

## RESOURCE MANAGEMENT ACT 1991

### DECISION OF A COMMISSIONER APPOINTED BY THE INVERCARGILL CITY COUNCIL

<b>Applicant:</b>	JJ Ltd
<b>Reference:</b>	RMA/2019/109
<b>Location:</b>	27 Lorne Dacre Road (State Highway 98) and 2137 Winton Lorneville Highway (State Highway 6), Invercargill
<b>Proposal:</b>	Establish and operate a farm vehicle sales and servicing activity
<b>Type of Consent:</b>	Land use consent
<b>Legal Description:</b>	Lots 6 and 7 DP 15006; Lot 1 DP 402989
<b>Zoning:</b>	Rural
<b>Activity Status:</b>	Non-complying Activity
<b>Commissioner:</b>	K J Hovell Being a Hearing Commissioner appointed under Section 34A of the Resource Management Act 1991
<b>Date of Hearing:</b>	13 November 2019
<b>Date of Decision:</b>	3 December 2019
<b>Decision:</b>	Land use consent declined

## **THE PROPOSAL**

1. JJ Ltd has sought approval to establish and operate a farm vehicle sales and service business on land adjoining the northeast corner of the intersection of Lorne Dacre Road (State Highway 98) and Winton Lorneville Road (State Highway 6) at Lorneville.
2. The land subject to the consent (“the site”) has an area of 9.72 hectares. It is currently vacant grassland, except for a farm shed on the eastern side of the property near the road frontage boundary with Lorne Dacre Road. The land rises gently from the corner of the site at the eastern end of the Lorne Dacre Highway to a generally level area to the north and west. Three large shelterbelts along a north-south axis are also present.
3. The site is held in two titles owned by R H & S J Walker and Small Farm Shearing Ltd. The applicant holds conditional sale and purchase agreements for both titles.
4. The proposed development includes the construction of a building with a ground floor area of 1,965 square metres and a maximum height of 10 metres, containing a workshop, parts store and show room. An outdoor display area along the road frontages is also proposed, together with a fenced outdoor storage yard adjoining and a designated vehicle testing area. A vehicle access way will link the showroom/workshop area to a new vehicle crossing onto State Highway 98.
5. A landscape strip between the road frontage and the outdoor display adjacent to the intersection of the highways is proposed. References to the width of this strip vary, and at the hearing the Applicant indicated these should refer to a three-metre wide landscape strip. A hardstanding car parking and manoeuvring area with capacity for 30 cars is also proposed between the outdoor display area and the main building. A 4.1m high by 1.9m wide illuminated freestanding pylon sign is also proposed at the road frontage corner boundary. Signage totalling 35.55 square metres will also be attached to the western and southern facades of the building.
6. The activity will employ 30 staff, three of which are sales staff who operate remotely.
7. There are currently two vehicle accesses to the site with one located on Lorne Dacre Road next to the farm shed, and the other at the northern end of the site off a shared Right of Way that provides residential access to 2139 and 2135 Winton Lorneville Road. It is intended these two accesses will be closed and replaced by a new entry/exit access on the Lorne Dacre Road, some 240 metres from the intersection.

## **PROCESSING THE APPLICATION**

8. The application was received by the Council on 28 June 2019. Written approvals were provided from the following properties:
  - 2139 Winton Lorneville Highway

- 2135 Winton Lorneville Highway
  - 6 Lorne Dacre Road
  - 8 Lorne Dacre Road
  - 10 Lorne Dacre Road
  - 16 Lorne Dacre Road
  - 18 Lorne Dacre Road
  - 30 Lorne Dacre Road
  - 6 Lorneville Wallacetown Highway – Agricentre
  - 20 Lorneville Wallacetown Highway – KGR
  - 871 North Road – Challenge Auto
  - 25 Wallacetown Lorneville Highway - Goldpine
9. A plan supplied to me by the Council showed these persons included all adjoining land owners and occupiers (excluding those of 59 Lorne Dacre Road) and other nearby businesses.
  10. A letter from WSP Opus on behalf of the New Zealand Transport Agency dated 13 June 2019 advised the Agency would consider providing written approval subject to an application being lodged seeking the inclusion of various conditions and an Advice Note. This matter is discussed further below.
  11. Further information was requested under Section 92 of the Resource Management Act 1991 (“the RMA”) on 17 July 2019 and this information was provided by the applicant on 22 July 2019.
  12. On 7 August 2019 the Director of Environmental and Planning Services, acting under delegated authority, decided the application required notification. The application was notified on 13 August 2019 and the period for lodging submissions closed on 20 September 2019. Two submissions were lodged, both in support of the application, from:
    - Robert and Susan Walker, owners of one of the lots subject to the application
    - Catherine Croft, of 2135 Winton Lorneville Highway, who has also given her written approval
  13. The hearing to consider the application was held on 13 November 2019. Immediately prior to the hearing, the Hearing Commissioner visited the locality. The parties to the hearing agreed with the Hearing Commissioner’s view that an inspection on the site was not required. The Hearing Commissioner undertook a further inspection of the locality on 26 November 2019.
  14. At the hearing, the Hearing Commissioner requested a copy of the actual written approval from the New Zealand Transport Agency. This was provided via the Council on 15 November 2019. The hearing was formally closed on that day.

## SECTION 42A REPORT

15. A report prepared by Gareth Clarke, Consultant Planner to the Invercargill City Council, under section 42A of the RMA was circulated prior to the hearing. Mr Clarke is an experienced planner. In his report he explained that regard should only be had to the Council's District Plan, recently made operative. He outlined that resource consent was required for the following reasons:
  - i. The proposed farm vehicle sales and servicing activity requires resource consent for a non-complying activity under Rule 3.38.3 because being a rural servicing activity it is not listed as a permitted, discretionary or prohibited activity in the Rural Zone.
  - ii. The proposed vehicle access to State Highway 98 (Lorne Dacre Road) requires resource consent for a discretionary activity under Rule 3.20.11 because the speed limit of this section of the State Highway exceeds 50 kph and the proposed farm vehicle sales and service activity is a non-complying activity.
  - iii. The proposed signage requires resource consent as a non-complying activity under Rule 3.16.5 because the areal extent and height of the proposed freestanding signage exceeds the permitted standards under Rule 3.16.1 by more than 20%, and the sign will be illuminated.
  - iv. The earthworks activities associated with the proposed development of the site require resource consent for a discretionary activity under Rule 3.17.7 because the earthworks required do not fit within one of the permitted exemptions listed under Rule 3.17.1 and will exceed the maximum volume of earthworks permitted in the Rural Zone under Rule 3.17.2.
  - v. LAeq noise levels may for brief periods exceed the limits in Rule 3.13.2. This requires resource consent approval as a discretionary activity under Rule 3.13.18(A).
16. Mr Clarke noted the site is not identified in the District Plan as having any special characteristics or values. He considered the key issue for this application to be the potential effects on rural character and amenity values. In that regard he accepted the proposed development will be reasonably in keeping with the existing rural servicing developments in the vicinity of the application site, but those existing activities either benefit from a zoning that provides for them (in the case of Agricentre and Goldpine), or, in the case of the service station, are historic developments that pre-date the current planning framework.
17. Mr Clarke also accepted not all rural parts of the District are uniformly 'agricultural' in nature and appearance, and in this case, the Lorneville Corner serves as something of a gateway to the city where rural land uses transition into a more urban environment, which the District Plan recognises as a key function of this area through the Business 5 Zone on

the western side of State Highway 6. That zoning enables the establishment of the type of rural servicing activity that is the subject of this application. He added however, the fact that the three other corners of the intersection of the state highways are occupied by similar rural servicing activities is not in itself, a justification for further intensification of non-rural activities in the area. He went on to state:

*“... the scale of the activity proposed is such that the open rural vistas that currently contribute an element of openness to the area will potentially be replaced with close quarters views of large, bulky machinery and another large, dominant commercial building (in addition to the associated signage, security fencing and hard surface areas that are not typical of rural environments). It is accepted that the northern and eastern portions of the site that are to remain in pasture for agricultural use will largely retain their existing rural character. However, the current openness of the site and the vistas to the north and east of the Lorneville corner, an important characteristic of rural amenity, will be significantly reduced. The Lorneville corner area will become more enclosed in nature, a characteristic that is more likely to be anticipated in urban areas. The site will be noticeably more commercial in nature, and include large car parking and hardstand areas, as well as a substantial amount of signage (including a large illuminated pylon sign), both of which are incongruous with the amenity anticipated in the Rural Zone. For this reason, it is considered that the proposed development is likely to have adverse effects on rural amenity and the environment that are more than minor.”*

18. In relation to noise, Mr Clarke accepted that the machinery being tested is typical of machinery found on farms throughout the region. Notwithstanding the written approvals given by residents in the locality, he had concern the testing of vehicles could generate noise with greater impact than what can reasonably be expected giving rise to a potential for adverse effects on rural amenity that are more than minor.
19. Mr Clarke noted the New Zealand Transport Agency has provided written approval for the proposal on the basis of the conditions requested by the Agency have now been promoted by the applicant. Subject to the imposition of these conditions on any consent granted Mr Clarke considered the adverse effects of the proposed activity on the functioning and safety of the transportation network are minor.
20. Mr Clarke was of the view the relocation of the business from its existing site within the Business 3 in close proximity of residences to be a positive effect. He does consider however, the development should be located within the nearby Business 5 Zone, with the proposed site giving rise to cumulative effects in terms of providing a pathway for future industrial development on the subject site.
21. The view of Mr Clarke that the proposal's adverse effects on rural amenity and the environment are more than minor provided the basis for him to conclude the development was contrary to Policy Rural.2 of the Regional Policy Statement that states:

*“Manage subdivision, land use change and land development activities in rural areas of Southland, in a way that maintains or enhances rural amenity values and character.”* and Rural Zone Policy 3 of the District Plan that states *“To avoid activities that do not have a need to locate within the Rural Zone and which would result in adverse effects inconsistent with the function, character and amenity provided for by the Rural Zone”*.

22. Having regard to the provisions of section 104 and 104D of the RMA, Mr Clarke concluded the proposal does not adequately mitigate the significant adverse effects on the environment and is contrary to the objectives and policies of the District Plan, the Regional Policy Statement, and the purpose and principles of the RMA. It was his recommendation the application should be declined.

## **THE HEARING**

### **Case for the Applicant**

23. The Applicant was represented at the hearing by Christine McMillan, a qualified and experienced planner employed by Bonisch Consultants. In attendance was Paul Jones, Managing Director of JJ Ltd. Ms McMillan had prepared a written brief of evidence that was received by the Commissioner the day prior to the hearing, together with a landscape report prepared by Baxter Design.
24. It was the view of Ms McMillan that the effects of the development on rural amenity would be less than minor, and she drew support for that from the Baxter Design report. Her reasons for reaching this view are:
  - (a) Buildings on the site would occupy 2% of the site, the fenced yard would be 2.4%, and hard stand areas 6%, leaving 89% of the site remaining in open space with rural activities.
  - (b) The building is set well back from the state highway frontages, being some 37 metres from the corner of the site, with landscaping proposed to soften the building and hard stand areas when viewed from the highways.
  - (c) The form of the building is softened by the proposed use of recessive colours in a grey palette and variation in the building height from 6 to 10 metres.
  - (d) The development will complement the existing land uses in the locality, especially those located on the three other corners of the intersection. She referred to the perspectives of the Baxter Design report as supporting this.
25. Ms McMillan also considered the effects relating to transport and noise to be less than minor, particularly taking into account the written approvals received from the NZ Transport Agency and adjoining residents. Similarly, she considered the effects from parking to be less than minor given the

available space for parking on the site. Ms McMillan acknowledged there would be minor adverse effects related to earthworks and construction activities, noting that in her view they would only be temporary and an unavoidable consequence of the development occurring. Finally, she referred to the positive effects of vacating the existing site.

26. Ms McMillan considered the development consistent with the Objectives and Policies of the Southland Regional Policy Statement and the District Plan, in particular by providing for the sustainable use of the site, through provisions of a business serving the rural sector whilst retaining the majority of the site as open space for use for rural activities.
27. While Ms McMillan agreed with the comments made by Mr Clarke that the proposed development will not have an adverse effect on the amenity of the wider Lorneville roundabout and the scale of development on other sites in the vicinity, she sought to differentiate the site subject to this consent primarily on the basis of the site size and large proportion of the site being retained for rural use. She also highlighted the greater setbacks for buildings being provided by the applicant's proposal when compared with other commercial activities nearby.
28. Ms McMillan also disagreed that the site represents rural open space because of the presence of large hedgerows on the site which restrict views into the site and the dominant land use to the north being rural-residential. She referred to the views into the site from each of the roads noting that these are restricted in some cases by the vegetation on the intersection roundabout, and noted that the dominant view on most of these was of commercial/rural service activities.
29. Ms McMillan referred to the Rural zone rules, noting these did not preclude building in the zone, with farm sheds, dwellings and other buildings, such as those associated with a veterinary clinic, being permitted to a height of 10 metres, 4 metres from the boundary. She could also envisage up to four dwellings being located on the site. It was the view of Ms McMillan that these were all part of the permitted baseline and their effects should be disregarded under section 104(2) of the RMA.
30. Mr Clarke had referred to a resource consent approved for a farm machinery retail and servicing premises approved by the Council in 2012. Ms McMillan considered this significant in that the site has been considered suitable for a rural servicing activity previously.
31. Ms Millan disagreed with the comments of Mr Clarke regarding the proposed signage on the building, noting that there were considerable blank areas around the wording. She also referred to the pylon sign, noting although this was twice the allowable 2 metres in height, it will not be a dominant feature for traffic travelling in each direction and is smaller in size to that at the nearby service station.
32. Ms McMillan set out that the Applicant had considered sites in the Business 5 Zone on the western side of the highway but these were not suitable because the owners would only enter into a leasehold agreement,

rather than sell.

33. Ms McMillan also disagreed with Mr Clarke's assessment of noise from activities on the site, in particular use of the test track, noting adjoining land owners has given their written approval. She did however accept there are cumulative effects associated with the development, albeit reduced given the level of development in the surrounding area. Further, it was her view these effects would not be adverse in the local environment.
34. Finally, Ms McMillan set out her reasons as to why this proposal meets the definition of sustainable development in section 5 of the RMA, noting the proposed development will serve the rural community, thereby providing for its economic wellbeing, and only occupy a small proportion of the site. Overall, she considered:
  - (a) The environmental effects of the proposal would be acceptable given the measures to avoid, remedy or mitigate adverse effects as well as the threshold provided by the permitted baseline.
  - (b) The proposal is consistent with the objectives and policies of the Invercargill City District Plan and the Southland Regional Policy Statement.
  - (c) The proposal will not create a precedent or threaten the integrity of the District Plan.
  - (d) The proposal will achieve the purpose and principles of Part II of the RMA.
35. Ms McMillan concluded consent should be granted subject to the conditions she attached to her evidence.
36. Ms McMillan in her evidence referred to a 3-page Landscape Assessment Report prepared by Baxter Design. Appended to that report were various site plans and photographic views of the site from approaching roads. The report provided comment in response to the objectives in the Invercargill City District Plan:
37. Objective 1 seeks to maintain and enhance the rural environment while allowing productive rural activities to be undertaken. The report noted a large proportion of the site will continue to be used for rural activities and the proposed development in this quasi urban setting will not detract from the side rural environment.
38. Objective 2 seeks to provide for the use and development of rural land while maintaining or enhancing amenity values. The report noted there will be change to the rural character and in part that change may be adverse, but the level is considered low because:
  - (a) The Lorneville corner a transitory point and the first of several gateways to the City.



- (b) The development will only be visible in the direct vicinity, being screened by vegetation when approaching the site from the north. In addition, when approached by traffic and viewed from:
- the east, the land to the right will remain open and retained in pastoral grazing
  - the south, the development is not unexpected
  - the west, other development is present and a large proportion of the subject site is retained as open land
- (c) There will be a loss of part of the existing rural character but a retention of a substantial portion of the rural vista.
39. The report also states that the limited planting south-east of the proposed development should be in groups of 3 – 4 trees, in species appropriate to the location that meet a minimum height of 10 metres. Ms McMillan advised this would be accepted as a condition on any consent granted.
40. The report added in its conclusion the development is a logical extension of the surrounding landscape, would not be an unexpected addition to the wider neighbour character and would have low adverse effect on that amenity.
41. In reply to questions from the Commissioner, Mr Jones outlined the company's business sales were currently located in Dee Street, and while he liked that site, there was no space available for customers test drive the machinery, and this was taking place on adjacent streets, which was most undesirable. He added he personally would be responsible for grazing the surplus land. The intent was to graze sheep, but growing balage was also a possibility. The Commissioner was also advised uplifting of the roadside signage was proposed, and no final decision had been made yet on whether storage of water for fire fighting purposes would be by way of tanks or a pond. Mr Jones also indicated he did not want to relocate activities further back on the site.
42. A lengthy discussion took place between the Commissioner and Ms McMillan as to the appropriateness and validity of the conditions promoted by the Applicant following consultation with the New Zealand Transport Agency. It was noted that:
- i. Where approvals were required from the Agency under other legislation they could not be imposed as a condition of consent, but could be referred to as an Advice Note.
  - ii. Conditions requiring final sign-off and approval of the Agency were not valid, rather, in submitting plans and other details to the Council for approval conditions can be worded to indicate the outcome of any consultation undertaken by the Applicant with the Agency.
  - iii. If consent is granted, it would be appropriate for a definitive

sediment control plan and landscape plan to be approved by the Council.

- iv. Conditions referring to a subdivision and the roadside signage brochure were not needed.

### **Submitters**

43. Two submissions had been received when the application was notified from Catherine Croft and Robert & Susan Walker, both in support of the application. The partner of Ms Croft, Tony Hutchings, spoke at the hearing highlighting the equipment and services provided by the Applicant were essential for farming, and an outdoor area was required as part of the activity.

### **Council's Consultant Planner**

44. Mr Clarke spoke to his report stressing the agricultural use of the subject site over time. He compared this to the sites in the locality that were used for similar commercial activities to that proposed, noting the zoning of the land as Business 5, and the service station which had been on its site for a number of years. In response to the suggestion that the permitted baseline allowed for a vet clinic on the site, it was his view that this was different to what was proposed. In particular, the display of farm machinery as proposed was of a different character to that of a vet clinic.
45. Mr Clarke advised that his view with regard to noise now differed to what was set out in his report, stating that subject to limiting use of the vehicle testing area to 30 minutes per day and inclusion of a review clause, he was now comfortable with the noise effects.
46. In reply to questions from the Commissioner, Mr Clarke did not favour rezoning the land, as it would allow more intensive use over the entire site than what was proposed.

### **Applicant's Right of Reply**

47. Ms McMillan in her right of reply reiterated that a rural site was required for this development, given that no land zoned for Business 5 was available for purchase. She added that JJ Ltd had been operating for some 60 years and wanted security by owning the land where the business was located.
48. Ms Millan also reiterated her position with regard to the previous approval for a similar activity on the site and the permitted baseline. She added, the Applicant would agree to a condition to include a covenant on the title of the site to the effect that no subdivision took place while the land was zoned for rural purposes. She did not however support a plan change at this time to provide for the activity, given the range of activities that could

then take place and their greater impact than what was proposed.

## **ASSESSMENT**

### **Introduction**

49. It is apparent from the Section 42A Report, and the evidence and discussions at the hearing, that the key matter in dispute was the impact on rural amenity values from the proposed development, and the objectives and policies on that issue. However, notwithstanding that, full regard is required to be given to the statutory considerations applying in this case.

### **Statutory Considerations**

50. The applicant and the Council's consultant planner agree that the application is to be considered as a non-complying activity. As a consequence, in order of consideration, the provisions of sections 104D, 104 and 104B of the RMA apply. The relevant parts of these sections state:

#### **104D Particular restrictions for non-complying activities**

- (1) ... 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 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
- (2) To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity.

#### **104 Consideration of applications**

- (1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—
- (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—
    - (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.
- (2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that

- effect.
- (3) A consent authority must not,—
    - (a) when considering an application, have regard to—
      - (ii) any effect on a person who has given written approval to the application:
    - (d) grant a resource consent if the application should have been notified and was not.
  - (6) A consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.

**104B Determination of applications for discretionary or non-complying activities**

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.

- 51. Section 104D requires consideration of the "gateway" test of subsection (1). If the Commissioner is satisfied that the adverse environmental effects of the proposal are minor or that the proposal is not contrary to the objectives and policies of the District Plan then the application can be determined on the basis of the matters listed in section 104. If the Commissioner concludes that it is appropriate to approve the application then section 104B provides for the imposition of conditions. Case law sets out various criteria for determining the appropriateness and content of conditions.
- 52. Section 104(3)(a)(ii) provides that when considering an application any effect on a person who has given written approval to that application is to be disregarded. In that regard any effects on the adjoining landowners and occupiers to the west, including impacts from noise and on visual amenity are to be disregarded because those persons have given their written approval.
- 53. Ms McMillan had argued that regard should be had to the permitted baseline that allowed as of right a vet clinic on the site some four metres from the property boundary. Mr Clarke expressed the view that what was proposed was different to that of a vet clinic, particularly given the application provided for the display of machinery near to the road boundary. I accept the view of Mr Clarke and also note that it is unlikely a building on the size proposed, being up to ten metres in height would form part of a vet clinic development, or given the current level of use of the site, a farm building of that size would be required either. In other words, the effects associated with the vet clinic as a permitted activity differ from the proposed development and the associated outdoor display of machinery.
- 54. Ms McMillan also argued that she could envisage up to four dwellings being erected on the site. However, subdivision is not a permitted activity in the Invercargill City District Plan. The effects of up to four rural-residential units on this land therefore does not form part of the permitted

baseline.

55. For the reasons given in paragraphs 53 and 54 I do not accept that regard should be had to the permitted baseline as set out in section 104(2).
56. Ms McMillan also referred to the 2012 consent given by the Council for a farm machinery retail and servicing premises on this site. She considered this significant and indicated the site was suitable for a rural servicing activity. Details of that development were not provided. However, the District Plan provisions, including the objectives and policies in force in 2012 differed from those now applying. It is my understanding that an approved resource consent that has not been given effect to is deemed to be part of the existing environment. However, that does not apply in this case because the 2012 consent expired in 2017.

#### Section 104D – Adverse Environmental Effects

57. The evidence presented referred to the environmental effects of noise, traffic, earthworks and impacts on amenity. Each is considered below. Any other effects I consider di minimis.

##### (a) Noise

58. Mr Clarke in his section 42A report expressed concern with regard to the noise emanating from the site from machinery using the vehicle testing area. Although the maximum allowable noise levels would not be breached, the average level (the LAeq) would be, and in his view its effect would be more than minor. He acknowledged that written approval had been given by potentially affected persons, but considered the issue relevant because there is potential for the noise to be of a nature that is beyond what is anticipated in the rural environment. At the hearing he modified his stance stating that if a limit of 30 minutes per day was imposed as a condition of consent then his concerns would be met.
59. Having regard to the written approvals submitted, regard cannot be had to the effects of noise in the manner adopted by Mr Clarke. Nor are there any other parties who could reasonably claim to be affected by noise from the development. No written approval was submitted from the property located to the east of the subject property, but there is not dwelling or other use of that land that would be adversely effected by the proposed development.

##### (b) Traffic

60. There was no dispute between Mr Clarke and Ms McMillan on the traffic effects of the proposal. The New Zealand Transport Agency has given its written approval. Notwithstanding the legality, appropriateness and relevance of some of the conditions sought by that Agency, I am satisfied that with the imposition of relevant and suitably worded conditions any environmental traffic effects of the proposal would be less than minor.

(c) Earthworks

61. The Assessment of Environmental Effects states on page 14:
- The nature and volume of any fill or extracted material proposed - Earthworks will be required on site in order to form the building platform, access, car parking and hard stand areas within the site. The volume of earthworks is anticipated to be approximately 7000m<sup>3</sup>.*
62. No additional details were included in the evidence presented at the hearing, nor are any details shown on the plans. It is not clear what areas are subject to cut or fill. The South West Perspective sketch prepared by Beattie McDowell Architects Ltd suggests the ground level adjacent to the corner of the site at the intersection of the state highways was level with the adjoining roadways. That would require fill of a metre or more, and impact on the extent to which machinery on display would be seen. The absence of information on areas of cut and fill does not allow the direct effects arising from the earthworks and their consequences to be assessed.
63. Mr Clarke and Ms McMillan agreed that if the proposal is approved a sediment and dust control management plan would be required to avoid sediment runoff and manage any dust nuisance that may arise. Such management plans, approved by the Council, would be appropriate.
64. I did consider seeking further information on this matter following the hearing, but I concluded it would not alter my overall conclusion that this application should not be granted consent

(d) Visual Impacts and Amenity

65. The Assessment of Environmental Effects submitted with the application made reference to the visual impacts of the development on pages 9 and 10, acknowledging the development of the site will change the amenity on the north eastern corner of the Lorneville roundabout through the addition of the new building, display areas and signage. It was also stated:
- (i) a 2 metre (amended to 3 at the hearing) landscape strip would soften the impact of the development; and
  - (ii) locating the proposed building 37 metres from the road boundary would result in the building being relatively unobtrusive on the site and not over dominate the environment.
66. The prime argument of the Applicant however was that the development of the site will sit well in the existing surrounding environment with similar types of rural service operations located

on the three other corners of the Lorneville Roundabout. Mr Clarke did not disagree with this, but considered the development of other sites adjacent to the roundabout was either the product of previous planning regimes or reflects the zoning of those sites. He placed emphasis on the current Rural zoning of the subject site as being the basis on which assessment should take place and in his view the impact on amenity values was more than minor.

67. At the hearing, Ms McMillan introduced a further point, that the proposed building would occupy only 2% of the site, 2.4% would be a fenced yard containing farm machinery and hard stand areas 6%, leaving 89% of the site as open land available for rural activities. Her analysis however omitted reference to the machinery display area and the practicality of using small areas of land between the access road and other activities for rural use. In any case, reliance on the use of percentages in this way is not a valid tool in assessing visual impacts and impacts on amenity. These impacts vary, depending upon where development occurs and in particular its proximity to the road frontage.
68. It was argued by the Applicant that by utilising only a small proportion of the site for the proposed development rural amenity values would be protected. That however is not supported by the photographs of the site attached to the Baxter Design report.
69. Ms McMillan relied upon her own assessment contained in the Assessment of Environmental Effects and upon a report prepared by Baxter Design. No details are given in that report as to the author, their experience or qualifications, nor is it clear if the author of that report visited the site. The substantive part of the report consisted of four paragraphs of less than one page in length commenting on matters contained in two objectives in the Invercargill City District Plan. Further, the report focused on the wider environment without a formal assessment of the on-site impacts, as illustrated by the conclusion which stated:
- In summary, whilst there will be a loss of some rural character, the proposed development, albeit quasi-urban / commercial in appearance, is nevertheless a logical extension of the surrounding landscape amenity and, to that end would not be an unexpected addition to the wider neighbour character and would have a low adverse effect on that amenity.*
70. The report also omitted to acknowledge that a portion of the central shelter belt was being removed, and assess its impact. Indeed, none of the documentation received from the Applicant referred to this at all. Nor did the report provide any assessment to support Ms McMillan's assertion that the pylon sign "will not be a dominant feature for traffic travelling in each direction".
71. Overall, the approach adopted in the evidence and other

documentation submitted on behalf of the Applicant relied to a considerable degree on the premise that on the subject site setbacks are greater than on nearby sites and the adverse effects are less than what occurs elsewhere. That however, is not the approach required by the RMA, nor does it have regard to the cumulative effects that would occur in this case.

72. Having considered all of the material provided to me, and having visited the site on two occasions (before and after the hearing) to fully understand the issue, I agree with Mr Clarke and conclude the adverse visual effects of the development and its impact on amenity values is more than minor.
73. Given my conclusion in paragraph 72, the proposal as presented fails to meet the requirement of section 104D(1)(a).

#### Section 104D – Objectives and Policies

74. Having regard to the consideration of the adverse effects of the proposed development, the following Rural Zone objectives and policies of the District Plan are relevant:

*Objective 1: The rural environment is maintained and enhanced while allowing for productive rural activities to be undertaken.*

*Objective 2: Provide for the use and development of land within the rural area while maintaining, and where practical enhancing, amenity values*

*Policy 3 Non rural activities: To avoid activities that do not have a need to locate within the Rural Zone and which would result in adverse effects inconsistent with the function, character and amenity provided for by the Rural Zone.*

75. It was the view of Ms McMillan (at paragraph 39 of her statement of evidence) that:

*The development achieves Objectives 1 and 2, and Policies 1 to 3 through the provision of an activity which directly services the rural sector while maintaining large areas of open space for grazing. The scale of the buildings and landscaping proposed maintain existing amenity of the surrounding area and there is no corresponding decrease in amenity within the site itself.*

76. Objective 1 and Policy 3 apply to the rural environment as a whole and I accept the proposed development is for an activity that provides a service to the rural sector and allows productive rural activities. Within that wider domain the proposed development is not contrary to this objective or policy.
77. Objective 2 is site and amenity focused. I cannot agree with Ms McMillan where she states there is no decrease in amenity within the site itself, having regard to the photographs submitted and matters observed on my



site visits. Nor do I accept the comments contained in the Baxter Design report with regard to this objective. As proffered by Mr Clarke, and for the reasons set out in considering the adverse effects of the proposal, I conclude the proposed development is contrary to Rural Objective 2.

78. I also consider regard should be given to the objectives and policies of the zone within which the activity is provided for as a permitted activity, being the Business 5 Zone. Neither Mr Clarke or Ms McMillan considered these in their respective statements, but they were included in Appendix 2 of the Section 42A Report. The provisions of relevance are as follows:

*Objective 1: Enterprises which offer services predominantly to the rural sector are enabled to locate conveniently near to the built up area of the City but not necessarily within it.*

*Policy 1 Business 5 (Rural Service) Zone:*

*To establish and implement a Business 5 Zone at or near the intersection of State Highways 6 and 99 and on the west side of State Highway 6, in order to provide an appropriate and convenient location for activities which:*

- (A) Supply goods and services primarily to the rural sector and*
- (B) Which require easy and convenient access to the rural sector*

*without perpetrating ribbon development.*

*Explanation: Invercargill's primary function as a rural servicing City means that enterprises which serve the rural sector may have a special need for sites which are convenient to the built-up area of the City but not necessarily within it. Such enterprises are characterised by a client base that is predominantly rural, and requirements for large amounts of storage and display space. These enterprises do not normally attract large numbers of clients at any one time. Appropriate locations for these enterprises offer good connectivity to major routes into the City and easy access for heavy delivery vehicles and farm vehicles with trailers. Appropriate site design and screening are important factors in minimising adverse effects on neighbouring properties and on the transportation network.*

*The Business 5 Zone is separate from, and an appropriate distance from, the urban Zones. If enterprises do not wish to locate in the urban area it is necessary that they locate an appropriate distance from it. Otherwise there is the potential for creation of this Zone to initiate ribbon development which is an inconvenient and inefficient urban form, costly to service, and which should be avoided.*

79. Notwithstanding the Rural Zone does not "enable" the proposed development, it does fit within the circumstances described by Objective 1. Policy 1 is more specific, setting out that the type of development proposed should be located on land to the west of State Highway 6. A

location to the east of the highway is clearly contrary to this, introducing commercial development into a quadrant of land currently used, and zoned for rural use.

80. Given my conclusions reached in paragraphs 77 and 79, the proposal as presented fails to meet the requirement of section 104D(1)(b).
81. Having regard to paragraphs 73 and 80, the proposal as presented fails to meet the requirements of section 104D and I have no discretion to grant the consent sought. However, for completeness I do have regard to the provisions of section 104.

#### Section 104 Considerations

82. Other than in responding to matters raised in the Section 42A Report, Ms McMillan has not explicitly considered nor set out the provisions of section 104 of the RMA.
83. Section 104 is subject to Part II of the RMA. Provisions in section 7 refer to the maintenance and enhancement of amenity values and of the quality of the environment. These issues are considered throughout this decision and do not require separate consideration. I consider the proposal contrary to these provisions.
84. Given my conclusion on the visual impacts of the development, and the result adverse impact on amenity values, the application does not meet the purpose and principles of the Act as set out in section 5. As presented the proposal does not encourage sustainable management.
85. Section 104(1)(a) requires consideration of any actual and potential effects on the environment of allowing the activity. In that regard the conclusions reached above with regard to the gateway test also apply here.
86. Section 104(1)(b) refers to the relevant provisions of the district plan. Other than the objectives and policies discussed above, no other provisions are considered relevant. In that regard the conclusions reached above with regard to the gateway test also apply here.
87. Section 104(1)(c) refers to any other matter the consent authority considers relevant and reasonably necessary to determine the application. In that regard the positive effects of relocating from the existing site within the Invercargill urban area are noted. It is also acknowledged that discussions have taken place with the owners of vacant land within the Business 5 Zone, but the Applicant does not wish to undertake development in that zone on the basis of leasing land. I am unsure whether that is a valid resource management consideration. Rather it is the effects associated with the application lodged that I have considered, rather than the criteria adopted by the Applicant in making a decision not to develop within an area zoned for such purposes.
88. Under section 104(1)(c) I also consider regard should be given to the issue of precedent. The Invercargill City District Plan has only recently become

operative. Allowing development to take place in close proximity to the area zoned for such purposes, contrary to the intent of Business Zone Policy 1 to limit development to the west side of State Highway 6 creates an undesirable precedent.

89. Overall, having regard to all of the matters considered in this decision, I conclude that the subject site is not suited for the development proposed. Even if the proposal were to pass the tests required by section 104D of the Act, I would still be inclined to refuse consent.
90. At the hearing, and in my deliberations that followed, I have spent some time in considering whether the imposition of conditions on this proposal (such as requiring the further setback of the proposed building and display area) could result in an acceptable outcome having regard to the statutory considerations. I have concluded that the outcome on this proposal would be same, namely the refusal of consent.

### **Determination**

91. The application by JJ Ltd to establish and operate a farm vehicle sales and service business on land adjoining the northeast corner of the intersection of Lorne Dacre Road (State Highway 98) and Winton Lorneville Road (State Highway 6) at Lorneville is refused for the reasons set out above.

Dated this 3<sup>rd</sup> day of December 2019



K J Hovell  
Hearing Commissioner