
IN THE MATTER OF:

J&R SHIRTCLIFF

**RESOURCE CONSENT APPLICATION
NO. 101.2017.2**

TO TIMARU DISTRICT COUNCIL

**DECISION OF COMMISSIONER
19 December 2017**

**ALLAN CUBITT
Cubitt Consulting Limited
4 Norfolk Street
St Clair
DUNEDIN 9012**

1. The Proposal

I was appointed as an independent Hearings Commissioner by the Timaru District Council to hear and determine Resource consent application 101.2017.2 lodged by John and Rosemary Shirtcliff. The resource consent application relates to the site legally described as Lot 1 DP 82810, at 584 Orari Station Road, Geraldine.

The resource consent application was lodged on 22 December 2016 and originally sought to subdivide the 22.34ha property to create twelve new allotments for rural residential purposes. In response to a further information request and a number of subsequent meetings, substantial changes were made to the application. As it now stands, consent is sought to subdivide Lot 1 DP 82810 to create nine new allotments, in three stages. Tables 1-3 below, taken from Councils Section 42A report, detail the nature and extent of the proposed allotments and the proposed service and access arrangements.

Table 1 - Nature and extent of the proposed allotments

Stage	Lot	Area (Ha)	Proposed Use
2	1	7.09	Rural residential
3	2	4.20	Rural residential
3	3	4.63	Rural residential
1	4	0.51	Rural residential
1	5	0.52	Rural residential
1	6	0.69	Rural residential
1	7	0.57	Rural residential
1	8	0.57	Rural residential
2	9	3.45	Rural residential

Table 2 – Proposed Services Arrangements

Lots	Water Supply	Effluent Disposal	Stormwater Disposal
1 - 9	It is proposed that water can be obtained from domestic bores, roof water collection and storage, or connection to the Te Moana rural water supply scheme.	Consent will be sought from Canterbury Regional Council (ECan) for the disposal of wastewater to ground.	It is proposed to dispose of stormwater to ground in accordance with ECan's stormwater disposal policy.

Table 3 – Proposed Access Arrangements

Lot	Physical and Legal Access
1	Access will be off Orari Station Road via the driveway to the existing dwelling.
2	Access will be off Orari Station Road via a new driveway to the underlying allotment.
3	This lot has physical frontage to Campbell Street and except for a narrow strip of land in Crown ownership, and an esplanade strip along the Ruakapuka Stream, also has frontage to Tancred Street. Access to Tancred Street is the preferred option.
4-8	Proposed new access from Orari Station Road, creating a right-of-way to service all these lots.
9	A new access off Orari Station Road will be created to access this allotment.

The easements proposed are detailed on the Subdivision Plan. An existing 5m wide esplanade strip (created from DP 79676) adjoins the stream through the property. No changes are proposed to this esplanade strip.

I advise here that the application has been **declined**. The full text of the decision and the reasons for it commences at page 12 below.

2. Activity Status

The subject site has a split zoning of Rural 1 and Rural 2 under the Timaru District Plan. Under the relevant Rural 1 Zone rules (Performance Standard 6.3.12 (1)), rural allotments must have a minimum area of 40ha unless Performance Standard 6.3.12(2) applies. This performance standard enables the creation of rural living sites where the underlying title has an area greater than 10Ha. In this case only approximately 9.6Ha of the site located in the Rural 1 Zone, and as a consequence there are no subdivision entitlements for this site.

The remainder of the site (approximately 12.7ha) is located in the Rural 2 Zone. Performance Standard 6.3.13 requires allotments in this zone to have a minimum area of 10Ha. The subdivision does not comply with this performance standard.

As a consequence, the proposed subdivision does not comply with the relevant Performance Standards, and is a **Discretionary Activity** in accordance with Rule 6.3.5 (i).

3. Notification and Submissions

The application was publicly notified on 15 June 2017 and received a total of 13 submissions. Of these submissions, nine were opposed to the application, one was neutral, two supported the proposed development and one supported in principle. One submission was a joint submission from nine adjoining landowners. Table 5 below, taken from Councils Section 42A report, lists the submitters on the application

Table 5 – List of Submitters on the Application

	Name	Address
1.	Alan & Jill Young	Ashbury Farm, 583 Orari Station Road
2.	Ross and Robyn Irvine	45 Tancred Street
3.	Freerk & Anke Numan	11 Cascade Place
4.	Peter & Desiree McCaskill	50 Campbell Street
5.	Ad & Anita Hendricks	540 Orari Station Road
6.	Notified Geraldine Residents Group	9, 11, 16 & 17 Cascade Place; 47, 51 & 52 Tancred Street; 50 Campbell Street; and 540 Orari Station Road
7.	Ian & Lynne Lyttle	17 Cascade Place
8.	Alison & Grant Norton	47 Tancred Street
9.	William Anderson	51 Tancred Street
10.	Canterbury Regional Council (ECan)	N/A
11.	New Zealand Fire Service Commission (NZFS)	N/A
12.	Lee Burdon	73 Connolly Street
13.	Brett & Melissa Horrell	15 Cascade Place

A summary of the submissions was provided in an appendix to the Section 42A report. Ms Conlon, the author of that report, advised that there were a number of issues raised which were outside the scope of the application, and identified the following as the relevant issues raised in the submissions:

- Inconsistent with the District Plan
- Inconsistent with the CRPS
- Draft Growth Management Strategy
- Wastewater and Stormwater
- Water
- Raukapuka Stream, Flora & Fauna
- Scale of Development
- Roothing
- Access
- Lighting
- Reverse Sensitivity
- Visual Amenity
- Rural outlook
- Fragmentation and Sub-Economic Arguments
- Housing Stock
- Earthworks

Where necessary and relevant, I have addressed these matters in my consideration of the application below.

4. The Hearing and Appearances

I heard the application in Timaru on the 16th of November 2017. I visited the site at the conclusion of the formal part of the hearing. The right of reply was not received until the 27th November 2017 and the hearing was formally closed on the 30th November 2017.

Mr. Shirtcliff represented himself and his wife at the hearing. Mr. Fortune also attended the hearing in support of Mr. Shirtcliff. Ms. Gemma Conlon, the Section 42A report writer attended on behalf of the Council.

The following submitters appeared:

- The Canterbury Regional Council, who were represented by the following people:
 - Julia Forsyth (Principal Planner)
 - Ashlee Dolamore (Consents Planner)
 - Shirley Haywood (Senior Water Quality Scientist)
 - Elizabeth White (Resource Management Consultant)
- Mr. and Mrs. Young
- Mr Lyttle, representing himself and the Notified Geraldine Residents Group.
- Mr. Ad Hendriks, who was also represented by his solicitor, Mr. Aidan Prebble.
- Mrs. Burdon.

Evidence from Ms. Alice Burnett (a planner with Beca Limited) on behalf of Fire and Emergency New Zealand was also tabled at the hearing.

5. Summary of Evidence Heard

All expert evidence was pre-circulated within the statutory timeframes while Mr Shirtcliff's submission was also pre-circulated before the hearing. This material, along with Mr Pebbles legal submission, is available from Council should anyone wish to

read all of the evidence and submissions presented. Because of the length of much of the material presented at the hearing, only a brief summary of the key points from the evidence is presented below.

Council Staff

Ms Conlon prepared a comprehensive section 42A report that was taken as read at the hearing. She summarised her position at the hearing. Her s42A report concluded that *“the application is not in accordance with the District Plan and the CRPS”*. On this basis, she recommended that the application be declined and summarised her reasons as follows:

- *The application is contrary to a suite of Objectives and Policies of both the District Plan and the CRPS.*
- *There is no consideration to the interrelationship and impact of the locational requirements of any dwelling to avoid flooding and those of the on-site service infrastructure, and whether one will impede the other.*
- *Servicing has not been confirmed prior to the proposed new lots being created.*
- *The lack of an overall strategy for the lands, which therefore creates uncertainty regarding the potential impacts of the development, servicing and sustainability.*
- *No information about earthworks has been provided with the application in relation to the creation of new access's to Lots 2 and 3.*
- *The effect of built form creates a change in the character and openness, which is not comparable to any permitted activities.*
- *There is no subdivision entitlement regarding the creation of rural living sites in the Rural 2 Zone; and therefore no anticipated increase in the density of allotments on the subject site.*
- *The scale of development is out of character with the anticipated level of built form to be found in this area and zone.*
- *The scale of development proposed will have an impact on the existing amenity of the area, with the effects created considered to be more than minor.*
- *The creation of five rural living sites and four larger rural/residential sites will remove a substantial amount of this Rural 2 versatile land out of rural production.*
- *Granting of consent will create precedence issues.*
- *Granting of consent will call into question the integrity of the District Plan.*

Ms Conlon also advised that should the consent be granted, *“a number of conditions of consent are essential to ensure the effects on the local and wider environment can*

be somewhat mitigated.” She noted “that some conditions have been recommended in submissions made in the notification process.”

The Applicant

Mr Shirtcliff opened his case by summarising the key points from his comprehensive written statement, that was pre-circulated before the commencement of the hearing. He opposed the Section 42A report which he considered ignores the National Policy Statement on Urban Development Capacity 2016 (NPS) and the Canterbury Regional Policy Statement (CRPS). In his view it was flawed and not even handed.

Mr Shirtcliff stressed the fact that the application is for a discretionary activity, which requires the decision-making authority to make an overall broad and subjective judgement as to whether or not the consent should be granted. He went on to outline the process he had undertaken to get to this point. He stated that the Council planners advised him to wait for the plan review and zone change for the site or seek a resource consent following the publication of the Growth Management Strategy (GMS), which he suggested the planners advised would be a relatively straightforward process. The GMS, released March 2017, identifies the site as suitable for rural residential development. Mr Shirtcliff noted that there were no objections to the Geraldine section of the GMS and that the one common submitter on that and this application (the Young’s), were in strong agreement with the GMS.

Mr Shirtcliff then advised that his efforts to align the detail of the application with the anticipated future zoning were rebuffed by the Council planners, and outlined the documents and information he had used to prepare the application. In his view, the proposed layout acted as a *de facto* structure plan that will support future subdivision by preserving access, further rural residential development potential and the identification of suitable on-site infrastructure. On this basis, Mr Shirtcliff considered that the proposal fully supports the GMS and that it represents an efficient use of the site that has limited other productive rural use due to a long history of subdivision of the original landholding.

Mr Shirtcliff then discussed in his evidence the wide range of issues raised by the proposal, citing a number of Environment Court decisions to support his arguments. He highlighted the growth in Geraldine (referring to statistical evidence and statements from real estate agents) to support his contention that Geraldine is poorly supplied with suitable building sites to meet demand. While acknowledging that there is no anticipation in the RMA either way as to whether a discretionary activity is likely to be appropriate or not, Mr Shirtcliff submitted that the GMS is evidence of a clear planning anticipation that this proposal is an appropriate activity for the locality. The proposal, in his view, will provide for the social and economic wellbeing of the community accordingly.

Mr Shirtcliff then dealt with precedent matters before addressing a number of environmental effects. In his view, the circumstances of this case (given the GMS and the consistency with the CRPS) are such that there is little, if any, chance of it being replicated in another location. He then went on to deal with views, cumulative effects, allotment size, effects on agriculture, rural amenity and landscape, reverse sensitivity and servicing matters (dealing with the evidence of the Regional Council at that time). In Mr Shirtcliff’s submission, these were either not issues of significance or could adequately be dealt with through a number of conditions that he promoted.

Mr Shirtcliff then addressed the policy framework, being the National Policy Statement on Urban Development Capacity 2016 (NPS), the Canterbury Regional

Policy Statement (CRPS) and the Timaru District Plan (TDP). He highlighted a number of policies he thought relevant from the NPS and considered the proposal will assist the TDC in achieving its obligations under the NPS. Mr Shirtcliff also concluded that the proposal clearly conforms with the CRPS and submitted that Council is required to give effect to Policy 5.3.1. He then addressed the Section 42A report writers position that the proposal is contrary to the policy framework, highlighting a number of Environment Court cases on the issue. Mr Shirtcliff was of the view that the proposal does not offend either the District Plan or the CRPS in the sense of being repugnant to them, again highlighting that the proposal is a discretionary activity, not a non-complying activity.

Mr Shirtcliff's written statement also contained a comprehensive review of each submission point made and his response to it. At the hearing he noted an incorrect reference in the tabled submission of Fire and Emergency NZ.

The Submitters

The **Canterbury Regional Council** was the first submitter to present. **Ms Forsyth** presented a brief overview of the Council's position, detailing some of the background work the Council has been working on, before handing over to **Ms Dolamore**, who addressed her written evidence. She began by highlighting some incorrect references to the rules in her evidence and then went on to address the relevant Regional Plans and rules that apply to domestic waste water, domestic water supply wells and stormwater. She advised that resource consent would be required for wastewater disposal on Lots 4 to 9 but that discharges on Lot 1 – 3 would be permitted (provided relevant conditions could be met). Ms Dolamore outlined the matters that would be considered when assessing restricted discretionary applications in relation to Lots 4 to 9 and also noted that there are existing consents in place for the site. Ms Dolamore also responded to Mr Shirtcliff's dairy cow baseline comparison which she considered unhelpful as it was not an appropriate comparison to make.

With respect to domestic water supply, Ms Dolamore outlined the relevant permitted activity rules and was of the view that the applicant could meet these. However, she did note that it may become increasingly difficult to locate these services to meet the setback requirements and outlined the process should consent be needed. Ms Dolamore went on to address stormwater, and was of the view that consent would be needed for this component of the proposal.

Overall, Ms Dolamore considered the necessary consents from Environment Canterbury are likely to be granted provided suitable plans and assessments are submitted with the application, and provided that the services can be installed strategically in locations that minimise risk to drinking water supplies and nearby streams. However, she did note that it would be difficult to service further subdivision at the site.

Ms Haywood then addressed her evidence which dealt with the general environment of the proposed subdivision in terms of groundwater and surface waterways and the potential risk to this environment. She advised that spring-fed streams such as the Raukapuka are very important habitats within the Waihi/Temuka catchments. Ms Haywood also advised that the groundwater in the areas is very shallow and is therefore vulnerable to inputs of contaminants, including from stock grazing, on-site sewage disposal and stormwater. In this case, she noted that no specifics of the services were available but advised that stormwater and domestic wastewater pose a risk to both ground and surface water. She confirmed that these risks can be

mitigated by the appropriate infrastructure and treatment systems but believed greater certainty was needed in this particular location.

Ms White then presented her evidence on behalf of the Regional Council. Her evidence related to the servicing of the subdivision, in terms of both the regional consents required and the wider strategic issues it raises. In this sense, her evidence focussed on the CRPS. In noting Ms Dolamore's evidence that the relevant regional consents are likely to be granted, but future subdivision would be difficult, Ms White formed the view that the proposal is an inefficient use of land, given the applicant relies on the draft GMS. In terms of the wider strategic view, she considers the proposal at odds with the direction of the CRPS, which requires subdivision and development of this type to be co-ordinated with provision of infrastructure. Ms White considers that the applicant has relied on the enabling parts of the CRPS and the draft GMS to justify the development but ignores the direction in both regarding the co-ordination and integration of such development with the provision of infrastructure.

She went on to highlight the relevant provisions of the CRPS and also the guiding principal of the draft GMS, a concept of 'managed growth' which seeks to enable consolidation and expansion of existing urban settlements in strategically located areas. Ms White advised that the draft GMS states that the provision of infrastructure is critical to the development of communities and the infrastructure is needed to integrate with and support growth.

Ms White did consider the site suitable for rural residential development but advised that in her experience, the direction in Charter 5 of the CRPS is usually given effect to through zoning within a district plan. She was of the view that a private plan change was the most appropriate method to achieve the outcome sought by the applicant, although she did acknowledge that the proposal must be considered on its merits. In her view, the proposal in its current form should be declined.

Mr. and Mrs. Young then spoke to their submission. In their view, the proposal was not in accordance with the current rural zoning and consider that it pre-empts the outcome of the GMS and District Plan review. They felt the availability of Council services is critical to the proposal given the shallow groundwater and ecological values of the stream and these were not available. Mr. and Mrs. Young also clarified how their title was created and questioned the validity of the rainfall figures used in the application.

Mr. Lyttle, who works for Environment Canterbury in their land sustainability group, presented his submission next. He read a brief statement, advising that he lives at 17 Cascade Place and that he was presenting on behalf of himself and the residents group. Mr. Lyttle first addressed the issue of subdividing rural land and considered the subject site excellent quality rural land, suited to a variety of farming enterprises, and that it should stay rural as a consequence. In his opinion, there is other land around Geraldine better suited to residential development. He was concerned that subdividing this land would create a precedent.

Mr. Lyttle then addressed the lack of services and was concerned that there was a risk of contamination to the stream under this proposal. In his view, the proposal should not be allowed to go ahead without reticulated services. He also highlighted the loss of rural aspect from the neighboring properties (while acknowledging they are generally orientated towards the sun) and the reverse sensitivity issues that may arise.

Mrs. Burdon then spoke to her submission in support of the proposal. She first outlined her concerns with the planning process for the Geraldine area, noting they have been waiting a long time for a plan. In reference to reports that had been commissioned, she noted that the capacity the first report said would be needed by 2040 was already used up but the second report said no more land was needed, despite the fact that Geraldine is growing. Mrs. Burdon highlighted the difficulty in getting a section in Geraldine. In her view, it is better to subdivide small blocks on the edge of town than waste good agriculture land for subdivision. Mrs. Burdon then went on to discuss her concern that services were not being extended to the site, noting that she was on town supply despite being zoned rural. She also addressed reverse sensitivity issues in relation to the adjoining dairy farm.

Mr. Prebble then presented legal submissions on behalf of **Mr. and Mrs. Hendriks**. Mr. Prebble noted that this case is fundamentally about maintaining rural character and amenity, and avoiding reverse sensitivity effects. He advised that the Hendriks support the Section 42A report conclusion that the subdivision be declined. Mr. Prebble disagreed with the applicants inference that discretionary activities are acceptable under the plan provided adverse effects are minor, noting that an assessment of whether the activity achieves the policy outcomes sought by the plan is also necessary.

Turning to the draft GMS, Mr. Prebble advised that it is not a statutory document and has not been incorporated into the District Plan. Consequently, he submitted that the District Plan as it stands must be applied, not the GMS which is an irrelevant consideration. He went on to set out what he considered to be the relevant matters to consider when assessing a discretionary activity. In his submission, Mr. Hendriks evidence would confirm that the proposal would have more than minor adverse effects in relation to rural character and amenity, productive potential of the land, and reverse sensitivity.

Mr. Prebble then turned to the policy framework and considered the proposal did not achieve, or would be contrary to, all of the key policy suites. He considered that consent to this proposal would undermine the integrity of the District Plan. He submitted the application should be declined.

Mr Hendriks then spoke to his submission, outlining his background and involvement in the Waihi Catchment Group. In this context he provided some background and context to the stream and groundwater values in the area and thought that they would be under threat from this proposal. Mr Hendriks was very concerned with the significant change in character that would occur, with the site no longer being rural. He advised that he already experienced reverse sensitivity issues and believed it would only get worse. The biggest concern was that he may be made to move his calf rearing shed, which would be a significant burden. He felt the subject property was a good buffer between the residential zone and his property. Mr Hendriks recommended that a reverse sensitivity covenant be placed on the new titles should the consent be granted. Both Ms Conlon and Mr Prebble addressed this issue, considering that it would not necessarily solve the problem.

Ms Burnett tabled evidence for Fire and Emergency NZ (FENZ). She advised that FENZ requested consent notices on any new titles created requiring the provision of a firefighting water supply. Referring to the planner's comments in the s42A report, Ms Burnett advised that FENZ consider water supply to be a relevant matter under the Act and outlined the guidance provided by the NZ Fire Service Code of Practice. She continued to request that appropriate conditions addressing the matter be attached to any consent granted.

Staff Review

Ms Conlon provided her review in writing. She advised that a subdivision plan is not a 'de facto structure plan', with the purpose of a Structure Plan being to generally inform development plans, including resource consents, and to prove conceptually that all relevant matters can be addressed satisfactorily. In her view, the subdivision plan submitted with the application cannot be compared with a Structure Plan.

With reference to the draft GMS, she advised that this document outlines the vision for the district's growth into the future and that the subject lands were identified in the DGMS as land for possible future rural residential use. She considered this a signal that further consideration should be given to suitability for rezoning, which would essentially occur through the use of a Structure Plan to ensure that all relevant and key issues can be addressed prior to the land being rezoned. If this process does not establish that the land can be sustainably developed, she advised that it will not be proposed or progressed in the District Plan Review. In her view the proposed subdivision does not illustrate the sustainable development of the land.

In this context, Ms Conlon considered it appropriate to consider this document as a Special Circumstance under Section 95A(4) of Act, but her view was that the application is premature as the adoption of the GMS, the preparation of a Structure Plan and the rezoning of the land under the District Plan have not been completed. As a consequence, she believed that no weight should be given to the draft GMS as it had not been adopted, has no legal standing and does not constitute the rezoning of the subject land.

With respect to the applicants suggested conditions, Ms Conlon highlighted some enforceability issues and also considered that some of them may potentially conflict with performance standards that could be developed as part of the Structure Plan or rezoning process. This is because they have been suggested prior to a robust assessment of the quality of the land being undertaken and what may compromise appropriate development of it.

Ms Conlon then went on to address the operative District Plan, and noted that rural residential subdivision of this scale and density is not provided for as a controlled activity in the Rural 1 and 2 zones. In relation to views and rural amenity experienced from residential sites, Ms Conlon noted that there is an expectation that land will be used or developed in accordance with the stated objectives and policies for that zone. In her view, the land currently exhibits a rural character, not a rural-residential character, and the application does not achieve the policy outcomes sought by the Rural 1 and Rural 2 Zones or avoid, remedy or mitigate the adverse effects on these matters. In her view, the proposal is contrary to the District Plan's objectives and policies.

Ms Conlon concluded by noting that the applicant's submission was based on personal opinion and is not supported by experts or evidence. In her view, granting the application could impede the implementation of the GMS and should be declined.

Applicants Reply

Mr Shirtcliff also presented a written closing. Dealing with Mr Prebble's legal submissions, he was of the view that these should have been treated as expert evidence so that he could have dealt with them in his evidence in chief. He went on to reiterate the points he had previously made in relation to the discretionary activity status of the proposal (in particular that the activity cannot be repugnant to the District

Plan) and the GMS, in that it provides a clear anticipation of the proposed activity at this site. He went on to note that he had addressed the issue of adverse effects and policy arguments in his opening submissions but did wish to highlight what he called glaring omissions in the submitters evidence regarding the planning hierarchy that has been imposed on the District Plan by both the NPS and the CRPS. In his submission, Councils lack of action in giving effect to these documents should not be a valid reason to decline the application. Mr Shirtcliff also addressed the issue raised in respect to future applications and precedent, noting that future applications that may or may not arise in the future are not relevant here.

With respect to Mr Hendriks verbal submission, he considered that he had already addressed the issues raised but did highlight that Mr Hendriks, while requesting a no complaints covenant, did acknowledge that issues are unlikely to arise by acting as a good neighbour. Mr Shirtcliff noted that the existing homestead is the only proposed allotment that is close to the calf rearing sheds and also highlighted the fact the Hendriks farm is already in close proximity to the urban boundary in other locations.

Mr Shirtcliff then addressed the Environment Canterbury submission, recording his understanding of their position and how the application resolved each issue. He felt the remaining issue, being the cumulative effects of future developments, should be resolved between the two Councils. He advised that they had received advice that on-site water servicing of future subdivision was feasible.

Mr Shirtcliff finished by addressing the planners review, being concerned that it did not address matters of case law or the NPS. He highlighted that the NPS should also be considered on any decision on a resource consent. He also referred to the structure plan and GMS issue in the context of what he considered relevant case law in respect, believing the GMS to be a proposed policy statement that is explicitly responding to the NPS and CRPS. He also referred to section 74(2)(b)(i) of the Act in this context.

Mr Shirtcliff expressed frustration at the lack of input from the planner in respect to the conditions proposed and also addressed the comment made that his submission was personal opinion, not supported by the appropriate experts. He was concerned with what he perceived as acrimony between himself and the Council planners. In his view the existing district plan is well beyond its use by date and considered it dangerous to cleave to an outdated plan and seek reasons why an initiative may not proceed rather than considering whether or not a proposal is sound and makes a positive contribution to the communities changing needs.

6. Preliminary matters

While no procedural matters were raised in relation to process by any of the parties present at the hearing, there are a number of preliminary matters that I think appropriate to deal with prior to setting out my reasons for the decision. Throughout his written and oral submissions, Mr Shirtcliff expressed frustration with the process, namely dealing with the Council planning department. While I can understand a lay person's frustration with this process, it is not for the Council planners to, as he put it, "synchronise the detail" of an application that does not comply with the anticipated density of the lands current zoning, but which is based on a draft strategy that does not form part of the District Plan. To do this would have compromised the integrity of the process, which would have given the submitters the opportunity to cast doubt on the objectivity of any report that came from the planning department. It is for the applicant to engage their own independent experts to assist in designing a proposal

and to provide advice in relation to process matters. Council staff should not be involved in this process.

That brings me to the question of evidence, with Ms Conlon noting that Mr Shirtcliff's submission is based on personal opinion and is not supported by experts or evidence. Mr Shirtcliff highlighted section 4B of the Commissions of Inquiry Act 1908, which sets out my powers in relation to evidence and states that I am not bound by the rules of law about evidence that would apply to judicial proceedings. However, the point Ms Conlon was making is that Mr Shirtcliff is a lay witness, not an expert. Lay witnesses can present facts and observations, but they cannot provide expert opinion. Hence, Mr Shirtcliff's evidence on planning and legal matters carries less weight than evidence from qualified experts in those fields.

Mr Shirtcliff also questioned the submissions of Mr Prebble, believing them to be expert evidence that should have been pre-circulated. However, Mr Prebble appeared at the hearing as an advocate for a submitter and while he cannot mislead the commission, his legal submissions are not considered expert evidence. Hence, his submissions do not need to be pre-circulated.

7. Statutory Provisions

The relevant statutory documents in this case are considered to be the operative Timaru District Plan, the Canterbury Regional Policy Statement, and the National Policy Statement on Urban Development Capacity 2016. The provisions of those documents that have been considered in this decision were recorded in the Section 42A report of Ms Conlon, the evidence of Ms White for the Canterbury Regional Council and the submissions of the applicant. Accordingly, I do not propose to list all those provisions here.

8. Decision

Pursuant to Sections 34A and 104B, and after having regard to matters set out in Part II and Sections 104 of the Resource Management Act 1991, I hereby **decline** resource consent application **101.2017.2** for the property legally described as Lot 1 DP 82810, located at 584 Orari Station Road, Geraldine.

9. Reasons for this Decision

The Act requires me to set down the reasons for my decision. It also requires that I record the principal issues in contention and the main findings of fact. These matters clearly form part of any assessment of a proposal and consequently inform the outcome. They cannot be dealt with separately from the reasons for arriving at a particular outcome and are accordingly dealt with in that way in this decision.

These matters must be considered in the context of Section 104 of the Act which sets out what must be considered when deciding a resource consent application. Section 104B provides that once those matters have been considered, I can grant or refuse an application for a discretionary activity. If the application is granted, conditions may be imposed under Sections 108 of the Act. The matters contained in Section 104 have all been considered in arriving at this decision.

The following are seen as the main issues in contention:

- The relevance of, and weight to be placed on, the draft Growth Management Strategy.
- The consistency of the proposal with the CRPS.
- The consistency of the proposal with the relevant Timaru District Plan provisions.
- The effects on rural character and amenity.
- The effects on versatile soils.
- The provision of appropriate servicing and roading infrastructure
- Reverse sensitivity effects.
- Precedent concerns.

These matters largely encapsulate the issues raised by the submitters and are addressed below.

Given that the applicant places great weight on the draft GMS, I will address this matter first. Mr Shirtcliff's position is that the operative District plan is "*well beyond its use by date*" and that the draft GMS provides "*a clear anticipation*" that the proposed activity is suitable for this location. On that basis it should not be ignored by the consenting authority. Both Mr Prebble and Ms Conlon are very clear in their position that no weight should be given to this document as it has not yet been adopted by Council and has no legal standing. Accordingly, in their view it does not constitute a rezoning of the subject land and the operative District Plan is what the proposal should be assessed against.

Section 104(1)(c) enables me that consider "*any other matter the consent authority considers relevant and reasonably necessary to determine the application*". In this context, I have considered the draft GMS and accept that the land has been identified as potentially suitable for rural residential development. However, the strategy itself advises at page 7 that it is a non-statutory document and that "*it will be used to inform Council's long term planning especially in guiding the development of the District Plan, Activity Management Plans and Long Term Plan.*" At page 22 the draft GMS states that "*The District Plan will provide the detail of how growth is managed. The District Plan is a regulatory document and will regulate land use growth by way of rules and other methods. This will likely be in the form of land use zoning and density controls.*"

The District Plan Review ... is a separate statutory process, which provides a number of opportunities for public input. This means that while the Growth Management Strategy will set the strategic direction for managing district land use growth, the detail will be confirmed through the District Plan Review."

At page 79, the GMS states that the "*Rural residential development in these locations [Geraldine] will be implemented through the District Plan in the form of zoning changes and associated controls. Consolidation of rural residential development will be supported by subsequent changes to rural living provisions in the general rural zones ... Structure plans should be advanced for the ... Cascade Place Rural Residential zoning prior to the zoning being made operative.*"

What this means is that any concrete outcomes from the GMS process are a long way off, and relation to rural residential development, are also likely to involve significant changes to the current rural zone rules. Hence a comprehensive package of provisions will need to be developed, informed by further work, before any new zonings are put in place by the replacement District Plan.

In relation to rural residential development, the GMS signals that this further work will include the development of structure plans that identify:

- i. principal through roads, and connections with the surrounding road network and were relevant the State Highway Network, and relevant infrastructure and services;
- ii. parks and any other land for recreation;
- iii. land required for stormwater treatment, retention and drainage paths;
- iv. pedestrian walkways, cycleways, bus routes both within and adjoining the area to be developed.

The appropriate density of development will also need to be determined. I note that the draft GMS defines 'rural residential' as development at a density of 5000m² to 2ha. This is quite a significant range in terms of servicing and amenity considerations and hence this issue will need consideration on a site by site basis through the structure plan (or similar) process. For example, this particular site is traversed by a stream while groundwater seems to be quite shallow, with evidence of springs within the property. These factors will have a bearing on what density is appropriate for the site.

While I accept that some of these matters can be addressed by a scheme plan of subdivision, the reality is that the site is still zoned Rural and must be considered against the Rural Zone provisions of the District Plan. To avoid that, the applicant would need to promote a private plan change and it is reasonably clear that there would be support for that approach under the Regional Policy Statement and the NES. These documents are more relevant in that context, than to a subdivision in a Rural zone that seeks an entirely different outcome to that anticipated by the zone.

Hence, I have placed little weight on the draft GMS. Mr. Shirtcliff referred to a number of Environment Court decisions which he suggested supported his case that there was a "planning anticipation" and that the GMS had a degree of influence regarding the appropriateness of the site for the proposed use. However, these cases were dealing with documents prepared under the RMA, which are subject to the rigorous evaluation process under section 32 under that Act, which is not the case with the draft GMS.

When considered against the provisions of the Rural zone, it is clear that the proposal is not at a density anticipated by the District Plan, even if the site met the criteria for the subdivision of rural living allotments, which it does not. It does not necessarily follow that this is fatal to an application, as the relevant receiving environment could be such that the density proposed is not out of character. However, this is not the case here. The site exhibits an open rural character and is not located within an environment that already contains a rural residential character. The proposed development will significantly change that character and will essentially extend the urban boundary into the rural zone. Consequently, I agree with Ms. Conlon's assessment in relation to the landscape and visual amenity effects of the proposal.

The significant adverse nature of this effect (in the context of its zoning), is the key factor against the development. I accept Ms. Conlon's view that the proposal will potentially take some versatile agriculture land out of production, but as Mr. Shirtcliff pointed out, it would have a very minimal impact on the versatile soil resource across the District. I suspect that this has been factored into the draft GMS position on the site but if not, it is an issue what will need to be considered through any District Plan review process.

With respect to servicing, I accept that it could be serviced as proposed by Mr. Shirtcliff but I do note the concerns of the Regional Council in relation to this issue. My site visit did confirm that there are potentially sensitive water resources within this property (both surface and ground), which could impact on waste and stormwater disposal. I understood the Regional Council concern to be more at a strategic level (as was Ms. Conlon in respect to the lack of a structure plan), given Mr. Shirtcliff placed great weight on the draft GMS (which would allow for the larger lots to be further subdivided). While I cannot consider what may or may not happen in the future, I do note that proposed Lots 4 to 8 are at more of a large lot residential density and a similar density across the whole site, without reticulated services, would present a significant challenge in this environment. The proposed internal roading layout also lacks connectivity, which again would present a challenge in the future. Hence Ms. Conlon's concern with the lack of a structure plan, and her view that the proposal *"is in danger of impeding the implementation of the Growth Management Strategy as it relates to this land and potentially the future rezoning of the area."* In this context I also note the policy framework at Section 9 of the District Plan (Services and Infrastructure) which discourages development *"that may compromise subsequent efficient servicing and subdivision of land identified for future residential development."* (see Policy 9.1(3)). This seemed to be Ms. White's main concern with the proposal also.

Mr. Hendriks also raised the issue of reverse sensitivity. I agree with Mr. Hendriks that the current property does establish a good buffer between the current residential zone and the activities within his property that may give rise to this concern. However, there will always be that potential for a farm that is essentially located on the urban boundary. While a moot point given this decision, the application has dealt with this issue reasonably well by proposing larger lots along the eastern boundary of the property, thereby reducing the number of residences on Mr. Hendriks boundary. I suspect, however, that this is an issue that will need to be addressed through any rezoning process under the District Plan review.

Turning to the policy framework of the District Plan, I again consider the proposal inappropriate when measured against the outcomes sought. While I would not go as far as Ms. Conlon and Mr. Prebble to say the activity is 'contrary' to the District Plan, it is inconsistent with the District Plan in many respects.

With respect to the Rural zone provisions, I consider the proposal inconsistent with Objective 1.1.2 and Policy 1.1.3(a) and (b). The explanation in relation to Policy 1.1.3(a) (the Rural 1 zone) notes that *"subdivision for rural activities and rural living sites is more limited than it has been in the recent past. The intention is still to provide for a range of activities including rural lifestyle blocks"*. This proposal is effectively seeking to develop the entire site for rural lifestyle purposes but has no entitlement to any rural living sites under the rules. In respect to the Rural 2 zone (versatile soil), the explanation states that *"Limitations on the development of land in this zone aim to protect the versatility of this resource for future generations. The establishment of buildings in this zone and subdivision is limited because of the need to protect the versatility of land in this zone."* While the effects of the proposal in regard to this issue may be minor in an overall sense, it is still inconsistent with this policy.

Related to that policy suite is Objective 1.2.2, and the associated policies, which seeks to *"avoid, remedy or mitigate the adverse effects of intensive development in rural areas."* Policy 1.2.3(1) gives effect to this objective by providing *"for a range of sites and uses, as long as the environmental effects including cumulative effects of development meet performance standards for the zone."* The explanation identifies the *"reduction in the open character of rural areas"* as an issue linked to intensive

development. The explanation goes on to state that *“in order to maintain a low density of development in the wider rural areas, the District Plan will continue to limit subdivision within the Rural Zones and to support this approach by providing for rural residential opportunities”*. Critically, it goes on to say that *“This approach provides for choice in the rural residential environment as well as enhancing certainty for the community as to where this type of development will be occurring.”*

The District Plan is quite clear (and therefore provides certainty) that this density of development is not expected in this location. It does not achieve Objective 1.6.2, which seeks to *“protect and enhance the character and amenity of the District’s landscapes.”* The explanation confirms that this objective *“acknowledges the public expectation of low levels of development in rural areas”*. To achieve this goal, Policy 1.6.3 encourages all land use to be sympathetic to retaining the rural landscape character and aims to protect and enhance the open rural character and visual quality of rural areas in the District. Open rural character would be lost under this proposal.

If there is to be a change in the amenity of an area, Section 13 of the Plan (the Community Enablement and Physical Resources section) indicates that this should occur via the plan change process. The objective in this section seeks *“to accommodate growth while protecting and enhancing the quality of the environment”* with the principal reason stating that *“future urban growth needs to be provided for by ensuring that sufficient appropriately zoned land is available on which sustainable growth can occur”*. Policy 2 is specific to rural residential development and is to provide for a range of lifestyle choices, for example rural living sites, and large lot residential development (amongst other things), with the explanation stating this it to be given effect to *“by a range of options by way of zoning to meet changing demographic, lifestyle and business needs.”* The principal reason for Method 1, that is to achieve this outcome, states that *“Zoning is the primary method employed for sustainably managing Timaru’s natural and physical resources. Zoning provides certainty about the level and nature of effect that may be experienced in a particular area. For example, Residential Zones are not applied where the intensity of development detracts from existing natural character, or areas of high landscape quality.”*

While there is no presumption under the Act that a plan change is the preferred approach for developments of this nature, this policy framework effectively directs the applicant to utilise the plan change process to achieve the outcomes sought. This is because a significant change in policy for an area is generally a matter of great public interest. The plan change process has significant advantages over the resource consent process in that it allows for the integrated management of effects over time (which involves wider considerations than allowed for in a resource consent process); allows for greater community input and the expression of community aspirations (two submission phases); and it requires a consideration of the alternatives, benefits and costs (Section 32).

While not normally an issue with discretionary activities, in this case I believe granting consent to this application would create an undesirable precedent given there are a number of areas around the district that are signaled for rezoning under the upcoming plan review process. Allowing these to be developed under the resource consent process prior to that occurring, would compromise the wider, more strategic approach required under the plan change/review process.

As a consequence of the foregoing, I believe the sustainable management purpose of the Act is best served in this instance by declining the resource consent application.

10. Right of Appeal

In accordance with section 120 of the Resource Management Act 1991, the applicant and/or any submitter may appeal to the Environment Court against the whole or any part of this decision within 15 working days of the notice of this decision being received. The address of the Environment Court is:

The Registrar
Environment Court
PO Box 2069
CHRISTCHURCH

Any appeal must be served on the following persons and organisations:

- Timaru District Council;
- The Applicant;
- Every person who made a submission on the application.

Failure to follow the procedures prescribed in sections 120 and 121 of the Resource Management Act 1991 may invalidate any appeal.

DATED at Dunedin this 19th day of December 2017.



Allan Cubitt
Commissioner