



## **Memorandum**

Date: 24 July 2023

From: Stewart Fletcher

Subject: A Resource Consent Application to Establish a Contractors Yard

Number: LUC22/0107

Location: 49 Mitcham Road

### **Introduction**

Resource consent has been sought to establish a contractor's yard at 49 Mitcham Road in Ashburton. The application has been processed on a limited notified basis and a prehearing meeting was held to consider various matters raised.

The outcome of the meeting was that the applicant would produce further information, including amendments to the application. This information would be reviewed and commented on by myself and then the submitter would have the opportunity to also provide comments. The applicant could then determine whether they wish to make any further amendments to the proposal in completing the prehearing process.

On the basis of the information received the below provides comments as to the revised proposal. The intent is that this document is provided to the applicant to determine if further additions or modifications are required. A copy of the comments will also be provided to the submitter and they will have the opportunity to respond to both this document and any further modifications proposed by the applicant. This includes whether the additional information modifies or changes the submitters position on the application.

Accordingly, the following comments are provided:

### **Relocation of Vehicle Crossing**

The applicant has submitted a revised site plan showing an offered relocation of the driveway approximately 80m west of the existing driveway. It is understood that the existing crossing will remain but will not be used as part of the proposed activity.

The applicant has specified that the new vehicle crossing will be designed in accordance with ADC rural vehicle crossing/entranceway requirements. It is noted that discussion occurred in the prehearing meeting regarding the width of the vehicle crossing and it was made clear that if widening was not to occur on the opposite side of the road then the crossing would need to be of such a width to enable turning within the sealed area of the road and crossing.

Overall, it is considered the relocation of the vehicle crossing is appropriate (subject to the obtaining of written approvals, as discussed below) but the applicant should provide further detailed information as to the design of the vehicle crossing, including dimensions to such a degree as to demonstrate that vehicles can turn in and out of the site within the sealed areas of the road and crossing.

## **Establishment of a Retail Activity**

Through the prehearing meeting the applicant clarified that some hay / straw which is harvested by the applicant will be sold during the year. Previously it was understood that the applicant would be storing hay etc for the landowners they harvested the hay from. This raised the question as to whether resource consent should have been sought for a retail activity as well as the Rural Service Activity. In addressing this question the applicant responded as follows:

*This activity is a Rural Service Activity, being an agricultural contracting facility or base. In addition to the on property balage, hay and/or straw there are other properties that Drummond Contracting Ltd, essentially manage and take the feed off as required and bring this back (not all of it at times) to site to store.*

*Storage of balage or the like is common, not only for contractors but at times, other than land managed by the applicant, farmers will have a feed surplus due to favourable farming conditions or otherwise where the feed is surplus to a properties needs and thus can be secured by the applicant/consent holder, or whoever for "on sale" if required.*

*This is a common practice and has been so for decades. The key point here is it is not a direct sale of the feed to the public therefore it is not a retail activity or retail sales for that matter, and it is not the primary activity of the business. It is an ancillary part of the Rural Service Activity. It is a farming activity to grow the balage.*

I have considered this matter further and note that this question influences the overall activity status of the application. Rural service activities are a discretionary activity under Rule 3.8.5 whereas a retail activity falls under a non-complying activity status under Rule 3.8.6.

Relevant definitions in the Ashburton District Plan, in determining the activity status for the sale of hay and balage include:

### Rural Service Activities

*means any activity that provides a commercial service to a rural activity such as seed cleaning, rural contractors and grain drying.*

### Commercial Activity

*means an activity involving the payment of fees for hire or reward. Commercial Activity includes the use of land and buildings for the display, offering, provision, sale or hire of goods, equipment, or services, and includes, but is not limited to, shops, markets, showrooms, and restaurants, takeaway food bars, professional, commercial and administrative offices, service stations, motor vehicle sales, the sale of liquor and associated parking areas; but excludes passive recreational, community activities, home occupations, and farming activities. This includes a business providing personal, property, financial, household, and private or business services to the general public. It also includes recreational activities where a fee is paid to use facilities i.e. a commercial bowling alley. It does not include community sports facilities where a membership fee may be paid.*

### Service Activity

*means the use of land and buildings for the primary purpose of the transport, storage, maintenance or repair of goods, including panel beating and vehicle spraying. It also provides for service stations. See also the definition of Rural Service Activity for those activities servicing a rural activity.*

Retail Activity

*means the use of land or buildings for displaying or offering goods for sale or hire to the public and includes, but is not limited to, food and beverage outlets, small and large scale retail outlets, trade suppliers, yard based suppliers, second hand goods outlets and food courts.*

Retail Sales

*means the direct sale or hire to the public from any site and/or the display or offering for sale or hire to the public on any site of goods, merchandise or equipment. Retail sales includes restaurants, but excludes recreational activities.*

Farming Activity

*means the use of land and buildings for the primary purpose of the production of vegetative matter and/or commercial livestock. Farming activity includes the packing, storage, and/or processing of the vegetative matter and/or commercial livestock produced on/in that land or on other land owned or managed by the same person(s). Buildings for this purpose are permitted up to an area of 500m<sup>2</sup> per site, where they meet all other rules. Farming activity excludes residential activity, home occupations, intensive livestock management, and forestry activity.*

Food and Produce Processing

*means the processing, packaging, storage, distribution and marketing of vegetative, marine and animal matter.*

Outdoor Storage

*means land used for the purpose of storing items, vehicles, equipment, machinery, natural and processed products, outside a fully enclosed building for periods in excess of 4 weeks in any one year.*

Retail Sales

*means the direct sale or hire to the public from any site and/or the display or offering for sale or hire to the public on any site of goods, merchandise or equipment. Retail sales includes restaurants, but excludes recreational activities.*

In consideration of the above definitions, a rural service activity is inherently a service activity and the question becomes whether the selling of the hay / balage falls within being a retail activity and something other than a rural service activity. I note that the definition of service activity includes service stations which are a retail activity. That said, the definition of retail sales includes the likes of yard based suppliers and the sale of hay etc would fall within the definition of retail sales.

My preliminary opinion is that the selling of a product is different from providing a service, but the District Plan does provide overlap between the two types of activities, such as in the example of a service station. This then leads on to the notion that a service activity could potentially include a retail component. It is then necessary to examine the proposal as a whole and determine the dominant versus secondary parts of the activity. In this instance it is considered the sale of straw and hay will be a secondary component to the activity provided necessary provisions are in place to ensure this remains the case. Later, comment is provided around the scale of straw and hay storage on the site and ensuring the scale of the activity is defined. On the assumption that the applicant suitably addresses that question it is considered that the sale of hay and straw could potentially fit within the scope, and activity status, of the application as notified.

It is noted that the above represents my preliminary review of this issue and it is anticipated that further analysis will be required as part of any section 42A report and that the Hearings Commissioner may wish to consider this matter further.

### **Area for the Storage of Hay**

During the prehearing process questions arose as to the storage of hay and the scale of storage that would occur as part of the proposed activity. With regards to this question the applicant has responded as follows:

*The amended site plan includes the boundaries within which the contractor's yard will operate. The hay, straw and balage will be stored within these areas and within that area shown on the aerial plan where balage can clearly be seen. Hay/straw will be put within the new shed(s) as required.*

On the basis of the above response provided by the applicant there is the potential that the entire application area could be used for the purpose of hay storage. It is considered that this is not consistent with the nature or intent of the resource consent application and accordingly controls need to be put in place regarding the size of the area to be utilised for hay storage, the location of these areas and the height of the storage areas.

### **Establishment of Landscaping**

The applicant has proposed to establish landscaping as part of the proposed activity including the volunteering of conditions as follows:

*All screening plantings on the Mitcham Road frontage as referred to in the application and site plan, shall be maintained to ensure their long-term survival. The exception is a tree (s) to be removed for the new driveway. Any plants that become diseased or die shall be replanted in the subsequent planting season (April – September) following their loss.*

*The consent holder shall advise the Council when all the plantings have been established on the site.*

*The existing shelterbelts and trees on site, as identified in the application for retention, shall be appropriately maintained (bi-annual or triannual trimming) and any removal or death by natural causes, requires replacement of the tree(s).*

It is agreed that the above provisions are appropriate and that requirements should also be imposed to ensure appropriate specimens are established within a defined time period. It is noted that the volunteered conditions include protection of existing landscaping on either side of the yard area which is also considered important in managing potential effects on neighbouring properties.

### **Number of Vehicle Movements**

Discussions at the prehearing meeting included whether limitations would be placed on vehicle movements during later evening hours. Discussions included potential limitations which would restrict the activity after 10pm at night to two heavy vehicle inward movements and no outward movements. In response and following consideration of the matter, the applicant has proposed the following:

*No more than four HGV movements (including tractors) with ancillary trailers/balers or attachments, shall occur inwards and no more than two outwards from the site onto and*

*from Mitcham Road, between 10pm and 6.30am. The reason for the four movements in is that the driveway is moved further away from the submitter's residential unit.*

The primary reason for the potential control of vehicle movements after 10pm at night was due to potential effects on the property owner located on the opposite side of Mitcham Road (48 Mitcham Road). It is agreed that the relocation of the proposed vehicle crossing would reduce effects on the adjacent landowner but it is also recognised that the purpose of the process includes to enable further consultation with neighbours such that the opportunity for their further input will be sought.

### **Monitoring of Activity**

Discussions included what measures could be imposed to ensure ongoing compliance with the resource consent application. In response the applicant has proposed the inclusion of a standard monitoring condition as follows:

*Pursuant to section 128 of the RMA the conditions of this consent may be reviewed by the Council at the consent holder's costs at any time:*

*(a) To deal with any adverse effect on the environment which may arise or potentially arise from the exercise of the consent and which it is appropriate to deal with at a later stage.*

*(b) At any time, if it is found that the information made available to Council in the application contained inaccuracies which materially influenced the decision and the effects of the exercise of the consent are such that it is necessary to apply more appropriate conditions.*

It is considered that potential non-compliances with conditions, such as vehicle movement limitations, could result in adverse effects intended to be controlled and addressed by the resource consent application and a standard review condition may not be adequate to address the issue in a timely manner. On this basis it is recommended that the applicant consider this matter further including:

- The establishment of a vehicle tracking system which would be readily available on request to show a record of vehicle movements, their number and timing.
- A system to ensure all staff are aware of relevant limitations imposed through the resource consent application;
- The inclusion of implications for established non-compliances with conditions of consent such as the cessation of activities / vehicle movements after 10pm until the agreement of Council is obtained that vehicle movements after 10pm can resume.

### **Proposed Sheds**

The applicant has supplied plans detailing the proposed sheds including their dimensions and height (maximum height 4.2m). The site plan identifies the proposed location of the sheds. The information provided is considered adequate in order to include the buildings as part of the resource consent application and it is considered that the sheds will provide a buffer between part of the activity area and the road. Consideration could be given to specifying a colour as part of the building specifications.

## Designation

It has been identified that a designation passes through the property, including the yard area of the proposed activity. In considering the impacts of this the applicant has advised the following:

*Consultation has been undertaken with Ashburton Lyndhurst Irrigation Ltd (ALIL)- General Manager, Rebecca Whillans. There is an easement document that has been signed by the landowner and forwarded back to ALIL. Within that document are requirements about not building over the easement and to avoid any damages to the said water supply line. This, as I understand it, suffices for approval from ALIL.*

Consultation is considered necessary, and it is considered that the combination of contact made by the applicant, together with the designation assists in addressing this issue. It is also considered that the provisions of the Resource Management Act 1991 further ensure that the applicant cannot undertake any works / activities that may affect the designation until the written agreement of the requiring authority has been provided.

## Updated Written Approvals

It is noted that written approvals have been submitted as part of the application from various parties. In addition, some parties may have elected to not submit on the notified application, on the basis of the original proposal details. Since that time the proposal has been revised, particularly including the relocation of the vehicle entrance. The changes to the proposal necessitates consultation to be undertaken and ideally to ensure no questions as to renotification arise. To address this, the written approval of the owners and occupiers of 70 and 75 Mitcham Road should be provided but ideally the updated written approval of all relevant parties should be provided.

## Conclusion

Resource consent is sought to establish a contractors yard at 49 Mitcham Road. In response to a prehearing meeting the applicant has updated the application which is considered to both address some potential effects and also provide better clarification as to some matters. It is considered that further matters can be clarified or addressed as per the above.

This memorandum provides the applicant a further opportunity to consider if additional amendments are appropriate and also to enable the submitter the opportunity to further consider and comment on the revised proposal.

Kind Regards



Stewart Fletcher  
**CONSULTANT PLANNER**