

Decision No. C<sup>52</sup> /2002

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of an appeal pursuant to section 120 of the Act

**BETWEEN** **D A FERRIER**

(RMA 782/99)

Appellant

**AND**

**KAPITI COAST DISTRICT COUNCIL**

Respondent

**AND**

**COUNTRY LIFE LIMITED**

Applicant

**BEFORE THE ENVIRONMENT COURT**

Environment Judge J A Smith presiding

Environment Commissioner I G C Kerr

Environment Commissioner N A Burley

**HEARING** at WELLINGTON on 17 April 2002

**APPEARANCES**

Mr D A Ferrier in person

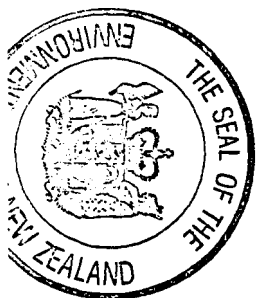
Ms T J McNeill for Kapiti Coast District Council

No appearance for applicant (Country Life Limited and Lynette Williams)

**DECISION**

***Introduction***

[1] This is an appeal from a decision of the Kapiti Coast District Council (**the Council**) granting a consent to an application for the erection of a sign to the west of State Highway 1 on a property at 459 Main Road, Waikanae. It is next to the main trunk



railway line. The applicant has changed during the period the appeal was pending and the premises are now operated by Lynette Williams as Country Life Limited.

[2] There was no appearance for the applicant on the date that this matter was set down for hearing namely the 15 April 2002. The matter was stood down until later in the week. After several telephone discussions the applicant applied for an adjournment. That application was considered by the Court but was declined. The matter proceeded for hearing on Wednesday 17 April 2002.

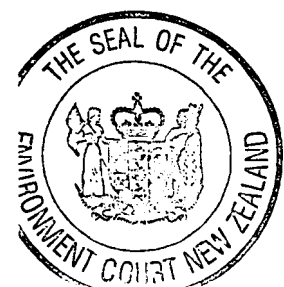
[3] The parties however accepted the evidence that had been filed by Ms L Williams for the applicant in this matter which was to be taken as read by the Court and that no cross-examination was sought.

[4] The evidence of both Mr Ferrier and Ms H C Blair, a planner for the Council was similarly taken as read by the Court and was not subject to any cross-examination. Further evidence was given by Mr Ferrier relating to certain matters raised by Ms Williams in her evidence, but this was not the subject of any further questions.

[5] Ms McNeill for the Council supported the decision of the Council which granted the application. However the evidence of the Council's expert witness, Ms Blair, did not support the application and concluded that granting the consent was contrary to the policies and objectives of the Kapiti Coast District Plan (**the plan**) and that it would have a precedent effect. Accordingly the evidence of the Council's witness was aligned closely with that of Mr Ferrier.

### ***Background***

[6] The application was for a 15m<sup>2</sup> sign to be established on State Highway 1 adjacent to the main trunk railway which runs parallel with the highway in an area known as the Waikanae Turf Farm Property. The sign is situated close to the Waikanae River, approximately 1 kilometre from the Country Life Restaurant. The sign has been established without a resource consent and has remained in place pending the outcome of this appeal. The applicant in her evidence indicates that she has understood that she had an operative resource consent in respect of the property. Ms McNeill for the



Council accepts and it is clear that this consent has not become operative and in fact the sign has continued in place illegally and without resource consent pending the outcome of this hearing.

[7] At the same time the applicant in her evidence indicated that she has spent a considerable amount of money on the sign and this is the basis upon which the Court should grant the consent.

[8] The placement of the sign prior to a consent being granted is not a matter that this Court can properly take into account in determining the outcome of the consent. There can be no expectation by persons who expend money in anticipation of obtaining a resource consent that a resource consent will be granted, Furthermore it cannot be used as a ground or properly be taken into consideration by the Court in considering the grant of that consent. Accordingly we reject the evidence from the applicant to this effect.

### *The Sign*

[9] The sign is a painted picture of various gardening implements including a fork on a white background. It is situated approximately 40 metres from the highway and has lettering on it which reads:

Country

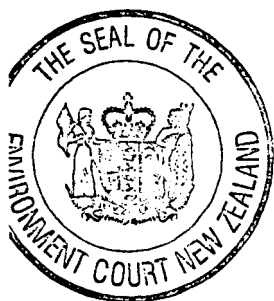
LIFE

Restaurant & Bar

1 km

[10] We have inspected the sign and the parties have produced photographs of it. The sign is difficult to read, particularly the words “Restaurant and Bar” and “1km”. The small lettering does not become clear until the vehicle is nearly parallel with the sign.

[11] The sign refers to the Waikanae Country Life Restaurant which is located at 8 Main Road, Waikanae, a short distance north of the Waikanae River on a bend in the highway immediately north of the river bridge. The visibility of the restaurant and its



entrance is obscured by vegetation on adjacent properties and the curvature of the bend. The premises are well established and have been operating since around 1948.

[12] The sign itself was erected around 1998 after discussion with Council officers, but prior to any application or consent being granted by the Council. The appeal from which this hearing relates stems from a decision of the Council made on 17 August 1999. That decision was contrary to the expert advice the Council received from their Planning Officer at the time.

[13] The Council is in exactly the same position before this Court in that its expert witness does not agree with the decision of the Council, nor can she support it on appeal.

### *Status of the Activity*

[14] The application is for a discretionary activity under the plan as the sign exceeds the plan provisions for signage area which are either 2.4m<sup>2</sup> or 3m<sup>2</sup> in the case of commercial activities or the rural zone respectively. Both of these areas are mentioned because restaurant signs fall within the standards relating to signs for commercial activities and the sign is located in the rural zone. In any event at 15m<sup>2</sup> the application exceeds the permitted size by a considerable margin.

[15] There is no dispute between the parties that the application is for a discretionary activity. Accordingly we intend to examine the various provisions of section 104 of the Resource Management Act 1991 (**the Act**), particularly the effects on the environment and the provisions of the plan. We then intend to move to the exercise of a discretion under section 105(1)(b) of the Act.

### *The Effects on the Environment*

#### *Traffic Effects*

[16] Both Mr Ferrier and Ms Blair were agreed that there were traffic safety issues arising as a result of the current sign. In particular they were concerned that the dominant message, Restaurant and Bar 1 kilometre, is in very small lettering. Mr



Ferrier's position was that the sign should provide directional information that is clearly visible and unmistakable in regard to its content. To that end he pointed to the fact that Transit New Zealand Limited (**Transit**) have agreed to the erection of a traffic information sign showing the name of the restaurant and crossed knife and fork symbol which would be very visible both day and night, and placed directly next to the carriageway of the road. His concern is that the sign as it stands is difficult to read except for the base information of Country Life. The lack of meaning and clarity in his view could not only confuse motorists but may lead to safety issues as drivers try and read the sign as they draw parallel to it.

[17] Ms Blair points out that the sign approved by the Council stressed the word "Dine Now 1 kilometre" whereas the sign actually erected has as its dominant message "Country Life" and not the proximity of the premises. Having inspected the sign and the site it is not clear to us that this restaurant is intended to operate during the day and when we attended at around lunchtime it was not open. It appears to be a restaurant that functions particularly at night and to this end the fact that the current sign is not clearly visible at night seems to derogate from its primary purpose.

[18] We conclude that there is a traffic safety issue arising from the current sign in that its lack of readability would encourage drivers to attempt to view it as they drew parallel with it, therefore potentially creating a hazard to other drivers. We accept that there is no particular evidence of that having occurred to date. On that basis the other alternative is that the sign is ineffectual and does not achieve any purpose for the restaurant owners. Certainly we have concluded that both traffic safety and visibility issues would be significantly improved by a Transit informational sign erected adjacent to the carriageway near to the sign's current position.

### *Visual Amenity*

[19] Mr Ferrier and Ms Blair again agree that the sign detracts from the visual amenity in this area. Although the river itself is not visible from the State Highway at the position where the sign is viewed it is located close by and appears from our inspection to be screened by the vegetation immediately behind the sign. This vegetation is of sufficient height that the sign is not "skyed" but the white of the sign



against the green background does make the sign itself as a whole stand out in the area. There are a significant number of signs along this area of State Highway 1, many of which appear to have been established well before the plan provisions came into force. The signs vary in size but from our casual observation this sign appears to be among the largest. We concluded that there is some effect from the sign on the environment in detracting from the visual amenity of this area, particularly in the proximity of the river environs. Having said that, the sign is seen across the main trunk railway which already makes a significant intrusion into the natural environment in the area.

### ***The Provisions of the Plan***

[20] As indicated the plan is operative and is taken to subsume within it the requirements of the Act and Part II in particular. Section B14, (page 65 of the plan) discusses issues relating to signs and identifies:

*Signs can have significant adverse effects on the district's environment. This includes both the effects of signs on the visual amenity and character of the district and traffic safety. Specific signage issues include:*

- *Effect of the design and positioning of signs on traffic safety and amenity values,.*
- *Effect on amenity values of signage for commercial businesses and service industries being located in or facing residential and rural areas.*

*Signage which is environmentally appropriate in the context of commercial/retail or industrial/service areas can have an adverse effect on the amenity values of residential and rural areas. Signage must be appropriately designed and positioned to avoid creating hazards to the safe movement of traffic and adverse effects on amenity values.*

[21] The objectives and policies of the plan relevant to this application are contained within section C.2 Rural Zone (pages 89 to 96) and in section C.13 Signs (pages 169 to 170). There are a number of objectives and policies in C.2.1 relating to the avoidance, remedying or mitigating of adverse effects of activities on the natural and physical



environment. In the section on anticipated environmental outcome (C.2.2, pages 94 to 95) the Council particularly identifies:

...

(v) *The maintenance and enhancement of a safe and efficient main roading network.*

...

(viii) *The maintenance, enhancement and protection of the district's rural landscape.*

In section C.13 Objectives and Policies, objective 1 reads:

*Ensure that the location and design of signage for activities do not have significant adverse effects on the safety of the transport infrastructure and visual amenity values of the environment.*

This is reflected in the policies contained at pages 169 and 170 of the plan, including policy 1 Visual Amenity:

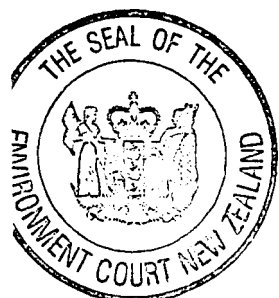
*Control unsightly or intrusive visual effects of the size and location of signs on landscape and amenity values especially on the character of rural and residential areas.*

[22] The explanation to this contains the following:

...

*This is especially important where visual amenity and traffic safety is important, ... rural areas and land fronting State Highway 1.*

The rules and standards of the plan identify that any application which does not meet the permitted activity status becomes a discretionary activity. Signs are required to be in compliance with the sign standards which is in Part L of the plan. Part L particularly identifies that any sign which does not comply with the permitted activity standards becomes a discretionary activity. Standard L.2 then goes on to discuss the relevant size of signs which appears to be 2.4m<sup>2</sup> for commercial activities.



[23] It must be taken that the standards in this case seek to implement the policies and objectives of the plan. Those policies and objectives are specifically designed to make provisions for signs which promote the business and district while maintaining the visual amenity of the environment and promoting road and pedestrian safety (C.13.2(i), page 170 of the plan).

### ***Anticipated Environmental Outcome***

[24] We have concluded that the control of the size of the sign is one of the methods which is adopted in the plan to implement the balance between the issues identified. The plan in itself however does not contemplate that simply because a sign is larger than the specified limits it may not be appropriate in terms of the plan. On the contrary it appears to contemplate that each case will be considered on its own merits.

[25] In this case the distance of the sign from the road would be a factor taken into account in that balancing exercise. However the plan also appears to contemplate visual amenity issues generally including its relationship with the surrounding environment, its proximity to the river and its visibility from a traffic safety point of view. Accordingly the plan in itself seems to recognise and take into account the effects we have already discussed under section 104(1)(a) of the Act.

### ***Exercise of the Discretion***

[26] The exercising of the Court's discretion in this matter is informed by and part of the fundamental assessment of this application in terms of the purpose of the Act, namely Part II and in particular the provisions of section 5. The questions of traffic safety and visual amenity are ones that are raised in terms of Part II, both under section 5 and also explicitly in the case of amenity values under section 7(c) of the Act. The enabling provisions of section 5(2) include reference to safety issues. Such enabling is subject to section 5(2)(c) avoiding, remedying or mitigating adverse effects on the environment. In fact the plan itself reflects the same intent in objective 1.0 section C2.1 of the Rural Zone.





[27] It is now necessary for the Court to exercise its discretion in respect of this activity under section 105(1)(b) of the Act. On the one hand we appreciate the desire of the owner of this restaurant to ensure that members of the public are aware of its existence prior to driving past it. There are good traffic safety reasons why such information should be given in plenty of time before the traffic reaches Country Life Restaurant. Sudden braking movements outside the restaurant (which is on a corner) would in itself affect traffic safety. However we have concluded that the sign in its current position does not advance traffic safety issues in respect of the restaurant.

[28] We have concluded that the sign is difficult to read and will have little or no impact on drivers approaching the restaurant from the south in terms of providing information about the restaurant. In our view an appropriate Transit sign erected on the road reserve and in a more standard format would be far more effective in identifying the restaurant and enabling traffic to slow and turn off the road appropriately. We conclude that if drivers wish to understand the sign it is likely to involve them either slowing down or viewing the sign when they are parallel with it which could in itself affect road safety.

[29] The overall objective of the plan is to balance the interests of advertising with a desire to avoid proliferation of oversized signs which will become intrusive upon the visual amenity of the area. Although we accept the sign is attractive it is still significantly larger than it needs to be to achieve its primary purpose of advising drivers of the restaurant's presence.

[30] On balance we are satisfied that there is an effect in terms of visual intrusiveness of this sign and that it does detract from the rural amenity of the area. We see no proper reason to distinguish this case from any other potential signage in the area. Accordingly, granting this application would set a precedent for any other oversized sign in the State Highway 1 corridor (covering the length of Kapiti) and effectively, in our view, affect the certainty of the plan provisions as they apply both under section C2, C13 and Part L of the plan.

[31] We have concluded that certainty in the provisions of the plan is in this case of greater weight than the interests of the owner in obtaining the signage. We are



influenced in this decision by the fact that Transit has confirmed to the owner that they are prepared to allow a sign in the Transit road reserve to better achieve the traffic safety and informational aspect of the sign.

### *Conclusion*

[32] We have concluded that the appeal should be allowed and the application for consent declined. The applicant in their evidence indicated that if this outcome was reached by the Court then the Council held a responsibility for granting the consent. As we have already made clear the sign that has been erected has at no time held a resource consent which was operative. Where an applicant erects a sign without consent this may lead to either abatement notices or enforcement orders from this Court pending a resource consent. In this case no such course was adopted by the Council but the applicant can have no expectation that this Court will be bound to issue a decision in favour of the applicant on appeal.

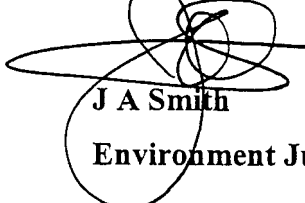
[33] The appellant sought an order from this Court requiring the sign to be removed. At this stage there is no enforcement application before this Court on which the Court can found such a decision. However it follows from this decision that this sign which does not hold any resource consent will need to be removed. If that does not occur then the Court will consider any application for enforcement and/or ancillary orders at that time.

### *Costs*

[34] In the event that any party seeks an order for costs in respect of this matter such application is to be filed within 15 working days. Any response is to be filed within 10 working days and a final reply (if any) within 5 working days thereafter.

**DATED** at CHRISTCHURCH this 11<sup>th</sup> day of May 2002.

For the Court

  
J A Smith  
Environment Judge



Issued: 14 MAY 2002