

RESOURCE MANAGEMENT ACT 1991

**DECISION OF COMMISSIONER APPOINTED
BY THE INVERCARGILL CITY COUNCIL**

Applicant:	The Hawthorndale Care Village Charitable Trust
Reference:	RMA/2020/80
Location:	40 Fairview Avenue and 32 Stuart Street, Invercargill
Proposal:	Construction and operation of an aged care facility
Type of Consent:	Land use consent
Legal Description:	Lot 41 DP 4928 and Part Lot 7 DP 4928 and Part Lot 2 DP 3809 and Part Section 12 Block I Invercargill Hundred held in record of title 39554 (40 Fairview Avenue) and Lot 8 Deposited Plan Blk I 48 held in record of title SL157/212 (32 Stuart Street).
Zoning:	Residential 1
Activity Status:	Non-complying
Commissioner:	K J Hovell Being a Hearing Commissioner appointed under Section 34A of the Resource Management Act 1991
Date of Decision:	15 January 2021
Decision:	Consent granted subject to conditions

THE PROPOSAL

1. The Hawthorndale Care Village Charitable Trust by way of an application dated 15 May 2020 applied for land use consent for the "construction and operation of an aged care facility". Additional information was provided on the proposal on 1 July, 28 July and 23 October. The latter included an amended site plan.
2. The key aspects of the proposal, as amended by the further information provided, are as follows:
 - Thirteen single storey residential care homes, each containing 6-7 bedrooms, bathroom facilities and a communal kitchen/living area, fenced off to ensure those with advanced dementia cannot leave the facility unsupervised.
 - Nineteen single-storey independent residential living units with associated outdoor living spaces and attached single garages;
 - A two-storey apartment building containing 22 residential apartments and an attached 22 space covered car park;
 - A village centre containing a covered atrium surrounded by 'high street' style retail and commercial activities including a bakery, café/bar, dairy/post office, spa/hair salon, physiotherapy clinic and gymnasium that would be open to the public, but accessible only from within the complex. Opening hours for these activities would be between 8am and 5pm;
 - A chapel, to serve the needs of residents, but which members of the public would also be able to attend.
 - A 'blokes shed' for residents use only
 - An administration block containing a reception area, ancillary offices, and staff amenities
 - Associated 'back of house' facilities including kitchen, laundry, waste storage areas, loading areas and plant rooms
3. In addition to directional and building signage to be erected or placed throughout the site, approval was sought for the following signage:
 - Freestanding signage at the Tay Street entrance of 10 square metres
 - Freestanding signage at the Fairview Avenue access of 5 square metres
 - Freestanding signage at the Stuart Street pedestrian access of 5 square metres
 - Signage attached to or painted onto the façade of village centre building of 10 square metres
4. The care home would be staffed 24 hours per day, and staff would work in shifts, with a maximum of 18 staff on site per shift. In addition to resident garages and parking spaces, a further 90 staff and visitor car parking spaces are proposed across the site. Vehicle access to the site will primarily be provided from Tay Street, with a secondary vehicle access to Fairview Avenue, and pedestrian access only from Stuart Street.

5. The development would be constructed in 3 stages, with the likely progression being:
 - Stage 1 - the care home, village amenities and administration facilities, and 10 independent living units.
 - Stage 2 - the remaining independent living units, including the 3 units at 32 Stuart Street
 - Stage 3 - the residential apartments.
6. To facilitate staging the applicant has requested the consent be subject to a lapse period of 7 years.
7. Lisa Steele, Consultant Planner and author of the Section 42A Report considered the overall development a non-complying activity under the Invercargill City District Plan. She listed the status of the various components of the proposal as follows:
 - Vehicle access to a state highway – Discretionary (Rule TRA-R11)
 - Demolition – Controlled (Rule DERE-R2)
 - Signs – Non-complying (Rule SIGN-R5)
 - Earthworks –Discretionary (Rule SOIL-R7)
 - Communal activities and residential care activities for 9 or more persons – Discretionary (Rule RES1Z-R2)
 - Restaurants, retail and commercial service activities – Non-complying (Rule RES1Z – R3)
 - Space around buildings – Discretionary (Rule RES1Z-R15)
8. Ms Steele also noted compliance was required with the following rules:
 - Car parking design (Rule TRA – R4)
 - Noise (Rule Noise-R7)

PROCESSING THE APPLICATION

9. The Applicant requested the application be subject to full notification. Six submissions were received. However, one by Murray Alexander Kilgour of 618 Tay Street was later withdrawn. Those submissions remaining are as follows:
 - Bevan Gilbert McNamara, Diane Marie McNamara and Trevor Philip Robinson of 44 Stuart Street. This submission opposed those parts of the application that seek to manage use of the existing accessway into the former Hawthorndale School site at 40 Fairview Avenue.
 - Keith Nicoll of 613 Tay Street, noting that as a shift worker there will be disruption to his sleep patterns during construction, and expressing concern over the potential impact of the value of his property.
 - Kerry Ross Stirling of 624 Tay Street, expressing concern with the installation of a right-hand turn bay on Tay Street and provision of on-site

parking.

- Rachel and Michael Cade of 628 and 630 Tay Street, expressing concern with the quantum of parking provided on the site, and seeking relocation of the site entrance to Stuart Street.
 - Waka Kotahi NZ Transport Agency in a neutral submission seeking the imposition of conditions on any consent granted to ensure the proposed vehicle crossing from Tay Street, and alterations of the median area in Tay Street, are formed correctly with the necessary approvals.
10. A hearing to consider the application and the submissions lodged to it was held on 17 November 2020. Matters arising at the hearing are set out below. In summary, this included:
- The Reporting Planner, Lisa Steele, speaking to her report
 - Presentation of the case by the Applicant
 - Written and oral statements from, or on behalf of, Submitters:
 - The Commissioner raising additional matters with Lisa Steele, the Reporting Planner.
 - Clare Lenihan exercising the right of reply on behalf of the Applicant to issues raised during the hearing.
11. During the right of reply, Ms Lenihan, Counsel for the Applicant, expressed a desire to give further consideration to the conditions of consent agreeable to the Applicant in the event that the resource consent sought is approved, and for this to be undertaken in consultation with the reporting planner and submitters. This was agreeable to the submitters appearing at the hearing and affirmed by the Commissioner. On 11 December 2020, the Commissioner received a minute from Ms Lenihan containing a modified set of conditions and a copy of feedback received from the submitters and comments from Ms Steele.

THE HEARING

12. Prior to the hearing, the section 42A Report prepared by Ms Steele was circulated to the Commissioner, the Applicant and all submitters, as was the evidence of the Applicant. A minute from the Commissioner advised that at the hearing, the section 42A Report and all technical pre-circulated evidence would be taken as read, but that a summary of the key points in the Report and evidence should be provided. Arrangements were also put in place for one witness of the Applicant, Mr Smith, to make a remote presentation.
13. As noted above, the hearing took place on 17 November 2020.

Section 42A Report

14. Lisa Steele, an experienced resource management consultant employed by Planz Consultants Limited, provided an overview of the consents required for the proposed development. It was her professional view the consent should be granted subject to 36 conditions. She reached this view on the basis that with

appropriate conditions the adverse effects of the proposal would be no more than minor and the proposal would be generally consistent with the objectives and policies of the Invercargill City District Plan and Southland Regional Policy Statement.

15. Ms Steele advised there was dispute between herself and the Applicant with regard to the extent of signage sought, as set out in paragraph 3 above. For amenity reasons, she considered signage on Fairview Avenue and Stuart Street should be limited to one sign each, with a maximum area of 0.25 square metres and a maximum height of 2 metres, while signage on Tay Street should be limited to one sign with a maximum area of 1 square metre and a maximum height of 2 metres.
16. Ms Steele also considered the manner in which the application and the evidence of the Applicant dealt with the various living units was not consistent with the approach adopted by the Invercargill City District Plan in dealing with residential activities.

Case for the Applicant

17. Clare Lenihan, Counsel for the Hawthorndale Care Village Charitable Trust, provided background to the proposal, a description of it and the site, and a summary of the various matters of non-compliance with the Invercargill City District Plan. She also provided a summary of matters raised by submitters and the evidence of the applicant, with emphasis given to the issues of noise and signage. Ms Lenihan also gave a brief overview of the relevant provisions of the Resource Management Act 1991 endorsing the conclusions of Ms Steele and Mr McSoriley with regard to those provisions.
18. Ms Lenihan sought to differentiate between those activities on the site that could be considered within the definition of “residential care activity” and those which are more appropriately defined as “residential activity”. Her submission was that the independent units and villas are “residential activities” and aspects of them can be considered as part of the permitted baseline, along with the Residential Care Activity for up to 8 people permitted on the site.
19. Sarah Hannan, a Trustee of, and Project Chair for, the Hawthorndale Care Village Charitable Trust spoke to a power point presentation setting out the background to the project, the vision of the Trust, details of the development and how it would function. Of particular note, details were provided of the positive economic impacts to the local economy and the contribution the development would make to the social, health and community wellbeing.
20. Nick Hamlin, an experience project manager, outlined the intended staging of the development, although he noted this was not fixed. He highlighted the extent of earthworks required on the site, which included the progressive removal of 500 mm of material over the entire site and backfilling to a depth of 350 mm.
21. Mr Hamlin expressed concern with the conditions recommended in the section 42A Report relating to signage and the access from Fairview Street during the construction period.

22. Sreenath Venkataraman, a qualified and experienced transportation engineer, advised that since the application was prepared, further consideration had been given to the extent of parking required on the site. As a consequence of staggered shift changeovers by staff, which he was not initially aware of, the parking being provided far exceeds that required by the Invercargill City District Plan. He agrees with the conclusion of Ms Steele that any adverse effects associated with parking will not be more than minor.
23. In order to contain visitors in the main car park, and to avoid conflict with pedestrians, Mr Venkataraman was of the opinion the six parking spaces west of the fountain, adjacent to 613 Tay Street, should be designated as staff parking, rather than visitor parking. Mr Venkataraman also described discussions that had taken place with Waka Kotahi NZ Transport Agency following receipt of submissions. The outcome of these discussions was a proposal to relocate the main access to the site from Tay Street 40 metres west from that shown in the application lodged.
24. Michael Smith, a qualified and experienced acoustic engineer, outlined that he had been engaged by the Applicant following receipt of submissions to assess compliance with the noise standards in the Council's District Plan. It was his conclusion that these noise standards would be met during the day provided fencing was well maintained, and could be met at night provided that staff parking was restricted to the Tay Street frontage. He agreed with Ms Steele that a noise management plan should be submitted to the Council confirming all noise from the site will comply with the provisions of the District Plan. He also agreed it was appropriate for construction work to be undertaken in compliance with an approved Construction Noise and Vibration Management Plan.
25. Luke McSoriley, a qualified and experienced, resource management consultant and author of the Assessment of Environmental Effects in the application lodged, outlined communications undertaken with nearby property owners and occupiers, and the submitters, and the various statutory requirements applying to the consideration of the application. It was his view that the 19 independent living units and 22 apartments proposed are consistent with the District Plan definition of residential activity, and this should be taken into account as part of the permitted baseline.
26. In commenting on the environmental effects of the proposal, Mr McSoriley agreed with Ms Steele in relation to the majority of matters. His response with regard to the concerns of Ms Steele on signage was to recommend a condition limiting signage on the Stuart Street and Fairview Avenue entrances to the site to 1.5 square metres in area and 2 metres in height in each case, while retaining two signs of 5 square metres on the Tay Street boundary. It was the evidence of Mr McSoriley (paragraph 38) that "the revised signage will not be out of scale with the built form on the site, will not be visually dominant and will not detract from residential amenity".

Case for the Submitters

27. Trevor Robinson, Counsel for B G McNamara, D M McNamara and T P Robinson, owners of 44 Stuart Street, provided written submissions in which he

outlined support for the application in principle but expressed concern regarding the use of the accessway from Fairview Avenue for construction traffic. The submitters sought a condition requiring a gate at the entrance to be closed and locked during the entire construction period, not just during Stage 1 as offered by the Applicant in the letter to the Council dated 23 October 2020, and post construction limited to use by residents only. Mr Robinson also noted that while the access may have a legal width of 4.9 metres, the practical width is much less given well-established vegetation and large concrete blocks each side of the existing fence.

28. Mr Robinson advised the Applicant had responded constructively to other concerns. However, the submitters he represented would be concerned with any sign erected on the fence of their property. While not opposing a sign on the far side of the access, he questioned the need for signage fronting Fairview Avenue given the access would only be used by residents.
29. Keith Nicoll of 613 Tay Street appeared with his wife Caroline Nicol speaking to the submission lodged, reinforcing potential impacts upon them given the shift work nature of their employment. Concerns were also expressed about the change of the access point to the site, shading of their property from buildings and the potential adverse impact on the value of their property. In response to questions from the Commissioner, they also opposed reassigning the visitor parks adjoining their property to staff and sought a condition limiting the height of any vegetation planted near their boundary.
30. Rachel and Michael Cade of 628 – 630 Tay Street spoke on their own behalf and also on behalf of Kerry Ross Stirling of 624 Tay Street, questioning the adequacy of parking on the site, and expressing concern that vehicles associated with activities on the site will park on Tay Street, impacting on their visitors. In response to questions from the Commissioner there was also concern with the signage proposed.

Review by the Reporting Consultant

31. Ms Steele advised she did not wish to amend her recommendation in her section 42A Report. She then clarified for the Commissioner various definitions in the Council's District Plan.

Applicant's Right of Reply

32. After a brief adjournment, Ms Lenihan discussed matters raised by submitters and changes the Applicant would accept to the conditions of consent, noting it would be desirable to have further discussions with the submitters regarding these. As noted above, the hearing was adjourned to facilitate those discussions.

ASSESSMENT

Introduction

33. Other than from the Applicant, the only expert evidence presented in this case was from the reporting planner, Ms Steele, in her section 42A Report. This

recommended consent be granted to the proposal subject to conditions. There was no expert evidence concluding the application should be declined. Similarly, the five submissions all sought changes to the proposal rather than opposing it outright. Whether to approve the application therefore was not in contention. However, that does not remove the obligation to consider the various statutory considerations, and for completeness they are included.

34. The key matters that were in contention related to:
- Use of the access from Fairview Avenue
 - Adequacy of car parking on the site and the potential for vehicles to park on Tay Street
 - Access to the site, and vehicle movements on, Tay Street
 - Shading impacts on the property at 613 Tay Street
 - The extent of signage sought
35. During the consenting process, both before and after notification, and again at the hearing, the Applicant made changes to various details contained in the application. These included relocating the main access to the development on Tay Street and reconfiguring and reallocating parking spaces from visitors to staff. While not subject to submissions from the Applicant, or comment by Ms Steele, regard must be given to the issue of whether such changes fall within the bounds of the application as notified.
36. There has been a series of decisions from the various Courts¹ considering this issue. The underlying principles arising from these cases pose the following considerations:
- Is the activity for which resource consent is sought, as amended, significantly different in its scope or ambit from that originally notified in terms of:
 - the scale or intensity of the proposed activity; or
 - the altered character or effects/impacts of the proposal.
 - Whether there might have been other persons who did not, but may have, submitted on the proposal in its modified form.
37. Having regard to all relevant information, including the evidence and other material provided at the hearing, and inspection of the site and surrounding area, the Commissioner is satisfied the proposal sought by the Applicant at the hearing was within the scope of the application notified. The scale of the proposed activity remains the same and there is no material change in the character or effects of the proposal. Further, there are no additional matters arising that could reasonably be claimed to impact upon any person, other than those who were submitters to the application. At the hearing, a written approval was also provided from the occupants of the property at 633 Tay Street, being the Monarch Motel.

¹ Including, but not limited to *Atkins v Napier City Council* 2009 NZRMA 429 (HC), *Haslam v Selwyn District Council* 1993 2 NZRMA 628 (PT), *Shell NZ Ltd v Porirua City Council* 2005 CA57/05 (CA) and *Waitakere City Council v Estate Homes Ltd* 2006 NZSC 112

Statutory Considerations

38. The parties agreed 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 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;
- (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
 - (b) any relevant provisions of—
 - (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.

39. Section 104D requires consideration of the "gateway" test of subsection (1). If the Commissioner is satisfied that either 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 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.

Section 104D - The Gateway Test

40. Section 104D(2) refers to section 104(2) and what is commonly known as the “permitted baseline”. This is a discretionary consideration that may assign weight to the effects arising from activities permitted on a site. The Applicant requested that the permitted baseline be taken into account having regard to residential activity and residential care activity up to eight persons being permitted on a site. However, no evidence was presented as to the effects of those activities that should be taken into account. For example, did it relate to noise, traffic generation or amenity? In the absence of such evidence, the Commissioner has declined to exercise his discretion to have regard to the provisions of section 104(2). Even if such evidence was presented, given the difference in scale from what is permitted on the site and what is proposed, particularly in relation to supervised care, the Commissioner was unlikely to reach a different view.
41. Having regard to the above, the Commissioner does not consider it necessary to resolve the conflict between Ms Steele and the Applicant as to what is, or is not, a Residential Care Activity. The proposed activities can be dealt with at face value.
42. The total site has an area of 2.6809 hectares on level land and on the basis of the evidence presented by the Applicant and the report of Ms Steele, the Commissioner is satisfied that the site can be developed in a manner that is compatible with the amenity of the area. Subject to the imposition of appropriate conditions, many of which have been volunteered by the Applicant, the Commissioner is also satisfied the adverse effects of the activity on the environment will be no more minor.
43. The thrust of the objectives and policies of the District Plan is to maintain and enhance the amenity values of the district and the various zones within it. Taking into account the expert evidence of the resource management consultants in this case the Commissioner accepts their conclusion that the application is not contrary to the objectives and policies of the District Plan.
44. I am satisfied, subject to the imposition of appropriate conditions, the proposal passes both limbs of the gateway test, and that the application can be considered on its merits under RMA section 104.

Section 104 Considerations

45. Section 104 is subject to Part II of the RMA. The only matters considered relevant are those in section 7 referring to the maintenance and enhancement of amenity values and of the quality of the environment. These issues underlie assessment throughout this decision and do not require separate consideration.
46. Section 104(1)(a) requires consideration of any actual and potential effects on the environment of allowing the activity. In that regard the issues raised by the submitters and Ms Steele in her section 42A Report are the only matters in dispute and the Commissioner does not consider it appropriate or necessary to have regard to any other matters.

Fairfield Avenue Access

47. Mr Robinson advised in legal submissions that the owners of 44 Stuart Street supported the application in principle but had concerns over the use of the accessway from Fairfield Avenue that adjoins the rear of their site. The submitters did not want the access used during construction and thereafter wanted its use restricted to residents of the development, not staff or contractors.
48. Mr Robinson referred to a letter from the Applicant to the Council dated 23 October 2020 offering a condition whereby the accessway would be gated and locked during construction of Stage 1. It was his submission this should apply to all stages of the development and in that regard supported Condition 23 recommended by Ms Steele. Further, he was not accepting of the reasoning of the Applicant that the access may need to be used by emergency vehicles and therefore should be unlocked, as being unlocked would facilitate use by any vehicle.
49. Mr Robinson supported the recommendation of Ms Steele to include a condition of consent requiring the access to be designed and operated so it was only available to residents. He advised he would have no objection to her recommended Condition 22 also enabling use by emergency vehicles.
50. Mr Hamlin, a witness for the Applicant, considered Condition 23 acceptable, provided that the requirement for the gate to be locked during construction was removed.
51. There is a procedural difficulty in the rewording sought by Mr Hamlin. As noted by Mr Robinson, by way of the letter of 23 October 2020, the Applicant after considering the submissions lodged, volunteered the following condition:

In relation to Stage 1 of the development the Fairview Avenue access to the site shall have a permanent gate (or other effective barrier to vehicles) installed before commencement of construction, and that that gate (or barrier) shall remain closed and locked for the duration of the construction programme.
52. Neither Mr McSoriley in his evidence, nor Ms Lenihan in her submissions, acknowledged the earlier concession. Nor did they present reasons why it should be amended.
53. Having regard to the matters raised at the hearing, the Commissioner accepts the gate should be locked during Stage 1 of the development. This places the Applicant in the same situation as other developments that are constructed with only one access point during that phase. The Commissioner noted the post-hearing agreement of the Mr Robinson on behalf of the owners of 44 Stuart Street that should the need arise, then access by emergency vehicles during the construction phase would be acceptable. That does not however, justify the gate being unlocked at all times, and if the Applicant were of a mind to argue this matter further the appropriate action would be to remove reference to use by emergency vehicles during the construction phase.
54. Other than expressing a desire to not lock the gate, no evidence was presented by the Applicant setting out the implications of such a closure. The merits of

amending the condition to remove reference to the gate being locked were not outlined. The Applicant failed to justify any change and given Fairview Avenue is reliant on vehicles travelling along Stuart Street from Tay Street, the need for such access was not established.

55. In considering whether the gate should be locked during all stages of the development the Commissioner noted Stage 1 includes ten of the nineteen independent living units, and it will be desirable to enable access by residents of those units from Fairview Avenue. It is not reasonable therefore to require locking of the gate during all stages of development. That does not however remove the need to include a condition prohibiting use of that access by construction traffic.

Parking and Traffic

56. The submissions of Kerry Stirling of 624 Tay Street, Rachel and Michael Cade of 628 and 630 Tay Street, and Waka Kotahi NZ Transport Agency all raised issues regarding the layout and movement of traffic on Tay Street. The discussions between the Applicant and Waka Kotahi NZ Transport Agency, together with the undisputed evidence of Mr Venkataraman, persuades me it is appropriate to amend the site access point from Tay Street, together with other changes to Tay Street as set out in the evidence. It should be noted however, any changes to the configuration of legal Tay Street is a matter for Waka Kotahi NZ Transport Agency to determine, and does not require resource consent approval.
57. I am also satisfied on the basis of the evidence that the quantum of parking provided on the site is adequate for the proposed activities. Rachel Cade at the hearing expressed concern that visitors to the site would park on the roadside, disadvantaging any person coming to her property. This is a reasonable concern. However, given the width of Tay Street and the presence of a median strip any such parking would occur on the same side of the road as the development. If this does become an issue, it is one the Council itself is able to respond to if it is of a mind, by way of restrictions on the duration of parking in the area.
58. Rachel and Michael Cade also requested that the main site access be from Stuart Street. Mr Venkataraman considered this matter briefly in his evidence, stating:

29 The main access to the development was always considered to be onto Tay Street. This was to ensure most of the traffic accessing HCV was from an arterial (Tay Street) not from a residential street.

59. As a principle, it is appropriate for developments of this nature and scale to have access from arterial roads which are designed to provide for higher levels of traffic than the more sedate residential streets, such as Stuart Street.

Impacts on 613 Tay Street

60. Keith Nicoll of 613 Tay Street, raised concern with potential shading of his property. The Commissioner is satisfied that buildings are sufficiently separated

from the site boundary to ensure this will not be an issue. The Applicant also volunteered a condition limiting the height of any vegetation close to the boundary. The Commissioner considers that a more than adequate concession by the Applicant on that matter.

61. Mr Nicoll, as a shift worker, also had concerns that his normal day-time sleep patterns would be disturbed. While acknowledging this matter, the potential impact is unlikely to be any different to the land being subdivided and houses built. Other than imposing a condition requiring compliance with the appropriate New Zealand Standard for construction activities, the Commissioner can take the matter no further given that the evidence indicates compliance with the Council's noise standards.
62. At the hearing, the Commissioner discussed with Mr and Mrs Nicoll the proposal to utilise the carparks adjacent to their property for staff parking rather than visitor parks. A condition has been agreed by the Applicant that no staff parking take place in this area between 10 pm and 7 am the following day. The Commissioner considers that an appropriate response to the issue.
63. Ms Steele in her Report noted at paragraph 5.7 that case law has determined that impacts on property values occur as a result of adverse effects on the environment and that therefore the focus of assessment should be on these environmental effects. As a consequence, the Commissioner is not able to have regard to this matter.

Signage

64. The application as lodged sought approval for the signage listed in paragraph 3 above. Ms Steele in her Report expressed concern at the extent of the signage proposed particularly with regard to the impact on amenity values. While Ms Steele misunderstood the proposed height of the signage as expressed in the application, following clarification by the Applicant she was still of the view that what was proposed by the Applicant was excessive.
65. Mr Hamlin in his statement of evidence circulated prior to the hearing promoted an alternative condition providing for the following:
 - Two freestanding signs on the Tay Street frontage of 2.4 square metres each
 - Freestanding signage at the Fairview Avenue access of 1.5 square metres
 - Freestanding signage fronting Stuart Street of 1.5 square metres
 - Signage attached to or painted onto the façade of village centre building of 10 square metres
66. The draft conditions submitted by the Applicant following the hearing expressed the signage fronting Tay Street in the following way:

two frees standing signs displayed adjacent to the Tay Street road boundary, as indicated on the site plan. These signs shall have a maximum area of 5m² and a maximum height of 2m.
67. This wording is unclear, with a possible interpretation being that each sign could be 5 square metres in area.

68. While the Applicant has provided information on the size and location of the signage proposed, no detail has been given as to the content. In the Commissioner's Minute of 18 November 2020, it was suggested it would be helpful for additional detail as to content to be provided. The Applicant has not done that on the basis that signage was not referred to in any submission lodged. Signage was however a live issue, having been raised by Ms Steele in her section 42A Report. As a consequence, more detailed consideration and specificity in the conditions is required than would otherwise be the case.
69. In considering signage, there is a need to balance protection of amenity, particularly within areas where the residential character dominates, with the provision of information, some of which contains necessary messaging. Regard also needs to be given to measuring the area of any signage, with the area of any double-sided signage with less than 200mm between each face is to be calculated on the basis of a single sided sign.
70. The conditions of consent proposed by the Applicant restrict the use of the Fairview Avenue access to residents of the development. In addition to identifying the overall use of the site, the signage at this location therefore has the function of directing traffic (other than that of residents and emergency vehicles) to the Tay Street entrance. A sign with an area of 1.5 square metres is appropriate for this purpose. As noted at the hearing, the sign will need to be located close to the property boundary so as to avoid impacting on the movement of vehicles and pedestrians using the access.
71. Three residences are to be built on the site fronting Stuart Street and this is consistent with the character and amenity of that area. Indeed, removal of the Scout building from the site and replacement with residences will enhance the amenity. Ms Steele was of the view that signage on this site should be restricted to a maximum area of 0.25 square metres while the Applicant now seeks a sign of 1.5 square metres in area. Balancing amenity with messaging, the Commissioner considers a restriction on lighting and an area somewhere between the two figures is appropriate. The conditions of consent provide for a sign with a maximum area of 0.5 square metres.
72. Ms Steele recommended that signage along the Tay Street frontage should be limited to a single sign with a maximum area of 1 square metre. Given the scale of development proposed, the Commissioner agrees with the Applicant that this is overly restrictive. Following a site visit and taking into account the evidence presented and the matters discussed at the hearing, the Commissioner has concluded that the signage adjacent to Tay Street, described in the evidence of Mr Hamlin, is appropriate.
73. Similarly, the size and location of the building signage referred to in the evidence of Mr Hamlin is also appropriate. There was no dispute between Ms Steele and the Applicant with regard to this signage.

Objectives and Policies

74. Section 104(1)(b) refers to the relevant provisions of a district plan. The application, the section 42A Report and the evidence of Mr McSoriley all contained a detailed assessment of the objectives and policies of the District

Plan. There are no matters in dispute with regard to these provisions and no provision that requires consideration by the Commissioner with regard to this section of the Act.

75. Section 104(1)(c) refers to any other matter the consent authority considers relevant and reasonably necessary to determine the application. In that context there is no matter requiring consideration.

Section 104B Considerations

76. Taking into account all of the factors set out and assessed above it is the decision of the Commissioner to **grant consent** to the application. Section 104B(b) provides for the imposition of conditions. Generally, these have been agreed to between the parties and the Commissioner wishes to record his appreciation of the input of the parties to arrive at these conditions. Those matters in dispute relate to the Fairview Avenue access and signage, both of which have been discussed in the body of this decision.
77. In addition to the matters considered in this Decision, some minor amendments are required to the agreed conditions, either for clarity or to ensure validity. For example, the Council is unable to withhold the issuing of a Building Consent pending submission of a noise management plan.
78. A schedule of the conditions of consent is attached.

REASONS

79. None of the expert evidence and/or reports with regard to this development recommended declining the application. None of the submissions lodged sought declining of the application. None of the statutory tests and considerations applying in this case raised matters justifying declining of the application.
80. Matters of detail were in dispute. These have been described, considered and subject to a conclusion by the Commissioner for the reasons outlined in this Decision. Arising from these considerations and conclusions, changes have been made to the conditions of consent sought by the Applicant.

Dated this 15th day of January 2021



K J Hovell

Applicant: The Hawthorndale Care Village Charitable Trust
Reference: RMA/2020/80
Location: 40 Fairview Avenue and 32 Stuart Street, Invercargill
Proposal: Construction and operation of an aged care facility

Consent Conditions:

General

- 1 The development shall proceed in general accordance with the resource consent application dated 15 May 2020, the further information dated 1 July 2020 and 28 July 2020, the updated Site Plan and Elevations dated 5 October 2020, the further information contained in a letter from Luke McSoriley dated 23 October 2020, and the evidence of the Applicant submitted to the hearing held on 17 November 2020, except where modified by the following conditions of consent.
- 2 The hours that the retail, commercial and hospitality activities on site are available to visitors and the public are limited to 8 am – 5 pm.
- 3 A minimum of 30% of the gross site area shall be maintained as permeable surfacing.
- 4 Trees:
 - a. No trees are to be planted on the development site adjacent to the rear (northern) boundary of the property at 26 Fairview Avenue (Lot 4 DP 4928).
 - b. Any trees or other vegetation planted adjacent to the property at 613 Tay Street (Lot 3 DP 5602) shall be maintained so as to restrict its height to no more than 2m.
- 5 Fencing:
 - a. Any fences on the boundary of the Fairview Avenue accessway that are damaged during construction shall be repaired or replaced at the Consent Holder's cost.
 - b. The damaged sections of corrugated iron fence located along the eastern boundary of the site shall be repaired prior to construction activity commencing and the fence shall be maintained in good order.

Landscaping

- 6 Landscaping shall be established and maintained in general accordance with the landscaping plan submitted with the application, except for amendments necessary to reflect changes to the site plan dated 5 October 2020.
- 7 The landscaping associated with each stage of the development shall be established on site prior to the buildings within that stage being occupied by residents.

Stormwater

- 8 Stormwater from all access and car parking areas on site shall be treated for a design flow of 6mm/hr using stormfilter or filterra devices or approved alternatives subject to certification by the Drainage Manager at the time of the first building consent lodged in association with the development.
- 9 Two stormwater attenuation tanks, each with a volume of 30,000 litres, shall be provided on the site. The tanks shall meet the District Plan rules relating to minimum building heights, setbacks from boundaries and recession planes. The location and outlet configuration shall be confirmed to the Drainage Manager at the time of the first building consent lodged in association with the development.

Signs

- 10 Signage is limited to the locations shown on Appendix Two of the evidence of Nick Hamlin attached to his Brief of Evidence dated 3 November 2020.
- 11 Freeview Avenue
 - a. One freestanding sign may be erected on the Fairview Avenue access to the site, limited to a maximum of 1.5 square metres in area and a maximum height of 2m.
 - b. In addition to the name of the development and any image or logo the Applicant may wish to add, the sign shall contain details restricting the vehicular use of the access to residents.
 - c. No material advertising services or commercial activities associated with the development shall be included on the sign.
 - d. The sign must not contain any moving parts or video.
 - e. Internal lighting of the sign is not permitted.
- 12 Stuart Street
 - a. One freestanding sign may be erected on the Stuart Street frontage of the site limited to a maximum of 0.5 square metres in area and a maximum height of 2m.
 - b. In addition to the name of the development and any image or logo the Applicant may wish to add, the sign shall contain details restricting the use of any pedestrian access provided to residents.
 - c. No material advertising services or commercial activities associated with the development shall be included on the sign.
 - d. The sign must not contain any moving parts or video.
 - e. The sign must not be lit.

13 Tay Street

- a. Two freestanding signs may be erected on the Tay Street frontage of the site. Each of the signs is limited to a maximum of 2.4 square metres in area and a maximum height of 2m.
- b. The signs must not contain moving parts, be internally illuminated or display moving video.

14 Signage on the Building Facade

- a. Any sign displayed on the building façade shall face Tay Street and not exceed 10m² in total area.
- b. The sign must not extend above the wall of the building on which it is located.
- c. The sign must not contain moving parts, be internally illuminated or display moving video.

15 The style of the above signage shall be in keeping with and complementary to the style of the Hawthorndale Care Village.

Noise

16 Prior to the commencement of earthworks or other construction of Stage 1 of the development, the consent holder shall submit to the Council a noise management plan (NMP) for the site. The NMP shall be prepared and/or certified by a suitably qualified acoustic expert, and shall include:

- a. Details of how the staff and visitor car parking will be managed to ensure that noise does not exceed 40dB during night-time hours when measured at any point within any adjoining residential zoned property.
- b. A restriction on staff parking vehicles in the 6 on-site car parks located adjacent the adjoining property at 613 Tay Street between 10 pm and 7 am the following day.
- c. A requirement that staff vehicles arriving at the site before 7am or departing after 10pm shall only use on-site car parks fronting Tay Street, excluding those parks referred to in b above.
- d. Details of how the Fairview Avenue access and gate will be designed and operated to ensure noise does not exceed 55dB during daytime hours, or 40dB during night-time hours when measured at any point within the adjoining residential zoned properties.
- e. Confirmation that all mechanical plant on site, including heat pump condenser units, shall be calibrated to ensure that noise received at the adjoining residential properties does not exceed 40dB.
- f. Details of how the boiler room and any ventilation paths will be treated to ensure that noise levels received at living spaces within the village do not

exceed 55dB, and do not exceed 40dB when measured at any point within the boundaries of the adjoining residential properties.

- g. A restriction on rubbish collection, delivery or loading activities taking place on the site between 10 pm and 7 am the following day.
 - h. Any procedures to be followed by the Consent Holder to ensure compliance with the provisions of the NMP.
- 17 The Consent Holder shall not commence any earthworks or other construction activities until the Council has certified in writing that the NMP fulfils the requirements of Condition 16.
- 18 The Consent Holder may, subject to compliance with Condition 17, review the NMP from time to time.

Lighting

- 19 All interior and exterior lighting on the site shall be designed, constructed, and operated to ensure that light spill beyond the site boundaries does not exceed 5 Lux;
- 20 Light spill is to be measured and assessed in accordance with the Australian Standard AS 4282 1997: Control of the Obtrusive Effects of Outdoor Lighting.

Transport

- 21 The circular vehicle access around the fountain in front of the main pedestrian entrance to the administration building, and the parking spaces west of the fountain, shall be designed to ensure that:
- a. Vehicles can move from the Tay Street access to the parking spaces west of the fountain without undertaking a reverse manoeuvre.
 - b. Vehicles can move from any of the parking spaces west of the fountain to the Tay Street site egress without undertaking more than one reverse manoeuvre.
 - c. The parking spaces are marked for staff parking only.
- 22 All vehicles used by staff shall be parked on the site.
- 23 The operation of the consented care facility shall not commence until the vehicle crossing providing direct access to Tay Street has been formed in accordance with the vehicle crossing layout plans (subject to any amendments required by way of condition 25) submitted by the consent holder in the Architectural Plans dated 5 October 2020 and labelled as "RC - 01: Concept Site Plan".
- 24 Prior to vehicle crossing formation works occurring, the consent holder shall submit to the Invercargill City Council a copy of the NZ Transport Agency's approval to undertake works on the State Highway (as detailed in advice notes 2 and 3 below).

- 25 Traffic calming measures shall be installed along the Fairview Avenue access to ensure that vehicles cannot comfortably exceed 25km per hour.
- 26 Prior to the care home being occupied by staff or residents, a gate or other physical vehicle barrier shall be installed at the entrance to the Fairview Avenue access, and shall be designed and operated to restrict vehicle access to residents' and emergency services vehicles only.

Construction

- 27 Prior to construction works commencing on site, a gate or other effective vehicle barrier shall be installed at the entrance to the Fairview Avenue site access. The gate or barrier shall remain in place and with the exception of access for emergency services when required shall be closed and locked during construction of Stage 1 of the development, and thereafter until the gate required by condition 26 is installed.
- 28 No construction traffic shall use the Fairview Avenue access.
- 29 Prior to the construction of each stage of the development commencing, the consent holder shall provide to the Council a Construction Management Plan (CMP) for certification that provides suitable measures to avoid or mitigate the effects of construction activity on neighbouring sites and the adjacent streets. The CMP shall include, but not be limited to, the following matters:
 - a. A Traffic Management Plan that has attained approval from Waka Kotahi including measures to control construction traffic at the site access to Tay Street and ensure the continued safe operation of the road network. The TMP shall demonstrate how Fairview Avenue will be managed in accordance with condition 27 above.
 - b. Measures for erosion and sediment control and prevention of sediment being carted onto roads, or entering the public stormwater system
 - c. Measures for the suppression of dust to be employed during construction activity to ensure dust emissions beyond the site boundary are not offensive or objectionable to residents of adjoining properties.
- 30 Prior to the commencement of earthworks or other construction of Stage 1 of the development, the consent holder shall submit to the Council a Construction Noise and Vibration Management Plan (CNVMP) for the site, outlining how noise and vibration nuisance will be mitigated during construction activities to minimise any exceedance of the following District Plan construction noise standards.

Days and Times	Noise Limit
Monday to Saturday 0730 – 1800	70dB LAeq and 85 LAmax
All other times LAmax	45dB LAeq and 75 dB LAmax

The CNVMP shall be prepared and/or certified by a suitably qualified acoustic expert in accordance with NZS 6803:1999

- 31 The Consent Holder shall not commence construction of the buildings authorised by this consent until the Council has certified in writing that the CMP and CNVMP

fulfils the requirements of Conditions 29 and 30.

- 32 The Consent Holder may, subject to compliance with Condition 31, review the CMP and CNVMP from time to time.
- 33 The CMP and CNVMP certified by the Council under Condition 31 shall be implemented for the duration of the construction activity occurring on the site and be a condition of any contractor undertaken construction work on the site. A copy of both documents shall be held on site at all times.
- 34 No construction activities shall occur outside the hours of 7 am to 6 pm Monday – Saturday, or on Sundays or public holidays except in cases of operational necessity.
- 35 In the event of the discovery or disturbance of any archaeological material the consent holder shall implement the procedures of the Ngāi Tahu ki Murihiku Accidental Discovery Protocol.

Demolition

- 36 The scout hall sewer and stormwater drains are to be sealed off by a certified drain layer. The drain layer is to complete the Council's "Drainage Information Sheet" form and return a copy of it to the Council.
- 37 The site is to be left clear and tidy with all demolition material removed, including foundations, concrete pads, piles etc., within six weeks of the demolition or removal of the building.
- 38 Dust suppression measures shall be employed to ensure that dust emissions from the site are not offensive or objectionable to residents of adjoining properties.
- 39 No demolition activities shall occur outside the hours of 7 am to 6 pm Monday – Saturday, or on Sundays or public holidays except in cases of operational necessity.
- 40 No work within the legal road reserve is to commence until written approval is obtained from the Roding Department of the Council. The Consent Holder, or their contractor, is to submit details of how they will protect Council assets.
- 41 Footpaths, vehicle crossings, and road frontages are to be inspected by the Council's Roding Manager prior to commencement and after completion of the demolition/removal.

Written notice shall be given to the Council's Roding Manager five working days prior to work commencing on the site.

- 42 Footpaths, vehicle crossings and road frontages must be protected from damage by covering with heavy timbers or similar. All sites must be safe for pedestrians and people with disabilities.
- 43 Damaged footpaths, vehicle crossings and road frontages must be immediately

reported to the Council's Roothing Department and then reinstated, top soiled and grassed as appropriate as soon as practicable. The Consent Holder is liable and responsible for the contractors undertaking the work, including any damage caused to the footpath, road frontage or vehicle crossing. Any damage is to be repaired by an approved contractor to the satisfaction of the Council's Roothing Manager.

Advice notes:

1. It is the consent holder's responsibility to comply with all the conditions imposed on this resource consent during the exercise of it.
2. This resource consent will lapse seven years from the date of granting unless it is given effect to before then. Application may be made under Section 125 of the Resource Management Act 1991 to extend the period for giving effect to the resource consent, and this must be submitted and approved prior to the consent lapsing.
3. It is a requirement of the Government Roothing Powers Act 1989 that any person wanting to carry out works on a state highway first gain the approval of Waka Kotahi NZ Transport Agency for the works and that a Corridor Access Request (CAR) is applied for and approved before any works commence.
4. A Corridor Access Request should be made online via www.beforeudig.co.nz and/or www.submitica.co.nz. A copy should also be sent to Waka Kotahi NZ Transport Agency System Design and Delivery Planning Team at consentsandapprovals@nzta.govt.nz. The Corridor Access Request will need to include:
 - a. The approved detailed design which shall include the following:
 - (i) The full design of the vehicle crossing including alterations to the median area;
 - (ii) Identification of any changes to or addition of line marking; and
 - (iii) Identification of any street lighting proposed to be relocated.
 - b. A Construction Traffic Management Plan that has attained approval from NZ Transport Agency Systems Design and Delivery through the Manager, System Management – Southland.
5. All demolition material (solid waste) should be either recycled or disposed of at an authorised landfill which has a resource consent for that purpose.
6. Demolition material falls into two categories, the first is Cleanfill, which can be disposed of at an authorised cleanfill site. Cleanfill material is material that does not undergo any physical, chemical, or biological transformations that will cause adverse environmental effects or health effects once it is placed in a cleanfill.

Any other non cleanfill waste material will need to be disposed of at an authorised landfill.

To avoid any confusion, you may wish to advise Council where the demolition material from your site is going. Most of the Cleanfill Sites within the Invercargill City District are required to keep logbooks of incoming material, including the origin of the material. You are reminded that any disposal of material in an unauthorised manner may result in enforcement action against you by Council.

7. This consent does not authorise the incineration of any demolition material (solid waste).
8. Legislation controlling demolition/removal work includes the Resource Management Act 1991, the Building Act 2004, Health and Safety at Work Act (Asbestos) Regulations 2016 and the Historic Places Act 1980. This resource consent is approved under the Resource Management Act 1991. The applicant is to take all practicable steps to ensure compliance with other legislative requirements.
9. The building being demolished may contain asbestos, and if so, must be disposed of in a safe and legal manner. For further information regarding this, please contact the Environmental Protection Agency on 04 916 2426 email info@epa.govt.nz.
10. Suitable protection barriers to the footpath may be necessary and temporary traffic management implemented, depending on the site and the proposed works. Approval is to be sought from the Council's Roading Manager for any hoarding or fencing necessary for the protection of the public within the legal road reserve (which includes footpaths and berms).
11. No vehicles are to be parked or loaded on or over the footpath or crossing during the demolition or construction phase works.
12. Temporary traffic management will be required where machinery is being operated close to or across the footpath area. Please contact the Council Engineering Services Group, phone (03) 2111-777.