

**IN THE MATTER OF
AND**

the Resource Management Act 1991

IN THE MATTER OF

applications by Soul Friend Pet Cremations to Palmerston North City Council (LU 5959) for resource consents to establish and operate a pet cremation business, public memorial garden, woodworking workshop and spray booth for urn finishes and to undertake land disturbance and a change in use of a piece of land described in the hazardous activities and industries list without a detailed site investigation at 94 Mulgrave Street, Ashhurst.

**DECISION OF THE HEARING COMMISSIONER APPOINTED BY PALMERSTON NORTH
CITY COUNCIL PURSUANT TO SECTION 34A OF THE RESOURCE MANAGEMENT
ACT 1991**

Independent Commissioner:

Mark St.Clair

16 November 2021

APPOINTMENTS

- [1] Pursuant to Section 34A of the Resource Management Act 1991 (RMA), independent commissioner Mark St Clair was appointed as a commissioner by Palmerston North City Council (PNCC) to hear and determine the application lodged by the “Applicant” Soul Friend Pet Cremations for resource consents to establish and operate a pet cremation business and associated activities at 94 Mulgrave Street, Ashhurst, Palmerston North.

PROCEDURAL MATTERS

Directions

- [2] On initially reviewing the application, I noted that the proposal requires an air discharge permit from Manawatu Whanganui Regional Council. Having considered good resource management practice and known case law, I made the decision to delay setting down a hearing date.¹ Ms A Davidson, legal counsel for the Applicant responded claiming that I had incorrectly interpreted Section 91 of the Resource Management Act 1991 (RMA), setting out the reasons for reaching that conclusion and referencing case law from superior and other courts that I was not previously aware of. Having sought legal advice as to this matter, I concurred that I did not correctly interpret the applicability of Section 91 of the RMA, rescinded Minute #1 and set down the hearing date of 19 October 2021.²
- [3] Having set the hearing date as sought by the Applicant’s counsel, I had a further request from the Applicant’s agent to delay the hearing by a week and a half, in part due the closure of the existing kennels at the application site. The Applicant’s agent also requested that if the delay could not be accommodated, the date of 19 October 2021 be retained. I was not able to accommodate the delay sought as to scheduling, so issued a Minute confirming the date of 19 Oct 2021 for the hearing.³
- [4] Minute #4 was issued on 20 October 2021 following the adjournment of the hearing on 19 October 2021. The minute set out the timetabling for the Applicant’s right of reply which was to be in writing.
- [5] In Minute #5 dated 27 October 2021, I closed the hearing. I record that all of the above matters in terms of filing information were complied with and the material was distributed to all parties.
- [6] For completeness, I have annexed copies of the minutes to this decision as **Schedule 1**.

Preliminary Matters

- [7] Before addressing the substantive matters as to the application, I begin by addressing a number of preliminary matters.

¹ Minute #1 dated 30 August 2021

² Minute #2 dated 13 September 2021

³ Minute #3 dated 20 September 2021

Scope of Proposal

- [8] On 23 September 2021, PNCC received an amended application from the Applicant. That amended application recorded that the cattery and kennel that were operating on the site had closed, due the impacts of the COVID - 19 pandemic. It included, updated technical reports as to traffic and acoustic assessments, as well as, a new set of plans and updated management plan. A copy of this updated material was sent to all the submitters.
- [9] While a legal matter, I sought the views of the parties at the hearing. In conclusion, the Applicant and the reporting officer were of the view that the overall the effects were less than the application as notified and hence the revised application of 23 September 2021 was within scope. No party challenged the matter. The Applicant further addressed the matter of scope in reply.⁴ Based on the reasons provided by the parties in response to my questions, I find that the revised application is within scope.
- [10] I record that the Section 42A Report at paragraph 3.6, records that;
- 3.6 I also note that a fresh application has been lodged with PNCC (LU6450) which is for the same activity, but which did not include the cattery and dog kennels. Tshi was received on 27 September 2021 to explore whether that application could be advanced without notification based on the revised assessment of effects. Due to the timing of the hearing that has been set down, no determination on that application has been made as PNCC officers has to commit to their s42A reports.
- [11] As I explained at the hearing, I observe that the application LU6450 is not before me, and hence I do not take that matter any further.

Site visit

- [12] I undertook a site visit on 18 October 2021 to familiarise myself with the subject site and the surrounding environment. As I explained at the hearing, I was escorted around the site by Ms Anne Maree Harding.

Decision format

- [13] I have had regard to the requirements of Section 113 of the RMA when preparing this decision. In particular, I note I have acted in accordance with Section 113(3) which states:
- “A decision prepared under subsection (1) may, -
- (a) instead of repeating material, cross-refer to all or a part of -
 - (i) the assessment of environmental effects provided by the applicant concerned:
 - (ii) any report prepared under section 41 C, 42A, or 92; or
 - (b) adopt all or a part of the assessment or report, and cross-refer to the material accordingly.”
- [14] During the course of the hearing it became apparent that there were particular issues in relation to landscape and visual amenity effects, noise effects, traffic effects, natural hazards, property values and future rezoning. I therefore focused my

⁴ Reply Statement, Para 3

questions on these matters. I have consequently focused my decision on those same matters.

THE APPLICATION PROCESS

- [15] WSP, on behalf of Soul Friend Pet Cremations, lodged a resource consent application with PNCC on 5 March 2021 to establish and operate a pet cremation business and associated activities at 94 Mulgrave Street, Ashhurst, Palmerston North (the subject site). A further information request was made under s92 of the RMA on 18 April 2021 in respect of noise, buildings elevations of the proposed total span building and potential precedent issues. On 12 May 2021 a response to that request for additional information was received by PNCC.
- [16] The consent application was limited notified to the owners of eight neighbouring properties on 28 June 2021 with the submission period closing on 27 July 2021.
- [17] Six submissions were received, with all six opposed to the proposal. A summary of the submissions was detailed in Section 8 of the Section 42A report⁵ and is not repeated here. For clarification, I note that Mrs I E Currie and Mr B P Currie, are the owners of 73 Winchester Street (Kilmarnock Nurseries also referenced as 83 Winchester Street) and as was established at the hearing itself Mr D Denton is the owner of 102, 107 and 114 Mulgrave Street.
- [18] I record that I read the submissions in full and I have had regard to them as part of my evaluation of the application.
- [19] For completeness I record that there was no pre-hearing meeting held in relation to the proposal.
- [20] As identified in paragraph [8] above, an amended application was received from the Applicant and distributed to the parties. In addition, as set out in paragraph [9] above, I find the amendments to be within scope of the application.
- [21] As noted above, all expert evidence was pre-circulated in accordance with Section 103B of the RMA. I record that I read all of the evidence and have taken it into account as part of my evaluation of the application.

THE HEARING and ATTENDANCES

- [22] The hearing was held in the Palmerston North City Convention Centre on 19th October 2021, commencing at 9:00am. I adjourned the hearing at 3.21pm on the same day. As set out in Minute #4 the reason for the adjournment being to provide the opportunity for submitters to provide additional information, the Section 42A Reporting officer to provide a revised suite of conditions and for the Applicant's right of reply in writing.
- [23] The Applicant's right of reply statement was duly filed in accordance with the timeframes set out in the Minute.
- [24] Having considered that I had all the information I required, I closed the hearing by way of minute (Minute #5) on 27 October 2021.
- [25] The attendances at the hearing were as follows:

⁵ Section 42A Report, Mr P Hindrup, Paras 8.3 – 8.4

Applicant

[26] For the Applicant:

- Ms S Morrison – Owner and Director of Soul Friend Pet Cremations.
- Ms T Manderson – Principal Planner, WSP Ltd.
- Mr G van Hout – Senior Acoustic Engineer, WSP Ltd.
- Mr S Steyn – Senior Landscape Architect at WSP Ltd.

[27] I record that the Applicant's material filed included memorandum from Dr J McConchie, a hydrological expert. However, Dr McConchie did not attend the hearing and as a result I was not able to posit any questions as to that memorandum.

Submitters

[28] The following submitters:

- Mr B P Currie for himself and on behalf of Mrs I E Currie (Submission #4) – 83 Mulgrave Street (Kilmarnock Nurseries).
- Mr D Denton and Mrs E Denton (Submission #5) – 106 Mulgrave Street.
- Mr P Pirie, Surveyor, for Mr and Mrs Denton.

[29] I record that the following submitters did not wish to be heard, Buddha Developments (Mr P Colville), Ms K Wallace, Mr H Pieterse and Ms C Shannon. I further record that while not hearing from those submitters, I have considered their submissions in my evaluation of the application.

Council officers

[30] The following council officers were in attendance and responded to matters raised:

- Mr P Hindrup – Consultant Planner for PNCC, Section 42A reporting officer.
- Ms C Kershaw – Consultant Landscape Architect for PNCC.
- Mr N Lloyd – Consultant Noise Control Engineer for PNCC.
- Mr C Lai – Senior Transport Engineer at PNCC.

[31] A Section 42A officer's report was prepared by Mr P Hindrup, Consultant Planner to PNCC.

[32] I was assisted in an administrative capacity by Ms Susana Figlioli and Ms Rosa de Souza, Democracy & Governance Administrators at PNCC.

[33] The parties provided additional material in response to my directions and questions at the hearing.

[34] All of the material presented by the above parties is held on file at PNCC. I took my own notes of the verbal presentations and any answers to my questions. For the sake of brevity, I do not repeat that material in the decision. However, I do refer to relevant matters raised in the material in subsequent parts of the decision.

LEGAL DESCRIPTION AND ZONING

[35] The property (“**the subject site**”) is legally described as follows:

Address:	94 Mulgrave Steet, Ashhurst, Palmerston North
Legal Description:	Lot 2 DP 35100 and held in Record of Title WN12A/55
District Plan Zone:	Rural Zone

THE PROPOSAL

[36] The proposal was described in a series of documents that formed the application⁶, the section 92 response⁷ and was summarised in the Section 42A officer’s report prepared by Mr Hindrup.⁸ Ms Manderson also addressed the proposal in evidence⁹, clarifying the recent closure of the kennels and cattery at the site, the status of the application to MWRC for discharge to air permit, and the proposed hours of operation. At the hearing Ms Morrison played a video about the proposed activity and responded to my questions.

[37] The Applicant’s proposal at the end of the hearing was, in summary to:

- Establish and operate a pet cremation business and associated facilities to 94 Mulgrave Street, Ashhurst.
- The construction and use of a 500m² Totalspan Shed to house a maximum of four cremators and cremator stacks, including a woodwork workshop, fabricating urns, a spray booth for urn finishes, a reception, staff areas, and chapel.
- The proposed cremation activity will involve the following:
 - Undertaking cremation of domestic animals (around 700 pets per month) and incinerating documents, biological, pathological and medical wastes.
 - Autoclaving sharps for disposal at landfill.
 - Undertaking aquamation using alkaline solution.
- The Four Chimney Stacks will be 10.5m above the ground. There will be two cremators operating in the morning; two in the afternoon; and in some instances, two during the evenings. Each course will last approximately 3 hours.
- One 20-foot shipping container (containing the spray booth for urn finishes) will be established. The shipping container is generally double door with a dimension of approximately 2.6m high x 6.1m long.

⁶ Soul Friend Pet Cremations – Resource Consent Application dated 5 March 2021 – Section 3

⁷ Section 92 Response from WSP, Dated 12 May 2021

⁸ Section 42A Report, Mr P Hindrup, Paras 4.1 – 4.7

⁹ Evidence in Chief (EIC), Ms T Manderson, Paras 10 - 13

- Construction of a timber acoustic fence along the boundary of 98 Mulgrave Street¹⁰ shown on General Site Layout Plan Sheet No. C01 Rev C dated 2021-09-15
- Upgrade of the existing vehicle crossing to meet PNCC engineering standards.
- Four visitor car parking spaces.
- A total of three full time staff and three part-time staff is proposed.
- Establishment and use of a memorial garden for the public to visit between 9am to 3pm Monday to Sunday.
- The proposed hours of operation for the cremation business are;
 - Crematorium 7.00am to 10.00pm Monday to Friday and 11.00am to 3.00pm Saturday and Sunday.
 - Workshop - 7.00am to 7.00pm Monday to Friday and 11.00am to 3.00pm Saturday. The workshop is not proposed to operate on Sundays.
 - Closed on public holidays.
- The list of the plans showing the proposal are listed as follows;
 - General Site Layout - Project. 5-P1403.00, Sheet No. C01, Rev C, dated 15 Sept 2021.
 - Landscaping Plan - Project. 5-P1403.00, Sheet No. C02, Rev C, dated 15 Sept 2021.
 - Totalspan Plan – Project No. 1871985 Architectural Details Floor Plan, Page 1 of 3.
 - Totalspan Plan – Project No. 1871985 Architectural Details Elevations, Page 2 of 3.
 - Totalspan Plan – Project No. 1871985 Architectural Details Elevations, Page 3 of 3.
 - Totalspan Plan – Plan & Elevations Showing Flues.

ACTIVITY STATUS

[38] The Section 42A officer's report¹¹ sets out the applicable rules under the Palmerston North City District Plan (PNCDP) and the Resource Management (National

¹⁰ Soul Friend Pet Cremations – Resource Consent Application dated 5 March 2021 – Section 5.2, Para 1, Bullet points 1 -4, Page 21

Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS) as follows:

- The PNCDP does not provide for Crematoria as a permitted, controlled, restricted discretionary or discretionary activity in the Rural Zone, so is therefore a Non-Complying Activity (R9.9.1).
- The proposal would exceed the permitted noise levels under rule R9.11.1, so is therefore a Non-Complying Activity (R9.9.1).
- The original proposal did not comply with the maximum vehicle movement requirements of 100 vehicles per day. However, with the closure of existing cattery and kennels as recorded in the revised application, the number of daily vehicle movements will be lowered to 30 which is a permitted activity under R 20.5.1.
- The proposal includes soil disturbance of approximately 1,666m² in area to a depth of approximately 275mm. This level of disturbance does not comply with the permitted standards under regulation 8(3) of the NES-CS. In addition, the proposal would also result in soil disturbance to form the building footprint and hardstand areas and a change in land use is required under regulation 8(4) of the NES-CS. Furthermore, the Applicant has not provided a detailed site investigation as required under the NES-CS. Therefore, the application is considered a Discretionary Activity pursuant to regulation 11(1) of the NES-CS.

[39] When considering all the consent triggers and activity statuses, Mr Hindrup's view was that the activities were interrelated and as such they should be considered together as a Non-complying Activity.¹²

[40] Similarly, Ms Manderson concurred with Mr Hindrup's assessment and analysis of the appropriate activity status¹³. I heard no evidence to the contrary, so I accept the applicable rules set out above and that the overall activity status classification is Non-complying.

STATUTORY PROVISIONS

[41] This application falls to be considered as a Non-Complying Activity under Part 2 and Sections 104, 104B, 104D, 108 and 108AA, of the RMA.

SECTION 104D OF THE RMA

[42] As a Non-Complying Activity, the application must go through a 2-step process¹⁴. First it must be assessed against the gateway tests of section 104D of the RMA; only if it satisfies one or other of those two tests can it then proceed to be fully assessed on its merits against the other provisions of section 104 of the RMA.¹⁵

[43] Section 104D states:

(1) Despite any decision made for the purpose of section 95A(2) in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—

¹¹ Section 42A Report, Mr P Hindrup, Paras 6.1 – 6.6

¹² Section 42A Report, Mr P Hindrup. Para 6.7

¹³ EIC, Ms Manderson, Para 14

¹⁴ Section 42A Report, Mr P Hindrup. Para 12.1

¹⁵ EIC, Ms T Manderson, Para 64

- (a) *the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*
- (b) *the application is for an activity that will not be contrary to the objectives and policies of—*
 - (i) *the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
 - (ii) *the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
 - (iii) *both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*

- [44] The first test, section 104D(1)(a), requires that I consider *only* the adverse effects of the activity on the environment. Whatever benefits are alleged are not a relevant consideration – they belong to the subsequent overall assessment. Furthermore, in considering whether the adverse effect on the environment is *minor*, the effects to be considered are as proposed to be remedied or mitigated – and also take into account the baseline of effects permitted and the nature of the existing environment.
- [45] The main effects cited in submissions and at the hearing include landscape character and visual amenity effects, noise effects, traffic effects, natural hazard effects, contaminated soil effects, property value effects, future rezoning and other matters.
- [46] Rather than repeat my determination in relation to the adverse effects, I refer to paragraphs [51] to [85].
- [47] Accordingly I find that the application passes the first gateway test of section 104D(1)(a) because, based on the evidence, landscape character and visual amenity effects, noise effects, traffic effects, natural hazard effects, contaminated soil effects, will be no more than minor.
- [48] Turning to the second test, section 104D(1)(b), the test is whether the activity is *contrary to* the respective objectives and policies of the PNCDP.
- [49] Rather than repeat my determination in regard to the objectives and policies of the PNCDP, I refer to paragraphs [94] to [99].
- [50] Accordingly, I find that the application satisfies the second gateway test of section 104D. Having met both gateway tests the application can therefore proceed to full assessment.

PRINCIPAL ISSUES IN CONTENTION

- [51] The principal issues in contention, as I have determined them, include:
- Landscape and visual amenity effects
 - Noise effects;
 - Traffic effects,
 - Natural hazard effects,
 - Property values,
 - Future rezoning, and
 - other matters.

I address these issues in the following sections.

Landscape and visual amenity effects

- [52] The submissions of Mrs Currie, Mr and Mrs Denton, Mr Pieterse and Ms Shannon raised the issue of the potential visual amenity effects of the proposal.
- [53] At the hearing the submitters expanded on the points raised in submissions. I have summarised particular points drawn to my attention, in particular by Mr Pirie as follows;
- Inability to screen chimneys,
 - Reliance on double row of pine trees on Currie's property is inappropriate as the Currie's propose removal of the trees,
 - Planting mitigation proposed is insufficient,
 - Change in rural landscape – industrial use as opposed to rural use.
- [54] In terms of expert landscape witnesses, evidence was received from Mr Steyn on behalf of the Applicant.¹⁶ On behalf of the Council, a landscape report prepared by Hudson Associates and a brief of evidence from Ms C Kershaw was pre-circulated as part of the Section 42A Report. I record that Ms Kershaw was unable to undertake a site visit in the preparation of the landscape report or brief of evidence. As such I have placed more weight on the expert evidence Mr Steyn.
- [55] In terms of this decision, I have considered all of the above identified matters in relation to the issues in contention in relation to landscape and visual amenity effects. I have set out those main issues and my findings in summary form below.
- [56] In response to my questions both Mr Steyn and Ms Kershaw agreed that there was no material difference in their respective approaches to landscape and visual assessment.
- [57] As to screening, in evidence¹⁷ and in response to clarification questions Mr Steyn considered that the trees specified in the proposed landscaping be substituted for species that would grow to 13m in height. Mr Steyn clarified that he had not taken account of the double row of pines trees on the Currie property as part of his assessment, but rather had relied on the proposed planting around the location of the proposed crematorium to provide effective mitigation noting time taken for the establishment of such measures. In response to questions, Ms Kershaw agreed with Mr Steyn's recommendation. I have incorporated those recommendations into the conditions including the revised landscaping plan appended as Attachment 6 to Ms Manderson's evidence.
- [58] Mr Steyn¹⁸ and Ms Kershaw¹⁹ addressed visual amenity effects both concluding that the overall landscape and visual effects would be low to low-moderate; post mitigation.
- [59] As to the change in rural character, it was Mr Steyn's view was that "... *The resultant vegetative framework will not only absorb the visual change but also be consistent with the wider characteristics and identity of the rural landscape.*" and that "*The*

¹⁶ Mr Steyn also prepared the landscape report that accompanied the application

¹⁷ EIC, Mr S Steyn, Para 2.3

¹⁸ Appendix D of Application, Landscape and Visual Assessment dated 18 Dec 2020 – Section 7, page 19

¹⁹ Section 42A Report, Appendix 2 – Landscape Report, Paras 40 - 41

building, where visible, will be seen in the context of the existing rural and urban landscape and will in my opinion be visually consistent with that landscape."²⁰

[60] Finally, there was a large degree of commonality between Mr Steyn and Ms Kershaw as to the overall landscape and amenity effects being low, with specific recommendations as to mitigation by way of conditions.

Summary of landscape and visual amenity effects

[61] Having considered all of the evidence on this matter, overall, I am satisfied that the proposal does not create adverse landscape and visual amenity effects, and that subject to conditions would be acceptable. In reaching this finding, I am persuaded by the evidence of Mr Steyn as to scale and significance of the effects. Accordingly, for the reasons set out above, I find the landscape and visual amenity effects to be acceptable.

Noise Effects

[62] Potential noise effects were identified as a major issue in the submissions of Ms Wallace, Mr Pieterse, Mrs Currie and Mr Currie, and Ms Shannon. At the hearing, Mr Currie specifically addressed concerns as to noise with particular emphasis on the future residential zoning of the Currie's property and the level of noise that future residential properties would be subject too. I return to the future rezoning issue latter in the decision. I record that at the hearing Mr Pirie noted that the abattoir at 102 Mulgrave Street had not operated since 2010 and as such was not a commercial operation for the purpose of the acoustic assessment. In summary, the acoustic issues drawn to my attention in the submissions were as follows;

- The level of noise
- Noise from crematorium and workshop
- Hours of operation
- Noise mitigation controls
- Queries as to noise modelling

[63] In terms of expert noise witnesses, I received a detailed report and evidence from Mr van Hout on behalf of the Applicant. Similarly, Mr Lloyd on behalf of the Council, prepared a report that accompanied the pre-circulated Section 42A Report.

[64] In terms of this decision, I have considered all of the above identified matters in regard to the issues in contention in relation to noise effects and I set out those main issues and my findings in summary form below.

[65] There was high level of agreement between Mr van Hout and Mr Lloyd in the methodology used for the acoustic assessment, the assumptions used in the preparation of the acoustic modelling including reasons for the use of notional boundary instead of site boundary particularly in relation to 83 Winchester Street as being used for commercial purposes.

[66] Mr van Hout set out in evidence three noise scenarios as to various combinations of activities occurring on the site and potential traffic noise.²¹ Noting the rural nature of the area and the PNCDP noise levels. Mr van Hout then addressed the matter

²⁰ EIC, Mr S Steyn, Para 3.2

²¹ EIC, Mr G van Hout, Paras 3.8 – 3.15

raised by submitters, noting the mitigation measures proposed including a noise management plan and acoustic fence on the boundary to 98 Mulgrave Street.²² In conclusion, Mr van Hout considered that;

7.1 *In summary:*

(a) It is predicted that noise associated with the proposed crematorium, woodwork workshop, spray booth, and vehicles on site comply with the proposed noise limits.

(b) The kennels and cattery are now closed and will not reopen. Therefore, there is no cumulative impacts of noise from the proposal and kennels.

(c) Consent conditions relating to noise have been developed to ensure that the noise effects are in line with the outcomes of the noise assessment. I have recommended a slight change to condition 4 (in Appendix 1 of the Section 42a report).

7.2 *I therefore consider that the noise effects of the Proposal will be acceptable.*

[67] Mr Lloyd for the Council in his Section 42A Report,²³ and response to matters raised in the hearing, generally concurred with Mr van Hout's views and reasoning as to the matters set out above.

[68] Mr van Hout and Mr Lloyd helpfully responded to my questions as to details of the recommended conditions including reference to the noise monitoring map appended to Mr van Hout's evidence. I accept Mr van Hout's and Mr Lloyd's advice and have imposed amended conditions.

[69] In summary, having considered all the submissions and evidence on this matter, subject to the imposition of conditions, I find the noise effects of the proposal to be acceptable.

Traffic Effects

[70] Potential traffic effects were raised in the submission of Ms Wallace.

[71] As addressed earlier in the decision, the closure of the kennels and cattery has had ramifications for the expert traffic assessments from Ms Prinsloo on behalf of the Applicant by way of the amended application²⁴ and from Mr Lai on behalf of the Council in terms of his assessment in the Section 42A Report.²⁵ For completeness I record that the Applicant did not present any expert traffic evidence at the hearing.

[72] In short there was agreement between Ms Prinsloo and Mr Lai as to a reduction in traffic generation from the closure of the kennels and cattery which meant that the total number of traffic movements would be compliant with the District Plan requirements and that the resulting traffic effects would be no more than minor.

[73] In terms of site access Mr Lai considered that given the frontage entire property which is within 30m of two intersections it was unreasonable to consider preventing vehicles access noting the low traffic volumes on Spelman Court, and that the

²² EIC, Mr G van Hout, Paras 4.1 – 4.11

²³ Section 42A Report, Appendix 3 – Acoustic Assessment, Mr N Lloyd

²⁴ Revised Application, Traffic Impact Assessment Memorandum, dated 21 September 2021

²⁵ Section 42A Report, Appendix 4 – Traffic Assessment, Mr C Lai

reconfiguration of Hillary Crescent reduced potential conflict.²⁶ In addition, Mr Lai noted the unimpeded sight lines at the approach to the site entrance which complied with the District Plan Standards.²⁷ In response to my questions Mr Lai considered that amendments to the vehicle crossing as supported by the Applicant were beneficial, but not determinative.

[74] I heard no contrary expert traffic evidence.

[75] Overall, I am persuaded by the evidence of Mr Lai, that the proposal will not generate additional traffic beyond the capacity of the existing network and that compliance with District Plan sightline requirements will not have any impact on the surrounding traffic network. Accordingly, I find the traffic effects to be acceptable, subject to the conditions imposed.

Natural hazard effects

[76] The submission of Mrs Currie and Mr Currie recorded that the subject site was identified as land subject to inundation. Mr Pirie on behalf of the Curries, considered that in summary, that the location of the crematorium was inappropriate, even though some aspects could be mitigated.²⁸

[77] Ms Manderson, replied on the memorandum of Dr McConchie to conclude that, for the reasons set out in that memorandum that the proposal would have less than minor effect on the existing flood hazard in this area.²⁹ Ms Manderson further noted the proposed building meet the permitted activity standards as to non-habitable building in the inundation area.³⁰

[78] Mr Hindrup set out in evidence advice from Horizons Regional Council as to flood risk; concluding that the risks were no more than minor³¹, but reserved his position as to minimum floor level awaiting advice from PNCC building consents team.³² At the hearing Mr Hindrup advised he agreed with evidence of the Applicant and that there was no need to recommend minimum floor levels.

[79] I adopted the reasons and science on behalf of the Applicant and the Section 42A reporting officer, and find that the flood risk to adjoining properties is acceptable and the establishment of minimum floor areas by way of conditions is not required.

Property Values

[80] The issue of effects on property values was raised in the submissions of Buddah Developments and Mr Pieterse. In the Section 42A Report Mr Hindrup opined that property values were not effects under the Act that could be considered.³³ Ms Manderson in evidence concurred with Mr Hindrup.³⁴ Neither Mr Hindrup nor Ms Manderson, set out in evidence any reason for reaching those views. In response to my questions at the hearing, Ms Manderson in reply³⁵, referenced case law to support the view that it was not appropriate to consider property values as to do so

²⁶ Section 42A Report, Appendix 4 – Traffic Assessment, Mr C Lai, Page 2

²⁷ Section 42A Report, Appendix 4 – Traffic Assessment, Mr C Lai, Page 3

²⁸ Presentation, Mr P Pirie, Para 3.7

²⁹ EIC, Ms T Manderson, Paras 35-36

³⁰ EIC, Ms T Manderson, Para 37

³¹ Section 42A Report, Mr P Hindrup, Paras 9.31 – 9.33

³² Section 42A Report, Mr P Hindrup, Para 9.31 – 9.33

³³ Section 42A Report, Mr P Hindrup, Para 9.65

³⁴ EIC, Ms T Manderson, Para 42

³⁵ Reply Statement, Paras 8 - 9

would be double weighing the effects rather than considering the property values as a reflection of the effects on the property. Considering that case law and the reasons provided in reply, I find that it is not appropriate to consider property values as an effect.

Future Rezoning

- [81] The submission of Buddah Development sought that the subject site be rezoned residential. As this is a resource consent application, I am only delegated to consider the effects of the proposal and do not have the authority to rezone land.
- [82] The submissions of Mr Pieterse and Mrs Currie and Mr Currie, noted that the surrounding land was to be rezoned residential and therefore it was undesirable to have a pet crematorium close to residential properties. A point reinforced by Mr Currie at the hearing.
- [83] In the Section 42a Report Mr Hindrup advised that PNCC had commenced seeking community feedback as to potential rezoning in the area, but that no formal rezoning process under the first Schedule of the RMA had commenced. As such it was Mr Hindrup's view that no weight could be given to any future zoning of the area, but rather the proposal should be evaluated under the current zoning and existing land uses.³⁶ Ms Manderson concurred with Mr Hindrup's assessment.³⁷
- [84] The consultation as to any future zoning is in its preliminary stage with no decisions as to rezoning having been made by Council. For the reasons set out by Ms Manderson and Mr Hindrup, I find that the assessment of the proposal should be as to the current zoning and existing land uses.

Other matters

- [85] In the Section 42a Report Mr Hindrup recorded additional matters as to effects, including servicing,³⁸ contaminated soils³⁹ and effects on productive capacity of Elite Soils.⁴⁰ Ms Manderson similarly addressed these matters in evidence.⁴¹ There was high degree of commonality between Mr Hindrup and Ms Manderson in terms of their assessments and that these matters were not specifically addressed in submissions or drawn to my attention at the hearing. As such I adopt the reasoning set out by Mr Hindrup and Ms Manderson and find that effects, subject to relevant conditions as to these matters is acceptable.

Section 104 RMA

- [86] Section 104 (1) of the RMA requires that a consent authority:
- (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—*
- (i) *a national environmental standard:*

³⁶ Section 42A Report, Mr P Hindrup, Paras 9.66 – 9.67

³⁷ EIC, Ms T Manderson, Para 43

³⁸ Section 42A Report, Mr P Hindrup, Paras 9.57 – 9.59

³⁹ Section 42A Report, Mr P Hindrup, Paras 9.63 – 9.64

⁴⁰ Section 42A Report, Mr P Hindrup, Paras 9.60 – 9.61

⁴¹ EIC, Ms T Manderson, Paras 38 - 41

- (ii) other regulations:
- (iii) a national policy statement:
- (iv) a New Zealand coastal policy statement:
- (v) a regional policy statement or proposed regional policy statement:
- (vi) a plan or proposed plan, and

(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

[87] I have discussed the significance of any actual or potential effects on the environment of allowing the activity in the above sections, and turn now to the statutory provisions requirement of Section 104(1)(b).

National Environmental Standards

[88] Mr Hindrup identified that the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS) as a relevant consideration and considered any issues had been addressed in the effects assessment of his Section 42A Report.⁴² Mr Hindrup went on to state there were no other National Environmental Standards applicable to the application. Ms Manderson concurred with that assessment.⁴³

[89] I heard no expert evidence to the contrary, so I accept Mr Hindrup's and Ms Manderson's evidence for the reasons expressed.

National Policy Statements (NPS)

[90] Mr Hindrup identified the proposed National Policy Statement for Highly Productive Land (pNPS- HPL) as being applicable and set out reasons why the proposal was not inconsistent with the proposed NPS.⁴⁴ In evidence Ms Manderson concurred with that assessment.⁴⁵ I record that Mr Hindrup identified in his report that the pNPS- HPL was likely to take effect in the second half of 2021. I questioned Mr Hindrup and Ms Manderson as to the applicability of the pNPS- HPL under s104(1)(iii) of the RMA, given that it only at the proposed stage. They agreed that a proposed NPS was not applicable under s104(1)(iii) of the RMA. Relying on that evidence I have not considered the pNPS- HPL as applicable to this application.

[91] Mr Hindrup and Ms Manderson were also in agreement that there was no other NPS relevant to the application.

Manawatu Whanganui Regional Council – One Plan - Regional Policy Statement (“the RPS”)

[92] Mr Hindrup agreed with the assessment of the RPS contained in the application,⁴⁶ but with some additions as to the protection of elite soils and natural hazards.⁴⁷ In particular Objective 3-4 and Policy 3-5 which seek consideration of the benefits of retaining Class I and Class II soils for protection and in relation to natural hazards Objective 9-1. Ms Manderson agreed with Mr Hindrup in relation to the soils protection issue and relied on the memorandum from Dr McConchie that Objective 9-

⁴² Section 42A Report, Mr P Hindrup, Para 10.3

⁴³ EIC, Ms T Manderson, Para 52

⁴⁴ Section 42A Report, Mr P Hindrup, Paras 10.4 – 10.7

⁴⁵ EIC, Ms T Manderson, Para 53

⁴⁶ Soul Friend Pet Cremations – Resource Consent Application dated 5 March 2021 – Section 7.5

⁴⁷ Section 42A Report, Mr P Hindrup, Para 10.9

1 and its associated policies would be met⁴⁸ and as I set out in the effects assessment above. Ms Manderson and Mr Hindrup concurred referring back to rules in section 22 of the PNCDP and the permitted activity status noting that the effects assessment from Dr McConchie was that water displacement would be less than minor. Given my earlier finding as to the natural hazard effects, I adopt the position of Ms Manderson and Mr Hindrup that a condition as to floor levels is not required and that the policy considerations have been appropriately met.

Operative Regional Plan (“the One Plan”)

- [93] The air discharge from the proposal is not a matter before me. In addition, no matters as to the One Plan regional consents were drawn to my attention.

Palmerston North City District Plan (PNCDP)

- [94] Mr Hindrup provided his own detailed assessment of the relevant objectives and policies in his Section 42A Report, in part agreeing with the assessment provided in the application.⁴⁹ As part of that identification and assessment Mr Hindrup focussed on the Citywide Objectives, the Rural Zone and the Land Transport sections of the PNCDP. In conclusion, Mr Hindrup’s view was that, on the whole, the proposal was not contrary to the objectives and policies of the PNCDP.⁵⁰
- [95] Ms Manderson, in general agreed with the assessment of Mr Hindrup, with the exception of details as to agreement between landscape and noise experts and the flooding issue.⁵¹
- [96] The submission of the Denton’s, prepared by Mr Pirie, records that;
- “There not any objectives or policies that permit or encourage the proposal but rather all of the potentially relevant objectives and policies do not provide of the proposed activities.”*
- [97] In the written material of Mr Pirie presented at the hearing, Mr Pirie identified what he considered the relevant objectives and policies from the rural chapter of the PNCDP.⁵² Mr Pirie considered that the purpose of the objectives and policies was protect the rural environment from inappropriate activities, that the activity was industrial in nature and therefore not appropriate, there would be a significant loss of pasture and that the activity was not essential to be located in a rural environment. Therefore, the proposal failed the required 104D test as to the relevant objectives and policies. In addition, I record that Mr Pirie considered that the proposal was an industrial activity and drew my attention an environment court decision, *Wayne Maskill and Maskill Contracting Limited v Palmerston North City Council W037/2006*, which was similar in nature to the current application and declined by the Court.⁵³
- [98] In reply, Ms Manderson, addressed the matters raised by Mr Pirie, noting the degree of agreement as to the objectives and policies between herself and Mr Hindrup, and recording that she remained of the view that there were policies allowing a wide range of land uses proposed effects such as amenity can be avoided or mitigated.⁵⁴ Ms Manderson then addressed the Maskill decision raised by Mr Pirie, noting several

⁴⁸ EIC. Ms T Manderson, Paras 54 - 55

⁴⁹ Section 42A Report, Mr P Hindrup, Paras 10.11 – 10.38

⁵⁰ Section 42A Report, Mr P Hindrup, Paras 10.39

⁵¹ EIC, Ms T Manderson, Paras 56 - 60

⁵² Presentation of Mr P Pirie, Page 6

⁵³ Presentation of Mr P Pirie, Pages 3-4

⁵⁴ Reply Statement, Para 12

differences as to that decision over the current application, including activity status, jurisdictional matters and that proposal failed both section 104D tests.

- [99] I have read the Maskill decision and I concur with Ms Manderson that matters are sufficiently different as to the application before me. In addition, I am persuaded by the expert evidence of Ms Manderson and Mr Hindrup that when considered as a whole, I find the proposal is generally consistent with the relevant provisions of the District Plan.

Conditions s108 and S108AA

- [100] Mr Hindrup recommended a suite of issues to be included in conditions in the Section 42A officer's report.⁵⁵ Ms Manderson, in evidence, recorded that the Applicant generally supported those conditions, with some provisos, amongst other things, as to the evidence of Mr van Hout and Mr Steyn and in relation to parking.⁵⁶ At the adjournment of the hearing and as set out in Minute #4, Mr Hindrup compiled a revised set of conditions reflecting matters raised in the hearing, which were sent to the parties.
- [101] In reply, the Applicant sought the amendment to condition 6 d) so that the crematorium and workshop would not operate on Saturdays only, in line with the undisputed acoustic evidence of Mr van Hout and Mr Lloyd.⁵⁷
- [102] I record that there were number of conditions offered in accordance with section 108AA and on an *Augier*⁵⁸ basis by the Applicant and that I have taken those into account.
- [103] Having reviewed the conditions presented by Mr Hindrup and Ms Manderson, I find the conditions to generally be appropriate having considered the effects. However, there are further amendments to the conditions, which I have made in line with my findings above.

PART 2 – RMA

- [104] This application is to be considered under Section 104 of the RMA, which sets out the matters that consent authorities shall have regard to when considering resource consent applications.
- [105] In the decision (*RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, the Court of Appeal reconfirmed the pre-eminence of Part 2 matters in the consideration of resource consents. The Court however found that in those instances where it is clear that a planning document has been competently prepared having regard to Part 2 and contains a coherent set of policies leading toward clear environmental outcomes, consideration of Part 2 is unlikely to assist evaluation of a proposal. Conversely, where a plan has not been prepared in a manner which appropriately reflects Part 2, or the objectives and policies are pulling in different directions, consideration of Part 2 is both appropriate and necessary.
- [106] I agree with Mr Hindrup⁵⁹ that the proposal is consistent with the purpose and principles set out in Part 2 of the RMA. I further agree that the PNCDP adequately

⁵⁵ Section 42A Report, Mr P Hindrup, Appendix 1

⁵⁶ EIC, Ms T Manderson. Paras 74 – 77 and Attachment 1

⁵⁷ Reply Statement, Para 19

⁵⁸ Conditions volunteered by applicants but would otherwise be *ultra vires*

⁵⁹ Section 42A Report, Mr P Hindrup, Para 13.1

addresses the Part 2 matters that are particularly relevant to this application, and the proposal has been assessed against its requirements, and is consistent with them. There is no inherent conflict, invalidity, incompleteness or uncertainty, and accordingly further analysis under Part 2 is not considered necessary.

[107] For completeness Mr Hindrup also provided an assessment as to the relevant Part 2 matters⁶⁰ concluding that the proposal will ensure that the potential of natural and physical resources at the site will be sustained to meet the reasonably foreseeable needs of future generations and that subject to conditions, the effects of the proposal would be acceptable. I concur and adopt that position.

Conclusion and Decision

[108] Acting under delegated authority pursuant to Section 34A, and Sections 104, 104D, 108, 108AA of the Resource Management Act 1991, the application made by Soul Friend Pet Cremations for Resource Consent to Palmerston North City Council (LU 5959) for the to establish and operate a pet cremation business, public memorial garden, woodworking workshop and spray booth for urn finishes and to undertake land disturbance and a change in use of a piece of land described in the hazardous activities and industries list without a detailed site investigation at 94 Mulgrave Street, Ashhurst, is granted, subject to conditions.

[109] This decision is made for the reasons discussed throughout and, in summary, because:

- The activity that is **granted** is consistent with the purpose and principles of the Resource Management Act 1991;
- Subject to the imposition of appropriate conditions, the activity that is **granted** is generally consistent with the provisions of the Palmerston North City Council District Plan; and
- The activity that is **granted** is unlikely to have any significant adverse effects on the environment provided the conditions imposed are fully implemented.

[110] The consent conditions attached as **Schedule 2** are imposed.

DATED this 16th day of November 2021.



Mark St.Clair (Independent Commissioner)

Schedule 1 – Minutes

Schedule 2 - Conditions and Plans

⁶⁰ Section 42A Report, Mr P Hindrup, Paras 13.2 - 13.15