

28 October 2008

Anzide Properties Ltd
C/O Paterson Pitts Resource Management Ltd
PO Box 1083
Dunedin 9054

Attention: Don Anderson

Dear Don

RESOURCE CONSENT APPLICATION: LUC-2008-473
80 ANZAC AVENUE
DUNEDIN

Your application for land use consent to establish and operate a temporary commercial car park at the above address was processed on a non-notified basis in accordance with sections 93 and 94 of the Resource Management Act 1991. The application was considered by a Senior Planner – Consents, under delegated authority, on 28 October 2008.

I advise that the Council has **granted** consent to the application. The decision is outlined below, and the decision certificate is attached to this letter. Please note that this consent will expire on 28 October 2011.

DESCRIPTION OF ACTIVITY

Land use consent is sought for a temporary commercial car park to be leased by the University of Otago. The 2266m² site has the address of 80 Anzac Avenue and is legally described as Lot 33-34 Deposited Plan 6068 (Certificate of Title OT8A/732).

A total of 74 car parking spaces were originally proposed, but this has been reduced by one because of concerns raised by the Council's Transportation Operations Department.

The site will be accessed from a new vehicle crossing at the cul-de-sac head of Parry Street. The site is already sealed, and no lighting is proposed. One sign, 1m² in size, is intended to advise that the car park is for private use and that illegally parked cars will be towed.

The site is subject to a Notice of Requirement for a Designation, made by the Dunedin City Council as part of the proposed Harbour Arterial route realigning State Highway 88. The car park will remain in place until the land is needed for the new road.

REASONS FOR APPLICATION

The subject site is zoned **Industrial 1** zone in the Dunedin City District Plan. The site is subject to a Notice of Requirement for a Designation (DIS-2008-3), made by the Dunedin City Council as part of the proposed Harbour Arterial route realigning State Highway 88. Parry Street is a Local Road in the District Plan Road Hierarchy, with Anzac Avenue being a National Road (which is also designated by the NZ Transport Agency for State Highway purposes for State Highway 88).

The proposal falls under the definition of Commercial Activity in the District Plan. Commercial Activity is not specifically provided for under the Industrial 1 zone, meaning the proposal is a **non-complying activity** pursuant to Rule 10.5.5(ii).

PLANNING ASSESSMENT

Affected Persons

The written approval of the person detailed in the table below has been obtained. In accordance with section 104(3) of the Resource Management Act 1991, the Council cannot have regard to the effects of the activity on this person:

Person	Owner	Occupier	Address	Obtained
NZ Transport Agency			Statutory Authority	29 September 2008

No other persons are considered to be adversely affected by this proposal for the reasons outlined below in the section headed 'Effects on the Environment'.

Effects on the Environment

The following assessment of effects on the environment has been carried out in accordance with section 104(1) of the Resource Management Act 1991. It addresses those assessment matters listed in Section 10.8 of the District Plan considered relevant to the proposed activity, and is carried out on the basis that the environment is typified by industrial activity along both sides of Parry Street, with a state highway adjacent.

Any actual or potential effects on the environment of allowing this proposal to proceed will be no more than minor for the following reasons:

1. Baseline Considerations

Under sections 94A(a) and 104(2) of the Resource Management Act 1991, the Council may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect. That is, an application can be assessed by comparing it to the lawfully established activity on the site and development that could take place as of right, without a resource consent, but excluding development that is fanciful.

In this case, various activities can be carried out on the subject site as of right subject to certain conditions, such as: Industrial Activity; Service Activity; Retail Activity where it is carried out in conjunction with Industrial Activity or Service Activity; Recreational Activity; Service Stations; Vehicle and Boat Yards; Garden Centres; and, Industrial Tourist Activity.

The current proposal does have different effects from the above permitted activities. Accordingly, it is not considered helpful to apply the permitted baseline. Instead, all of the effects of the proposed activity have been assessed and are discussed below.

2. Amenity Values (10.8.5)

This assessment matter requires consideration of the effect that the activity will have on amenity values. The term 'amenity values' is defined in section 2 of the Resource Management Act 1991 as "*those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes*".

The location is industrial in character, and the amenity values of the area reflect this. There is some noise from existing nearby activities and the adjoining state highway. Odour is emitted from some of the nearby activities, and the area is often subject to strong winds off the harbour.

As such, the site does not currently possess high amenity values. The site is already hard surfaced and no new structures are proposed. Effects on amenity values will hence be restricted to traffic movements and the presence of the vehicles on the site. Having regard to the receiving environment and the nearby land uses, these effects will be minimal.

3. Noise (10.8.6)

Being located within the Industrial 1 zone, the noise limit applying to the site as specified on Planning Map 64 is 60 dBA L10 during the day and the night. Rule 21.5.1

of the District Plan also states that noise between 9pm on any night and 7am the following day shall not exceed an Lmax of 75 dBA; there is no maximum noise limit outside of these hours.

The situation is complicated because the site is on the edge of a noise area: on the opposite side of Parry Street and on the opposite side of Anzac Avenue the noise limits are 55 dBA L10 during the daytime (7am to 9pm Monday to Saturday), and a noise limit of 40 dBA L10 at night-time (9pm to 7am the following day) and all day on Sundays and statutory holidays, with an Lmax of 75 dBA between 9pm on any night and 7am the following day.

The activity will include engine start-up noise, the slamming of doors and noise from people talking. The number of vehicles accessing the site will likely be in excess of that associated with a permitted activity. However, there are no sensitive activities nearby: there is an industrial yard to the immediate south and an industrial activity to the immediate east. Anzac Avenue and Parry Street adjoin the western and northern boundaries and provide separation, and vehicles along the state highway are a significant contributor to the background noise.

Accordingly, it is considered unnecessary to impose noise limits on the activity. The Council still has powers under the Resource Management Act 1991 to control unreasonable and excessive noise should it arise.

4. Glare and Lighting (10.8.6)

No lighting is proposed for the car park. Hence, no glare and lighting effects will occur, apart from headlights when the car park is used outside daylight hours.

As with noise, there are not any particularly sensitive activities nearby. Hence any impacts from headlights will be minimal. As a result, conditions regarding the control of glare and lighting are considered necessary.

5. Services (10.8.9)

The site is already hard surfaced, and this will not change. No services are considered necessary.

6. Cumulative Effects (10.8.10)

The concept of cumulative effects, as defined in *Dye v Auckland Regional Council & Rodney District Council* [2001] NZRMA 513, is "... one of a gradual build up of consequences. The concept of combination with other effects is one of effect A combining with effects B and C to create an overall composite effect D. All of these are effects which are going to happen as a result of the activity which is under consideration". Similarly, some effects may not presently seem an issue, but after having continued over time those effects may have significant impact on the environment. In both of these scenarios, the effects can be considered to be 'cumulative'.

The cumulative effects from this proposal revolve around transportation effects and impacts on amenity. As detailed elsewhere in this assessment, these effects over and above what currently exists in the receiving environment will be no more than minor.

There is also the cumulative effect of the additional loss of Industrial 1 zoned land. The notice of requirement over the site indicates that it will be used for roading purposes in the future and hence lost for industrial purposes anyway. Accordingly, no concerns arise.

7. Intensity of Operation (10.8.11)

The scale of the activity involves some 73 car parking spaces. The frequency and hours of operation of the activity have not been stated in the application, but it is to be used by the University of Otago. Hence it is anticipated that it will be largely used during typical working hours on a Monday to Friday basis. Usage outside these times is expected to be low, as staff will be less likely to be working at the University and parking demand closer to the University will be less.

Having regard to this and to the surrounding land uses, no concerns arise regarding the intensity of the activity.

8. Other Activities (10.8.12)

This requires consideration of the extent of land that will be lost for industrial activities.

The proposal does result in 2266m² of Industrial 1 land not being used for a permitted activity. However, effects on the availability of Industrial 1 land will be minimal: the notice of requirement over the site means establishment of a permitted activity is somewhat fanciful given the likelihood that the land will be acquired for the proposed Harbour Arterial route in the near future. In fact, the application provides a good use of the site until it is required for the new road without any over-capitalisation.

Accordingly, no concerns arise.

9. Transportation (10.8.18)

The application has been considered by the Council's Transportation Operations Department.

The site is currently able to be accessed from two existing vehicle crossings. One is located at the north-eastern corner of the site next to Parry Street through an existing gate in the 2m high cyclone mesh fence surrounding the site. The other is from Ward Street at the western corner of the site, again through an existing gate in the fence. Neither of these will be used for the car parking activity, and instead a new vehicle crossing will be installed at the head of the Parry Street cul-de-sac. Transportation Operations required this new crossing to be a formed width of at least 5m and noted the new crossing will need to be constructed in accordance with the Council's Vehicle Entrance Specification. To stop any use of the existing vehicle accesses, the existing gates into the site will need to be appropriately locked and a condition has been imposed to ensure this.

The site plan indicates that the new entry/exit point into the site will be located between parks 1 and 52, which Transportation Operations considered acceptable. The car park is already hard surfaced from the edge of the carriageway on Parry Street, so no further hard surfacing will be required as part of the new access.

Regarding the parking layout, Transportation Operations was satisfied that the parking stalls and aisles would comply with the dimensions stated in the District Plan. The parking, access and manoeuvring areas are hard surfaced, which Transportation Operations considered acceptable. It did require the parking spaces to be suitably marked, in accordance with Rule 20.5.4(v)(b) of the District Plan.

Traffic will circulate in the car park in a clockwise direction only, which Transportation Operations considered acceptable. The original proposal involved the creation of park 74, which Transportation Operations had concerns about as manoeuvring into and out of the space would be inconsistent with the other parks. The space has been deleted, and no longer forms part of the proposal.

There are no parks of sufficient dimension for people with disabilities. However, given the distance between the proposed parking facility and the site it is intended to service, Transportation Operations considered there was less need for disability parking at the facility. It therefore considered the provision of no disability parking to be acceptable.

Normally, 18m of on-site queuing space would be required for the proposal under Rule 20.5.4(iv) of the District Plan, and this is not being provided. However, Transportation Operations noted that the portion of Parry Street from which the site will be accessed is a cul-de-sac head with no-through traffic. It therefore accepted that any effects of vehicles queuing on the carriageway would be minor.

Lighting would normally be required for the car park under Rule 20.5.4(v)(c) of the District Plan, which states that car parks accommodating more than four vehicles and used at night need to be illuminated to a minimum level of 2 lux with high uniformity. As noted earlier, this will not be provided, and further information supplied in support of the proposal indicates that the level of usage at night is unlikely to be significant, and in all probability, only involving cars that are left overnight. Transportation Operations noted this, and the limited term of the activity, and accepted that no lighting was required.

Transportation Operations considered the manoeuvring space in the car park to be sufficient to allow vehicles to turn around on-site and always enter and exit in a forwards direction.

A sign is proposed as part of the proposal. It will be no larger than 0.36m² with the words "Tow away at owner's expense" or similar. The sign will be located at the vehicle entry to the site and fixed to the fence at driver's eye level. It will not have any amenity effects, meaning the only other implication is in respect of traffic safety. Transportation Operations found the sign acceptable but commented that it should comply with the Land Transport New Zealand RTS7 guidelines with regard to lettering height.

Overall, Transportation Operations was not concerned about the traffic that might be generated by the proposal and concluded that the effects on the transportation network would be no more than minor. It did request the addition of the following conditions and advice note:

Conditions:

- (i) *The vehicle access shall be a minimum of 5.0m formed width.*
- (ii) *The surface of all parking, associated access and manoeuvring areas shall adequately drained for their entirety, and parking spaces permanently marked.*
- (iii) *Car park number 74 is to be omitted from the proposal.*
- (iv) *The font sizes on any signage shall be within the recommended minimum font size in accordance with Land Transport New Zealand RTS7 guidelines as follows:*

Table 2.3 Minimum capital letter heights:	Lettering height (mm)		
	Speed Limit (km/hr)	Main Message	Property Name
	50	150	100
	60	175	125
	70	200	150
	80	250	175
	100	300	200

Advice Notes:

- (i) *The vehicle access from the carriageway to the property boundary is over road reserve and is therefore required to be built in accordance with the Dunedin City Council Vehicle Entrance Specification (available from Transportation Operations).*

The fourth condition is not considered necessary as the sign is not an identification sign for the site but is rather a sign to inform users of the car park that unauthorised users will be towed away.

The Council's Transportation Planning Manager was consulted with regard to the likely time that the land will be required for the Harbour Arterial route. He verbally advised that the land is likely to be needed within the next 18 to 24 months, and he considered a term of 3 years to be appropriate for this temporary consent. Of course,

if the designation of the Harbour Arterial route is confirmed, then the designating authority can require the land at any time irrespective of any resource consent. The Transportation Planning Manager indicated that if the land was needed before the resource consent expires then some three months notice would be given.

The written approval of the NZ Transport Agency has been provided, and accordingly it is considered that the proposal will not adversely affect the safety and efficiency of the State Highway.

Having regard to the above, adverse effects on the transportation network are considered to be no more than minor.

CONSENT DECISION

*That, pursuant to sections 34A(1) and 104B and after having regard to Part 2 matters and sections 104 and 104D of the Resource Management Act 1991, the Dunedin City Council grants consent to a **non-complying activity** to establish and operate a temporary commercial car park at 80 Anzac Avenue, Dunedin, legally described as Lot 33-34 Deposited Plan 6068 (Certificate of Title OT8A/732), subject to conditions imposed under section 108 of the Act, as shown on the attached certificate.*

REASONS

Effects

In accordance with section 104(1)(a) of the Resource Management Act 1991, the actual and potential adverse effects associated with the proposed activity have been assessed and outlined above. It is considered that the proposal will have no more than minor adverse effects on the environment.

District Plan – Objectives and Policies

In accordance with section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the District Plan were taken into account when assessing the application.

The proposal is considered to be consistent with or not contrary to the following objectives and policies:

- **Objective 4.2.1 and Policy 4.3.1 (Sustainability Section)** that seek to enhance and maintain the amenity values of the Dunedin area.
- **Objectives 4.2.2 & 4.2.3 and Policies 4.3.2 & 4.3.5 (Sustainability Section)** that seek to minimise effects on infrastructure.
- **Policy 4.3.8 (Sustainability Section)** that seeks to avoid the indiscriminate mixing of incompatible uses and developments.
- **Objective 10.2.2 (Industry Zone Section)** that seeks to manage in a sustainable manner the natural and physical resources of the Industrial Zone.
- **Objective 10.2.3 (Industry Zone Section)** that seeks to ensure non-industrial activities in industrial areas do not limit the operation of industrial activities.
- **Objectives 19.2.1 to 19.2.5 and Policies 19.3.1 to 19.3.3 (Signs Section)** that seek to ensure the adverse effects of signs on amenity, heritage and townscape values are avoided, remedied or mitigated.
- **Objectives 20.2.2 & 20.2.4 and Policy 20.3.4 (Transportation Section)** that seek to avoid, remedy or mitigate adverse effects on the transportation network and to ensure a safe, efficient and effective transportation network.

As noted under the assessment of effects, the proposal is unlikely to affect the amenity values of the area. The proposed activity is not particularly sensitive to effects from the receiving environment. It will be not incompatible with the surrounding activities in the area.

The use of the site for a car park will mean that it is unable to be used for a permitted

activity. However, it is vacant land at the moment, and the notice of requirement over the site makes it difficult to be put to a permitted use. In addition, the area of land being used for the activity is small when compared to the total Industrial 1 zone resource. Whilst the proposed activity is not provided for in the Industrial 1 zone, it will not limit the operation of industrial activities.

Policy 10.3.2 of the District Plan seeks to exclude activities not part of or associated with industrial activities from the Industrial 1 zone. The proposal is contrary to this policy, but it is noted that a similar resource consent has been issued for a nearby site and that this proposal represents a good use of the subject site.

Having regard to the above, the proposal is, overall, considered to be consistent with or not contrary to the relevant objectives and policies of the District Plan.

Section 104D

Section 104D of the Resource Management Act 1991 specifies that a resource consent for a non-complying activity must not be granted unless the proposal can meet one of two limbs. The limbs of section 104D require either that the adverse effects on the environment will be no more than minor, or that the application is for an activity which will not be contrary to the objectives and policies of the District Plan. It is considered that the establishment of the proposed activity in this location will have effects that are no more than minor. Furthermore, the proposal is considered, overall, to be consistent with or not contrary to the relevant objectives and policies of the District Plan. Therefore, the Council can exercise its discretion under section 104D to grant consent.

Other Matters

Recent case law has required that for the Council to grant consent to a non-complying activity, the application needs to be a 'true exception', otherwise in terms of precedent effects, the integrity of the District Plan may be undermined.

In the situation the property is an industrial zoned site, with the application seeking to construct a temporary commercial car park. The site is a piece of land that has been designated for a future arterial road, which makes it difficult for a permitted activity to be established. The application provides a good use of the site until it is required for the proposed Harbour Arterial route.

Accordingly, it is considered that there are features of the activity that mean the proposal is a 'true exception' and the proposal does not challenge the integrity of the Industrial zone in any way or compromise the consistent administration of the District Plan.

Part 2 Matters

It is also considered that the proposal meets Part 2 matters of the Resource Management Act 1991. For the reasons outlined above, the proposal is considered consistent with sections 5(2)(c) – *"Avoiding, remedying, or mitigating any adverse effects of activities on the environment"*, section 7(b) – *"The efficient use and development of natural and physical resources"*, section 7(c) – *"The maintenance and enhancement of amenity values"*, section 7(g) – *"Any finite characteristics of natural and physical resources"* and section 7(f) – *"The maintenance and enhancement of the quality of the environment"*.

RIGHTS OF OBJECTION

In accordance with section 357 of the Resource Management Act 1991, the consent holder may object to this decision or any condition within 15 working days of the decision being received, by applying in writing to the Dunedin City Council at the following address:

The Chief Executive
Dunedin City Council
PO Box 5045
Moray Place
Dunedin 9058

Attention: Senior Planner – Enquiries 1st Floor

Yours faithfully

A handwritten signature in black ink, appearing to read 'Peter Webb'.

Peter Webb
Planner

Consent Type: Land Use Consent
Consent Number: LUC-2008-478

Purpose: To establish and operate a temporary commercial car park.
Location of Activity: 80 Anzac Avenue, Dunedin.
Legal Description: Lot 33-34 Deposited Plan 6068 (Certificate of Title OT8A/732).
Expiry Date: 28 October 2011.

Conditions:

1. *The proposed activity shall be undertaken in general accordance with the "Parry Street Carpark Proposed 3.0m Layout" plan dated July 2002 and the information provided with the resource consent application dated 29 August 2008 and the further information dated 10 September 2008, except where modified by the following conditions of consent.*
2. *Park 74 shown on the "Parry Street Carpark Proposed 3.0m Layout" plan dated July 2002 shall be deleted from the proposal.*
3. *The new vehicle crossing from Parry Street to be constructed as part of the proposal shall be a minimum of 5.0m formed width.*
4. *The surface of all parking, associated access and manoeuvring areas shall adequately drained for their entirety, and parking spaces permanently marked.*
5. *The existing gates in the north-eastern corner of the site and in the western corner of the site shall be permanently closed and secured so that they cannot be used for vehicular access into the site.*

Advice Notes:

1. The Council's Transportation Planning Manager advises that the land may be required within the next 18 to 24 months for the Harbour Arterial route. If the land is needed prior to this consent expiring then the Council (in its role as the requiring authority) will endeavour to give at least 3 months notice of this need.
2. The vehicle access from the carriageway to the property boundary is over road reserve and is therefore required to be built in accordance with the Dunedin City Council Vehicle Entrance Specification (available from the Council's Transportation Operations Department).
3. A fresh resource consent will need to be sought and obtained if the temporary commercial car park is to continue beyond the 28 October 2011 expiry date.
4. In addition to the conditions of a resource consent, the Resource Management Act 1991 establishes through sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.

5. Resource consents are not personal property. This consent attaches to the land to which it relates, and consequently the ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
6. It is the responsibility of any party exercising this consent to comply with any conditions imposed on the resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in section 339 of the Resource Management Act 1991.
7. This is a resource consent. Please contact the Council's Building Control Office, Development Services, about the building consent requirements for the activity.

Issued at Dunedin this 28 October 2008

A handwritten signature in black ink, appearing to read 'Peter Webb', with a stylized flourish at the end.

Peter Webb
Planner

RECOMMENDATION TO SENIOR PLANNER
SECTION 94 ASSESSMENT

After having regard to the above planning assessment it is considered that:

- 1 The adverse effects of the activity on the environment will be no more than minor.
- 2 The written approval of all parties considered to be potentially adversely affected by the proposed activity has been obtained.
- 3 No special circumstances exist in relation to the application that require it to be notified.

For the reasons concluded above, this application is processed without notice, pursuant to section 94 of the Act.

CONSENT DECISION

For the reasons outlined in this report, the Council grants consent to the proposed activity under delegated authority, in accordance with section 104B of the Act.

Application:

LUC-2008-473 - Application

Plans: (see p16)

LUC-2008-473 - Application

Further Information:

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