

IN THE MATTER OF The Resource Management
Act 1991

AND

IN THE MATTER of an appeal pursuant to
Clause 14(1) of the First
Schedule to the Act

AND

IN THE MATTER of and the matter

BETWEEN **APN OUTDOOR LIMITED**
Appellant

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST A DECISION ON
PROPOSED PLAN CHANGE 48 - SIGNS
TO THE OPERATIVE QUEENSTOWN LAKES DISTRICT PLAN 2009**

To The Registrar
Environment Court
DX WX 11113
Christchurch

1. **APN Outdoor Limited ("APNO") APPEALS** against the decision of the Queenstown Lakes District Council on **PROPOSED PLAN CHANGE 48 – SIGNS ("PC 48")** to the operative Queenstown Lakes District Plan 2009 ("the ODP").
2. **APNO made a submission on PC 48.**
3. **APNO is not a trade competitor for the purposes of section 308D of the Act.**
4. **APNO received notice of the decision on 5 December 2014.**
5. **The decision was made by Queenstown Lakes District Council.**

6. **PARTS OF DECISION APPEALED AGAINST, REASONS AND RELIEF SOUGHT**

APN Outdoor Limited

- 6.1 APN Outdoor Limited ("APNO") is New Zealand's largest outdoor advertising company. APNO controls a portfolio of third party advertising billboards comprised of over 600 outdoor sites throughout the country, from Whangarei in the north to Invercargill in the south.
- 6.2 APNO is a member of the Outdoor Media Association of New Zealand ("OMANZ"), an organisation that represents and advocates for the interests of those individuals and companies which derive their income from the display of outdoor media, primarily in the form of billboards.
- 6.3 APNO and OMANZ are concerned to ensure that the planning instruments relating to outdoor advertising (billboards) should reflect sound resource management principles and practice. In particular, they support regulation of all signage, including outdoor advertising, via district plans promulgated under the Resource Management Act 1991 ("RMA"), being New Zealand's principal resource management statute, rather than via bylaw control.

Outdoor advertising industry

- 6.4 Outdoor advertising involves the conveying of advertising and community messages to the general public by means of (generally large format) graphic messages. It involves what is often described as "third party advertising", meaning that it conveys messages about a product rather than the site on which the sign is located (generally called "identification" or "ID" signs). Outdoor advertising is a form of media in the same way as television, radio or newspapers are. To that extent, outdoor advertising is one of the media available to advertising agencies for conveying a creative advertising message to its intended audience.
- 6.5 Outdoor advertising is a legitimate field of commercial activity. The economic impact of the outdoor advertising industry is of considerable significance to the New Zealand economy, not only in respect of its own activities but also in terms of supporting related industries. Outdoor advertising also generates economic activity by enabling the commercial community to advertise their goods and services.
- 6.6 Billboard advertising can be informative, provide enjoyment to the public, provide a focal point and add vibrancy and interest to otherwise drab

commercial areas. They can be used for community messages. The placement of a billboard advertisement on a site can result in benefits to the community by contributing to an increase in the visual amenity and enhancement of the vitality of the area.

- 6.7 The potential adverse environmental effects associated with signage relate to traffic safety, impacts on amenities and cumulative effects. The outdoor advertising industry accepts that regulation is needed to ensure that such adverse effects do not arise and in that regard district plan over bylaw control is preferred for the reasons outlined above. Discretionary activity status is seen as an appropriate means of addressing the potential adverse effects of signage. (Given the narrow scope of potential effects, restricted discretionary activity status is generally appropriate.)

Submissions on PC 48

- 6.8 PC 48 was promulgated to set out the proposed objectives, policies and methods relating to the management of signage, including outdoor advertising (billboards) within Chapter 18 - Signs of the ODP. As notified, PC 48 provided for full discretionary activity status for off-site signs (including outdoor advertising) district-wide. As a full discretionary activity, consent can be granted or declined, Part 2 matters are relevant, and any conditions considered appropriate can be imposed.
- 6.9 APNO generally supported the provisions of PC 48 as notified. In particular, it supported the establishment of a regulatory framework whereby all signage is regulated under the district plan, rather than via bylaw control.
- 6.10 APNO made submissions on PC 48 on the provisions relating to "off-site signs", and, specifically, to outdoor advertising. The submission requested amendments to provide greater clarity as to the intent of the provisions and to better reflect the intention in PC 48 for off-site signs to be accommodated in appropriate locations/circumstances.
- 6.11 Submissions on PC 48 were heard before independent hearing commissioners on 18 August 2014. APNO was represented at the hearing and presented expert planning evidence. APNO received notice of the decisions on 5 December 2015.
- 6.12 The hearing commissioner's decisions on submissions are set out in the decision of the Hearing Commissioners dated 11 November 2014 entitled *Report and Recommendations of Independent Commissioner, Plan Change 48: Signs*. The decision rejected in part APNO's submissions.

APNO – scope and grounds of appeal

- 6.13 APNO supports the provisions of the ODP per the Council's decision insofar as they provide for the regulation of signs solely by way of the ODP, rather than the legacy 'hybrid' approach which controls signs under the provisions of both the ODP and a Council bylaw. However, APNO opposes and appeals against the following parts of the ODP as amended in the commissioner's decisions:
- (a) District-wide prohibited activity status for outdoor advertising (page 41);
 - (b) The definition of "Hoardings" (which includes outdoor advertising) and consequential amendments to the definition of "Off-site sign" (page 42);
 - (c) Policies 18.1.3.1.7 and 18.1.3.1.11 relating to provision for off-site signs (Page 25).
- 6.14 The grounds for APNO's appeal are that the provisions of PC 48 as amended by the commissioner's decisions:
- (a) Do not reflect sound resource management principles and practice, particularly insofar as they would severely inhibit the operation of a legitimate business activity that can generate significant economic and other benefits;
 - (b) Do not represent the most appropriate means of achieving the objectives of the Otago Regional Policy Statement and the ODP;
 - (c) Do not represent the most appropriate means of achieving the purpose of the Act, particularly insofar as they would not provide for the social and economic wellbeing of the outdoor advertising industry, those members of the commercial industries who wish to advertise their goods and services and the community that benefit from such signage.
- 6.15 Without limiting the generality of the foregoing, APNO'S reasons for this appeal and the relief sought are set out in Sections 7 - 9 below.

7. PROHIBITED ACTIVITY STATUS FOR OUTDOOR ADVERTISING

Reasons for appeal

- 7.1 As noted, PC 48 as notified provided for off-site signage (including outdoor advertising) as a discretionary activity, subject to a range of assessment criteria designed to ensure appropriate regulation of the effects of such signage.
- 7.2 The Council's decision on PC 48 rejected this activity status and provided for prohibited activity status for "Hoardings" throughout the district. The reasons are reflected in the Commissioner's report as follows:¹

"...[T]here is a continuum of signs that extends from simple pre-warning signs to signs in the nature of hoardings which promote a product and have no particular relationship to the land use activity on the site or in the near vicinity.

While Rule 12 in Activity table 4 provides for Off-Site Signs as a discretionary activity the Commission considers that it would be undesirable and inappropriate to make provision for Off-Site signs which are in fact hoardings. The Commission considers that hoardings that are erected for purely commercial brand awareness reasons and which do not relate to a land use activity on the site may greatly detract from visual amenity values in both a rural and urban context. Accordingly the Commission has concluded that hoardings should be prohibited and that a distinction should be drawn between hoardings and other off-site signs."

- 7.3 APNO is particularly concerned about the assumption inherent in the decision that the content of the advertising (and whether it relates to the land on which the sign is located) is relevant to the effects of the sign and its activity status. That assumption is fundamentally flawed and the provisions which have resulted are inconsistent with sound resource management practice.
- 7.4 There is no justification from a planning perspective for making outdoor advertising a prohibited activity. Such a position would be contrary to current sound practice throughout New Zealand and would constitute an unjustifiable restriction on the operation of a legitimate business activity that provides benefits to the community.

¹ Report & Recommendations of Independent Commissioner, Plan Change 48: Signs, dated 11 November 2014, p 41.

- 7.5 APNO supported the district-wide discretionary activity status for “off-site signs” as set out in PC 48 as notified, which would enable case-by-case assessment of the effects of a proposed sign in a particular locality.
- 7.6 Although there may be justification for prohibited activity status in some exceptional circumstances (which is not conceded), Queenstown District has a range of zones in which outdoor advertising would be appropriate, including commercial and industrial zones and the Town Centre. In that regard, a district-wide assessment of this nature has not been undertaken. The provisions are therefore not supported by any objective analysis undertaken by the Council under section 32 RMA (or otherwise). This is contrary to sound resource management practice and inconsistent with the requirements of the RMA.
- 7.7 Prohibited activity status therefore represents an unnecessary and unreasonable response to the resource management issues which arise.

Relief sought

- 7.8 APNO seeks the following amendment to the Activity table:
- (a) Delete row 12A in Activity Table 4 providing for “Prohibited” activity status for hoardings.

8. DEFINITION OF “HOARDINGS”

- 8.1 In order to implement the Council’s decision to prohibit outdoor advertising throughout the district, the commissioner developed a new and novel definition of “Hoarding” (which had not been sought in any submissions) and made consequential amendments to the definition of “Off-site signs”, as follows:

“Hoardings – means any sign that is for purely commercial brand awareness purposes and which does not relate to the land use activity conducted on the site.”

“Off-site sign – means a sign which does not relate to goods or services available at the site where the sign is located and excludes a hoarding”

- 8.2 This approach makes an artificial distinction between types of sign based on their content. There is no justification for a distinction between outdoor advertising and other off-site signs. The potential effects of off-site signs are unrelated to the content of the sign. Discretionary activity status

ensures appropriate consideration of particular proposals and can enable potential adverse effects to be addressed via conditions.

- 8.3 APNO supported the definition of "off-site sign", in the notified version of PC 48, which included outdoor advertising. This approach meant that all off-site signs were regulated consistently.

Relief sought

- 8.4 APNO seeks the following amendments to the definitions:

- (a) Delete definition of "hoardings".
- (b) Amend the definition of "Off-Site Sign" as follows:

"Off-site sign – means a sign which does not relate to goods or services available at the site where the sign is located ~~and~~ excludes a hoarding"

9. POLICIES 18.1.3.1.7 AND 18.3.1.11 - PROVISION FOR OFF-SITE SIGNAGE

- 9.1 Policies 18.1.3.1.7 and 18.3.1.11 in the decisions version of PC 48 state:

Policy 7 - *To ensure signs relating to a particular activity and/or the use of land or buildings are located on the site of that activity, land or building.*

Policy 11 - *To provide, in limited circumstances, for off-site signs where it is not practical to display the sign on the site where the activity and or the use of land or buildings occurs.*

Reasons for appeal

- 9.2 APNO's submission noted that there was an inherent contradiction between the notified versions of Policy 7 and Policy 11, as the former provided that signs "are limited to those" relating to a particular activity located on the site of the sign, whilst the latter provided for off-site signs in limited circumstances.

- 9.3 The Council's decision acknowledged the apparent contradiction between Policies 7 and 11 and accepted in part APNO's submission on Policy 7 by

deleting the words "are limited to those". The decision notes, however, that notwithstanding this amendment:²

"the Commission considers that Policy 7 should retain emphasis on ensuring that signs relating to a particular activity are located on the site concerned."

9.4 APNO's submission on Policy 11 was rejected on the basis that it would "water down" the provision "*by referring to matters which would be considered as a matter of course in the context of considering any application for an off-site sign.*"³

9.5 For the reasons set out in paragraphs 7.3 to 7.7 above, Policies 7 and 11 are unduly restrictive in that they seek to preclude outdoor advertising except in very limited circumstances. Rather, it would be appropriate from a resource management perspective for Policies 7 and 11 to recognise and provide for this legitimate business activity by enabling outdoor advertising in appropriate locations.

Relief sought

9.6 APNO seeks the following relief:

(a) Amend Policy 7 as follows:

Policy 7 – *To ensure signs relating to a particular activity and/or the use of land or buildings, and that are located on the site of the activity, land or building are appropriately provided for.*

(b) Amend Policy 11 as follows:

Policy 11 – *To provide, in limited circumstances, for offsite signs where ~~it is not practical to display the sign on the site where the activity occurs~~ they are visually compatible with the surrounding environment in which they are located and/or the scale and character of the building to which they are attached.*

10. ATTACHMENTS

10.1 APNO attaches the following documents to this notice:

² Report & Recommendations of Independent Commissioner, Plan Change 48: Signs, dated 11 November 2014, p 24.

³ Report & Recommendations of Independent Commissioner, Plan Change 48: Signs, dated 11 November 2014, p 24.

- (a) A copy of its submission (**Appendix A**);
- (b) A copy of the decision (**Appendix B**); and
- (c) A list of names and addresses of persons to be served with a copy of this notice (**Appendix C**).

DATED at **AUCKLAND** this 5th day of February 2015
APN OUTDOOR LIMITED
by its solicitors and duly authorised
agents **BERRY SIMONS:**


.....
S J Berry

5 February 2015

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***Advice to recipients of copy of notice of appeal
How to become party to proceedings***

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (**see** form 38).

Advice

If you have any questions about this notice, contact the Environment Court in Christchurch.

APPENDIX A
SUBMISSION BY APN OUTDOOR LIMITED ON PC 48 - SIGNS TO THE
QUEENSTOWN LAKES DISTRICT PLAN

APPENDIX B
REPORT & RECOMMENDATIONS OF INDEPENDENT COMMISSIONER, PLAN
CHANGE 48: SIGNS (11 NOVEMBER 2014)

APPENDIX C
NAMES AND ADDRESSES OF PERSONS TO BE SERVED WITH A COPY OF
THIS NOTICE

Name	Address
Queenstown Lakes District Council	Private Bag 50072 Queenstown 9348 Attn: Policy Team PC 48