King / Borlase
EP08/05/03

THAT pursuant to Section 104C of the Resource Management Act, the Committee GRANTS consent to Arthur Wakefield Motor Inn as detailed in the following report and decision.
CARRIED

Report and Decision of the Tasman District Council through its Hearings Committee

Meeting held in the Tasman Room, Richmond

on 5 May 2008, commencing at 9.30 am

A Hearings Committee (“the Committee”) of the Tasman District Council (“the Council”) was convened to hear the application lodged by **Arthur Wakefield Motor Inn** (“the Applicant”), to dispense with off-site car parking requirements and to cancel the cash-in-lieu payment required by Conditions 1 and 2 of Resource Consent 8/85/4 (granted by variation T2/9/92-45). The application, made in accordance with the Resource Management Act 1991 (“the Act”), was lodged with the Council and referenced as RM070294.

- PRESENT:** **Hearings Committee**
Cr King, Chairperson
Cr Borlase
Cr Higgins
- APPLICANT:** Mr N McFadden (Counsel)
Mr F Gear (shareholder of R & K Williams Ltd)
Mr M Pope (previous Manager/Lessee)
Mr V Carr (the Applicant)
Mr R Edwards (Traffic Engineering Consultant)
- CONSENT AUTHORITY:** **Tasman District Council**
Mrs J Shaw (Consent Planner, Land Use)
Mr R Ashworth (Transportation Manager)
- IN ATTENDANCE:** Mr J Butler (Principal Resource Consents Adviser - assisting the Committee)
Mr B Moore (Committee Secretary)

1. DESCRIPTION OF THE PROPOSED ACTIVITY

The Applicant has sought both a dispensation from parking provision and cash-in-lieu rules in the Proposed Tasman Resource Management Plan (PTRMP) and to cancel Conditions 1 and 2 of their consent T2/9/92-45 which authorises them to use 17 car parks on the adjoining landowner's site with a formal agreement in writing to be presented annually, and requires them to pay 50% of the cost of five additional car parks.

The Applicant has lost access to those 17 car parks and, instead of paying the cash-in-lieu payment as is sought by Rule 16.2.3 of the PTRMP, seeks a dispensation from the requirements. The car parking provisions for the Applicant have been calculated afresh as part of the processing of this application and it has been determined that seven car parks must either be provided or paid for by the Applicant in order to comply with Permitted Rule 16.2.3.

The parking requirements of the Applicant have been the subject of many years of discussions and negotiations. As will be discussed further below, mistakes have been made by both the Richmond Borough Council (RBC), now the Tasman District Council (the Council), and the Arthur Wakefield Motor Inn (the AWMI).

2. PROPOSED TASMAN RESOURCE MANAGEMENT PLAN ("PTRMP") ZONING, AREAS AND RULE(S) AFFECTED

According to the PTRMP the following apply to the subject property:

Zoning: Central Business
Area(s): nil

The proposed activity does not comply with Permitted Activity Rule 16.2.3 of the Proposed Tasman Resource Management Plan and is deemed to be a restricted discretionary activity in accordance with Rule 16.2.6 of the Plan.

Note that through the assessment and hearing of this application the issue of whether it should best be considered a cancellation of a condition of the existing consent or a new application emerged. This issue was considered by the Committee and is reported on below.

3. PROCEDURAL MATTERS

Non-Notification

The application has not been notified as it is considered that the proposal involves the Council only and that there are no special circumstances or affected parties in respect of the historical provision of the car parking assessment. However, the Council's staff have determined that, pursuant to Section 100 of the Act, a hearing was necessary to address the issues and achieve a final outcome.

4. EVIDENCE HEARD

The Committee heard evidence from the Applicant, expert witnesses, and the Council's reporting officers. The following is a summary of the evidence heard at the hearing.

4.1 Applicant's Evidence

Mr McFadden

Mr McFadden began by addressing the status of the application. He stated that the application has been made as if for resource consent, but in reality it should be considered as an application to change existing conditions of consent under Section 127 of the Act.

He then outlined the history of the site and negotiations between the Applicant and the Council (the RBC and the TDC). This included three resource consents (or equivalent) in 1978, 1985 and 1992 to establish a restaurant, establish a motel, and to extend the motel, respectively.

Mr McFadden described how there was now no agreement with the new owner of the ex-Mitre 10 site (Strategic Property Trust), that this left the Applicant in a position of not having a sufficient number of car parks and being in breach of Condition 1 of their 1992 consent. As the Applicant has been unable to reach an agreement with the new owners the breach has resulted in an abatement notice. This abatement notice was subsequently appealed to the Environment Court on the basis that it is ultra vires, void and of no legal effect.

Mr McFadden then covered the reasons why the adverse effects should be considered as being minor, exceptional circumstances that make this case unique and a response to the staff reports. These matters are covered in more detail by subsequent witnesses.

Mr McFadden then turned to the PTRMP and made it clear that the necessity to either provide parks or provide cash-in-lieu is not compulsory but is merely necessary to meet the permitted rule. He stated that the next step on the rule cascade is restricted discretionary and that the relevant matters to which the Council has restricted its discretion are demand for and supply of parking, and the securing of rights to use any parking of the site of the activity. Therefore, he argued that an application to dispense with the permitted activity standards must be taken on its merits under the provisions of the Act without prejudice. The effects, which are relevant in an assessment of a restricted discretionary activity, were to be described by Mr Edwards. (Mr Edwards assessed the application and presented his evidence as though it was a new resource consent application while Mr McFadden presented evidence in the terms of a Section 127 change of conditions.)

Mr Gear

Mr Gear described the negotiations that took place between R & K Williams Limited (the Company) who developed, owned and operated the Arthur Wakefield restaurant, and the RBC with regard to the construction of car parks behind the AWMI.

He outlined the payments, incremental development of the car park and various adjustments in required payments. He also stated his belief that additional car parks are not needed for the operation of the AWMI as the Wilkins and Field (Mitre 10) parks were rarely used and most of the parking for the AWMI is required at night.

Mr Pope

Mr Pope introduced himself as a former manager and described the demand for parking as very low, particularly in the Wilkins and Field (Mitre 10) car parks.

Mr Carr

Mr Carr introduced himself as the current owner of the AWMI. He described the clients of the facility as generally being sales reps and business service people involved with local industries or businesses. There is also a mix of tourists throughout the year with January to March being the busy period. Mr Carr considered the pressure on parking to be very low and that there has never been a need to use the Wilkins and Field (Mitre 10) space when it was available to them.

Mr Carr confirmed that the highest demand for parking generated by their business is in the evening. He stated that outside of wet school holidays and major events, car parks are readily available in the Petrie-Harkness car park. He said that after 4.00 pm it is starting to empty and by 5.00 pm it is well empty.

Cr King asked if the business operates during the day. Mr Carr responded that there is some minor daytime activity that would require parking and that occasionally they have conference events.

Mr Edwards

Mr Edwards stated that he has personally and comprehensively reviewed the Council's and the Applicant's files with regard to this matter. He stated that it has a complicated history and errors were made by RBC throughout; a fact that is agreed upon by the Council's reporting officer Mrs Shaw.

Mr Edwards discussed the various parking space requirements and came to the conclusion that in 1987 33 spaces were required by the RBC under the Transitional District Plan (even though he confirmed that 30 should have been the correct number). This was provided by way of 13 on-site parks and a cash-in-lieu payment of \$17,034.30 (being \$19,440 that was calculated as being owed, less \$2,405.70 for car park formation work already undertaken by the Applicant). He also considered that since the number of car parks had been over-calculated, the Applicant over-paid the RBC by \$2,916.

The parking requirements then changed in 1992 as a result of the extensions and the third resource consent. Mr Edwards described the various calculations and permutations and, in summary, stated that the 1992 bar and lounge extension required an additional 16 parking spaces, yet resulted in the on-site parking provision reducing from 13 spaces to three spaces. Consent was approved on the basis of providing 17 leased spaces (Wilkins and Field, Mitre 10) and paying additional cash in lieu for five spaces. In the decision it was considered fair that the Applicant pay 50% of the cost for the 5 car parks, on the basis that the remaining 50% may be required dependent upon monitoring of car park requirements in the vicinity.

Mr Edwards then described the current application as being one which seeks to dispense with the parking requirements of the 1992 consent, or otherwise apply for consent under restricted discretionary Rule 16.2.6 of the PTRMP. He considers that they amount to the same thing.

Mr Edwards confirmed the actual parking space requirements as they currently stand under the PTRMP. He stated that 32 spaces are currently required. This was calculated as follows:

Development Stage	Parking Requirement	Parking Required
1978 – 80-seat restaurant	180 m ² @ 1 per 30 m ²	6 spaces
1985 – 20 unit motel complex	20 units @1 space/unit + 1 space/2 employees + 2 spaces for the manager's unit	20 spaces + 1 space + 2 spaces
1992 – 65 seat restaurant extension	95 m ² @ 1 per 30 m ²	3 spaces
Total Parking Requirement		32 spaces

The point was also made that the figure of 32 car parks differs from that in the application due to an error in the calculation in the application.

The parking supply and cash-in-lieu already paid means that there is a current parking shortfall of seven spaces:

Description	Requirement/Supply
PTRMP parking requirement for the site	32 Spaces
Less car parks provided in the front yard of the site	- 3 Spaces
Less car parks provided under the porte-cochere	- 2 spaces
Less car parks paid for by cash in lieu on 31 st October 1987	- 20 spaces
Proposed Tasman Resource Management Plan Shortfall	7 spaces

Mr Edwards then addressed the effects of approving the shortfall without requiring cash-in-lieu. He stated that the effects relate to the utilisation of the existing parking supply in the vicinity of the site.

Mr Edwards submitted that the observations of the Applicant are that there is a surplus of car parks in the Petrie-Harkness car park. He then presented data from parking surveys conducted at times of peak demand for the AWMI and found that large amounts of parking was available at all times after 5pm.

Mr Edwards then addressed Objective 11.1.0 and Policy 11.1.4 of the PTRMP. The latter is *“To ensure that adequate and efficient parking and loading spaces are provided, either on individual sites or collectively, to avoid or mitigate adverse effects on the safety and efficiency of the road network”*. Mr Edwards considered that the proposal here is entirely consistent with this policy as there will be no adverse effects on the safety and efficiency of the road network.

Following this presentation of evidence from Mr Edwards a number of questions were asked by the Committee to all of the Applicant’s witnesses. Cr Borlase asked whether the condition in the 1992 consent that required parks to be provided at the Mitre 10 site and a 50% payment for five other car parks was appealed. The witnesses agreed that it wasn’t appealed. No one was sure of the reason why not but it was considered that some form of resolution was needed at that time.

It was put to Mr Edwards by Cr King that the approximately 80 spare car parks in the Petrie-Harkness car park is evidence that the cash-in-lieu system works well and that this is the reason that parks are available for the Applicant. Mr Edwards agreed, and also agreed that the cash-in-lieu system being applied to businesses that operate during the day do adequately provide enough parks for businesses operating in the evening.

When asked if it was fair that the AWMI should be granted a dispensation because of the fact that it operates at night, Mr Edwards responded that under the Act and the resource consent process the effects were the primary consideration and that the adverse effects in this case are minor.

4.2 The Council's Reporting Officer's Report and Evidence

Mrs Shaw

Mrs Shaw stated that she concurred with Mr Edwards's assessment of the number of car parks now required (seven) and that the \$17,034.30 cash-in-lieu had been paid. She also agreed that she did not know the origin of the imposition of a requirement of 17 car parks and a 50% payment for five more.

She believed it is fair and reasonable that the Applicant pays for seven as this has been calculated in accordance with the PTRMP.

Mrs Shaw considered the precedent effect of granting this application to be significant in that it will allow any other development to avoid cash-in-lieu payments if they can show that the adverse effects are minor. This will seriously erode the ability of the Council to provide future parking.

Mrs Shaw made the point that not all businesses adjoin public car parks and questioned why a business that has the good fortune of doing so should be exempt from paying for parking when another business that does not adjoin a public car park would have to pay. She continued by saying that the Council has tried to apply the parking and cash-in-lieu rules consistently to ensure a high quality of parking provision into the future.

Mrs Shaw asked Mr Ashworth to confirm the financial situation with regard to parking provision in the district. Mr Ashworth stated that over the whole district (he did not have specific Richmond figures) the parking budget is hundreds of thousands of dollars in deficit.

Cr Higgins asked Mrs Shaw and Mr Ashworth about the mistakes and inconsistencies that have been made by the Council in past dealings with the Applicant and whether these should be taken into account in making a decision. It was agreed that the Council should be as consistent as possible but, in response, it was also asked whether it was fair that all other businesses had to pay cash-in-lieu for parking but the Applicant didn't pay and effectively benefited from others.

Finally, when asked by Cr King whether Mrs Shaw was still happy with her report and recommendation, albeit with an adjustment of the recommended car parks from 13 to seven (based on figures agreed upon in the hearing), Mrs Shaw responded that yes, she believed the requirements were reasonable.

4.3 Applicant's Right of Reply

Mr McFadden stated that the system used by the RBC "floated" and was "not focussed".

He restated that under the PTRMP the permitted rule must be met through either parking provision or payment of cash-in-lieu or else, in the event that you cannot or do not wish to meet the permitted rule, the activity cascades to restricted discretionary.

Mr McFadden brought the Committee back to the matters relevant to the restricted discretionary rule and stated that the Committee must consider parking demand and supply. During the evening the demand is low and the supply is high.

He then addressed the precedent issue by stating that the Committee cannot invoke the “think about everyone else” argument. He stated that the effects must be taken into account and that the Committee is not bound by its decisions for all applications that may arise as the history of this case is well documented and unique. This provides distinction from other applications.

Mr McFadden restated that the shortfall is seven car parks, and asks whether this is material out of 80 to 180 spare and available car parks. He stated that the effect is *de minimis*.

Finally, Mr McFadden stated that if it was decided that a sum is payable then it would in all likelihood be the lessee who must pay rather than the landowner.

5. PRINCIPAL ISSUES

The principal issues that were in contention were:

- a) Should this application be considered as a Section 127 cancellation of conditions, or as a new (restricted discretionary) application in its own right?
- b) How many car parks is the Applicant currently required to provide?
- c) What are the direct adverse effects of the Applicant’s parking requirements? In particular, are the adverse effects of using the Petrie-Harkness car park in the evening minor?
- d) Is it appropriate that cash-in-lieu be provided to, in effect, provide for more car parking elsewhere in Richmond?
- e) Is it appropriate that businesses that create night time parking demand use car parks paid for by day time operating businesses without providing a financial contribution?
- f) Would the granting of this consent create a precedent affect leading to the granting other such applications, and would this have a more than minor cumulative adverse effect? And if yes, can such a potential cumulative effect be taken into consideration when assessing this application?
- g) Is it appropriate that the Council should require, irrespective of the rules and rule cascade structure in the PTRMP, businesses to pay because it is considered the fair way to achieve effective public parking provision?

6. MAIN FINDINGS OF FACT

The Committee considers that the following are the main facts relating to this application:

- a) For clarity, the application is best treated as a new application. The application was originally lodged as a new application and has been treated as such

throughout the assessment process. Also, the processing of this application has involved a fresh “from scratch” quantification of the AWMI’s parking requirements under the PTRMP, independent from the previous history, consents and variations. This too makes it a new application in its own right. While, as Mr McFadden suggests, the issue is of no great moment, the Committee considers that treating the application as new may avoid unnecessary confusion.

- b) Following an adjournment and subsequent discussion between representatives of the Applicant and the Council, the Committee is satisfied that the final number of car parks that need to be either provided or paid for if Rule 16.2.3 is to be met is seven.
- c) The Committee accepts the evidence of Mr Edwards and others that most of the parking pressure created by the AWMI is during the evening when the general demand for parking in the vicinity is low and the supply is correspondingly high. However, the Committee also considers that there is also significant usage of car parks created by the AWMI during the day. The Committee is also mindful that the Applicant has already paid cash-in-lieu for 20 car park spaces.
- d) While the system may not be perfect, the Committee is satisfied that the cash-in-lieu system is fair and provides a level of income necessary for the Council to provide high quality parking for the traffic generated by businesses. However, the Committee does concede that the structuring of the parking and cash-in-lieu provisions and rules in the PTRMP could be improved to clarify the emerging paradox of new businesses being entitled to argue that parking is sufficient and that adverse effects are minor on the back of the cash-in-lieu payments established businesses. In this respect the cash-in-lieu policy is, in a sense, self-defeating.
- e) The Committee considers that the promotion of evening businesses is desirable in Richmond. The Committee also recognises that the use of car parks throughout both the day and the evening is the most efficient and effective use of parking space. Therefore, it is considered appropriate that businesses that create parking demand in the evening not pay financial contributions to the same extent as businesses that create additional daytime parking demand. The Committee is clear however that the parking provisions and rules in the PTRMP are not set up to clearly reflect this; hence the obfuscation of this case.
- f) The issue of whether the granting of this consent would set a precedent for future applications is complex. The history and circumstance surrounding this case sets it apart from others that are likely to emerge and it is unlikely that this case would set any direct precedent.

However, there is a sense of an indirect precedent being set. The Committee acknowledges that this case has illuminated the paradoxical situation where cash-in-lieu and provision of parking may confound further investment in parking through the ability to “escape” permitted activity standards (i.e. provision of private parking or cash-in-lieu) by applying for a restricted discretionary resource consent where the decision is guided by actual effects. Until now, the cash-in-lieu requirements have been treated as compulsory; this is clearly not the case in the PTRMP. It is this illumination that may bring other such applications to the fore.

It is considered that businesses that create low to medium levels of parking demand in the evenings may have a case for being granted a resource consent that dispenses with the requirement to provide parks or pay cash-in-lieu. However, the Committee considers that it is very unlikely that any reasonable case could be made for businesses that create either additional parking demand during the day, or high levels of parking demand at night.

- g) The Committee does not consider that the provisions of the Act or the PTRMP allow the Committee to require cash-in-lieu. The Committee agrees with the evidence of the Applicant that, as the rules currently stand, any party is entitled to apply for a resource consent to dispense with the parking or cash-in-lieu requirements, and that any such application must be assessed in accordance with the provisions of Section 104 of the Act which, in this case, principally concern the actual and potential effects on the environment.

7. RELEVANT STATUTORY PROVISIONS

7.1 Policy Statements and Plan Provisions

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

- a) Tasman Regional Policy Statement (TRPS);
- b) the Transitional Regional Plan (TRP); and
- c) the Proposed Tasman Resource Management Plan (PTRMP).

7.2 Part II Matters

In considering this application, the Committee has taken into account the relevant principles outlined in Sections 6, 7 and 8 of the Act, as well as the overall purpose of the Act as presented in Section 5.

8. DECISION

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

9. REASONS FOR THE DECISION

- a) The Committee is satisfied that the effects of the activity are minor and the activity is therefore consistent with the provisions of Section 104 of the Act. In terms of matter (3) of Rule 16.2.6, the evening and night time supply of car parking is high and demand is low. Therefore, the demand created by the AWMI is easily accommodated. Day time demand created by the AWMI is less, but still potentially significant. However, the Committee is satisfied that the cash-in-lieu already paid adequately mitigate this daytime demand.
- b) The Committee is satisfied that the proposal is not contrary to Objective 11.1.0 and Policy 11.1.4 of the PTRMP in that the lack of provision of car-parks or cash-in-lieu will not adversely affect the adequacy or efficiency of provision of parking spaces. Indeed, the night time use of parking spaces constitutes greater efficiency of the parking spaces already provided.

- c) There is no doubt that this case has a long and complicated history. The Committee considers that the situation has only arisen because of a change of circumstances beyond the Applicant's control, namely the demise of the Wilkins and Field (Mitre 10) store which previously provided the parking shortfall. In addition, the Council only required those 17 car parks to be provided during the evening when the demand created by the AWMI is the highest. Similarly, the fact remains that the AWMI is an existing business that has been operating for many years. Unwavering imposition of cash-in-lieu payments on existing businesses is not necessarily justified given the circumstances outlined in point 9(a) above.
- d) The Committee is also aware that during the history of this case mistakes and miscommunications were made by both sides. The mistakes and delays on the part of the RBC (and possibly the TDC) have contributed to the escalation of costs far beyond what would have been payable 15 to 20 years ago. While not a reason in itself to grant this consent, it contributes to the overall decision reached.
- e) This decision does not set a precedent that may cause potential cumulative adverse effects into the future. The special circumstances of this case and the relative rarity of the AWMI's operation (in the sense of creation of demand for evening and night time parking) make this a unique case.

Issued this 5th day of June 2008



Cr Tim King
Chair of Hearings Committee

RESOURCE CONSENT NUMBER: RM070294

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

Arthur Wakefield Motor Inn Limited
(hereinafter referred to as “the Consent Holder”)

ACTIVITY AUTHORISED BY THIS CONSENT: A reduction in the number of car parks or payment of cash-in-lieu to be provided.

LOCATION DETAILS:

Address of property:	294 Queen Street, Richmond
Legal description:	Lot 2 DP 11742
Certificate of title:	CB28F/1070
Valuation number:	1958044700

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

CONDITION

1. The Consent Holder is exempt from the requirement to provide either seven car parks or payment of cash-in-lieu for seven car parks.

ADVICE NOTE

For the avoidance of doubt, and in addition to granting a waiver to the parking and cash-in-lieu performance standards of Permitted Rule 16.2.3 of the Proposed Tasman Resource Management Plan, this consent cancels and replaces Conditions 1 and 2 of Variation T2/9/92-45.

Issued this 5th day of June 2008



Cr Tim King
Chair of Hearings Committee

Date Confirmed:

Chair: