IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF application RC LU5959 by Soul Friends Pet Cremations (Applicant) to the Palmerston North City Council for resource consent to establish and operate a pet cremation business, 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.

BY **SOUL FRIENDS PET CREMATIONS**
Applicant

RIGHT OF REPLY

ON BEHALF OF SOUL FRIENDS PET CREMATIONS

26 October 2021

General comments

1. There remains a large degree of agreement between the respective experts who have presented evidence and prepared reports in relation to the application.

2. I remain of the opinion that the application can be granted as environmental effects identified can be appropriately mitigated.

3. It was acknowledged and highlighted by the applicant's team by virtue of providing updated reports, that the closure of the kennels on the subject site results in a change in potential environmental effects occurring on the site as a whole. It does not represent a change in the scope of the application. The kennels were operating under existing use rights and as such were not subject to the application process. The application clearly sought consent for the operation of the pet crematorium business. The kennels were part of the existing environment and effects were taken into account as part of cumulative effects assessment. While some submissions raised concerns in relation to the kennels, the closure (as noted by the Applicant a difficult economic decision due to repeated COVID-19 lockdowns) results in reduced noise and traffic effects at the subject site. The closure does not alter the proposed activity nor the effects of the activity applied for but rather resulted in a reduction in non-compliances with District Plan standards (such traffic movements per day).

Landscape comments

4. In relation to other changes in the existing environment, such as shelter belts on neighbouring properties that may be removed. The presence of the vegetation was discussed in the original landscape assessment as part of describing the existing environment and there was some reference to this screening some views. However, my understanding from the landscape report and from discussions with Mr Steyn is that the greatest benefit from landscape planting and screening is gained from the planting that is established in close proximity to the activity (proposed building including the associated stacks) as shown on the landscaping plan. This is why the landscaping plan focused on planting around the proposed building.

5. I note that the landscape plan proposed by the applicant, subject to minor amendments has been agreed as being appropriate by the landscape experts. While it is acknowledged that the trees may take some time to achieve mature height and screening, having discussed this with Mr Steyn he notes that additional landscaping planting could be done to 'bulk up' the planting in proximity to the building and potentially include some faster growing exotic species. Mr Steyn is of the opinion that no additional boundary planting would be required, even if neighbouring vegetation was removed. It is generally accepted that landscape planting will take time to establish, as noted by Ms Kershaw during the hearing. My understanding from this is that it is acknowledged that the amenity effects would alter over time as more screening is achieved as trees establish.

Potential re-zoning

6. I remain of the opinion that no weight can be given to potential rezoning of neighbouring properties. The plan change process has not yet reached the stage upon which any weight can be given to this – no provisions have been notified, initial consultation only is being undertaken as noted by Mr Hindrup. Plan change processes can take time, and there is no guarantee of the outcome. Regardless, the concerns raised appear to be mostly concerns about 'not in my back yard' and stem from perceptions regarding crematorium activities which ultimately are considered to fall under the potential amenity effects category. As above, the relevant experts are in agreement that landscape and broader amenity effects (such as noise) can be appropriately mitigated to the extent that they will be less than minor to no more than minor, noting that some of the proposed mitigation will take some time to be realized (by virtue of the time taken for planting to reach mature heights).

7. Crematoria can and do exist in proximity to both residential zones and properties throughout New Zealand. Potential adverse effects such as visible smoke would be as a result of mechanical breakdown or similar and are not expected to occur as a part of normal operating. The air quality report prepared to support the discharge to air permit lodged with Horizons Regional Council confirmed that no visible smoke would be expected as part of normal operating procedures. Again, as noted by the relevant experts once the proposed mitigation planting is established visibility of the building would be no more than minor.

Property Values

8. Section 104 of the RMA relates to consideration of environmental effects. As such, property values are not strictly something that can be contemplated under the RMA as noted my Mr Hindrup and myself. But on reflection I note that amenity effects may be relevant to property values. I have examined some case law in relation to this in response to questions from Commissioner St Clair. Meridian Energy Ltd [NZCnvC59, 2013] provides useful discussion in relation to Property values and the RMA, paras [483 – 485] are set out below –

   [483] Section 104(1)(a) *requires us to have regard to any actual and potential effects of a proposed activity on the environment. There are difficulties associated with treating a potential reduction in property value as a separate effect under* s 104(1)(a)*. If* ***property values*** *are reduced as a result of activities on another property, the argument is that the loss in value is the result of the effect of that activity on the environment, not an effect itself. The objection is to the prospect of effects being double-counted.*

   [484] As well, establishing that an activity is likely to cause a diminution in ***property values*** *is problematic. How does one factor in the vagaries of the property market and the various other factors that can contribute to a potential loss in property value? Coupled with this, the Environment Court is almost invariably dealing with activities that are proposed to occur in the future (sometimes some distance away in the future, as may be the case here), and therefore there is a significant predictive element to the Court's assessment. How certain and therefore reliable can future predictions about the property market be in this context?*

   [485] The question of adverse effects on ***property values*** *has been addressed by the Court on several occasions. Some of the case law articulates the idea that if it occurs at all, the diminution in property value is simply another measure of adverse effects on amenity values.*282[1] *In one case,*283[2] *the Court noted that a potential purchaser takes the situation as it exists at the time of purchase and may not be influenced by matters which may be of great moment to a present owner and occupier. There are inherent difficulties in trying to assess whether or not a proposed activity under the RMA is likely to result in a drop in* ***property values****.*

9. No expert evidence has been presented in relation to the potential impacts on property values as raised by some submitters. I consider it appropriate to consider amenity effects, so as to avoid the potential for 'double counting' as noted by the Court in the case above. As such I consider it appropriate to rely on the expert evidence provided by the landscape architects and noise experts in relation to potential amenity effects. They concluded that potential effects are less than minor to no more than minor.

Noise

10. Noise standards have been proposed and these are agreed by the relevant experts as being appropriate. Noise from the activity will continue to be managed through the noise management plan, as well as the mitigation proposed by the applicant (acoustic fence).

Section 104D Assessment

---

[1] Foot v Wellington City Council, W73/98, 2 September 1998, paragraph [256

[2] Hudson v New Plymouth District Council W138/95, 9 November 1995, page 6

11. There is a large degree of agreement between Mr Hindrup and myself that the proposal can pass both limbs of section 104D gateway test. The proposal is not, in my opinion, contrary to the objectives and policies of the Palmerston North City Council District Plan. As noted in the application, I remain of the opinion that there is support from a number of the objectives and polices in the District Plan – as it seeks to allow for a diverse range of land uses, provided effects such as amenity can be avoided or mitigated.

12. I have not found any reference to only utilizing rural land for rural use, as outlined by Mr Pirie. Regardless of any explanatory text – which I do agree is useful for assisting with interpretation - I agree with Mr Hindrup that it is the objectives and policies themselves that are most relevant and are to be considered. These have been addressed in the application, as an examination of relevant objectives and policies was undertaken to help inform site design and identify mitigation - and within the evidence of Mr Hindrup and myself.

13. I have reviewed the Maskill decision, I firstly note that the application was sought for a discretionary activity on the basis that the business was a 'rural industry'. The contention regarding this was discussed in the hearings level decision. The hearing level decision concluded that as the activity was not a rural industry and therefore not a discretionary activity,they therefore did not have jurisdiction to amend the application and grant consent for a non-complying activity. In addition, it was found that various adverse environmental effects, including visual effects, were more than minor and there was a failure to establish the proposal would comply with the relevant objectives and policies and rules of the plan.

14. In the Environment Court decision, as well as canvasing the hearings level decision, amenity values were further discussed and considered. The Court was in agreement with the landscape consultants who presented evidence that the proposal would create significant and adverse visual impact upon the surrounding environment [para 23]. The Court went on to conclude that the effects of the proposal could not pass the first threshold [para 25] of section 104D.

15. In para 28 the Court noted that *"overall, the clear thrust of the relevant Objectives and Polices is summed up in the Explanatory note to Objective 3…".* The explanatory note being as follows –
The rural environment has a range of unique qualities which are valued by rural dwellers and those who view or travel through those areas. It is important that the amenity values and general ambience of the rural environment is protected from any adverse effects on them.

16. The proposal was found to be contrary on the basis of adverse effects (discussed in paragraphs [20] to [25] of the Environment Court decision. As such the Court found it could not pass the second threshold of section 104D either.

17. For the Soul Friends Pet Cremations proposal, consent has not been sought as a rural industry and consent has been sought as a non-complying activity – this is not disputed between the planning experts. This is one key difference with the Maskill proposal. The other key difference is in relation to the potential scale of effects. In particular in relation to amenity, for this proposal it is considered that amenity effects are appropriately addressed through mitigation proposed by the applicant and consent conditions. Amenity effects are able to be addressed and have been found to be less than minor to no more than minor by the relevant experts.

Conditions

18. In relation to Condition 6 as amended by Mr Hindrup.

19. I do not consider that 6. d. is appropriate (*The pet crematorium and workshop must not operate concurrently).* The modelling undertaken by Mr van Hout, and agreed as being reasonable by Mr Lloyd, for the 'worst case' scenario for noise accounted for the crematorium and workshop being operated concurrently. The noise standards proposed as conditions are

based on this worst-case scenario. What was offered by the applicant was that the workshop would not operate on a Saturday when the crematorium was operating. As such, I recommend that Condition 6.d. be amended as follows –

d. The pet crematorium and workshop must not operate concurrently <u>when operating on a Saturday</u>.

20. As above I remain of the opinion that there is no impediment to consent being granted. The proposal is able to pass both the threshold tests of 104D. Mitigation is proposed both by way of what was proposed by the application and the proposed consent conditions to ensure that the level of effects generated from the proposed activity will be less than minor to no more than minor.

Tabitha Manderson

26th October 2021