



Before the Timaru District Council Hearings Panel

in the matter of

Resource Consent Application No. 102.2021.15.1

Made by

Edwards & Hardy Roofing

A Report prepared under

Section 42a of the Resource Management Act 1991

By

Vishal Chandra, Timaru District Council

Dated

25 September 2023

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1.0 Introduction

1.1 General

This report sets out an independent and objective assessment of the application in accordance with the Timaru District Council's (TDC) statutory responsibilities to consider and determine the application.

The report does not represent the views or opinions of the Hearings Panel or the Council.

This report has been prepared in accordance with Section 42A of the *Resource Management Act 1991* (RMA). It provides an analysis of the resource management issues in respect of consent application at 19-27 Cornwall Street, Timaru. This report is intended to be read alongside the resource consent application and Assessment of Environmental Effects report (the AEE) titled "*Assessment of Effects on the Environment in Support of Land Use Consent 102.2021.15*", dated 29 July 2022 and referenced 082001.

In this report, I recommend that consent application **be refused** within the context of the receiving environment, and subject to no contrary evidence being presented at the hearing.

If the hearing commissioner determines to grant consent, a suite of draft conditions is attached to this report.

The assessment and recommendations contained in this report are not binding on TDC or the hearing commissioner. This report has been prepared without knowledge of the content of any evidence or submissions that will be made at the hearing; consequently, it cannot be assumed that the Hearing Commissioner will reach the same conclusions as those provided in this Report.

1.2 Qualifications and Experience of the Reporting Officer

My name is Vishal Chandra, I am a consultant planner for the Consents and Compliance team at TDC. My qualifications include Master and Bachelor of Planning (Hons) from University of Auckland. I am a full member of the New Zealand Planning Institute and I am certified independent hearings commissioner and chair.

I have approximately 19 years of planning and resource management experience in areas of land development, subdivision, infrastructure and plan development. These include work for territorial authorities, requiring authorities and private entities.

2.0 Proposal Description

The proposal is to operate a roofing business that includes the following:

- associated office and storage space
- a shipping container for storage
- iron and iron racks
- pallets of roof tiles
- paint and chemicals at 20 litre container capacity, and
- storage of vehicles and trailers.

The business activity is proposed at 19-27 Cornwall Street, Timaru, and these parcels as the application site are legally described as follows:

- Lot 1 DP 19797 identified on Record of Title CB23B/756
- Lot 2 DP 19797 identified on Record of Title CB23B/757
- Lot 3 DP 19797 identified on Record of Title CB18F/1315, and
- Lot 4 DP 19797 identified on Record of Title CB35A/568.

The collective site has an area of 1,249 m².

Any new buildings including storage containers and storage racks are proposed with a setback of 3 metres from any site boundaries. All areas of storage is proposed to be screened by a 2 meter high fencing running along the site boundaries with a gate fronting Cornwall Street.

The existing western building is proposed to be removed.

The existing container sitting towards the road frontage is proposed to be relocated towards the rear of the site.

A single vehicle crossing and access will service the activity.

Planting is proposed in form of a hedge along part of the western boundary and along part of the road frontage, where there is currently no building or a future vehicle access point. Planting is also proposed along part of the rear boundary where there currently are not vegetation.

The site layout is shown in Figure 1.



Figure 1 – The proposed site layout.

Source: AEE

The activity will operate between 8am and 5pm, Monday to Friday. The activity does not involve direct sales to the public from the site.

A maximum of nine staff are proposed. Of these, up to two will be located within the office.

Minimal earthworks will result in giving effect to the proposal, which will be within the permitted thresholds.

3.0 Background

3.1 Operative Timaru District Plan 2005 and Proposed Timaru District Plan 2022

The site is currently zoned Commercial 3 – *Neighbourhood* (Timaru only) under the operative Timaru District Plan 2005 (ODP), and surrounded by Residential 1 zone. Refer to Figure 2.

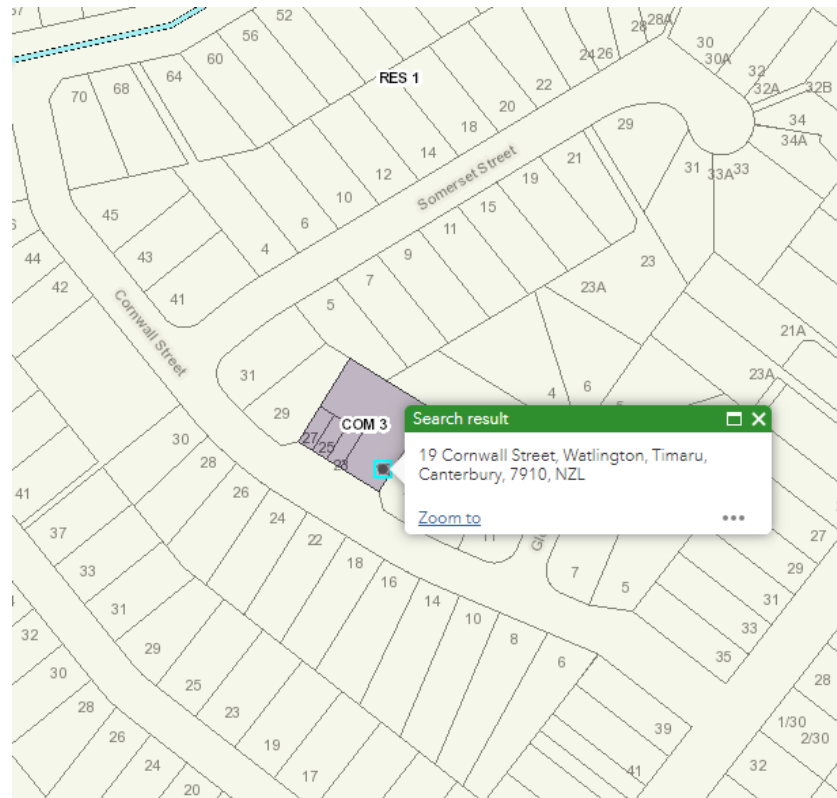


Figure 2 – Collective site zone and surrounding zone
Source: ODP

The intent of this zone is as outlined below, which is referred to later in this Report.

The Commercial 3 Zone includes the many small commercial areas scattered through the Residential 1 Zone of Timaru and is intended to provide a location for commercial activities within suburban areas while providing sufficient flexibility to enable residential activities to also make use of this land.

The relevant definitions from the ODP considered within this Report include:

- Commercial - *Involving payment of fees for hire or reward.*
- Industry – *The use of any premises or land used or proposed to be used for the production, processing, assembly, servicing, testing, repair and/or storage and warehousing of any materials, goods or products and also includes transportation facilities, and sales facilities that are a part of the industry.*

The site is zoned General Residential in the Proposed District Plan (PDP). The collective site is not identified for any flood, geotechnical or soil contaminant risks under the ODP or the PDP, while the road corridor is subject to flooding assessment notation. Refer to the Figure 3.

The intent of the General Residential zone is for residential units of one or two storeys to be established with ample space around the buildings for plantings and outdoor living space and access to sunlight. While primarily residential, this zone enables compatible and complimentary activities that do not detract from the character and qualities of the zone by way of resource consent.

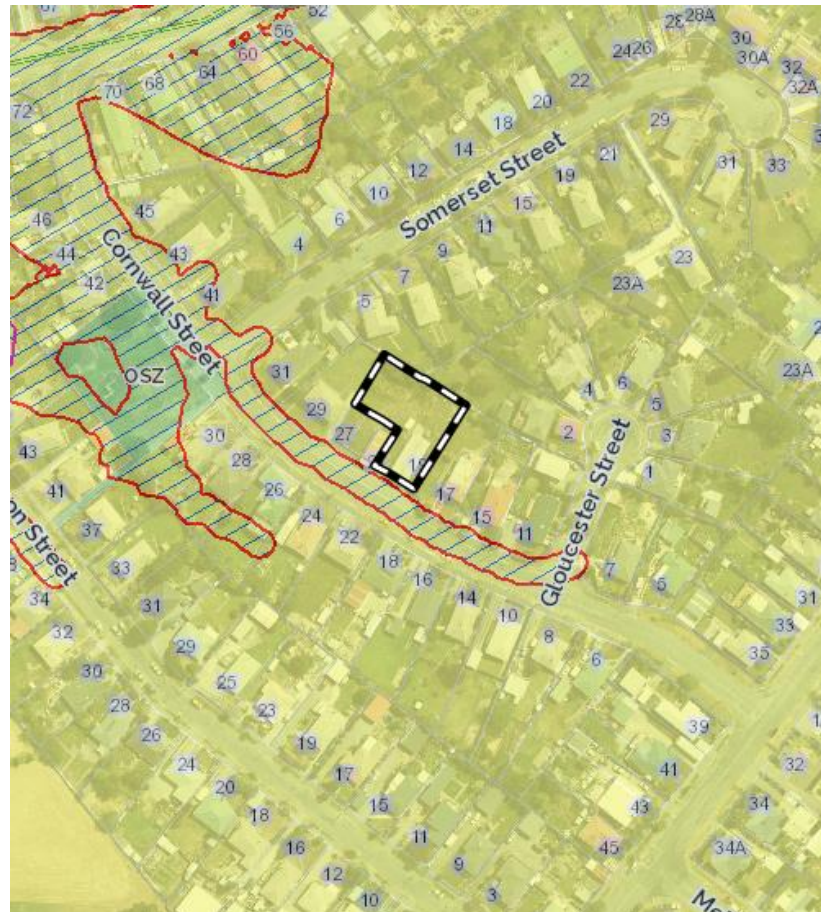


Figure 3 – Application site zoning and surrounding area zone
Source: PDP

3.2 Lodgment of the Application, Notification and Submissions

The application was lodged on 27 January 2021. The application was assessed and a decision was made to undergo public notification, dated 7 October 2022. The primary reasons for this decision were the change in residential character and amenity values, and the unlikelihood of the proposed activity aligning with the expected activities within the Commercial zone that is intended for local conveniences. The proposal is more widely aligned with industrial activities given the physical and operational characteristics i.e. storage of materials, machinery and vehicles with supporting office.

The application was publicly notified on 16 May 2023 and submissions closed on 13 June 2023. As part of the public notification, the owners and occupiers of the sites identified in Figure 4 received a specific notice of the application.

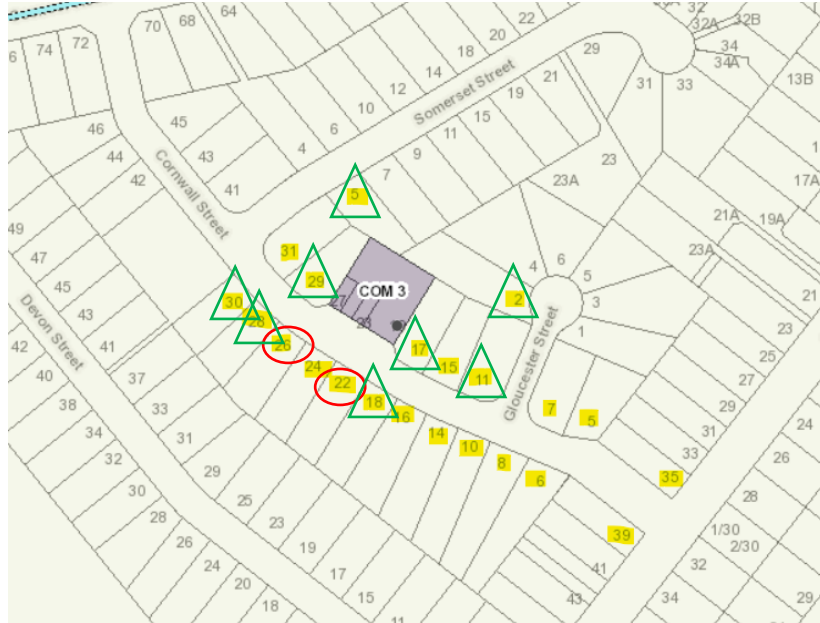


Figure 4 – Sites that received specific notice of the application alongside the public notice (marked in yellow); location of submitters (marked with red circles) and location of the sites from where written approvals were received post notification (marked with green triangles)

Submissions were received from the following in opposition. These are marked identified in Figure 4.

- 26 Cornwall Street – Alister Chambers and Sara Chambers
 Concern – residential amenity values being compromised by the industrial use; and lack of engagement
 Resolution – refuse consent
 Hearing – wishes to present a joint case with others at a hearing
- 22 Cornwall Street – Philip Graham Wade
 Concern – the proposed activity will reduce residential amenity values; will have increase vehicle movements; and the nature of the activities, lack of complaints procedures and reduce property values
 Resolution – refuse consent
 Hearing – wishes to present a joint case with others at a hearing

It is not noted property values and consideration of a change is not considered within this Report, and a matter out of scope.

3.3 Further Information

On close of the submission period, the applicant submitted a complimentary letter confirming amendments that were proposed post lodgement of the application, and these include the removal of the shipping container from the site that has since been removed; and use of smaller delivery vehicles only.

The applicant clarifies the permitted activities undertaken at the site that include:

- storage of material
- erection of a boundary fence

- upgrades the existing building, and
- plant within and around the perimeter of the site.

The applicant also provided written approvals from persons identified Figure 4, after the submissions closed.

As such, these additional materials have been considered as part of the overall proposal.

3.4 Site Visit

A site inspection on 15 December 2022, and a further site and surrounding area inspection on 21 April 2023.

4.0 Description of Site & Surrounding Environment

The site is located at 19-27 Cornwall Street, Timaru. A description of the site and surrounding environment is contained in the Notification Report, and not repeated here.

5.0 Development History

5.1 Development History of the Site

There is no resource or building consent history relevant for this application.

5.2 Development History of Land in the Vicinity of the Site

There is no resource or building consent history in the vicinity of the subject site that is pertinent to the consideration of the application.

6.0 Planning Framework

6.1 Operative Timaru District Plan 2005 (ODP)

The collective application site is zoned Commercial 3 Zone in the ODP, and requires resource consent of the following reasons:

- A **Discretionary activity** pursuant to Part D3, Section 3.5.8, Rule 3.7, for the storage of materials within the application site.
- A **Non-Complying activity** pursuant to Part D3, Section 3.5.8, Rule 4 as industry is not listed as a permitted, controlled or discretionary activity in the Commercial 3 Zone.
- A **Discretionary activity** pursuant to Part D6, Section 6.7.5, Rule 6.7.5 as the proposal does not comply with Part D6, Section 6.7.2, Rule 4 which requires parking and loading spaces to be formed, sealed and drained. The parking and loading area within the site is of a gravel formation.

It is noted that the reason for consent pursuant to Part D6, Section 6.14, Rule 6.14.2.1(1) for the siting of the shipping container has been removed as identified in the notification decision, given this part of the proposal has been omitted.

6.2 Proposed Timaru District Plan 2022 (PDP)

The PDP was notified on 22 September 2022 and submissions closed on 15 December 2022, where the subject site is zoned General Residential Zone, and described in Part 3 – *Area Specific Matters, Zones, General Residential Zone*. No rules relevant to the application site and zone have immediate legal effect pursuant to s86B(3) of the RMA. As such, there are no triggers for consent under the PDP.

6.3 National Environmental Standards (NES)

6.3.1 *The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (the NES-CS)*

The NES-CS was given effect to on the 1st January 2012. The regulations provide a consistent set of planning controls and soil contaminant criteria. These are in place to ensure that land affected by contaminants are identified and assessed appropriately.

The NESCS applies when a person wants to undertake an activity described in subclauses (2) to (6) on a piece of land described in subclause (7) or (8) – where:

- Subclause 7 refers to a piece of land described as an activity or industry described in the HAIL being undertaken (a), has been undertaken (b) or is most likely than not is being or has been undertaken (c) on it.
- Subclause (8)(c) refers to subdividing productive land in a way that causes the piece of land to stop being production land, and
- Subclause (8)(d) refers to change the use of the piece of productive land in a way that causes the piece of land to stop being production land.

The AEE states that no listed Hazardous Activities and Industries List (HAIL) have occurred on the site and relies on the Environment Canterbury Listed Land Use Register that identified no listed HAIL on the site.

The NES-CS, therefore does not apply.

6.3.2 *Other NES*

There are eight other National Environmental Standards that have been prepared under Sections 43 and 44 of the RMA and are in force as regulations. These cover marine aquaculture, fresh water, air quality, human drinking water, plantation forestry, telecommunications facilities, electricity transmission, and storing tyres outdoors.

None of these NESs apply.

6.4 Activity Status

The application was lodged as a Non complying activity under the ODP.

Despite the change in the planning framework with the notification of the PDP, there is no change in relation to additional triggers for which consent or the activity status, as originally lodged.

Overall the application is considered and processed as a **Non-complying Activity**.

7.0 Notification and Submissions

7.1 Notification

On 7 October 2022, the application was determined to be publicly notified under delegated authority, and is detailed earlier in this Report. On 16 May 2023, the Resource Consent Notice was published in the Timaru District Council Noticeboard Newspaper. The submission period closed on 13 June 2023.

7.2 Submissions

At the end of the submission period, two submissions were received (as detailed earlier in this Report with a summary of relief sought). These submissions were received within the specified timeframe. An assessment of the effects associated with the relevant concerns outlined in the submissions are contained within Section 9 of this Report.

Pursuant to Section 100(b) of the RMA, the Council has an obligation to hold a hearing as at least one of the submitters has requested to be heard and has not subsequently advised that he or she does not wish to be heard.

7.3 Written Approvals

Section 104(3) of the RMA provides that a consent authority may not have regard to any effect on a person who has given written approval to the application. These are outlined earlier in this Report and received post notification. None of these written approvals were withdrawn at the time of writing this Report.

7.4 Amendments to the Application

No changes have been made to the proposal after notification or close of submissions, except for undertaking the mitigation i.e. planting and fencing, and omission of the container storage from the application and physical removal from the site.

8.0 Statutory Consideration

This section of the report details the provision of the RMA that are relevant to the consideration and determination of the application. When considering an application for resource consent for a discretionary activity Council must have regard to Part 2, and sections 104 and 104B of the RMA, along with sections 106 and 108, where relevant.

Section 104(1) of the RMA requires that, subject to Part 2 regard should be had to the following matters:

- (a) any actual and potential effects on the environment of allowing the activity; and*
- (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
- (b) any relevant provisions of-*
 - (i) a national environmental standard:*
 - (ii) other regulations:*

- (iii) *a national policy statement:*
 - (iv) *a New Zealand coastal policy statement:*
 - (v) *a regional policy statement or proposed regional policy statement:*
 - (vi) *a plan or proposed plan; and*
- (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

Section 104B of the RMA requires:

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—

- (a) may grant or refuse the application; and*
- (b) if it grants the application, may impose conditions under section 108.*

Section 104D states:

- (1) *Despite any decision made for the purpose of section 95A(2)(a) in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—*
 - (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*
 - (b) the application is for an activity that will not be contrary to the objectives and policies of—*
 - (i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
 - (ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
 - (iii) both the relevant plan and the relevant proposed plan if there is both a plan and a proposed plan in respect of the activity.*
- (2) *To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity.*

As a Non-complying activity, Council may grant or refuse consent under s104B of the RMA.

It is considered that the information provided by the applicant is adequate (coupled with the assessment undertaken in this Report) to determine the application in terms of section 104(6) of the RMA.

While the recommendation is to refuse consent, if consent was to be granted, under s108 conditions may be imposed. Section 108 provides for consent to be granted subject to conditions and sets out the kind of conditions that may be imposed.

The remainder of this Report has been set out to address these provisions of the RMA.

9.0 Actual and Potential Environmental Effects

An assessment of the actual and potential effects on the environment, pursuant to Section 104(1)(a) of the RMA, is provided below.

Relevant to the assessment is that Section 104(2) of the RMA provides consent authorities with a discretionary power to disregard the effects of activities that are permitted by a rule in the District Plan when deciding on whether to grant resource consent.

Having reviewed the District Plan, and the triggers for which consent is required, the application of a permitted baseline offers no benefit towards determining this application. The permitted measures, are included in the Notification Report. Of relevance, is the ability to establish small scale commercial uses and associated office space and storage space where the latter can be located outside and requires to be screened. In relation to distinct nature of the proposed activity and the scale at which it will occupy the outdoor space, this is not what the commercial zone among a residential area is expected to promote.

The following actual and potential effects have been identified.

9.1 Positive effects

Positive effects include economic wellbeing of the applicant.

9.2 Permitted Baseline

A consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or plan permits an activity with that effect. This is termed the 'permitted baseline'.

The stages are public notification in making an assessment for the purposes of section 95A(8)(b) in deciding whether the activity will have adverse effects on the environment that are more than minor (s95D(a)(b)); for limited notification under sections 95B(4) and (9) in deciding whether a person is an "affected person" (s95E(2)(a)); and under section 104(1)(a) when considering the actual and potential effects of the proposed activity on the environment (section 104(2)).

It is at the consent authority's discretion as to whether the permitted baseline is taken into account when considering an application.

For this application, it is not considered appropriate apply a permitted baseline in relation to the proposed activity. While it is acknowledged any earthworks and construction works associated within giving effect to this consent, if granted will likely be within the permitted thresholds and therefore is not assessed in this Report.

With the above, the effects considered under this Report directly relate to the reasons for consent within the context of the receiving environment.

9.3 Actual & Potential Effects on the Environment

9.3.1 *Transportation and Stormwater*

9.3.1.1 *Submission*

The submitter concerns in relation to transport and access, is associated with the nature of the business. Although the use of larger vehicle is proposed to be managed by way of using smaller delivery vehicles, it remains unclear if the use of smaller vehicles will increase the number of trips.

The road network immediate to the site and surrounding environment is characterised and provided to a large extent to support residential activities. In relation to the industrial characteristics of the proposal, there may be increased review and maintenance of the road network in this location.

All matters raised in the submitter concerns are addressed in the below assessment.

9.3.1.2 Functionality of the Transport Network and Safety of Users and Vehicular Access, and Stormwater Flows

Council expert Mr Kevin Kemp confirms the formation of existing crossing appear suitable. Without any consenting information this however requires undergoing further assessment should this consent be issued.

Extending from the crossing part of the access and manoeuvring area is formed, while there are parts which are proposed to remain as metal. Although Mr Kemp suggests that these be formed, I disagree and consider if all weather use is provided with suitable stormwater system then a formed area is not necessary. The context of the Mr Kemp’s recommendation is to manage debris being carried to the road network and noise nuisance. In relation the debris management this can be suitably provided as per the application, while the noise nuisance is likely to affect the adjoining site most, and written approvals from all owners and occupiers were provided from these.

Mr. Kemp has reviewed the onsite manoeuvring and street parking arrangement, and confirms that compliance with the relevant standard can be achieved. Mr Kemp in consultation with the Council assets team confirms changes to the road network such as changes to the existing angle parks and no parking lines. With these, any safety concerns are avoided. Refer to Figure 5.

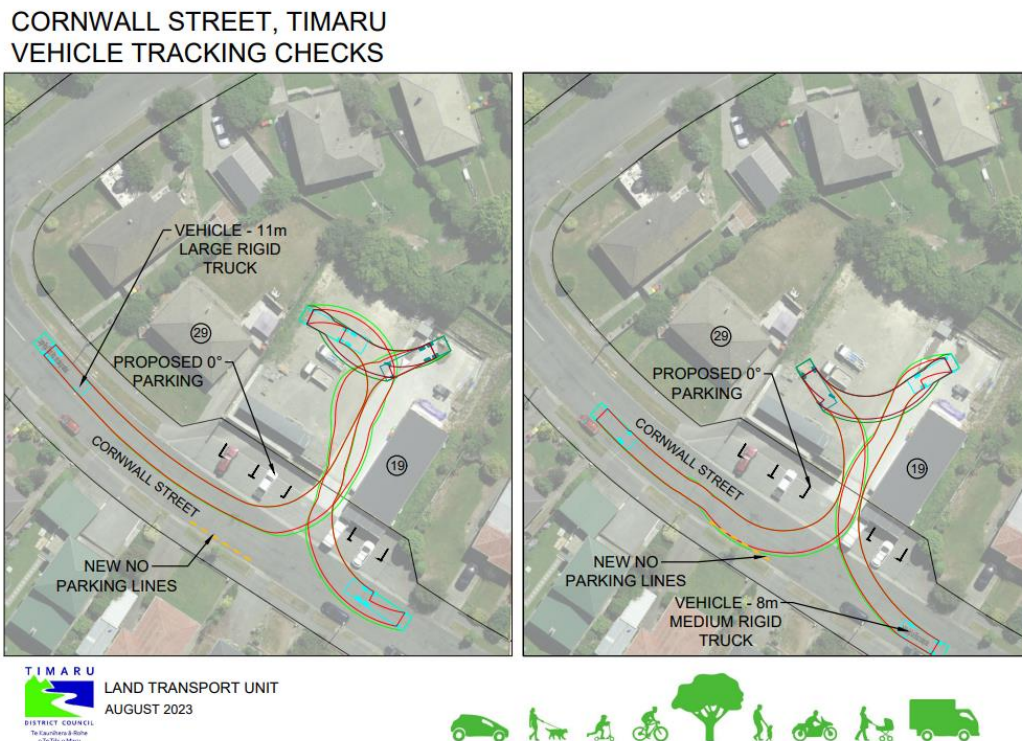


Figure 5 – Vehicle Tracking Curves and Road Infrastructure Changes
Source: Council Expert Memo

All deliveries and parking associated with the proposal will occur onsite. This includes staff parking. Mr Kemp suggests deliveries to occur outside the peak period, i.e. after 9am and before 3pm given the residential surrounding. This will avoid conflict between the occupants of the surrounding residential area, particularly the school peak times, as there is higher likelihood of occupants being in school.

Mr Kemp notes that 15 vehicle movements are expected for the site. Without a specific assessment of the activity, its operational character and timing, and knowledge of staff movements, this frequency is not appropriately informed. The recommendation for appropriate speed is also not explored sufficiently i.e. what is a suitable speed. Although unknown, and if a change in speed occurs, that will likely affect the wider public. Mr Kemp suggests 30 km / hour when the current speed limit is 50 km / hour. A traffic statement will be useful for the applicant to provide for the decision maker.

Mr Kemp confirms based on the pre and post development calculations, an additional 1.731 litres per second rate, resulting in 6.23 cubic metres of stormwater that will be generated by the existing site formation over the 4.22 litres per second generated by the previous development. With this increase, suitable stormwater management system needs to be established on site. A stormwater discharge certificate will be required for this. The establishment of the new stormwater management system will require a building consent for an alteration of the site's private drainage system. At these later stages, confirmation can be provided.

Aside from the traffic intensity impact that remains unclear, the aforementioned reasons and with appropriate conditions associated with the transportation matters are included, any resulting adverse effects are avoided or mitigated.

9.3.2 Development Layout, Character and Amenity Values

9.3.2.1 Submission

The submitter concerns include reduced residential amenity values and this in part is associated with the nature of the proposal which may be screened from the outside in form of fencing and landscaping, will from an operational perspective remain unlike activities that can be reasonably foreseen in the midst of residential areas, such as small commercial use such as a retail or person services.

All matters raised by submitters are addressed in the below assessment.

9.3.2.2 Residential character and amenity values

In assessing the effects of the proposal on the character of the surrounding environment, the proposal will introduce a noticeable change when compared with activities previously undertaken on the site and those present within the surrounding environment including those that are expected to occur on such small commercial zones sites.

Outlined earlier, is the intent for the zone and the application site where non-residential activities can occur if these are undertaken while acknowledging the receiving environment, and inherently that compliment the residential neighbourhood i.e. local conveniences. On the contrary, the proposal has no such offering for this community.

The use of 2.0m high steel fencing to achieve the necessary screening where the site is essentially locked out physically and visually. This extent of fencing is not present in this location particularly as

the vegetation sitting behind the fence do not offer the softening found in residential areas, and this results in an imbalance balance between built and natural character within the receiving environment.

Noise nuisance is outlined earlier in this Report related to the operation of the activity, particularly vehicle noise. Although the proposal confirms this to be within the permitted thresholds the perceptual change in noise levels will likely be higher than that present in residential zones and suburbs.

Lighting is another area of change which again has been referred to meet the permitted thresholds specifically in the way these are located and orientated such that light spill does not reach adjoining sensitive activities. With all adjoining properties having provided written approval this adverse impact of illuminance is on those across the road. With distance and the road environment containing lighting, any light will be absorbed within the street illuminance already present.

Above the physical elements of the site and proposal, the operational change will cause the highest level of changes to the residential character and amenity values. Of relevance are movements associated with deliveries, staff coming and leaving the site among customers – and more so having an activity that will not necessary be closely associated with this neighbourhood. Comparing with a commercial use for instance such as retail, veterinary clinic, tailoring or personal services.

While the proposal may stand on the boarder of the activities referred to above whereby independent mitigations are offered to address potential adverse effects, the proposal does stand inconsistent with the receiving environment and anticipated environment relying on the ODP zones.

For the foregoing reasons, within the context of the receiving environment, the proposal remains inconsistent with the expected use of the application site and will likely introduce adverse effects from its operation that is not already present in the environment. As such, the proposal is considered inappropriate.

It must be noted that while conditions are included these set ongoing requirements associated with

9.3.3 Other effects

9.3.3.1 Submission

While not directly specified, the issues raised by submitters do allude to reverse sensitivity in form of the unsuitable location of the proposal in this locality and within the application site.

9.3.3.2 Reverse Sensitivity

It is recognised that issues regarding reverse sensitivity can arise from establishing activities not anticipated or complimentary to activities already present within an environment, particularly with the intended industrial use among established residential developments. Within the context of this receiving environment, the industrial characteristics of the proposal (vehicle driven access, staff intensity and location of the activity where there is no complimentary businesses to compliment this proposal) set it apart. With this, the proposal is likely to create land use and user conflicts. As such, reverse sensitivity effects are likely to arise from this proposal.

9.3.3.3 Cumulative Impact

A cumulative impact are included in the definition of 'effect' in s3 of the RMA as effects that can build up over time or occur in combination with other effects. In this instance, there is the potential for

cumulative effects to arise from increased residential development, increased vehicle movements, and intensification of development causing a change in character and effects on amenity values. Assessing a cumulative effect is limited to the consequences of granting an application. For a cumulative effect to be significant, it must have breached a threshold, or 'tipped the balance'. A cumulative effect is an effect which arises over time and or in combination with other effects. Noting that this is not the same as a potential effect.

Cumulative effects of this proposal can include an effect generated by the proposal which is cumulative upon the effect of any other development approved by Council.

The site and the proposed collectively display attributes and characteristics such as use of the site, and consistency with the receiving environment that allude to a departure of what is anticipated (particularly as the site is zoned General Residential in the PDP recognising the use of the site perhaps is best to remain small scale commercial or residential), and as such, introduces new activities in this locality that is unlikely to integrate with or compliment existing activities.

For the foregoing reasons, the proposal is considered to result in cumulative effects.

9.3.3.4 Precedent

Case law has established that the precedent of granting a resource consent is a relevant factor for a consent authority in considering whether to grant a non-complying resource consent.

A precedent is likely to arise in situations where consent is granted to a non-complying activity that lacks the evident unique, unusual or distinguishing qualities that serve to take the application outside of the generality of cases or similar sites in the vicinity. In other words, if an activity is sufficiently unusual and sufficiently outside the run of foreseeable other proposals it avoids any precedent effect and can be approved.

In this instance, the proposal requires resource consent as a non-complying activity. It is considered that the application is significantly distinguished from other potential consent applications for similar development within the vicinity for the reasons detailed earlier in this Report. These include the location of the site midst of a residential zone and establishment, and the nature of the receiving environment, extending to an access through a residential area.

Overall, it is considered that the proposal is likely to create an undesirable precedent.

9.3.4 Conclusion on Effects

In summary, my opinion is that there are additional effects that may be generated by the proposal beyond those identified in the application and the above assessment.

Overall, I consider that the proposal will generate adverse effects that will not be appropriately managed and mitigated to maintain a coherent residential environment where any non-residential use is expected to compliment and integrate.

Any actual and potential adverse effects therefore not be acceptable from a resource management perspective.

10.0 Relevant Statutory Documents

In considering a consent application, a consent authority must have regard to any relevant provision of a national environmental standard or regulation, national and regional policy statements, and a plan or proposed plan. The relevant provisions and an analysis is provided below.

10.1 National Policy Statements

A total of seven National Policy Statements are in place, and these include:

- Freshwater Management
- Renewable Electricity Generation
- Electricity Transmission
- Urban Development
- Highly Productive Land
- Indigenous Biodiversity, and
- New Zealand Coastal Policy Statement.

Of these, the National Policy Statement on Urban Development (NPS-UD) is relevant to the consideration of this application. The NPS-UD is about recognising the national significance of:

- a. urban environments and the need to enable such environments to develop and change, and
- b. providing sufficient development capacity to meet the needs of people and communities and future generations in urban environments.

Many of the provisions included within the NPS-UD are focussed on ensuring that sufficient zoned land and associated infrastructure and planning provisions are provided by local authorities to facilitate expected population growth. These are predominantly to be considered in plan making and monitoring and, as such, are not relevant to the consideration of the proposal.

Notwithstanding this, Objective 3 states regional policy statements and district plans need to enable more people to live in, and more businesses and community services to be located in, areas of an urban environment close to centre zones, well-serviced public transport, and a high demand for housing or for business land in the area. Policy 3 requires district plans to enable building heights and densities of urban form to realise as much development capacity as possible within the city centres zones to maximise benefits of intensification.

Given the Site's location described earlier in this Report, the proposal may be consistent with the relevant provisions of the NPS-UD, however in relation to the direction of the PDP that gives effect to this NPS, it remains inconsistent by removing the ability for future residential use as the PDP anticipates.

No other National Policy Statements are of relevance to this application.

10.2 National Environmental Standards

There are no National Environmental Standards of relevance to this application.

10.3 Canterbury Regional Policy Statement

The regional policy statement provides an overview of the resource management issues in the Canterbury region, and the objectives, policies and methods to achieve integrated management of natural and physical resources. These methods include directions for provisions in district and regional plans.

It is considered that the Operative and Proposed District Plans have been prepared to give effect to the Regional Policy Statement, and therefore, an evaluation under the Regional Policy Statement is not necessary.

10.4 Operative Timaru District Plan 2005

The site is zoned Commercial 3 by the ODP. Given the zoning of the site and the proposed activity, it is considered that the following provisions from the District Plan are relevant to the consideration of the application:

Part B: Resource Management Issues, Objectives, Policies, Methods, Environmental Results

(8) Rooding

Objective (2) - Avoid, reduce, or mitigate any adverse effects on the environment occurring in association with the rooding network.

Objective (3) - Minimise conflicts between land use and the rooding network, while still providing for mobility, and safe and efficient ingress and egress to roads.

Objective (4) Ensure that the parking impact of activities on the capacity and safety of the rooding system is adequately catered for so as to avoid adverse effects on the environment.

Policy (5) To provide a rooding system that allows safe and efficient access to and from adjoining private property, and to ensure loading and unloading activity is carried out off the road.

Policy (6) To discourage traffic in areas where it would have significant adverse environmental effects.

Policy (7) To have regard to sound traffic planning and design, through appropriate standards including:

- *Guidelines for Establishing Rural Selling Places (RTS 3; 1992)*
- *Guidelines for Visibility at Driveways (RTS 6; 1993);*
- *Advertising Signs and Road Safety: Design and Location Guidelines (RTS 7 1993);*
- *Transit New Zealand guidelines.*

Comment:

As detailed in the assessment of effects within this report, the proposal addresses parts of the transport outcomes to ensure safe and function road network including changes within the road corridor such as parking changes and no parking areas being identified. Aside from these there remains the doubt about the intensity of movements, impact of road and any user conflicts, particularly as Mr Kemp suggests reduction in speed limit that affects the public and the change is led

by a private proposal i.e. this application. Given the partial uncertainties noted here and detailed earlier in this Report, the proposal is partly inconsistent with above objectives and policies.

(9) Services and Infrastructure

Objective (1) –

(a) Avoid, remedy, or mitigate the adverse effects of development, including servicing infrastructure, on the environment.

(b) Ensure that an adequate level of infrastructure is provided to enable the efficient use and development of natural and physical resources by the recovery of the costs of providing that infrastructure directly from developers and, where appropriate, by apportioning costs between the developer and the community in accordance with the relative benefits of providing that infrastructure.

Policy (1) To ensure that the means of providing water to a site is established at the time of subdivision.

Policy (2) To require financial contributions to develop and maintain the District's water supply infrastructure and reticulation, i.e. headworks, mains, and reservoir; roading network, water, sewerage or stormwater systems. Any cash contribution will be spent on the infrastructure within ten years of payment.

Policy (3) To discourage development that may compromise subsequent efficient servicing and subdivision of land identified for future residential development.

Comment:

Council experts confirm the above as appropriate, and conditions of consent included within the decision are considered to ensure the proposal is suitably serviced. The proposal is therefore consistent with these provisions.

Part D: Zones, General Rules, Definitions & Appendices

Zones - (3) Commercial Zones

Objective 3.1.1.1 Minimise the situations where there is conflict between commercial activities and other land uses.

Objective 3.1.1.2 Mitigate the adverse effects of activities in the Commercial Zones and on adjoining Residential Zones.

Policy 3.1.2.1 To use the following Zones to separate commercial activities from residential areas and other sensitive activities.

(4) Commercial 3 (neighbourhood, Timaru only)

Policy 3.1.2.2 To concentrate commercial activities where they will have limited adverse effects on nearby more sensitive activities unless the adverse effects of commercial activities can be mitigated.

Policy 3.1.2.3 To allow for more permissive noise and light levels in commercial areas than provided for in Residential Zones of the District while acknowledging that some restriction on noise levels is required where sensitive land uses share a boundary with a commercial activity. Lmax limits will apply at night time.

Policy 3.1.2.4 To limit the occurrence of activities producing odour or dust emissions in commercial areas.

Policy 3.1.2.5 To control the occurrence of activities using hazardous substances locating in Commercial Zones.

Comments

The proposal is not a commercial use, and as assessed earlier fails to integrate with the residential use and avoid potential conflict. This is despite the proposal not creating nuisance associated with noise, odour and lighting. As such, the proposal remains inconsistent with the above zone related objectives and policies.

10.5 Proposed District Plan

The site is zoned General Residential by the PDP. It is considered that the following provisions are relevant to the consideration of the application:

Part 2 – District Wide Matters, SD - Strategic Direction

SD-O1 – Residential Areas and Activities

- i. *There is sufficient residential [development capacity](#) in existing and proposed [urban areas](#) to meet demand and household choice, provided through:
 - a. *the use of existing zoned greenfield areas;*
 - b. *a range of densities in existing [urban areas](#); and*
 - c. *higher residential densities in close proximity to the Timaru and Geraldine town centres, and Highfield Village Mall;*
 - d. *the new Future Development Areas identified for the General Residential Zone.**
- ii. *limited rural lifestyle development opportunities are provided where they concentrate and are attached to existing [urban areas](#), achieve a coordinated pattern of development and are capable of efficiently connecting to reticulated sewer and [water infrastructure](#); and*
- iii. *limited residential opportunities are maintained in existing rural settlements, subject to adequate servicing.*

SD-O6 – Business Areas and Activities

Business and economic prosperity in the District is enabled in appropriate locations, including by:

- i. *providing sufficient [land](#) for a range of business activities to cater for projected growth;*
- ii. *providing opportunities for a range of business activities to establish and prosper, provided that [commercial activities](#) outside of commercial areas are limited so they do not detract from the role and function of the City Centre and Town Centre zones.*

Comments:

For the reasons outlined earlier in this Report, including the assessment against the ODP, the proposal is inconsistent with the above provisions where the application site is being zoned General Residential with an industrial / business use proposed. Of importance is the proposed will likely detract from planned business activity areas and contradict with the planned residential area i.e. the application site, proposing incompatible land use activities to coexist.

Part 3 - Area Specific Matters, Zones, Residential Zones - General Residential Zone

GRZ-O1 – Purpose

The General Residential Zone primarily provides for [residential activities](#), a mix of housing types, along with other complimentary activities that support the wellbeing of residents.

GRZ-O2 – Character and qualities of the General Residential Zone

The character and qualities of the General Residential Zone comprise:

1. a low to moderate [building site coverage](#); and
2. a built form of single and two-storey attached or detached [buildings](#); and
3. ample space around [buildings](#); and
4. provision for on-site outdoor living areas; and
5. [sites](#) that incorporate plantings; and
6. a good level of sunlight access; and
7. a good level of privacy between properties.

GRZ-P1 – Residential Activities

Enable [residential activities](#) and a wide range of [residential unit](#) types and sizes where:

1. they are compatible with the character and qualities of the General Residential Zone; and
2. outdoor living areas:
 - a. are directly assessable from the [residential unit](#) and have access to sunlight; and
 - b. provide ample opportunity for outdoor living, tree and garden planting; and
3. [residential units](#) and [accessory buildings](#) are located to:
 - a. take advantage of sunlight; and
 - b. ensure the shading and privacy of adjoining [sites](#) is not unreasonably compromised; and
4. ample open space is provided around [buildings](#) that maintains the character and qualities of the zone.

GRZ-P2 – Appropriate non-residential activities

Enable [home business](#), small-scale non-residential activities where:

1. they are compatible with the character and qualities of the surrounding area; and
2. any home-based business is ancillary to a [residential activity](#); and
3. they do not result in adverse [effects](#) on the [amenity values](#) of adjoining [sites](#) arising from the movement of people and vehicles associated with the activity that cannot be mitigated; and
4. the hours of operation are compatible with residential amenity.

GRZ-P4 – Other non-residential activities and buildings

Only allow other **non-residential activities** and buildings where:

1. they support the **wellbeing of residents** in the area, or have a functional need to locate in the zone; and
2. any adverse effects on the **residential amenity values** are avoided or minimised; and
3. they maintain the **anticipated character, qualities and purpose** of the General Residential Zone.

GRZ-P5 – Incompatible activities

Avoid activities that are likely to be **incompatible or inconsistent** with the character, qualities and purpose of the General Residential Zone, unless:

1. the activity is such a small scale that it will not have any adverse effects on residential amenity; or
2. the site adjoins a zone that permits that activity and the activity will not have any adverse effects on residential amenity; or
3. GRZ-P4 is complied with.

Comments:

As assessed above, the proposal is generally inconsistent with these provisions.

The key inconsistency is the proposal being non-residential and above this, not being able to compliment or has a function within a residential area. Extending on this the adverse effects on residential amenity is not avoided or minimised. The character or quality of the General Residential Zone is not maintained.

The policy direction is to avoid activities that are likely to be incompatible or inconsistent with the character, qualities and purpose of the zone, unless it has no adverse effect on residential amenity or adjoins a site that permits that activity or the non-residential activities policies are met.

For the foregoing reasons, the proposal does not avoid incompatibility and inconsistency (GRZ-P5) and therefore is **contrary** to the zone objectives and policies.

Weighting between Operative District Plan and Proposed District Plan

A weighting assessment in relation to the ODP and PDP is only required if the conclusions reached under either planning document are different i.e. inconsistent with the ODP and contrary to the PDP. In this case, relative to the change in use and purpose of the zone, while factoring in that this application was made prior to the PDP being notified, and submissions yet to be heard, more weight is afforded to the ODP. As such, the proposal is inconsistent with the relevant objectives and policies.

11.0 Other Matters

In addition to the matters of regard covered under sections 104(1)(a), (ab) and (b), section 104(1)(c) states that consideration must be given to "any other matters that the consent authority considers relevant and reasonably necessary to determine the application."

11.1 Conditions of consent

From an environmental effects perspective, the earlier assessment outlines that resulting outcomes are of an adverse nature where concerns have also been registered and conditions included to ensure the proposal operates within the parameters proposed.

Specifically, conditions relate to:

- the activity being carried out as proposed
- ensure that any adverse effects are appropriately identified, monitored and responded
- adhere to the additional controls associated with the use of the site that extends to controlling nuisance such as light spill and noise
- undertaking new planting and the protection of these
- create suitable vehicle crossing, access and manoeuvring, and
- provide suitable changes to ensure the road network remains safe and functional.

It is therefore concluded that if resource consent is granted as sought by the Applicant; compliance with conditions, will assist in managing unacceptable adverse effects on the environment (noting the inconsistency with the objectives and policies based on which it is considered the proposal be refused).

The Applicant has not reviewed or confirmed these conditions as acceptable.

11.2 Submissions

The submission received by the council in the processing of this application has been reviewed and considered in the overall assessment of effects in this report and set out earlier in this Report, where the key issue relates to the residential character and amenity, and operational impact of the proposal on the road infrastructure.

Council experts have reviewed the submission as required and incorporated comments into their assessments accordingly.

11.3 Any other matters (s104(c))

No other matters considered relevant and reasonably necessary to determine the application.

12.0 Non-complying Activity Gateway Test

Section 104D provides an additional layer of scrutiny to the consideration of applications for Non-complying Activities. Under section 104D an application must pass one of the two following gateway or threshold tests to be eligible for approval:

- Under section 104D(1)(a) the effects of an activity on the environment (excluding those effects to which a written approval has been provided) must be no more than minor; or
- Under section 104D(1)(b) the application must be for an activity that is not contrary to the relevant objectives and policies of a District Plan or proposed District Plan.

The measures proposed by the Applicant to avoid, remedy and mitigate adverse effects associated with the proposal, and in relation to the findings earlier in this Report and the Notification Report, the likely effects of the proposal is more than minor.

The development inhibits inconsistencies, which relate to the industrial use that is not provided for or is able to integrate with the receiving environment. Resulting effects and inconsistency will also be discernible. As such, the proposal is **not considered to align with the objectives and policies**, although these may not be contrary relative to the ODP, the proposal is certainly contrary to PDP.

Having considered these tests, it is concluded that the proposal overall results in adverse effects which **are more than minor**, and is **not contrary to the ODP** (but contrary to the PDP, however the weighting applier is more on the ODP) zone objectives and policies. These are detailed earlier in this Report, and consideration of the application under section 104 can therefore be made.

13.0 Part 2 Matters

Part 2 sets out the purpose and principles of the RMA. The purpose of the RMA is to promote the sustainable management of natural and physical resources. The various principals listed in Part 2 support this purpose. Those aspects of the Timaru District Plan relevant to this application have been 'competently prepared under the RMA', in the sense referred to by the Court of Appeal¹. There is therefore no obligation to conduct an evaluation under Part 2, and such consideration should not be used to override the plan provisions.

As the proposal is considered to be in accordance with the ODP and PDP, it is unlikely to be consistent with the purpose and principles of the RMA, as set out in Part 2.

14.0 Conclusion

In relation to the assessment within this report, it is considered that the proposal shall be refused.

15.0 Recommendation

Pursuant to sections 104, 104B, 104D, and 108 of the RMA, it is recommended that consent **be refused** within the context of the receiving environment, and subject to no contrary evidence being presented at the hearing.



Reported and Recommended by:

Vishal Chandra, Consultant Planner

Date: 25 September 2023

16.0 Appendices

1. Application
2. Notification Decision
3. Public Notice
4. Submissions
5. Further Information
6. Council Expert Memo
7. Draft Conditions of Consent

¹ R J Davidson Family Trust v Marlborough District Council [2018] NZCA 316, paras 74 and 75.