

IN THE MATTER

of the Resource Management Act
1991

AND

an application pursuant to section 88
of the Act by Gull New Zealand
Limited to construct and operate a
24 hour unmanned service station at
16 Bridge Street, Tokoroa.

DECISION BY INDEPENDENT HEARINGS COMMISSIONER

1.0 DECISION SUMMARY

This decision report leads to a decision to grant consent to the application, subject to conditions. The Commissioner finds that the application meets the relevant statutory tests in order to be granted consent. For the reasons included below, consent is granted to the application which is for a discretionary activity in the South Waikato District Plans.

The case for the South Waikato District Council in opposition is acknowledged but the points raised in that opposition are not sufficient to lead to the application being refused. That case was not sufficiently supported by the provisions of the Proposed District Plan. In the decision, account is taken of points raised by the Council including encouraging the consent holder to liaise with the Council in relation to landscaping or similar of the south west corner of the site in order to achieve some integration of it with the commercial area of the town to the south west. Further, in relation to providing for some small measure of local employment.

2.0 THE APPLICATION

The application is for a proposal to construct and operate a 24 hour unmanned service station at a site located at 16 Bridge Street, and with frontage to State Highway 1, in central Tokoroa. It includes the installation of two 60,000 litre tanks underground which will provide both petrol and diesel for customers. The facility will consist of a forecourt with fuel dispensers covered by a winged canopy. There will also be a small control kiosk on the site. The facility will not be set up to service heavy vehicles because there will be no high flow dispenser or high boom hose. However, there will be nothing otherwise precluding the use of the site by operators of large trucks. As the applicant, Gull NZ Ltd (“**Gull**”) has advised it does not operate fleet card services for bulk fuel purchasers and that most truck operators tend to access larger suppliers such as BP and Z who do offer fleet card purchasing. The site will not be manned but there will be a site ambassador available who will visit the site once a day and oversee the site. The proposal includes provision for two on-site illuminated pylon signs next to the State Highway, each sign being 2.1 metres wide by 7.7 metres high.

There are two vehicle access points to the site, being a left-in, left-out entrance at the southern end of the site fronting onto Bridge Street and a full movement access point onto Leith Place at

the northern end of the site. Due to manoeuvring constraints, the applicant has proposed that tankers accessing the site to refuel the tanks do a circuit through part of central Tokoroa so as to access the site from Bridge Street only and then exit via Leith Place only.

3.0 APPOINTMENT

I was appointed as an Independent Hearings Commissioner (“**Commissioner**”) by the South Waikato District Council (“**the Council**”) in terms of s34A of the Resource Management Act 1991 (“**RMA**”) to hear the applicant and the submitter, and the reporting officer for the Council, and to make a decision on the application.

The information available to me prior to the hearing comprised the application and attachments; the submission; and, the report prepared by the planning consultant Chris Dawson in terms of s42A of the RMA. The Council had appointed both an independent hearings commissioner and an independent planning consultant given it was a submitter to the application. I carried out a site visit on the morning before the hearing.

4.0 THE SITE

The application site is situated alongside State Highway 1 (which is to the east) where it forms part of Tokoroa Town Centre, being at its north east corner. It was previously used as the Tokoroa bus terminal and is occupied by the former terminal building. Most of the site is however vacant and covered with a chip seal surface. It has until recent time been used for the Tokoroa Saturday morning market.

The site is bounded by Leith Place to the west and a vacant commercial building. Logan Street is on its north side and comprises a dual carriageway with mature trees located within the central berm. Several commercial premises are located on the northern side of Logan Street including a BP service station. A number of commercial and large format retail activities are located across State Highway 1 to the east. To the south the site is bounded by Bridge Street which is also a dual carriageway street with mature trees in the central berm. The main shopping area of central Tokoroa is located south of Bridge Street and on the west side of Leith Place. Leith Place continues on the south side of Bridge Street and contains a parking area and there are toilet facilities and an information centre accessed directly from it.

The site is owned by Raukawa Iwi Development Ltd which is the commercial and asset holding subsidiary of the Raukawa Iwi. The site was vested in Raukawa in late 2013 as part of their Treaty of Waitangi Claims settlement with the Crown.

5.0 ACTIVITY STATUS AND REASON FOR RESOURCE CONSENT BEING REQUIRED

The proposal is a discretionary activity in terms of both the Commercial Core Zone of the Operative District Plan 1998 and the Tokoroa Town Centre Zone of the Proposed District Plan 2012.

6.0 THE HEARING

The hearing was held in the Council chambers at Tokoroa 11 July 2012. Appearances were from:

Applicant: Tracy Hayson, planning/resource management consultant
Karl Mischewski, Gull Retail Development and Sustainability Manager
Vanessa Eparaima, Chair of Raukawa Settlement Trust

Submitter: Ben Smit, Deputy Chief Executive, South Waikato District Council
Neil Sinclair, Mayor of South Waikato District Council
Amanda Hema, Group Manager Community, South Waikato District Council
Larry Sullivan, Tokoroa retail operator ("Morrisseys")
Martin Bryant, consultant landscape architect & urban designer
Patrick McHardy, Senior Planner, South Waikato District Council
Sharon Robinson, Group Manager-Environment

Council: Chris Dawson, planning/resource management consultant
Alan Moss, Planning Manager
Bryan Duncan, Contracts Engineer
John Anderson, Manager Environmental Health
Marnie Rydon, Hearings Administrator.

7.0 WRITTEN APPROVALS AND SUBMISSIONS

Written approval was provided from the Raukawa Settlement Trust on 28 March 2014. It is stated in the s42A report¹ that the applicant had consulted with Raukawa as the owners of the site. Included in the further information response to the Council was a letter from the Raukawa Settlement Trust to the Investment Manager at Raukawa Iwi Development Ltd

¹ Section 42A report, section 3

dated 5 December 2013. That letter confirms that the ownership and management of the site sits directly with Raukawa Iwi Development Ltd and that Raukawa Settlement Trust is supportive of development plans for the property including the consent application by Gull for the service station.

A letter dated 14 March 2014 was provided from the NZ Transport Agency to confirm it did not oppose the application on the basis that the proposal would not have direct access to the State Highway and the applicant had proposed suitable mitigation measures.

The application was limited notified to the Chief Executive of the South Waikato District Council on 16 April 2014 and a submission in opposition was received. The submission was included in the s42A report² as follows:

Table 1: Submitter and Reasons for Opposition

Submitter	Reasons
South Waikato District Council	<p>The submitter considers that the benefits from the activity will not outweigh the likely and definitive adverse effects that will occur. Specifically the submitter considers that the development of the unmanned 24 hour service station on the site will inhibit the development of the Central Business District in Tokoroa and hinder Council's plans to develop a vibrant and attractive town centre to increase tourism, economic growth and community cohesion in the town.</p> <p>Specifically the submission states:</p> <ol style="list-style-type: none"> 1. The Tokoroa Concept Plan was developed in 2008. The top three action points from that Concept Plan were to increase the attractiveness of the CBD. An upgrade of Leith Place was suggested as a way of making the CBD more appealing to visitors and locals. 2. Council has set aside funds and committed them through strategy plans to improve the township including an upgrade of Leith Place. Council has promised the community (including during Annual Plan hearings) that the Leith Place area will be redeveloped in a manner consistent with the 2008 concept plan process. 3. The upgrade of Leith Place will likely attract more business to the town centre. 4. Service stations are not permitted activities in the CBD, they are not encouraged within the town centre and are therefore listed as discretionary. This type of activity (vehicle orientated commercial operations) is permitted in the Business zone and the proposal should be located there instead of Leith Place. All other plans of Council (including the Tokoroa Concept Plan) are deemed just as relevant and significant as the District Plan.

² Ibid, section 3.7

Submitter	Reasons
	<p>5. Council believes that an unmanned service station will detract from the amenities of the town, will not enhance cohesion in the town centre or instil pride in the town or its surrounds.</p> <p>The submitter considers that the application for a 24 hour unmanned service station should be declined.</p>

8.0 STATUTORY PROVISIONS CONSIDERED

In considering the application, I have had regard to the matters to be considered as set out in sections 104 and 104B and Part 2 of the RMA.

9.0 OTHER RELEVANT PROVISIONS THAT WERE CONSIDERED

The provisions of the following statutory RMA documents were considered in reaching this decision:

- South Waikato Operative District Plan, 1998
- South Waikato Proposed District Plan, notified May 2012, decisions on submissions notified April 2014, appeals period closed 3 June 2014
- Waikato Regional Policy Statement, operative October 2000
- Waikato Proposed Regional Policy Statement, notified November 2010, decisions on submissions notified in November 2012
- Te Ture Whaimana o Te Awa o Waikato – Vision and Strategy for the Waikato River 2010.

The following documents were also considered:

- Tokoroa Concept Plan 2008
- South Waikato District Council, Vision 2009-2019, the 10 Year Plan
- South Waikato District Council, Long Term Council Community Plan 2012-22
- South Waikato District Council, Annual Plan 2013-14.

10.0 WEIGHTING OF THE DISTRICT PLANS

Given there is both an Operative and a Proposed District Plan the question arises regarding the weight to be applied to each in my assessment of the application. I received information from Mr Dawson in the s42A report³ that, in summary:

- 14 appeals⁴ have been received on various aspects of the Council's decisions on submissions to the Proposed District Plan. The proposed Tokoroa Town Centre zoning

³ Ibid, section 4

of the application site has not been challenged by submissions or appeals. There are also no appeals on any of the relevant objectives, policies or rules that are relevant to the proposed activity of a service station in the Tokoroa Town Centre Zone. Therefore these provisions can be treated as if they were operative.

- Because there are some outstanding appeals in relation to the Proposed District Plan it cannot, in terms of s86F of the RMA, be considered as fully operative. However, due to the limited number and scope of appeals, significant weight should be accorded to it with respect to the proposal and little weight should be accorded to the Operative District Plan.
- In terms of the zones, objectives, policies and other methods that are of relevance, the Operative District Plan can be considered to be inoperative with respect to this application.

Mr Dawson's advice was not challenged in these respects and I adopt that approach, affording significant weight to the Proposed District Plan given the extent of its progression through the statutory process to becoming an operative document.

11.0 THE PRINCIPAL ISSUES THAT WERE IN CONTENTION

The principal issues that were in contention were:

- a) Whether the proposal will have any actual or potential adverse effects on the environment in relation to traffic and access, character and amenity and hazardous substances. Also, whether conditions could be applied that would serve to satisfactorily avoid and/or mitigate any adverse effects to an acceptable or satisfactory level.
- b) Whether the proposal is consistent with the objectives and policies of the Proposed District Plan.
- c) What impacts the proposal will have on South Waikato District Council's aspirations for town centre enhancement.
- d) Whether s104 RMA is satisfied.
- e) Whether the proposal is consistent with the Part 2 of the RMA, being the purpose and principles of the Act.

12.0 SUMMARY OF EVIDENCE HEARD

The evidence from the applicant, submitter and the Council's officers is summarised, to the extent required, in the below "Findings on the Principal Issues in Contention" where that evidence has had a bearing on the decision.

I record, as raised at the hearing, that I initially had some difficulty with Mr McHardy appearing given he had been part of the Council's processing team for this application, at least in its early

⁴ Evidence of Patrick McHardy, para 2.4

stages of further information and notification, and was appearing at the hearing as part of the submitter's team. The Council did however see him as an important part of its presentation. Ms Robinson provided some explanation and when asked, Ms Hayson did not wish to make an issue of this point. I proceeded to hear Mr McHardy and following that presentation stated that given the professional manner in which his evidence had been prepared and presented I did not have a problem in receiving it. I acknowledge this is not an ideal situation but it was the will of the submitter and the evidence was useful to my understanding of the district planning situation and of his views.

13.0 FINDINGS ON THE PRINCIPAL ISSUES IN CONTENTION

13.1 Whether the proposal will have any actual or potential adverse effects on the environment in relation to traffic and access, character and amenity and hazardous substances. Also, whether conditions could be applied that would serve to satisfactorily avoid and/or mitigate any adverse effects to an acceptable or satisfactory level.

13.1.1 Permitted Baseline

When considering a resource consent application a consent authority must consider whether or not to apply what has come to be referred to as the "permitted baseline" which is essentially the base against which the potential adverse effects of a proposal are to be assessed. The Courts have explained it as being the existing environment overlaid with such relevant activity (not being a fanciful activity) as is permitted by a district plan. Thus, if there is an activity permitted by a district plan that will create some adverse effect on the environment, that adverse effect does not count in the assessment because it is part of the permitted baseline in the sense that it is deemed to be already affecting the environment, or anticipated to do so.

The permitted baseline approach then provides for me to disregard an adverse effect of the proposed activity on the environment if the Proposed District Plan permits an activity with that effect. That includes consideration to what other activities may be permitted upon the site.

I find it is relevant to apply the permitted baseline in my assessment of the proposal in terms of the activities provided for in the Tokoroa Town Centre Zone as permitted activities and also in relation to the performance standards that apply to those permitted activities. The Tokoroa Town Centre Zone provides for the following as permitted activities: retail activities; restaurants, bars and cafes; offices; places of assembly; education and childcare facilities; commercial services; health care services; veterinary services; and car parks.

That is a diverse range of activities which need to comply with the performance standards in the Proposed District Plan, those standards including building setbacks, site coverage, parking, height, signage, verandah provision, noise, vibration and glare, hazardous substances and screening.

It is apparent that any of these activities could be established on the application site and generate all of the potential adverse effects that may be of concern in relation to the service station proposal. These activities could be established as permitted activities, that is, without the need for resource consent consideration by the Council.

I find agreement with Ms Hayson and Mr Dawson in these respects and, for the purposes of having regard to any actual and potential effects on the environment of allowing the activity, that there are potential future permitted activities that are at least similar in terms of the adverse effects they may generate to those expected to be generated by the proposed activity. It was part of the applicant's case that this permitted baseline approach applied irrespective of what may be outlined in the Tokoroa Concept Plan ("**the Concept Plan**") and that the land owner had the right to rely on the provisions of the Proposed District Plan in this respect.⁵

13.1.2 Traffic and Parking Effects

The application was accompanied by a Traffic Assessment report prepared by Bruce Harrison, consultant traffic engineer in which he comprehensively addressed all relevant aspects of the proposal. This in turn was commented upon by the Council's engineer, Bryan Duncan, who raised no concerns other than seeking there be a specified route for delivery vehicles to follow to make access to the site easier for such vehicles. In addition, NZTA had given its written approval largely on the basis that there would be no direct vehicle access to or from the State Highway.

The only potential difficulty that had been raised was access to the site for delivery vehicles. Ms Hayson advised in evidence⁶, that Gull had worked with both NZTA and Council officers to ensure vehicle movements to and from the site would not create adverse effects on the transportation network and in that respect a fuel tanker delivery route has been agreed with Council officers to avoid tankers using the Leith Place entrance to the site. This means tankers will enter the area off the State Highway onto Logan Street and then traverse a town block by way of Mannering Street and Bridge Street to enter the site from its southern end. Tankers would depart following the same route and exiting onto the State Highway from Bridge Street.

I am of the view that this provides the most effective traffic arrangement in a manner that will not create any adverse effects upon road safety or efficiency. Further, it would be an infrequent event, estimated at perhaps twice a week by the applicant. I do not see that as having any significant amenity effect upon the town centre area that the petrol tanker would traverse as part of this route. This route for tanker delivery vehicles is included as Condition 6 to the consent and I have reinforced the recommended form of this condition by referring to the manner in which drivers would be informed of this detail and how it would be monitored.

Mr Duncan provided further commentary at the hearing in which he confirmed that there were no issues relating to matters such as accident incidents or queuing that would be of any concern.

I conclude from the evidence that any adverse effects associated with traffic and access to and from the application site will be acceptable and no more than minor in nature.

⁵ Evidence of Tracy Hayson, para 7.9

⁶ Ibid, para 6.2

13.1.3 Character and Amenity Effects

The character and amenity of this site derive from a combination of the busy State Highway on one side and the main shopping area of Tokoroa to its south west. The site has a clear association with the BP service station neighbouring it to the north and the commercial activities along the other side of the State Highway. This association is stronger at this time, given particularly the former bus terminal use of the site, than its association with the main shopping area to its south west. This is further contributed to by Bridge Street separating the site from the main shopping area. The Council's aspirations to develop the site as part of the town centre, linking it more effectively to the existing shopping area, is acknowledged and discussed in another part of this decision. However, I see the site in the above manner and being more closely linked at the current time to the State Highway, the BP Service Station, other commercial facilities in Logan Street, and the currently vacant office building opposite on Leith Place. In that context, I do not see the proposal as detracting from the character and amenity of this locality. It will, as any development would, improve the appearance of the site and whilst a service station may not, due to its functional nature, present necessarily a visually pleasing appearance it will nonetheless add to, rather than detract from, the character and amenity of the locality.

The structures associated with the service station are relatively small, comprising the winged canopies over the fuel dispensers, a small kiosk building and the associated signage. In those respects the appearance of the site will remain visually open and connected to the surrounding area. The proposal includes two signs achieving a height of 7.7m and a width of 2.11m which can reasonably be described as standard identification signs for service stations. In the context of the location of these signs, at the north and south end of the site and adjacent to the State Highway, I see no difficulties with them. Other signage is directional signage associated with entry and exit for the site.

The proposal provides for some landscape planting around the perimeter of the site and there is the opportunity to work in conjunction, if desired, with the Council to provide landscaping at the south west corner of the site, amounting to an area approaching 400sqm that could be designed to provide some visual or similar linkage with the shopping area to the south west. I have added to the recommended condition relating to landscaping by seeking to achieve the maximum amount of landscape planting on the site whilst acknowledging the visibility needed for customers. I have also added an advice note to the condition (Condition 13) regarding liaison with the Council about landscaping or similar development of the area at the south west corner of the site.

I acknowledge that a service station development upon the site may not be what the Council, or perhaps others, may see as the optimum development upon this site in terms of character and amenity considerations, but I conclude it is acceptable and any adverse effects would be less than minor in nature.

13.1.4 Hazardous Substances

The Council's Manager of Environmental Health, John Anderson, stated in his contribution to the s42A report that *"Obviously unmanned sites oppose greater risks to the general environment, nearby properties and the health and well-being of citizens/residents."*⁷

Mr Anderson repeated these concerns at the hearing indicating orally that he had *"major reservations about unmanned sites"*. He expressed particular concerns, along with photographs, regarding the Gull site at Atiamuri in relation to maintenance, ignition sources and emergency telephone numbers. However, it is the case that the proposal would meet all the relevant legislative and practice requirements. The site is required to have a Hazardous Substances Test Location Certificate and an Emergency Response Plan in place prior to the operation, under the Hazardous Substances and New Organisms Act 1996 and Environmental Protection Agency requirements⁸. Ms Hayson advised that Gull operates 17 unmanned service stations throughout the North Island and has well established procedures in place for site management and emergency response.

Ms Hayson described the other features of the site including:

- there being a number of CCTV cameras that can be monitored remotely by Gull Head Office as required;
- each site being appointed a Site Service Contractor who becomes the "ambassador" for the site and is responsible for the day to day checking and maintenance of the service station, including a visual inspection of the forecourt for spills and hazards, potential pump leaks and checking the spill response kit is in place;
- customer safety procedures for the general public being detailed on a sign board and on the individual pillars of each of the winged canopies adjacent to the fuel dispensers;
- the maximum spend for an individual fuel transaction being \$150 or 75 litres which avoids fuel continuing to pump from a fuel dispenser in the event of sabotage or an accident; and
- there being a storm water interceptor which separates hydrocarbons and suspended solids from storm water before it enters the storm water system, that also having an automatic shut-off valve, isolating it from the municipal system in the unlikely event of a large spill.

Ms Hayson was supported in her views by Mr Mischewski of Gull who confirmed these arrangements. She concluded that the potential for adverse environmental effects from either

⁷ Report from John Anderson to Chris Dawson

⁸ Evidence of Tracy Hayson, para 6.6

the operation of a hazardous facility or the use of the land for a service station are able to be mitigated to ensure potential adverse effects are minor.

The concerns were the subject of discussion at the hearing with a principal concern being that in an emergency customers were directed to call 111 and that the Gull Emergency Response Officer would travel from Hamilton, taking some one and a half hours, to reach the site. Mr Mischewski pointed out that was not a difficulty insofar as the 111 response team would deal with any problems. I pointed out, reflecting the likely views of the community, a perception that the Gull emergency response should derive from a more local source to give people comfort in that respect rather than it coming from further afield. That was not seen as being necessary by Mr Mischewski but he did say, that if this was a matter of such concern that it may *break or make a consent* to the application, then Gull would be prepared to have a local person carry out that response function. Whilst that was in response to the concerns I expressed, and I acknowledge Ms Hayson confirming that offer from Gull in the applicant's right of reply, I am somewhat pressed legally and justifiably to be able to impose that as a condition of consent. That is because the proposal is able to meet all the relevant requirements associated with the storage and use of hazardous substances on the site. I do however invite Gull, as a measure of good faith to the Tokoroa community, to seriously consider a local emergency response officer rather than that response needing to come from Hamilton. This is added as an advice note following the hazardous substances consent conditions.

Although not related to the consideration of hazardous substances, the Gull representatives at the hearing did confirm that the site ambassador responsible for the day to day checking and maintenance of the service station would be a local person along with either that person or any other person charged with maintaining the landscape planting upon the site.

I conclude that the hazardous substances associated with the proposal will have no adverse effects and that any potential adverse effects that may arise are only of a minor nature.

13.1.5 Conclusion on Adverse Effects

I find that any potential adverse effects of the proposal upon the environment will be minor. The potential for such effects is avoided or sufficiently mitigated by measures that are included in the application and the conditions imposed as part of the consent. The review condition provides the opportunity for the Council to review the conditions of the consent in order to address any difficulties that have not been foreseen and which may arise through the implementation of the consents. This particularly provides an on-going check on the hazardous substances processes that were a concern of the Council's reporting team.

13.2 Whether the proposal is consistent with the objectives and policies of the Proposed District Plan.

Section 104 RMA requires me to have regard to any relevant provisions of the District Plans. As explained by Mr McHardy that usually means decision-makers consider whether or not a

proposal is consistent with the objectives and policies and other provisions of a district plan. I accept that is the traditional and a reasonable approach.

All three planners, Ms Hayson and Messrs McHardy and Dawson provided commentaries upon the objectives and policies of relevance to the proposal. There was no disagreement on what were the relevant objectives and policies but a difference in their conclusions. For the record, and given the discussion that follows on those objectives and policies, I set out below those that were raised as being relevant, noting these are from the Proposed District Plan:

Objective 4.2.4

To enable the town centres in Putaruru, Tokoroa and Tirau to provide distinctive, attractive, safe and easily accessible environments with a concentration of commercial businesses and cultural activities providing a wide range of services and facilities for residents and passing travellers, and with minimum adverse effects on the safe and sustainable functioning of State Highway 1.

Policy 4.3.8

Ensure that development minimises risks to people, properties and the environment from hazardous substances and natural hazards.

Policy 4.3.11

Promote affordable, safe, integrated, sustainable and responsive transport networks within and through the towns, with safe pedestrian and cycleway connections linking residential neighbourhoods with public reserves, schools and the town centres.

Policy 4.3.13

Promote a high standard of urban design for new development, including reflecting the town's past and the locality's Raukawa heritage, and consideration of community safety and Crime Prevention Through Environmental Design (CPTED) principles.

Ms Hayson also raised the assessment criterion from section 8.4.4 of the Proposed District Plan as:

The extent to which the proposal is likely to have an effect on the amenities sought by the objectives for the zone concerned.

Mr McHardy added:

Policy 4.2.5

To allow adequate opportunities for businesses and industries to provide a range of employment opportunities for the District's residents, in a manner consistent with the towns' existing amenity values without any unnecessary barriers to economic advancement.

In the consideration of these provisions, Objective 4.2.4 is key in terms of the manner in which the town centres of the district are developed. In this respect the proposal will contribute to a safe and easily accessible environment and provide a commercial business providing a range of services and facilities particularly for passing travellers and also residents and with minimum adverse effects on the safety and sustainable functioning of State Highway 1. There is some debate around whether the proposal is distinctive and/or attractive. It is the case that a service station is by its very nature of a functional design and appearance and in most cases would not be deemed to be *attractive*. So in that case, and in others some objectives and policies are not necessarily directly applicable to this proposal. Be that as it may, Mr McHardy provided guidance in referring me to get a sense of what the Proposed District Plan is aiming to achieve in the Tokoroa Town Centre Zone by looking at the anticipated environmental results for that zone in contrasting them with those that are sought for the remainder of the Tokoroa CBD. Again, given the importance of these provisions, I quote them below:

The Tokoroa Town Centre Zone is intended to achieve the following anticipated environmental results:

- *The town centre provides a vibrant, fully developed and tenanted retail and commercial area that serves the needs of the town and surrounding rural area*
- *The town centre provides an attractive/visually appealing, safe and easily accessible environment for residents, passing travellers and pedestrians*
- *Public spaces provide a lively atmosphere where residents and shoppers can meet*
- *Mixed use activities characterise building occupancy with offices and other commercial service activities, and residential accommodation occupying upper floors*
- *Continuous verandah coverage is maintained on buildings on nominated street frontages to provide year round protection from the weather for shoppers*
- *The cultural heritage of the town is celebrated through art displays in public places*
- *The demand for pedestrian based retail activities is catered for in the town centre*
- *The character and amenity of the residential areas adjacent to the town centre is maintained through appropriate controls on building bulk, location and landscape treatments.*

The Tokoroa Town Centre Zone is a method to implement the objectives and policies contained within Chapter 4 (Objectives and Policies for the District's Towns).

As Mr McHardy pointed out, the Proposed District Plan states that the Tokoroa Town Centre Zone is a method to implement the objectives and policies quoted above.

When I consider each of the anticipated environmental results in turn, in the context of the objectives and policies, I am unable to find that the proposal is inconsistent with, or challenges any of those provisions to such an extent that it sits outside those provisions and should not be granted a consent on that basis.

The anticipated environmental results for the Tokoroa Town Centre Zone are the means by which Objective 4.2.4 is seen to be implemented but I find those anticipated environmental results to be largely of an aspirational nature to be applied to development proposals. In the case of a service station some are not relevant or can otherwise be dismissed on the basis of the functional appearance of a service station that is accordingly not necessarily going to be *attractive/visually appealing* but is clearly a component of the town centre that can contribute to serving the needs of the town, surrounding area and passing travellers.

Returning to the objectives and policies, there was debate at the hearing around Policy 4.3.13 and the desire to *promote a higher standard of urban design for new development*. There is however little guidance in the Proposed District Plan regarding what constitutes a high standard of urban design for new development. The policy itself refers to it *reflecting the town's past and the locality's Raukawa heritage and consideration of community safety and Crime Prevention Through Environmental Design (CPTED) principles*. That does little to provide the sort of guidance that one may reasonably expect to be included as part of a district plan, such documents often including reference to appendices or associated documents that include urban design principles which are nationally accepted. Mr Bryant was of the view that one had to go looking for what constituted good urban design by perusing the various provisions in the Proposed District Plan. Whilst I acknowledge the high quality of the written and oral commentary provided by Mr Bryant in relation to urban design issues, there would need to be a greater lead provided in the Proposed District Plan in that respect to provide any certainty regarding what forms of building and activity spaces the Council envisaged in any unit area of the district. There is insufficient in my view, and based upon the evidence presented, to lead me to the conclusion that a service station situated adjacent to the State Highway and at the edge of the Tokoroa Town Centre Zone should be refused resource consent.

The only provision that may directly work against the proposal was highlighted to me in the evidence from Mr McHardy who referenced Policy 21.3.7 of the Operative District Plan, that being:

To discourage those commercial activities that are incompatible to other retail uses, and which tend to detract from the pedestrian nature of the shopping environment.

That has however not been carried through into the Proposed District Plan and Mr McHardy himself stated in evidence that the objectives and policies of the Proposed District Plan would undoubtedly carry greater weight in the event of any conflict given the advanced stage it had reached in the plan and preparation process.

I observed and commented during the hearing that the Council appeared to have not carried its aspirations for the future of the Tokoroa Town Centre Zone, including the subject site, through into the Proposed District Plan in any direct or meaningful manner. There are of course a number of statutory and planning techniques by which the Council could notate that site and area in a manner that reflected its aspirations to develop it in the manner they described through evidence and as written in the Tokoroa Concept Plan 2008. In response to a questions on this, the Council representatives expressed the view of the Council that the provisions of the

Proposed District Plan were strong enough to support their aspirations in the Concept Plan apart from which they had had dialogue with the owners of the site making them aware of the manner in which they saw it being included as part of the Concept Plan.

However, I find that the provisions of the Proposed District Plan are not sufficiently strong to refuse the proposal for a service station based upon my assessment of those provisions and the information put before me in evidence. In addition, the owners of the site are clearly wanting to develop it in the manner sought by this application irrespective of earlier dialogue that may have taken place.

There was also debate at the hearing around the issue of public safety, with Policy 4.2.8 of the Proposed District Plan having application in this respect. Mr Anderson, as part of the reporting team for the Council, and Mr Mischewski, from Gull, had different views in this respect. The proposed development is able to meet all relevant legislative and practice requirements, as I have commented on above, and accordingly it cannot be found that the proposal is inconsistent with that policy.

Mr McHardy had also raised the matter of employment opportunities as reflected through Objective 4.2.5. It is the case that an unmanned facility is not going to be an employment generator. However, and as discussed above, I have sought that Gull seriously consider local people for some of the roles associated with the management of the service station proposal.

In the s42A report, the additional assessment criteria relating to service stations were set out. These are readily met and the only debate between the presenters at the hearing would be *the extent to which the proposal is likely to have an effect on the amenities sought by the objectives for the zone concerned.*⁹

I cannot find the proposal to have any adverse effects of consequence on the amenities of the Tokoroa Town Centre Zone given it sufficiently addresses all the potential adverse effects that could arise relating to traffic safety, noise, hazardous substances and the lighting. The only issue is a more subjective view that some persons have in relation to how this may impact on the Council's aspirations for developing this site for other purposes. I discuss that in the section that follows.

Finally in terms of other provisions in the District Plan, Mr Dawson referred to relevant parts in his s42A report¹⁰ commenting that the proposal was consistent with these provisions. I concur with him.

Taking account of all the evidence put before me in relation to the provisions of the District Plans, it is the case that the Proposed District Plan is the dominant document and I am unable

⁹ Proposed District Plan, assessment criterion at part 8.4.4

¹⁰ Section 42A report, sections 4.34 to 4.37

to find the proposal to be inconsistent with its objectives and policies, or relevant assessment criteria, in any manner that would lead to a refusal of consent to the proposal.

13.3 What impacts the proposal will have on South Waikato District Council's aspirations for town centre enhancement.

The main thrust to the submission opposing the proposal, supported in the evidence, was that a service station in this location was not what the Council was seeking and rather, it sought to carry out an upgrade of Leith Place in a manner to make this area more appealing to visitors and locals and had set funds aside for that purpose. The Council stated in its submission:

Council believes that an unmanned service station will detract from the amenities of the town, will not enhance cohesion in the town centre or instil pride in the town or its surrounds.

It also stated in its submission that service stations are not permitted activities in the Central Business District ("CBD"), they are not encouraged within the town centre and are therefore listed as discretionary. In addition, that all other plans of the Council including the Tokoroa Concept Plan are deemed just as relevant and as significant as the Proposed District Plan.

I must say neither of those last two statements are correct. If the Council wished to have service stations as non-permitted activities in the CBD they would have had to have either excluded them from the lists of permitted, discretionary and other activities or made them specifically non-complying activities. A discretionary activity is reasonably considered to be one that can be expected or is appropriate within a zone subject to an examination of its environmental effects and/or against assessment criteria included in a district plan. It is also the case that a non-statutory plan such as the Concept Plan cannot be deemed as relevant under the RMA in the consideration of resource consent applications as the Proposed District Plan, one reason being that a district plan undertakes a First Schedule RMA public scrutiny process.

The Council called a number of representatives to provide evidence. Mr Smit pointed out in his summation his view that the Council had thought the Proposed District Plan was strong enough and relied on an understanding with Raukawa that it could consider the application site as part of the town enhancement proposals adding, that the Council was passionate about developing the plan for the CBD and that this site was integral to that planning. Mayor Sinclair provided background to the development of the Concept Plan, the Council's long term aspirations for this area and the delay in implementation largely being a result of the process of the Treaty claim affecting the application site.

Ms Hema provided details of the opportunity the Council saw for the application site being developed as part of the proposed upgrading of Leith Place, along with the associated financial commitment to that upgrade. That was supported by the evidence of Mr Bryant regarding this site being important in what he described as the urban design and viability of Tokoroa. He saw the proposed development as being poorly considered in an urban design context and an inappropriate development upon the site, raising a number of reasons why he did not see it contributing to the Council's aspirations for the development of this area as evidenced through

its Proposed District Plan and the Concept Plan. That evidence was supported by Mr Sullivan as a retailer in Leith Place and Mr McHardy as Council's Senior Planner. Mr Sullivan provided a useful summary of the position in stating:

*In summary, I find the proposed Gull Station does not in any way enhance or offer anything positive to the CBD of Tokoroa. Its placement denies the long term plan of an attractive Civic Hub to take place. The economic benefit to one corporate will over shadow the environmental and economic benefits as well as the future hopes and aspirations of a town.*¹¹

I agree with the Council representatives that this site can be considered appropriately developed as part of its future enhancement of this locality but it has advanced those plans without any security or assurance over the application site being available to it. As I have stated too, the Proposed District Plan provisions are not specific enough in stating what is to be discouraged from this location, or in stronger terms, ensuring the activities it does not want are excluded through the lists of activities in its Proposed District Plan. The proposal will therefore have a marked impact on the Council's aspirations for town centre enhancement. However, the opportunity for the use of the site in that manner is not available to it.

That aside, the site is situated at the edge of the Tokoroa Town Centre Zone where any form of proposal the Council may not want is perhaps more appropriately located rather being more central within the zone. It is also separated by Bridge Street, and its associated traffic and roundabout, which does not easily lend it to pedestrian linkage with the main part of the Tokoroa Town Centre Zone. It may be that the Council needs to focus its upgrading efforts on the southern part of Leith Street immediately between the town centre and the State Highway. I understand that area to be under the Council's ownership/control.

13.4 Whether s104 RMA is satisfied.

13.4.1 Any actual and potential effects on the environment of allowing the activities

I have concluded above that any adverse effects arising from the proposal will have no more than a minor adverse effect on the environment. The proposal will have some positive or beneficial effects. It will develop a site that is in need of attention and do so with a facility that will provide a service to the passing motorists and to the local community. I note that the RMA is not a licensing mechanism for controlling the number of such facilities that may be made available. This applicant also offers fuel at reduced prices relative to other suppliers and this has been shown to result in a lowering of fuel prices from all suppliers for the benefit of the public. There will be the opportunity, albeit limited, for the Council to work with the land owner regarding the area at the south west corner of the application site in a manner that provides some amenity or linkage to the main commercial area.

¹¹ Submission of Larry Sullivan, final para.

13.4.2 Regional Planning Considerations

The operative Waikato Regional Policy Statement (“RPS”) and the proposed Waikato Regional Policy Statement (“PRPS”) provide an overview of the significant resource management issues of the Waikato region and sets objectives, policies and methods to achieve integrated management of the natural and physical resources of the region. The decisions on submissions to the PRPS were notified in November 2012 and it has largely now replaced the RPS.

No matters were raised in relation to the RPS or PRPS as being of concern or to indicate the proposal was inconsistent with the any provisions of the RPS. In that respect I do note that the Proposed District Plan must give effect to the RPS and PRPS and therefore any concerns can reasonably be expected to be dealt with through the assessment of the proposals against the provisions of the Proposed District Plan.

Mr McHardy drew attention to the Te Ture Whaimana o Te Awa o Waikato - Vision and Strategy for the Waikato River 2010, that having been an important addition to the PRPS as a requirement of Schedule 2 of the Waikato Raupatu Claims (Waikato River) Settlement Act 2010. The Vision and Strategy is directed to restoring and protecting the health and wellbeing of the Waikato River. The proposal could potentially have impacts, through any discharges of contaminants in stormwater run-off from the site to local waterways, which in turn lead to the Waikato River. However the measures included in the application, and confirmed in consent conditions, satisfactorily address any such potential impacts.

I find the proposals to be consistent with regional planning considerations.

13.4.3 District Plans

The relevant provisions of the District Plans have been addressed above.

13.4.4 Other Matters

The Tokoroa Concept Plan can be considered as another matter and has been addressed above accordingly.

13.4.5 Conclusion on section 104 RMA

From all of the above considerations, I find that the provisions of section 104 RMA are satisfied by the proposal.

13.5 Whether the proposal is consistent with the Part 2 of the RMA, being the purpose and principles of the Act.

Part 2 of the RMA contains the purpose of the Act (section 5) with sections 6, 7, and 8 being principles intended to give guidance as to the way in which the purpose is to be achieved.

The proposal is consistent with the sustainable management purpose of the RMA. It will make sound use of the physical resource of the existing land area and provide a service from the site that will enable the community to provide for its social, economic and cultural wellbeing. In social terms the community has a choice of whether to use the facility, it is the case that this particular applicant provides a less expensive product that in itself provides a local economic benefit and the site is owned by local Iwi. Further, the proposal serves to meet the reasonably

foreseeable needs of future generations and is able to operate in a manner that avoids, remedies or mitigates any adverse effects on the environment.

Sections 6, 7 and 8 all include considerations of Maori and of the Treaty of Waitangi. The proposal is consistent with these provisions of the Act in providing for development upon land owned by Raukawa following settlement of their Treaty claims.

Section 7 contains a list of other matters that decision makers shall have particular regard to in determining an application. In considering those matters, I find that the proposal does represent an efficient use and development of the physical resource of the land and will not, in any more than a minor manner, adversely affect the maintenance of amenity values or the quality of the environment.

In applying the overall broad judgment of whether a proposal would promote the sustainable management of natural and physical resources, I come to the view that the proposal is consistent with the purpose and principles of the RMA.

DECISION

Pursuant to sections 104, 104B and 108 of the Resource Management Act, consent is granted to the application by the Gull Group of Companies to establish and operate a 24 hour unmanned service station at 16 Bridge Street, Tokoroa, as a discretionary activity under the Proposed South Waikato District Plan on a site legally described as Section 78 Block VIII Paterere South Survey District comprised in Certificate of Title SA 47D/188, subject to the following conditions, and for the reasons in the above decision report and summarised below:

1. That the activity be established, operated and maintained in general accordance with;

The Assessment of Environmental Effects submitted by the Gull Group of Companies prepared by Wasley Knell Consultants Limited and dated January 2014) and all the associated technical reports and appendices comprising:
 - a) Proposed Site Plan UO2 F prepared by Studio Architectural Design (as superseded by Harrison Transportation Plan "Gulf Service Station, 16 Bridge Street, Tokoroa-Tracking of Design Semi-Trailer", Job No. 19, Drawing No. 07 dated 18/12/13);
 - b) Fender Canopy plan Drawing FCPS A1 Issue Lt1 prepared by Shade Systems;
 - c) South Waikato ID Sign Details prepared by Studio Architectural Design;
 - d) Hazardous Operation Plan for Proposed Service Station at 16 Bridge Street, Tokoroa prepared by ICR Consulting Ltd;

- e) Transportation Assessment Report prepared by Harrison Transportation with attached site plan 02;
- f) Gull Tokoroa proposed Lighting Plan prepared by Phillips;

The further information provided by the applicant (letter from Wasley Knell dated 24 March 2014) with attached letters from the NZ Transport Agency, Raukawa Settlement Trust and Harrison Transport Ltd (including amended site plan 07 dated 18/12/13) and the Written Approval of Raukawa Iwi

Unless otherwise specified or amended by the following conditions of consent.

Noise

- 2. Noise emissions from any source on the site (excluding construction noise) shall not exceed the noise levels in the table below when assessed at any point at or within the boundary of the site. Sound levels shall be measured in accordance with NZS6801:2008 'Acoustics — Measurement of Environmental Sound' and assessed in accordance with NZS6802:2008 'Acoustics — Environmental Noise'.

Noise Limit	
Daytime	Night-time
On any day 7.00 am to 10.00 pm	At all other times
60 dB LAeq	55 dB LAeq 70 dB LAmax

- 3. All demolition and construction work on site shall be designed and conducted to ensure that construction noise from the site complies with the provisions of NZS6803: 1999 – Construction Noise. Sound levels shall be measured and assessed in accordance with the provisions of NZS 6803:1999 'Acoustics – Construction Noise'. The assessment location of this standard is approximately 1m from the wall of the surrounding residential dwellings most exposed to construction noise and 1.2 – 1.5m above the floor of interest.

Lighting & Glare and/or Spill

- 4. That all outdoor lighting within the site including illuminated signage is directed so that it does not cause a disturbance by way of glare and/or spill to the occupants of any adjoining property or to road users.

Construction Management Plan

5. That prior to the commencement of building construction or earthworks for the development, the consent holder shall provide Council with a Construction Management Plan that details the procedures that will be implemented to ensure that any potential adverse effects generated during the construction phase are avoided, remedied or mitigated. The plan shall address the following:

- a) Construction timetable
- b) Temporary Traffic Management Plan
- c) Health and Safety
- d) Environmental controls
- e) Dust management
- f) Stormwater and silt management
- g) Vibration of construction equipment
- h) Compliance with noise standards, in particular NZS6803P:1984NZS in accordance with Section 14.4.2 Rule C(ii) of the Proposed District Plan
- i) Any need for temporary road closures or other restrictions surrounding the roading network
- j) Site security
- k) Consultation with land owners and occupiers of planned construction activities
- l) Handling Construction Management Plan and addressing of complaints that relate to areas of non-compliance with the approved Construction Management Plan

The Construction Management Plan shall be to the approval of the Group Manager Environment, and prepared at the consent holder's expense.

Site construction for the facility shall be undertaken in accordance with the Construction Management Plan as required above.

Heavy Traffic Routes Used

6. Prior to the operation of the facility, a Journey Management Plan shall be completed advising that delivery vehicle operators are required to use the following agreed route, and advising the manner in which the consent holder will advise delivery vehicle operators of this requirement and how it will be monitored:

From SH1 southbound turn right onto Logan St, turn left onto Mannering Street, left turn onto Bridge St and turn left into the site. Exit from the northern end of the site, turn right onto Leith St, turn left onto Logan Street, turn left onto Mannering Street, left turn onto Bridge St and turn left onto SH1.

7. The consent holder shall submit a copy of the Journey Management Plan to the Group Manager Environment for information only prior to the facility commencing operation.

Entranceways

8. Prior to the commencement of use of the facility, the consent holder shall upgrade the existing entranceways and road markings as per Drawing number 07 to Figure 10.1 standard as outlined in Council's Code of Practice for Subdivision and Development (February 2009). The entranceway shall be constructed to the approval of the Group Manager Assets and at the consent holder's expense.

Facility Maintenance

9. The consent holder shall maintain the facility on a regular basis and ensure that any rubbish is removed promptly to the approval of the Group Manager Environment.

Site Facility Building

10. Prior to the operation of the service station, the site facility building shall be painted in recessive colours to the satisfaction of the Group Manager Environment.

Hazardous Substances

11. No less than 10 working days prior to the facility commencing operation, the consent holder shall provide the Council with construction drawings, site plans, Hazardous Substances Location Test Certificate and Hazardous Substances Stationary Location Test Certificate for both the diesel and petrol tanks and an emergency response plan in accordance with the EPA 'Certifying Your Service Station' Publication EPA0290, May 2014, relating to unstaffed and unattended stations.
12. The facility shall comply with the Code of Practice for the Design, Installation and Operation of Underground Petroleum Systems and Hazardous Substances and New Organisms Act and Regulations.

Advice Note: The consent holder is invited, as a measure of good faith to the Tokoroa community, to seriously consider engaging a local emergency response officer rather than that response needing to come to both those facilities from Hamilton. Whilst acknowledging the emergency 111 response, this engagement would assist the perception and concern regarding any emergency situation.

Landscaping

13. Prior to the operation of the service station, the consent holder shall submit a Landscape Management Plan (LMP) prepared by a suitably qualified specialist, to the Group Manager Environment for review and approval (acting in a certification capacity only). The LMP shall include at a minimum:
- (a) Details of the landscaping to be implemented and maintained permanently on the site including planting that will soften the appearance of the site facility building from views from Leith Place, Logan Street and Bridge Street. On-site planting shall be maximised in order to provide an attractive appearance for the developed site, within the constraints of needing to have the facilities available on the site clearly visible for customers. That may include planting in pots or similar on the site rather than necessarily being restricted to the perimeter of the site.
 - (b) A schedule of the species to be planted including botanical name, average plant height at time of planting and at maturity and planting density. The planting should be predominantly native species.
 - (c) A planting specification including planting and mulching techniques;
 - (d) Planting maintenance requirements (including irrigation if required) to achieve permanent effectiveness of the landscaping;
 - (e) If any plants die or are damaged or are removed then they shall be replaced with similar species of the same size and thereafter maintained and kept to a high standard at all times.

Advice Note: The consent holder is encouraged to liaise with the Council in relation to that part of the site available for landscaping or similar towards the south west corner in terms of landscaping, planting or any other means of providing some integration of the site with the commercial area of the town both to the south west and directly across Leith Place. This would be consistent with the offer of the consent holder, as part of the hearing process, to do so.

Archaeology

14. The consent holder shall ensure that should any human remains or archaeological items be exposed during development that such works will cease immediately. Heritage New Zealand, the New Zealand Police, South Waikato District Council and Kaumatua representing local Tangata Whenua shall be contacted and work shall not recommence in the affected area until any necessary statutory authorisations or consents have been obtained.

Review

15. Pursuant to sections 128 to 131 of the Resource Management Act 1991, the South Waikato District Council may review any or all of the conditions of this consent one year after the date of the commencement of the consent, and on an annual basis thereafter up to and including 5 years after the commencement of the consent, by serving notice on the consent holder of its intention to review any or all of the conditions of this consent for any of the following purposes:

- a) To review the effectiveness of the conditions of this consent in avoiding, remedying, or mitigating the potential adverse environmental effects in relation to traffic, lighting, and landscaping effects, and further in relation to hazardous substances, and if necessary to avoid, remedy or mitigate such effects by way of further or amended conditions;
- b) To address any adverse effects on the environment which have arisen as a result of the exercise of this consent that were not anticipated at the time of granting this consent, including addressing any issues arising out of complaints;
- c) The Council will undertake the review in consultation with the consent holder and the consent holder shall pay the actual and reasonable costs of the review.

Advice Notes:

- a) The consent holder is advised to cap and provide 'as built' plans for the existing sewer connection to the site.
- b) The consent holder is encouraged to consult further with the Council to consider any design motifs, landscaping or public art which may be established as part of the development to recognise the sites location as part of the Tokoroa Town Centre Zone and to recognise any linkages to the existing "Talking Poles" and other local initiatives in Leith Place.

REASONS FOR DECISION

The reasons for this decision are included in the decision report above but can be summarised as:

- 1) The proposal will provide a commercial service, being the provision of fuel for the local community and passing travellers, and develop an area of the Tokoroa Town Centre that is currently vacant and in need of some attention given it is in a reasonably prominent position.

- 2) The actual and potential adverse effects on the environment of granting consent are acceptable and are assessed as being no more than minor.
- 3) The proposal is not inconsistent with the objectives and policies, nor with the various assessment criteria, included in the South Waikato Proposed District Plan.
- 4) The proposal is consistent with other statutory planning documents, including the regional policy statement.
- 5) Conditions imposed on the consent address a number of the potential adverse effects to confirm details included in the application and to ensure that such effects are avoided or suitably mitigated to be acceptable. The conditions relate to noise, lighting, construction, the route for tanker delivery vehicles, facility maintenance, landscaping and hazardous substances. A review condition provides for the Council to revisit the conditions in the case of any unforeseen adverse effects arising from the facility.
- 6) The proposal is consistent with Part 2 of the Resource Management Act 1991.
- 7) An advice note addresses the potential for some "linkage" being developed between the site and the adjacent commercial area.



AR Watson

Independent Hearings Commissioner

22 July 2014