

**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 consents 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**

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**STATEMENT OF EVIDENCE OF TABITHA MANDERSON  
(PLANNING)**

**ON BEHALF OF SOUL FRIENDS PET CREMATIONS**

5 October 2021

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## **A. INTRODUCTION**

1. My name is Tabitha Manderson. I am a Principal Planner with the consulting firm WSP, a firm specialising in engineering, environmental science and planning. My qualifications are a Bachelor of Agricultural Science (Massey University), Post-Graduate Diploma in Environmental Agricultural Science (Massey University) and a Master of Applied Science (Natural Resource Management) (Massey University). I have undertaken various Post-graduate planning papers (Massey University). I am an Associate Member of the New Zealand Planning Institute. I have completed the Making Good Decisions programme and am a current certificate holder.
2. I have over 22 years' experience in planning and resource management. I have been employed by WSP as a Senior Resource Management Planner and subsequently Principal Planner since October 2007. Since joining WSP I have been engaged in various roles, including providing assistance to various Councils to process consent applications as well as preparing consent applications on behalf of clients.
3. I previously worked for Horizons Regional Council in several roles including over three years as a Consents Planner. As a Consents Planner I processed a diverse and complex range of Land Use Consents, Discharge Permits and Water Permits, including those that were decided at Hearings and Environment Court. During my time with WSP I have prepared numerous applications for wastewater treatment plant discharges, public water supplies, land use consents for earthworks and infrastructure projects and I have also prepared other consent applications for discharge to air from crematoria. I have also worked for the Ministry for the Environment, Taranaki Regional Council and the Wanganui District Council.
4. I confirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note (2014). I agree to comply with the Code of Conduct. Except where I state that I am relying upon the specified evidence of another person, my evidence in this statement is within my area of expertise. I have not omitted to consider any material facts known to me that might alter, or detract from, the opinions that I express.
5. I have been assisting Soul Friends Pet Cremations (SF) since July 2020, initially providing planning assessment advice and then with review and drafting of the required resource consents for both PNCC and Horizons Regional Council. I assisted SF with the consultation evening that was undertaken in November 2020.

## **B. SCOPE OF EVIDENCE**

6. My evidence will address the following:
  - An outline of any areas where I disagree with the planning evidence provided by Mr Hindrup in the circulated Section 42A report as directed by the panel;
  - Some additional areas of assessment for the panel to consider in their decision-making process;
  - Commentary on the consent conditions recommended in Mr Hindrup's Section 42A report; and
  - Commentary on some matters raised in submissions; and
  - Concluding remarks
7. In preparing this report I have considered:
  - The Section 42A reports prepared by Mr Phillip Hindrup (Planning), Mr Nigel Lloyd (Noise), Ms Chelsea Kershaw (Landscape) and Mr Chris Lai (traffic).
  - Submissions received through the notification process.

- The application reports and revised reports as circulated on 23rd September, the Air Quality report prepared by PDP as part of the Horizons Regional Council Discharge to Air Permit.
  - The evidence prepared by on behalf of SF by Mr George van Hout (Noise), Mr Stefan Steyn (Landscape), and a memorandum prepared by Dr Jack McConchie in relation to inundation.
8. I have visited the site on several occasions and am generally familiar with the surrounding area. I am familiar with the provisions of the Resource Management Act 1991 (the Act) and the Palmerston North City District Plan.
  9. I do not provide a description of the proposal or the site as I consider this is adequately addressed in the application, the revised noise and traffic statements and site plan forwarded 23<sup>rd</sup> September and the Officer's Section 42A report. But following discussions with Mr Hindrup I try to provide some clarity regarding what appear to be operational differences across technical reports as it noted there appears to be some disconnect across some of the reports (see para 13).

### **C. UPDATES AND CHANGES TO APPLICATION, CONSENTS REQUIRED**

10. As noted by Mr Hindrup in paragraph 3.5 of his Section 42A report, the application was recently amended to reflect the recent closure of the kennels at the site, it is acknowledged that PNCC reporting officers had not long to consider the changes as noted by Mr Hindrup. The applicant's team considered it was preferable to circulate the revised reports as soon as practical after this change to the application was known to us, hence the circulation of revised reports essentially while PNCC staff would have been preparing evidence. I thank the reporting team for including the new information within their reports.
11. During consultation and from submissions received it was clear that noise from the kennels was an issue for some nearby residents. The closure of the kennels, as I understand it is permanent and the applicant has no intention of reopening them. I understand the Ms Morrison is likely to speak to this further in her evidence, and this should allay fears that the kennels could attempt to seek to re-open under existing use rights. I note Mr Hindrup recommended a condition in relation to this and make a minor comment in respect of this in my commentary on conditions in Appendix 1.
12. As discussed above and noted by Mr Hindrup, an application for a discharge to air from the crematorium is lodged with Horizons Regional Council. At the time of preparing this evidence that application remained on hold for further information. I have recently spoken with the processing planner who confirmed that their technical advisor was now satisfied with the information response provided in relation to technical matters and was expecting advice back some time mid-week of 4<sup>th</sup> October 2021. The further information request also requested information in relation to cultural matters, WSP have been assisting with this and as such had various meetings and phone conversations in addition to providing the application details to the relevant iwi representatives. At the time of preparing this evidence we have had verbal confirmation from the iwi parties consulted with that there were no issues (in the case of Ngāti Kauwhata) and that the subject site was outside of the rohe (in the case of Rangitāne o Tāmaki nui a Rua and Ngāti Raukawa ki te Tonga). We are currently waiting on the written confirmation of this verbal advice so this can be provided to Horizons Regional Council. I hope to be in a position to provide further updates in relation to this matter at the hearing, noting that while the two applications are separate there is likely to be ongoing interest in the discharge to air consent as air quality was raised as a concern by some submitters.
13. As a description of the operation proposed I provide the following outline where I have tried to condense what activities would occur and when, along with what is typical vs. infrequent occurrences-

<b>Day of the week</b>	<b>Hours of Operation</b>	<b>Activities on site/notes</b>
Monday to Friday	7am to 7pm	Staff arriving onsite from 7am-8am, cremation operation, workshop operation, staff leaving site. The typical operation of the site.
Monday to Friday	7pm to 10pm	Maintenance associated with the cremators as required, infrequent. All staff off site by 10pm.
Saturday	11am to 3pm	Some routine cremations to occur. Occasional use of crematorium in response to unplanned customer requests, planned visits to memorial gardens on request. Use of workshop due to large orders to be processed. Intermittent occurrences.
Sunday	11am to 3pm	Occasional use of crematorium in response to unplanned customer requests, planned visits to memorial gardens on request. Infrequent occurrences.
Public Holidays	No operation	

14. Mr Hindrup discusses the consents required in Section 6 of his evidence, I agree with this assessment and that the activity should be assessed as a Non-Complying Activity.

#### **D. SUBMISSIONS**

15. I have read the original submissions, and do not repeat a summary of them here as they are provided in Mr Hindrup's report. Where relevant I have discussed the submission points raised throughout my evidence.
16. In Section J of my evidence below I make some comment on recommended conditions and the degree to which I consider they address some of the specific issues raised in submissions.

#### **E. ASSESSMENT – SECTION 104**

17. In Section 10 of Mr Hindrup's Section 42A report he outlines the matters in Section 104 of the Act that are relevant to the application. I concur with the matters identified by Mr Hindrup and I do not repeat them here.
18. In addition to the technical Section 42A reports, I have also considered the evidence prepared by Mr van Hout and Mr Steyn where they relate to Section 104 matters, as well as the memorandum prepared by Dr McConchie which includes reference to a site plan that now includes the flooding information provided by Horizons Regional Council.

#### **F. ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT**

##### **Landscape character and rural amenity**

19. Landscape character and rural amenity effects were assessed as part of the planning assessment phase and informed the site design. A landscaping plan was submitted as part of the application, as noted by Mr Hindrup.
20. Mr Hindrup provides a summary of landscape character and rural amenity effects in paragraphs 9.1 to 9.16, I generally concur with the assessment provided by Mr Hindrup but I note the evidence of Mr Steyn and provide some further comments regarding

'inappropriateness' (in both the rural zone and adjacent to residential zones) below as this was raised by several submitters.

21. There is a large degree of agreement between the landscape experts, with Mr Steyn noting that after reviewing the Section 42A evidence he has recommended some changes to tree species in order to better mitigate potential visual effects from the stacks. I note that a number of submitters were concerned regarding visibility of smoke from the stacks. Mr Steyn has also referenced the PDP Air Quality report, this report noted that under normal operating conditions there would not be smoke plumes visible but rather a 'heat shimmer'. My understanding is that this does not alter the overall level of effects assessment provided by the landscape experts.
22. In his evidence Mr Steyn also references approximate times for the various vegetation (as recommended in the landscape plan) to become established. The recommended conditions require that a landscape plan be submitted for certification prior to operation of the crematorium. As I understand it there will be a period of time during which construction of the proposed building would be undertaken and thus it would not be until the building work is completed and cremators are moved onto the site before the activity could be operational. It is important that the current phrasing of the condition is retained as it currently does not preclude the applicant from commencing planting when practicable in order to allow for plant establishment to occur before the cremators are in place. The applicant will comment on this in her evidence at the hearing.
23. Another element of amenity value as defined in the Act are the natural or physical characteristics of an area that contribute to people's appreciation of pleasantness. This will be highly variable and it must be acknowledged that perceptions and personal opinions that can be held by people in respect of crematorium may at times be strong. These opinions are acknowledged, and in relation to the ongoing perception of crematorium the applicant, Ms Morrison, is to present evidence in relation to this as she has experience with the operation of the pet cremation business.
24. I agree with para 9.16 of Mr Hindrup's evidence that the proposal will have less than minor effects on the surrounding landscape character and rural amenity. I have recommended minor changes to the landscape conditions, but in my opinion, these strengthen the certainty in relation to the mitigation to be provided.

#### **Noise effects**

25. Various noise assessments have been undertaken by the applicant team, most recently revised modelling as a result of the closure of the kennels. I note there is a large degree of agreement between the two noise experts.
26. Noise monitoring standards for consent conditions have been recommended and these are generally agreed between the two noise experts. Mr van Hout has prepared a map showing where the relevant noise standards would be measured from. I am supportive of the inclusion of a map as this provides certainty to the consent holder, and I consider this to be an important part of meeting the required test of consent conditions being reasonable.
27. Mr Lloyd in his evidence noted a difference in terms of hours of operation described in the management plan and the noise report prepared by WSP. On this basis and on the basis of a request from a submitter (Hanno Pieterse) that the crematorium and workshop do not operate on the weekends. The applicant has clarified that they currently do operate on the weekend on occasion, and if a pet passes away on the weekend requests for a cremation can occur. The applicant would like to still be able to operate on the weekends (as was sought in the application) but acknowledges it would be appropriate to only operate under reduced hours. The applicant has confirmed she is willing to restrict hours on the weekend to between 11am and 3pm only.

28. With regard to Mr Pieterse's request, my understanding is that noise from the worst-case scenario activity will comply with the permitted activity standards at the property boundary of Mr Pieterse's property. The noise standards in the District Plan do not change on the weekends. As such, restricting activity from the proposal in its entirety would be requiring a stricter standard than that allowed by the permitted activity standards of the District Plan and I do not consider this appropriate. However, from a noise effects point of view I understand it to be good practice to ensure that periods of respite are given, and the request from Mr Pieterse is reasonable. As noted in para 13, the applicant has offered to restrict hours on the weekends and no workshop activity would occur on Sundays.
29. Mr van Hout has also noted that as part of the noise management plan a complaints register must be kept. I am aware that the applicant actively encourages adjacent property owners to contact her should they have concerns regarding operations at the site (to be clear I make this comment in reference to the kennel operations, but I anticipate the same framework going forward). As part of the noise management plan Mr van Hout has commented that the Applicant could work with neighbours regarding accommodating special events. This would require neighbours to contact the applicant directly regarding upcoming events, but based on my understanding of the business operation, ongoing discussion would be welcomed by the applicant as it is acknowledged this would be the most efficient way for issues to be resolved.
30. Mr Hindrup has noted the opinion put forward in the further information response that it would be challenging for a residential property to be constructed in the south-eastern corner of 114 Mulgrave Street. I stand by this opinion. In addition to the initial assessment provided, based on the online planning maps as part of responding to para 9.34 of Mr Hindrup's evidence, the WSP team have imported the flood modelling image provided by Horizons Regional Council onto the site plan. While the purpose of this was to demonstrate where the proposed building would be located relative to the flood modelling on the subject site, it does show the corner of 114 Mulgrave clearly. There is an area showing that does not have inundation associated with it to the south of the Ashhurst Stream. It is my understanding that the stop bank runs alongside the Ashhurst Stream and continues through 114 Mulgrave, as such no dwelling would be able to be constructed (without consent) within 8m of the toe of the stopbank. In addition, separation distances from the boundaries (10m from a front boundary and 5 m from any other boundary) would need to be adhered to (or consent sought from Palmerston North City Council). As identified by information put forward by the application team, in addition two crossings of the Ashhurst Stream would be required (based on current configuration of the property), and consents would be required for these. As noted in the advice from the Regional Council and within policies of both the Regional Policy Statement and District Plan safe access and egress are required. While I do not go quite so far as to say that construction of a dwelling (a noise sensitive receiver) in the corner of 114 Mulgrave street is fanciful, as discussed above I consider it would require a number of resource consents and is not something that would be undertaken as of right. Therefore, to restrict the proposed activity that is the subject of this hearing on the basis of a potential future dwelling I would not consider sound planning.
31. Subject to the imposition of the recommended conditions including providing clarity in respect of hours of operation on weekends, I am comfortable that potential noise effects are less than minor and am in agreement with para 9.27 of Mr Hindrup's evidence.

### **Traffic Effects**

32. Traffic effects are described in para's 9.28 to 9.30 of Mr Hindrup's evidence. As noted, there is a large degree of agreement between the parties, and as such no additional traffic evidence is presented on behalf of the applicant. It is noted that in the revised assessment there was no recommendation to upgrade the access to 5.5m, however it was noted in the original application that was notified that the upgrade would be undertaken. As such I am in agreement that it is appropriate from a procedural perspective that the upgrade be undertaken and conditioned.

33. Several submitters noted concerns regarding increased traffic to the site. As discussed in the revised traffic effects memorandum and confirmed by Mr Lai's evidence traffic generated is assessed as being less than occurring currently as a result of the closure of the kennels.
34. I am in agreement with para 9.30 of Mr Hindrup's evidence that traffic effects will be less than minor.

### **Natural Hazards**

35. In providing advice in relation to the overall site design for the property, the WSP team took into account the permitted activity standards (of both the One Plan and District Plan) in relation to a non-habitable building in an inundation area. The advice provided from Horizons Regional Council provides additional useful context, however I do note that my understanding is that in relation to the building itself matters such as floor heights will be looked at as part of the building consent process noting that this building does not include habitable rooms. As such while acknowledging that Mr Hindrup has sought advice from the Building Consent Team that would apply at the time of building consent, I do not consider that this matter needs to be resolved at the resource consent stage provided the relevant policy provisions are met. It will of course however be of assistance to the applicant to have further clarification with regards to this, I do not consider there would need to be a condition on consent regarding this and noting that the building consent process would have its own requirements in this regard. The applicant (Ms Morrison) may make additional comments in relation to this at the hearing. I make comment regarding relevant policies in the Operative District Plan below.
36. In response to the question regarding whether there would be additional flood hazard risk to neighbouring properties discussed in Mr Hindrup's evidence. I sought advice from a WSP colleague, Dr Jack McConchie, and a short memorandum is attached as Attachment 2 to my evidence. This assessment focuses at a high level on the volume of water that would theoretically be displaced during a 0.5% AEP event. The volume of water displaced was calculated as being some 203m<sup>3</sup> of flood water which could increase the flooding depth on the subject site by a maximum of 5mm. The memorandum goes on to note –

*The actual increase in flooding, however, will be less than this because there would also be a slight increase in the lateral extent of flooding to the east of the proposed building; but still on the applicant's property. This would reduce any potential increase in the depth of flooding such that, in my opinion, it would be 'less than minor'. Any change would certainly not be able to be measured. Again, it must be stressed that this increase in the depth of flooding would only occur during a very large design flood event (i.e. 0.5% AEP).*

*In my opinion therefore, I believe that the proposed development will have a 'less than minor' effect on the existing flood hazard in this area. There will be no effects outside of the applicant's property.*

37. On the basis that the proposed building is able to meet the permitted activity standards and taking into account the information provided in the technical memorandum I am comfortable that effects on flood hazard are less than minor.

### **Servicing**

38. The Section 42A report of Mr Hindrup discusses servicing, in para 9.57 to 9.59 I am generally in agreement with this assessment.

### **Effects on the Productive Capacity of Elite and Versatile Soils**

39. I agree with the summary provided by Mr Hindrup in para 9.60 to 9.62. I can confirm that one of the considerations of site selection for the proposed building was avoiding the Class 2 land on the property. I agree that effects on the productive capability of the site will be less than minor.

## **Contaminated Soils**

40. I am generally comfortable with having a condition requiring testing be overseen by a suitably qualified person. I do note however that the Preliminary Site Investigation was based on the original application where additional car parking was proposed near to the chemical storage shed that was renovated in 2010. I note that this car park is no longer part of the revised proposal. As such I consider the recommendations may be amended as now little development, if any, will occur close to the chemical storage shed, it is my intention to seek further advice regarding this and I will provide further update at the hearing. Based on my understanding of the Preliminary Site Investigation the recommendations in relation to asbestos testing may no longer be required, but as above I will seek confirmation from the relevant expert prior to the hearing.
41. Subject to appropriate conditions I agree with Mr Hindrup that the risk of adverse effects on human health will be less than minor. While I may recommend some minor changes to the conditions wording, as above I will seek comment from the Preliminary Site Investigation authors and provide an update at the hearing.

## **Property Values**

42. I agree with Mr Hindrup at para 9.65 that property values are not an effect under the Act that can be considered.

## **Future Rezoning**

43. In his Section 42A report Mr Hindrup discusses the potential rezoning in relation to some adjacent properties. I agree with Mr Hindrup that no weighting can be given to this as no formal rezoning process has commenced.
44. In relation to rezoning I can confirm that a meeting did take place with the applicant, myself and two of the policy planners at Palmerston North City Council regarding the potential rezoning. This discussion occurred in late 2020, one of the options being put forward by the applicant was to include her property in the rezoning as well. I understand from recent discussion there are some concerns about the inundation potential on the applicant's property as well as 'incompatibility' of a crematorium in or adjacent to residential zone properties.
45. Several submissions refer to this rezoning. The potential for rezoning was acknowledged in the application and it is acknowledged that it is of concern to several submitters, with the issue including the 'incompatibility' or inappropriateness of a crematorium adjacent to residential properties. While agreeing with Mr Hindrup that the potential plan change should not be given any weight, I do make some comments regarding 'incompatibility'.
46. I am not of the opinion that crematorium are outright incompatible with adjacent residential sites. The other crematorium sites I have been involved with consenting have residential properties adjacent to them, though it is acknowledged that those sites were existing sites that were also designated. What the sites I have been involved in consenting did have in common with this proposal is the open space around them.
47. In preparation for this hearing, I used an internal WSP Microsoft Teams discussion forum to understand where crematoria are located around New Zealand. While this is not extensive research, I was provided with 15 examples of where crematoria are located in sites adjacent to residential sites. A brief memorandum outlining location of cremators in relation to residential zones is attached as Attachment 3 of this evidence. Examining this my comment is that while the sites are in various zones, the most common element between these sites was for them to be located in open space or recreation zones. Recognising that we are of course dealing with a rural zoned site here I wish to only draw attention to the fact that the common element that I observed from the examples provided to me was open space around them with landscaping in the form of trees.

48. As discussed above the general agreement between the landscape architects that the proposed landscaping mitigation, including planting and colour choice for the building was to ensure that visual amenity is mitigated to the point where, in their opinion, effects are no more than minor. From my discussions with the applicant over the time WSP have been assisting with the project, there is commitment to ensuring that effects are adequately mitigated and to this end the screen planning will continue to play a role in mitigation of effects.
49. The application acknowledged that there can be perceptions and in some cases strong personal aversions to crematoria in general, and often amenity issues can be at the heart of this. The applicant has been operating the current business for some time and will be presenting evidence in relation to general public response, based on her experience and that of others in the industry, in relation to public perceptions and how these can change over time.
50. As noted above, and in agreement with Mr Hindrup, as the plan change for potential rezoning on some neighbouring sites has not occurred no weight can be given to this. Should sites be rezoned in the future then the crematorium as proposed, with associated mitigation, would not, in my opinion, be out of place having considered a number of examples from around the Country.

### **Effects Summary**

51. In summary in consideration of the identified potential effects as discussed above, subject to the proposed mitigation and recommended conditions I consider the effects to be less than minor.

## **G. STATUTORY PROVISIONS**

### **National Environmental Standards**

52. I agree with Mr Hindrup's assessment of National Environmental Standard in para 10.3.

### **National Policy Statement for Highly Productive Land**

53. I agree with Mr Hindrup's assessment of the proposed National Policy Statement for Highly Productive Land in 10.4 to 10.7.

### **One Plan Regional Policy Statement**

54. I agree with Mr Hindrup that the correct planning instrument in respect of assessing objectives and policies is the One Plan – Plan Change 2 (2016). I agree with para 10.9 of Mr Hindrup's assessment.
55. In relation to Natural Hazards, I am comfortable based on the technical memorandum of Dr Jack McConchie, that Objective 9-1 and supporting policies are able to be met. The relevant rules and permitted activity standards as required by Policy 9-1 (c) are able to be met by the proposal, in this case Policy 9.2(b)(ii) is of particular relevance as the building is a non-habitable structure and therefore can be allowed. Potential effects from displacement of water from the proposed building have been assessed as being less than minor. As I discussed above, additional information from the Building Consent Team I expect would be advantageous for the applicant in terms of what may be required under the building consent process, but there does not need to be a condition of this consent in relation to a required minimum floor level.

## **Operative Palmerston North City Council District Plan**

56. I agree with Mr Hindrups para 10.11 that the Palmerston North City District Plan is the correct planning instrument to be assessed.

City View Objectives

57. I generally agree with Mr Hindrup and his assessment against the City View Objectives, with the exception in relation to minor disagreement in relation to Objective 19. I am more comfortable that effects in relation to natural hazards are appropriately met based on the Memorandum I have from Dr Jack McConchie.

Objectives and Policies – Section 9 (Rural Zone)

58. I am largely in agreement with the assessment provided by Mr Hindrup in paragraphs 10.21 to 10.29, except where I recommend minor changes to conditions (refer section J of my evidence). I note the high degree of agreement with the respective technical experts for landscape and noise and generally agree with the recommended conditions (with some minor edits as discussed further below). In respect of Policy 2.5 I am comfortable that this policy is met, based on the adherence to permitted activity standards and the technical memorandum provided by Dr Jack McConchie.

59. I agree with Mr Hindrup that the proposal meets the relevant objectives and policies of Section 9 of the ODP.

Objective and Policies – Section 20 (Land Transport)

60. I agree with the assessment provided by Mr Hindrup in paragraphs 10.30 to 10.39.

## **H. SECTION 104(C) OTHER MATTERS**

61. Mr Hindrup assesses precedent in response to a submitter concern. I agree with his paragraphs 11.2 to 11.3 and make some additional comment below.

62. I note that in *Dye v Auckland Regional Council* [2002] 1 NZLR 337 (CA) the following:

*The granting of a resource consent has no precedent effect in the strict sense. It is obviously necessary to have consistency in the application of legal principles, because all resource consent applications must be decided in accordance with a correct understanding of those principles. But a consent authority is not formally bound by a previous decision of the same or another authority. Indeed in factual terms no two applications are ever likely to be the same; albeit one may be similar to another. The most that can be said is that the granting of one consent may well have an influence on how another application should be dealt with. The extent of that influence will obviously depend on the extent of the similarities.*

63. On the basis of case law, I agree with Mr Hindrup that little, if any weight, should be given to perceived precedent effects.

## **I. SECTION 104D ASSESSMENT**

64. Mr Hindrup provides a Section 104D assessment in paragraphs 12.1 and 12.2. I am in agreement with the assessment that provided the proposal passes through one of the Section 104D gateway tests the applicant is entitled to have its application determined on its merits in accordance with the provisions of Section 104 RMA. I do however make some further comment below as it was a matter raised by one submitter.

**Section 104D(1)(a) – “the adverse effects of the activity on the environment.... will be minor”**

65. The first limb of the gateway test is whether the adverse effects of the activity on the environment will be no more than “minor”.

66. In considering adverse effects on the environment, it is important to note that this does not mean no effect but rather that the panel must be satisfied that “minor” or comparatively small effects will result from the activity.

67. Case law has established that “minor” is a comparative word. In the early authority of *Bethwaite and Church Property Trustees v Christchurch City Council* His Honour Judge Skelton held on pages 7 and 8:

*“The word “minor” is not defined in the Act but dictionary meanings suggest that in its primary sense, which is the appropriate one here, it is a comparative word. Thus, the Concise Oxford Dictionary gives as the primary meaning “lesser or comparatively small in size or importance...”. The Collins Concise Dictionary gives as the primary meaning “lesser or secondary in amount, importance, ....”.*

*“It seems clear therefore, that in providing the pre-condition in section 105(2)(b)(i) of the Act Parliament did not intend that there should be no adverse effects. Nor, so it seems to us, did it intend that any adverse effects should be minimal. That is to say, again having recourse to the dictionaries, “smaller or very minute or slight”. Thus, in using the word “minor” Parliament intended that whatever adverse effects there might be they had to be less than major, but could be more than simply minute or slight.”*

*“Then too, we think it is permissible to consider this question having regard to any mitigation of effects that might be achieved by the imposition of conditions. Put another way, it is permissible to have regard to the effects of the activity, controlled by conditions that would limit or proscribe that activity and its effects. This has been done before – see for example *Shell Oil NZ Ltd v Rodney District Council* Decision No: C19/93. We did not have the benefit of any submissions about that in this case, but we think it must follow from the way sections 104 and 105 are structured. It would not be sensible to have to rule out a proposed activity on the grounds that it failed to comply with both the pre-conditions in section 105(2)(b) of the Act if it was clear that by the imposition of conditions on the granting of consent, such a result could be avoided. We remind ourselves too however, that even though a proposal might be found to satisfy one or other of the pre-conditions, does not follow that consent has to be granted.”*

68. Subsequently, in *Stokes v Christchurch City Council* His Honour Judge Jackson confirmed, at paragraph 75, his agreement with the Planning Tribunal’s findings in *Bethwaite* that the word “minor” means “less than major but could be more than simply minute or slight.”. Then, His Honour went on to hold at paragraph 76 that:

*“The test is whether the adverse effects as proposed to be remedied and/or mitigated, and taken as a whole, are more than minor”.*

69. Based on the technical reports supporting this application and technical evidence prepared the effects are considered to be less than minor to no more than minor. This assessment is guided by comparison with the relevant standards for permitted activities within the plan as applicable (in relation to traffic and building location etc).

70. Overall it is concluded objectively that the adverse effects of the proposal on the environment, as proposed to be remedied and/or mitigated, and taken as a whole, will be no more than ‘minor’ (as that term is legally understood following *Bethwaite* and *Stokes*).

**Section 104D(1)(b) – “the application is for an activity that will not be contrary to the objectives and policies of...”**

71. The second limb of the Section 104D gateway test is whether the activity is contrary to objectives and policies. Contrary is understood to mean something more than just non-complying. In general terms the Courts have applied the definition of “contrary” as being “repugnant to” or “opposed to”, not simply that the proposal does not find support from them

(See [35], Monowai Properties Ltd v Rodney DC A215/03.). The policy assessment undertaken as part of this application indicates there is a lot of consistency with the relevant identified objectives and policies, there is an enabling intent to the policies and desire to see a range of land uses allowed for – provided adverse effects can be avoided or mitigated. Taking into account the effects assessment it therefore follows that the activity is not found to be contrary to relevant objectives and policies.

72. Taken overall, the proposal is not repugnant to, or opposed to, the thrust of the objectives and policies of the plan. I note there is a large degree of agreement between Mr Hindrup and myself in this respect. At the time of preparing my evidence, I am not aware of nor viewed any additional expert planning evidence. There is also a high degree of agreement on the assessment of adverse effects between the applicant team and the Council team.
73. As such I am in agreement with Mr Hindrup that the proposal is able to meet both limbs of Section 104D.

#### **J. COMMENTS ON PROPOSED CONDITIONS**

74. Mr Hindrup has provided a set of conditions. These are by and large based on mitigation proffered in the application. I have recommended minor changes based on the evidence of Mr van Hout and Mr Steyn. As noted above I will be seeking further comment with respect to the recommendations in the Preliminary Site Investigation now that the additional car parking area close to the closed kennels area is no longer required, there may be changes to the recommendations made in the Preliminary Site Investigation and I intend to resolve this prior to the hearing.
75. I have made changes to conditions 3 to 6 in relation to where noise monitoring would occur and have recommended a map be included as part of the conditions. I have made updates to reflect hours of operation, including weekend work but these are restricted to the hours as offered by the applicant.
76. In relation to the landscaping conditions, I have made minor updates to these conditions to provide more certainty and measurability in relation to these. Mr Steyn has produced an updated landscaping plan, this could be incorporated into the conditions if there was agreement regarding this.
77. I have had some initial discussions with Mr Hindrup and our intention is to meet prior to the hearing to work through the conditions and we may be able reach agreement on some matters.

#### **K. RELIEF SOUGHT IN SUBMISSIONS**

78. Below I make brief comment where submitters identified specific matters that could be conditioned.
79. Ms Catherine Shannon sought to be informed should the proposal go ahead. I do not consider that a condition of consent would be required to accommodate this, as a submitter she will be provided with a copy of what decision is made as a matter of course.
80. Mr Hanno Pieterse sought that no operations occur on weekends. As discussed above the proposed activity will meet the District Plan permitted activity standards at the boundary of Mr Pieterse property, the applicant however has agreed that hours of operation should be restricted on the weekends and the 'worst case' scenario as modelled in relation to noise would not occur on weekends.

#### **L. PART 2 ASSESSMENT**

81. In Section 13 of his Section 42A report Mr Hindrup sets out the approach as confirmed by the High Court in relation to Part 2.
82. I agree with this assessment, and in a similar manner, based on the evidence currently available do not undertake a Part 2 analysis.

#### **M. CONCLUSION AND RECOMMENDATIONS**

83. The technical experts who have provided evidence to date are largely in agreement in respect of the level of effects and appropriateness of mitigation and conditions as proposed. There is a large degree of agreement that effects will be less than minor to no more than minor, and that the proposal is consistent with the relevant Objectives and Policies of the Operative District Plan. I consider that the application meets both limbs of Section 104D.
84. Where submitters have sought specific relief this has been responded to and incorporated to the extent practicable.
85. Subject to the amended conditions proposed (Appendix 1) I remain of the opinion that the consent can be granted.

Tabitha Manderson



5th October 2021

Attachment 1 – Conditions Schedule, T Manderson comments and recommendations  
Attachment 2 – Memorandum regarding flooding  
Attachment 3 – Memorandum regarding crematorium in relation to residential zones  
Attachment 4 – Expert evidence George van Hout, Noise  
Attachment 5 – Expert evidence Stefan Steyn, Landscape Architect  
Attachment 6 – Updated landscape plan