

UNDER THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER OF an application by
GD Osborne and J Osborne to
renovate and convert the vacated
Longbeach Scout Hall to a residential
unit within the Rural B zone, at 798
Longbeach Road, Eiffelton,
Ashburton.

Council File: LUC23/0033

ASHBURTON DISTRICT COUNCIL

Application reference: LUC23/0033

**Report and determination by Hearing Commissioner
Matt William Bonis**

**DECISION OF THE ASHBURTON DISTRICT COUNCIL ON A RESOURCE CONSENT
APPLICATION**

APPLICATION REFERENCE:	LUC23/0033
APPLICANT:	GD Osborne and J Osborne
SITE ADDRESS:	798 Longbeach Road, Eiffelton, Ashburton
LEGAL DESCRIPTION:	Lot 1 Deposited Plan 23186
PROPOSAL:	Land Use Consent: To renovate and convert the vacated Longbeach Scout Hall to a residential unit
OPERATIVE DISTRICT PLAN:	Rural B Zone
OVERLAYS / NOTATIONS:	None
COMMISSIONER:	Matt Bonis
SUMMARY OF DECISION:	Granted, subject to Conditions
DATE OF DECISION:	14 October 2024

1.0 Introduction

- 1.1 I have been appointed by the Ashburton District Council (**the Council**) to make a decision on the Land Use resource consent by GD Osborne and J Osborne to renovate and convert the vacated Longbeach Scout Hall to a residential unit as located within the Rural B zone. The site (**subject site**) is located at 798 Longbeach Road, Eiffelton, Ashburton.
- 1.2 In reaching the following decision, I have read all the relevant evidence from Mr Mountfort for the applicant and Ms Wright for the Council, as well as legal submissions including those in reply from Ms Gardner for the applicant, and the tabled material from Mr Mackenzie the owner and occupier of the surrounding farm block at 902 Longbeach road who submitted in opposition to the proposal. I have also reviewed the relevant provisions of the Operative District Plan (**the Plan**).
- 1.3 I attended the Council Offices on 13 September 2024 to undertake the hearing on this application. I conducted an inspection of the subject site on the same day, as well as in advance of the Hearing as undertaken on 30 August 2024.
- 1.4 Upon receipt of requested additional information from the Council reporting officer regarding Regional Council consent CRC212067 (onsite wastewater system) and 400m intensive farming buffer illustration on 20 September, and receipt of submissions from Ms Gardner in reply, I closed the hearing on 27 September 2024.

2.0 The Application

- 2.1 Land use consent is sought to renovate and convert the vacated Longbeach Scout Hall to a residential unit. Primarily, consent is required given a breach with the minimum allotment size associated with establishing a residential unit in the Rural B zone.
- 2.2 Within the Rural B zone such a breach falls to be non-complying and that of course opens up the s104D (of the Resource Management Act) 'gateway' tests.

2.3 The s42A Report prepared by Ms Wright provides a detailed description of the proposal in Section 3.1. There is no contention between the parties as to the description of the proposal, therefore, Ms Wright's description is generally adopted for the purpose of this decision, noting the following key aspects:

- a. The proposal is to renovate and convert the disused Longbeach Scout Hall into a two-bedroom residential dwelling.
- b. The subject property is 1,667m².
- c. The combined footprint of buildings on the site (main building and garage) is some 170m² (10.5% site coverage).
- d. Existing landscaping on the site will be retained.
- e. A no-complaints covenant in perpetuity will be entered into to prevent complaints arising from land based primary production on the immediately adjoining site (as owned and operated by Mr Mackenzie)
- f. The vehicle crossing providing access to Longbeach Road will be upgraded and sealed.
- g. Windows and any glazed doors will be acoustically double glazed¹.
- h. An acoustic fence is to be erected on the site between the dwelling and the pumping station on the immediately adjoining site (as owned and operated by Mr Mackenzie)².

3.0 The existing site and immediate vicinity

3.1 The subject site and surrounding environment are concisely described in paragraphs 9 -13 within the evidence of Mr Mountfort, with additional context provided by Ms Wright in Section 3.2 of the s42A Report. This description was further added to in the discussion held with Mr Mackenzie at the Hearing and reflects my observations of the site and surrounds.

¹ Reply. Gardner [Volunteered Condition 2]

² Reply. Gardner [Volunteered Condition 9]

- 3.2 As per the s42A Report prepared by Ms Wright, the site at 1,667m² is small for a Rural B zoned property under the operative District Plan which otherwise requires a 50Ha minimum area for subdivision and residential density.
- 3.3 The existing hall as established in the 1960's, and together with the surrounding curtilage is in a state of disrepair and neglect. There is no heritage notation in the Plan as associated with the Hall, nor any representative historical or cultural associations.
- 3.4 There are two unformed gated access points to the site from the road reserve, as setback some 5.5m from the formed and sealed road.
- 3.5 The application site contains the main hall as set centrally and to the south of the property, and an existing double garage as set back from Longbeach Road and to the north of the property. Landscaping consists of a modest extent of pittosporum along the front boundary, macrocarpa shelter belts along the western and northern boundaries, and Lombardy pines along the southern boundary. It was confirmed at the Hearing that this landscaping was within the subject site, and therefore able to be relied on as mitigation.
- 3.6 The surrounding area is characterised by large scale arable and pastoral farming, albeit there is a modest cluster of housing and buildings located around the intersection of Bells and Longbeach Roads, including dwellings at 12 and 18 Bells Road, and 778 and 779 Longbeach Road.
- 3.7 The property at 902 Longbeach Road (circa 20.2ha) which surrounds the subject site to the north, west and south, is owned and operated by Mr Mackenzie, and is part of a larger landholding further south.
- 3.8 An irrigation bore (Well No.BY21/0114) as owned by Mr Mackenzie is located in close proximity to the southern boundary of the subject site, including a shed. There is a large-scale vehicle shed on Mr Mackenzie's property adjoining the western boundary of the subject site.
- 3.9 Longbeach School and a larger hamlet is located some 3.3km to the north of the site along Longbeach Road.

4.0 The Hearing and Post Hearing Information

The Hearing

- 4.1 **Ms Gardner**, legal counsel for the applicant provided statements confirming the non-complying activity status of the application under the Plan. She set out the relevant law in terms of the disjunctive test 'gateways' under s104D of the Act to be satisfied for the application to be considered pursuant to s104, and concluded that the proposal would comfortably meet either of the gateways, and consent as subject to conditions could be granted.
- 4.2 Ms Gardner submitted that effects on the environment associated with visual character and amenity already exist as considered against a factual finding of the existing Scout Hall, existing garaging and landscaping. She also stated that in relation to any vehicle queuing non-compliances, the long and straight extent of Longbeach Road, together with extensive berm widths would ensure safe egress and ingress to the site would be possible.
- 4.3 Turning to reverse sensitivity effects, Ms Gardner noted that the proposal would lead to improvements and maintenance in the currently abandoned and dilapidated subject site and buildings. She agreed that the proposal has the potential for reverse sensitivity effects on adjoining permitted agricultural activities and associated noise, dust and odours. She advised that those effects would be interim, seasonal or occasional as identified in the evidence of Mr Mountfort, and would be suitable addressed through volunteered conditions relating to acoustic glazing, retention of landscaping, and a no-complaints covenant to be placed on the record of title for the site which would bind all future owners and occupiers.
- 4.4 Regarding engagement with the requirements of the National Policy Statement – Highly Productive Land (**NPS-HPL**), Ms Gardner advised that there was no tension with the NPS, as the proposal was able to address the requirements of Clause 3.9 given the exemption in clause 3.9(2)(g) where there is no impact on the productive capacity of land, and as engaging with clause 3.9(3)(b) the proposal including the no-complaints covenant would not result in material reverse sensitivity effects on land based production.

- 4.5 In response to questions, Ms Gardner acknowledged that proposed conditions, as volunteered and contained in the recommendation of the reporting officer needed to be certain and implementable.
- 4.6 **Mr Mountfort**, Planner for the applicant relied on his evidence, reiterating his conclusion that the proposal would not result in adverse effects, including those associated with reverse sensitivity effects on the landholdings and activities undertaken by Mr Mackenzie. He reiterated that the existing buildings and small-scale nature of the site made it uneconomic for any form of productive use, and that the proposal would result in a number of positive effects.
- 4.7 He acknowledged in response to questions that whilst there may some tension with Policy 3.1D of the Plan which seeks to avoid the establishment of residential activities to manage reverse sensitivity effects, that the tension was alleviated by the no-complaints requirement as volunteered.
- 4.8 Mr Mountfort did not see a need to extend the no-complaints covenant beyond land based primary activities. His answer was in response to questions relating to imposing restraints on landholdings relating to Rule 3.10.3 of the Plan which requires a 400m setback from activities such as intensive farming and milk sheds from residential units on separate sites. Mr Mountfort reasoned that such activities did not currently exist in the area, and the restraint would be unreasonable.
- 4.9 **Ms Jenny Osborne** as the applicant confirmed that the proposal was deliberately broad allowing for their use as a holiday home, short term rentals, or longer term as would logically appeal to a farming family in the area. She reiterated the intent to renovate the buildings and maintain the site, including painting the exterior, and replace windows with acoustic double glazing. She confirmed to questions that internal works associated with installation of kitchen and bathroom facilities would likely require building consent.
- 4.10 **Mr Mackenzie** the landowner and farmer at 902 Longbeach Road provided verbal submissions in opposition to the proposal. He noted his family associations with the establishment of the Scout Hall. He acknowledged that since the turn of the century that there has been little activity undertaken on

the site, and confirmed his view that there were little historical, community or cultural associations with the building on the subject site.

- 4.11 He outlined a number of reasons for his opposition to the proposal, focusing on the potential for incompatibilities between the use of the subject site for residential activities and those undertaken in his farming operations. These included issues associated with the proximity and potential noise effects from the irrigation bore to the south of the subject site, noting high levels of noise and that the bore could well be utilised 24 hours a day and seven (7) days a week. He considered that the recent Regional Council consent obtained by the applicants for wastewater discharge would be nullified by conditions imposing a set back to the existing bore location.
- 4.12 Regarding broader land-based incompatibilities, Mr Mackenzie recommended a conservative approach to any implications that the proposal would have in terms of limiting the range of productive activities he would otherwise be able to be undertaken on his property. In response to questions Mr Mackenzie acknowledged that he had no intent to undertake more intensive farming operations or dairy farming, noting that such activities were being discouraged by the Regional Council. He also noted that the proposal could result in increased fire risk, and incompatibilities with domestic dogs on the site or bee keeping as undertaken on his property.
- 4.13 **Ms Wright** provided a concise summary of her Section 42A Report, confirming that she remained of the view that consent could be granted. She reconfirmed her view that the adverse effects on the environment would be no more than minor, and the proposal whilst inconsistent to a minor degree with Policies in the Plan seeking to avoid additional residential opportunities in the rural area, was not contrary to these provisions. She noted that the proposal when considered on its merits and subject to conditions would not result in any precedent effects or reduce Plan integrity.
- 4.14 In response to questions, Ms Wright agreed that the efficacy of recommended conditions could be improved and offered to assist the Applicant's Planner in terms of improving certainty and application should consent be granted. She also considered that even should the Regional Council consent for wastewater be nullified given proximity to the established irrigation bore, that there are a number of other means by which the site could be serviced.

Post Hearing Information

- 4.15 Prior to the hearing closing I sought information from **Ms Wright** regarding a copy of Regional Council Consent CRC212067 which authorises the discharge of contaminants from the subject site, as well as a factual diagram of the application of Plan Rule 3.10.3 Intensive Farming 400m buffers zones to existing residential units as proximate to the site. The latter showed that there is considerable overlap from a 400m buffer as would be potentially generated from the subject site, as compared to the existing regulatory constraint provided by the application of a 400m buffer for residential dwellings at 778 and 12 Bells Road; importantly there was full overlap along the linear extent of Longbeach Road. These were received on 20 September 2024.
- 4.16 As enabled by the statutory process, legal submissions in reply on behalf of the Applicants were received from **Ms Gardner** on 26 September 2024. These set out responses to a number of matters raised during the hearing, including the potential for reverse sensitivity effects, application of CRC212067, responses to matters raised by Mr Mackenzie , and an amended suite of volunteered Conditions.

5.0 Assessment

The Planning Framework

- 5.1 The planning framework is detailed in s42A Report provided by Ms Wright at Section 4, and this description is adopted for the purpose of this discussion. For completeness I note that there are no matters of contention as to the applicable planning framework between Ms Wright, Mr Mountfort and Ms Gardner, nor did Mr Mackenzie seek to advance a differing view.
- 5.2 Based on the evidence before me the application is to be considered to be a **non-complying activity** given³ a breach of Zone Standard 3.10.1 'Residential Density'. That standard prescribes a minimum net area for any one residential unit of 50Ha in the Rural B zone. In addition, the following Site Standards are breached, although as accepted by all parties these infringements are related to the existing buildings and access to the site:

- Site standard 3.9.2 Site Coverage which requires buildings and surfaces to be 5% in the Rural B zone (proposal is 10.5%).
- Site standard 3.9.5 Setback from Neighbours requires a minimum setback to internal buildings of residential units to be 20m (main building is 9.5m from the southern boundary).
- Site standard 10.8.12 Queuing Length requires a minimum 6m space for vehicles queuing to entire the site (5.5m from the sealed road reserve).

Written approvals / submissions

- 5.3 No written approvals accompanied the application.
- 5.4 The application was notified on 16 November 2023 to the owners and occupiers of 902 Longbeach Road. Mr Mackenzie addressed the Hearing in terms of his submission opposing the proposal. That submission raised the following matters: absence of potable water and septic tank; reverse sensitivity effects; potential contamination to groundwater bore; the proposed building is derelict and not suitable for conversion; and concerns associated with the CRC consent for the septic tank.

Statutory considerations

- 5.5 As a non-complying activity, the proposal is to be considered in terms of s104 of the Act. Sections 104B and 104D of the Act grants me, as Commissioner, full discretion to consider all actual or potential effects, then grant or refuse consent, or grant consent as subject to conditions. Pursuant to s104D of the Act, consent can only be granted if either: the adverse effects of the activity on the environment are no more than minor; or the activity is not contrary to the objectives and policies of the relevant District Plans.
- 5.6 Conditions of consent are subject to s108 and s108AA of the Act.
- 5.7 Section 104 is subject to Part 2 of the Act, although whether or not an application requires formal consideration directly against Part 2 is a case-by-case matter, as addressed subsequently in this Decision.

³ As pursuant to Rule 3.8.6 Non Complying Activities

Effects on the Environment

- 5.8 Having regard to the evidence before me, it would appear that the potential effects on the environment that I must give particular consideration to are those associated with rural character, effects on rural amenity, servicing, transport and the actual or potential effects associated with reverse sensitivity. It is the latter matter that forms the primary contention between the parties.
- 5.9 In terms of **rural character and visual amenity**, these terms of are not specifically defined in the Plan. However, Chapter 3 of the Plan states that *'the [Rural B] zone is anticipated to provide wide, open spaces scattered only with farm houses and associated utility sheds, and small settlements'*⁴. Furthermore, the zone description refers to the rural environment as containing particular amenity and environmental values which are important to rural people, including *'privacy, rural character, spaciousness, openness, ease of access, clean air and, at times, quietness'*⁵. The Zone description⁶ references that the Rural B zone covers the majority of the [Canterbury] plains within the district, and is managed as a working environment within a main purpose to provide for agricultural and horticultural activities therein.
- 5.10 I have therefore considered the proposal against those values, importantly taking into account the existing environment.
- 5.11 The sites character is clearly influenced by the existing Scout Hall and attached double garage, and accompanying mature landscaping and shelter belts. There was broad agreement between Mr Mountfort and Ms Wright that these attributes informed the existing environment, for the purposes of s104(1)(a). There was also agreement that the state of the building and curtilage was in a state of some disrepair. I also noted from my site visit, that the existing building, and therefore the proposed residential activities, will be somewhat co-located proximate to four existing residential dwellings located close to the corner of Bells Road and Longbeach Road intersection.

⁴ Ashburton District Plan. Chapter 3 Rural [Section 3.2.3 Rural Character and Amenity – Rural B Zone].

⁵ Ashburton District Plan. Chapter 3 Rural [Section 3.2.3 Rural Character and Amenity].

⁶ Ashburton District Plan. Chapter 3 Rural [Section 3.3.2 Zone Description Rural B Zone].

- 5.12 In terms of rural character and visual amenity, I conclude that adverse effects on visual amenity will be less than minor, due to there being no change in built form and landscaping. I note that the existing buildings are small in scale and compatible in design and character to existing residential dwellings located in the Rural B zone. I also note that the application does not seek to expand the buildings. Accordingly, I consider that the proposal will not have any material adverse effects on the extent of openness as associated with this environment.
- 5.13 I consider based on the material provided by Ms Osborne that the proposal would result in positive visual amenity effects as associated with renovations of the buildings, and the maintenance and improved care associated with the grounds. Appropriately, any consent granted would come with an expectation and condition in relation to retaining and maintaining landscaping associated with the site.
- 5.14 I consider that there will be a change in rural character. This will occur as a change in usage patterns, especially if associated with permanent occupation and would be conveyed through typical residential activities such as daily vehicle movements, passive outdoor activities, and generated noise and movements on site. However, in the context of the established buildings, the likely scale as associated with a two-bedroom restoration, and that the residential character would not be dissimilar from that undertaken at the nearby residential dwellings, acknowledging that these are associated with rural landholdings, I do not consider effects on rural character to be more than minor.
- 5.15 I also consider that the alternative, being the continued deterioration of the building and grounds, would be to the detriment of both rural visual amenity and character, both when perceived from the adjoining rural dwellings and also the travelling public.
- 5.16 In terms of **servicing** I understand that the proposal can be serviced by water tank. The reply from Ms Gardner confirms that the site can appropriately implement CRC212067 in relation to authorising the discharge of contaminants to land from an onsite waste-water systems. Accordingly, I consider these matters to be appropriately addressed.

- 5.17 I am satisfied that there are no adverse effects associated with **traffic**. Mr Mountfort and Ms Wright agree that there is sufficient ability for a vehicle accessing the site to pull off the sealed road reserve completely onto the berm, and that the access point(s) provide considerable visibility either north or south along Longbeach road. My own observations of the site accord with the views of Mr Mountfort that this section of Longbeach Road has a low frequency of vehicle movements. I note the volunteered condition relating to upgrading and sealing the full width of the road access.
- 5.18 The main issue of contention between Mr Mackenzie and the technical experts for the Applicant and the Council relates to **reverse sensitivity effects**.
- 5.19 The term 'reverse sensitivity effects' is not found in the Resource Management Act, but has arisen from foundation cases such as *Auckland Regional Council v Auckland City Council*⁷ as referencing "*the effects of the existence of sensitive activities on other activities in their vicinity, particularly by leading to restraints in the carrying on of those other activities*".
- 5.20 Reverse sensitivity effects arise when an established use creates adverse effects that do not constitute a nuisance given the current state of neighbouring land. However, if the neighbouring land is put to a proposed new use, then the effects of the activity *could* cause an actionable nuisance. Future residents may complain about the effects-creating land use, and this may result in restrictions being placed on that activity or, in extreme cases closure or curtailing of the range of uses undertaken by the activity.
- 5.21 Matters associated with the consideration of reverse sensitivity effects are also explicitly engaged in the planning framework as associated with the proposal. Policies in the Plan⁸ as well as the NPS-HPL⁹ embed the concept.
- 5.22 Unsurprisingly therefore, the concept and consideration of the actual or potential effects associated with reverse sensitivity were not contested by any of the parties. The position from Mr Mountfort and shared by Mr Wright was that the conditions volunteered by the Applicant, in conjunction with the scale and nature of surrounding farming activities would not be impeded by the proposed residential activities.

⁷ [1997] A010/97

⁸ Policy 3.1D

⁹ Policy 9 and Clause 3.9(3)(b).

- 5.23 Mr Mackenzie, as the adjoining landowner considered that there would be a number of incompatibilities between the proposed residential use of the subject site and the lawfully established farming activities undertaken, or able to be undertaken on his landholdings. These related to matters such: as noise, dust and odour undertaken from existing operations; noise from the operation of the irrigation bore; and nuisance issues associated with domestic dogs worrying stock, domestic cats and biodiversity issues, beekeeping undertaken on his premises; and potential fire risk from poor maintenance of the subject site. In addition, he expressed concern that the proposal, if consented could impose additional regulatory controls on a broader range of farming activities on his property.
- 5.24 In terms of issues associated with domestic dogs, cats and bees, I do not consider that the potential effects from such to be any different to established rural dwelling houses. As also identified by Ms Wright there is existing regulation associated with the Bees and Poultry Bylaw (2016) and the Dog Control Bylaw (2016). In terms of issues associated with fire risk, I consider that the property as utilised and well maintained would reduce fire risk to the adjoining property compared to its current dilapidated and overgrown condition.
- 5.25 In terms of the scale and magnitude of effects associated with large scale pastoral farming and cropping undertaken on the surrounding farmland, I accept that incompatibilities with a more sensitive residential development would be intermittent, or as Mr Mountfort states '*seasonal, occasional and very brief*', I also accept that the existing shelter belts may play a role in reducing dust trespass from adjoining farm activities. In isolation I would not conclude that such were sufficient to resolve the potential for incompatible reverse sensitivity effects on existing proximate farming activities.
- 5.26 The applicant has provided several augier conditions as associated with acoustic double glazing of windows and any glazed doors and the provision of acoustic fencing adjacent to the irrigation bore to immediate south of the property. The amended conditions contained in the reply from Ms Gardner have been vastly strengthened to improve efficacy given the focus on conditions at the Hearing.

- 5.27 In addition, the applicant has volunteered a no-complaints covenant to be registered on the title, restricting the ability of owners and occupiers of the proposed dwelling to complain to the Ashburton District Council or Canterbury Regional Council regarding *any adverse effects arising from grazing, cropping, cultivation, crop-spraying, harvesting, burning of crop residues, irrigation operations or any other land based primary production activity* as defined by the NPS-HPL.
- 5.28 As an instrument, the no-complaints covenant would make the proposed residential activity conditional on the owners or occupiers not complaining about legitimate adverse effects emanating from the adjoining Mackenzie farm holdings. I understand that where such instruments are appropriately established, they provide a defence against an action pursued against nuisance, that is the effects-creating use is protected from future complaint. Furthermore, if the no-complaints condition is breached there is action available to Mr Mackenzie to seek that the Ashburton District Council issue an abatement notice against the consented Residential activity.
- 5.29 In terms of foreclosing the potential for intensive farming activities as would otherwise be authorised by the Plan, I appreciate Mr Mackenzie's honesty and integrity at the Hearing where he stated that intensive farming operations were not intended for the property. He also advised that such activities were being discouraged by the Regional Council. Furthermore, as provided by Ms Wright the impact of the 400m setback as required by Rule 3.10.3 provided little additional restraint compared to the existing distribution of residential units proximate to the Mackenzie landholdings.
- 5.30 It should also be acknowledged that reverse sensitivity protects effects-creating uses by preventing surrounding land developing in a way that will transform a legitimate activity into actionable nuisance. It does not extend to removing the need to comply with all other applicable Acts, bylaws, and Regional Plans as prepared under the RMA.
- 5.31 I consider that the Conditions associated with physical works to be undertaken on the property go some way in terms of managing the adverse effects associated with potential reverse sensitivity effects associated with legitimate activities undertaken on the Mackenzie landholdings. I also find that the application of the no-complaints covenant as provided in the reply

submissions from Ms Gardner necessary and reasonable in terms of providing appropriate protections for Mr Mackenzie in terms of legitimate farming activities being undertaken on his landholding which, in a more sensitive environment, would be seen as more offensive or objectionable. I do not consider it necessary that the nature of the no-complaints covenant be extended to intensive farming activities for the reasons given above.

- 5.32 In conclusion, I consider that the actual or potential adverse effects associated with reverse sensitivity effects are no more than minor. As identified above it is also in both parties interests to undertake their respective activities with a high degree of reasonableness.
- 5.33 I consider that there is a commensurate range of positive effects associated with the proposal. These are largely associated with the efficient use and development of an existing structure and property within the rural environment, and a modest increase in visual amenity through reversing the degradation of the Scout Hall into a useable dwelling with associated upkeep of the property. For completeness, I agree with Mr Mackenzie that the proposal offers little in terms of enhancing heritage or cultural associations with the building.
- 5.34 In summary, I consider that the adverse effects of the proposal are no more than minor.

Objectives and Policies

- 5.35 I have reviewed those objectives and policies referred to by both Ms Wright and Mr Mountfort. The objective and policy framework for the Rural area places a strong emphasis on the retention of an "*open and spacious character*" and ensuring a scale of development compatible with the surrounding rural area.
- 5.36 Provisions in the plan seeking to retain primary production¹⁰ and ensuring that land is not developed for intensive residential usage¹¹ are not troubled by the proposal. The existing landholding is very small in terms of the Rural B zone, has no recent history in terms of productive capacity, and contains existing

¹⁰ Objective 3.1

¹¹ Policy 3.1A

buildings which prevent productive use. Accordingly, I do not consider the proposal to be inconsistent with provisions that seek to protect highly productive soils¹².

5.37 The Plan also seeks to ensure that the character and amenity values of the district's rural areas are protected considering its productive uses, whilst providing for non-rural activities that meet the needs of local and regional communities and the nation¹³. As outlined in the effects assessment above, I have concluded that the proposal will, at worst, be neutral in terms of visual amenity effects given enhancement of a dilapidated property. I have concluded that there will be a modest change in rural character, but these effects will be no more than minor, not dissimilar to farm worker's accommodation in the surrounding area and mostly offset through conditions of consent. Accordingly, the proposal is not inconsistent with this objective or supporting policies¹⁴.

5.38 In terms of provisions in relation to Natural Hazards¹⁵, Biodiversity¹⁶ and Transport¹⁷, I did not understand that these matters, as comprehensively considered in the s42A Report from Ms Wright were in any way contested. I agree with her reasoning that the proposal is consistent with these Objectives and Policies of the Plan.

5.39 Policy 3.1D is directive seeking:

"Avoid the establishment of residential activities or the expansion of urban boundaries in close proximity to intensive farming and other rural activities, to manage reverse sensitivity effects that can be created by such activities i.e. noise, odour and dust".

5.40 Both Mr Mountfort and Ms Wright identified that this provision needed to be considered within the context of the receiving environment, that is: the structure already exists; the proposal does not seek to increase footprint; would not involve the creation of any new undersized allotment; and did not represent '*intensive residential development*'¹⁸. Furthermore, the volunteered

¹² Policy 3.1E

¹³ Objective 3.5

¹⁴ Policy 3.5A, Policy 3.5B.

¹⁵ Objective 3.7, Policy 3.7A

¹⁶ Objective 3.2, Policy 3.2A

¹⁷ Objective 10.3, Policy 10.3B

¹⁸ For the purposes of Policy 3.1A

Conditions, including the no-complaints covenant would adequately manage reverse sensitivity effects.

- 5.41 I however agree with Ms Wright where she concedes in the s42A Report that there remains an inconsistency in terms of this policy.
- 5.42 When viewed in the wider context and including the surrounding activities there is little, in my view, that this site currently offers in terms of providing the key rural amenity values as sought by the Plan. Further, the fact that it contains a dilapidated and unused building and has been isolated from other rural activities tends to mean that its value in terms of rural character and productive capacity is negligible.
- 5.43 While I accept that the Plan seeks to avoid residential activities in rural areas in order to manage reverse sensitivity effects, that is not always possible. In this case such would only be obtainable through declining the application and hence further decline of the building and site, or through an alternative benign use. In this instance, the applicant has leaned heavily into the second part of the policy, that is *managing reverse sensitivity effects*, including the instruments and conditions referenced by Ms Wright and Mr Mountfort.
- 5.44 While I do not consider the proposal is entirely contrary, as that term has been defined by the High Court¹⁹ to Policy 3.1D, I am not convinced either that it meets the intent of that provision. It is in this case a fine line.

Other relevant documents

- 5.45 Both Mr Mountfort and Ms Wright have assessed the proposal against the relevant provisions of the Canterbury Regional Policy Statement (**CRPS**) and the National Policy Statement for Highly Productive Land.
- 5.46 Based on that evidence, and as assisted by the legal submissions from Ms Gardner I agree that the proposal is not of a scale or character that challenges relevant provisions in the CRPS. Those provisions relate to environmental protection or water quality, and specifically Chapter 5 in terms of the integration of land use and Infrastructure, including provisions that seek

to maintain rural production and avoid conflict between incompatible activities²⁰.

- 5.47 In relation to the NPS-HPL I agree with Ms Gardner that the exception provided in clause 3.9(2)(g) as a small-scale land-use activity that has no impact on productive capacity is applicable to the proposal. Given the findings above in relation to conditions and the no-complaints covenant I also consider the proposal is not inconsistent with clause 3.9(3) which provides for the '*avoidance or mitigation*' of reverse sensitivity effects on land based primary production.

Other Matters

- 5.48 Turning to other matters to be considered as pursuant to s104(1)(c) of the Act, I believe Ms Wright is correct that it is of some importance in this case to consider issues of plan integrity, precedent and consistency of decision making. The Environment Court has addressed these matters on numerous occasions, with the general principle of application being that the public's confidence in the consistent administration of its district plan being degraded where a council ignores its own policies and objectives and allows an activity with a major effect which is clearly contrary to those policies and objectives.
- 5.49 My findings above, are that the proposal will have effects on the environment that are considered no more than minor, and whilst that there is a tension with Policy 3.1D of the Plan, I find the proposal inconsistent rather than contrary to that provision.
- 5.50 I also agree with Ms Wright that there are a number of unusual or unique circumstances that relate to this proposal that make it distinguishable and consequently granting the consent would not bring the integrity of the District Plan into question. These include the combination of the following:
- (i). The unique nature of a 1,667m² freehold title which seeks to repurpose an existing community facility.

¹⁹ High Court in New Zealand Rail Limited and others v Marlborough District Council (AP 169/93 Wellington Registry)

²⁰ CRPS Objective 5.3.1(2)(e) and (i).

- (ii). Mature landscape screening present at the site.
 - (iii). The volunteering of conditions associated with glazing, landscape retention and the no-complaints covenant.
- 5.51 I consider that there are very few, if any other sites in the district which could be able to claim similar uniqueness in this regard. Accordingly, I would not see a grant of consent in favour of this proposal as setting any sort of precedent in favour of intensive residential development within the generality of the Rural Zone. Further, I do not believe this proposal, given the circumstances of the site would seriously undermine the integrity of the District Plan and establish a precedent whereby it will be difficult for the Council to decline further non-complying applications of this nature.

Sections 104D(1)(a) and (b) of the Act

- 5.52 As a non-complying activity, the gateway test in section 104D must be met for the application to then be considered pursuant to s104. In this instance, as considered above, I find that the application results in adverse effects that are no more than minor and the proposal is not contrary (as meaning 'repugnant' or 'opposed to'²¹) to policies and objectives of the Plan. As record, the application therefore satisfies both tests.

Part II Considerations

- 5.53 In terms of Part II of the Act, the District Plan clearly has a framework in place for the sustainable management of rural environment and that framework reflects both the wording and intent of section 5 of the Act. Having weighed up the various issues I have concluded that in the circumstances the proposal is not at odds with that framework and would meet the purpose of the Act in terms of sustainable management without creating material adverse effects on the environment. Principally I find that the proposal represents an efficient use of the land concerned as appropriately constrained through conditions to negate material adverse effects on amenity values and the quality of the environment.

6.0 Determination

6.1 For the reasons set out above, having regard to Part II of the Act, and in accordance with the provisions of ss104, 104B and 104D, I have determined that resource consent LUC23/0033 to renovate and convert a former Scout Hall to a dwelling within the Rural B zone as located at 798 Longbeach Road shall be granted subject to the following conditions:

General

1. Except to the extent provided for by these conditions the activity shall be conducted in accordance with the plans and all information submitted with the application being:
 - (i). Application Form and Assessment of Effects prepared by David Mountfort, Mountfort Planning Ltd. on behalf of Jenny and Graham Osborne, dated 19/04/23.
 - (ii). Further Information received from David Mountfort dated 20/10/23 and 01/11/23.
 - (iii). The Plans submitted with the application and referenced by Council as "*LUC23/0033 Approved Plans Sheets 1-2*".

Reverse Sensitivity

2. All windows and any glazed doors on the residential unit shall be double-glazed to mitigate noise disturbance, prior to first residential occupation.
3. A land covenant as pursuant to Section 108(2)(d) of the Resource Management Act 1991 shall be registered on the record of title of Lot 1 DP 23186 in perpetuity to secure performance of the below requirements. The covenant shall be prepared by the applicant's solicitor on terms and conditions acceptable to the Ashburton District Council, acting reasonably and registered prior to the first occupation

²¹ Submissions Ms Gardner [40]

of the dwelling. The requirements to be registered on the record of title are the following:

- (i) The owners and occupiers of the site must not complain, either directly or indirectly, to the Ashburton District Council, the Canterbury Regional Council or any other authority regarding adverse effects arising from: grazing, cropping, cultivation, crop spraying, harvesting, burning of crop residues, irrigation operations or any other land based primary production activity as defined by the National Policy Statement for Highly Productive Land on nearby farmland.
4. All occupants of the property are to be made aware of Condition 3 above, and the no-complaints covenant, in any letting or leasing arrangements entered into by the owners.

Vehicle Access

5. Prior to first occupation of the residential unit, the existing vehicle crossing to Lot 1 DP 23186 shall be upgraded and sealed for the full width of the crossing from the edge of the road seal to the boundary to the satisfaction of Council's Roading Team.

Landscaping

6. All vegetation currently serving as a shelterbelt or as located along the frontage with Longbeach Road located within the Application Site shall be retained, and any trees which die are to be replaced with similar trees at the next planting season (extending from 1 April to 30 September) at a minimum height at planting of 1.8m.

Contaminated Material Discovery Protocol

7. A refurbishment survey (sometimes referred to as an intrusive survey) shall be carried out to identify asbestos and lead containing materials that would be affected by this project prior to building works commencing. It should identify asbestos containing materials over and above those that would be discovered in a management survey by means of destructive access where necessary to locate asbestos that

would normally remain hidden behind other building materials. It is important that the scope of the works to be undertaken is defined and discussed with Council prior to the survey to ensure that the survey covers all areas that will be disturbed by the planned works. The consent holders are to undertake any of the recommended actions within the refurbishment survey, which may include appropriate removal and disposal techniques.

8. In the event that the refurbishment survey pursuant to Condition 7, and / or where evidence of unidentified contamination is discovered as associated with building alterations or any associated earthworks such as stained or odorous soil, ash or charcoal, rubbish or hardfill, or asbestos containing material, then the following steps shall be implemented:
 - (i). Excavation, earthworks and/or building works to cease immediately, the area to be secured to stop people entering where potential contamination was encountered;
 - (ii). Contact a Suitably Qualified and Experienced Practitioner (contaminated land specialist) for further advice on how to proceed, including whether any additional authorisations under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health are required before continuing with works.
 - (iii). The consent holder must immediately notify the Planning Manager, Ashburton District Council, by way of email to info@adc.govt.nz. Works are not to recommence until:
 - (a) Any measures to manage the risk from potential soil contamination are communicated to the Council prior to work re-commencing; and as necessary
 - (b) Authorisations under the *National environmental standard for assessing and managing contaminants in soil to protect human health* are obtained and implemented.
9. Prior to residential occupation of the dwelling an acoustic fence shall be erected, and maintained, as close to the southern boundary of the

site as practical, extending from the road boundary to the rear wall, to mitigate the effects of noise from the adjacent pumping station on Part Lot 4 DP 955. The following minimum specifications should be applied:

- (i). Minimum Height: 2 metres
- (ii). Surface Mass: at least 10 kg/m² (20mm pine or 18mm plywood) with no gaps between or below component boards or panels or between the fence and the ground.

Advice Notes:

- 1) Please read the conditions of this resource consent carefully and make sure that you understand all the conditions that have been imposed before commencing the development.
- 2) This allotment is located within the Rural B Zone. Farming activities are provided for by the Ashburton District Plan and may occur on adjoining or nearby properties. The usual incidence of these activities may have amenity impacts beyond the boundaries of those properties.
- 3) As the water supply is not sourced from Council reticulation, the proposed dwelling must be provided with an adequate potable and wholesome drinking water supply. This shall be in accordance with Council minimum water quality standards and as identified in the Long-Term Community Plan (Drinking Water Standards 2008 levels). A certification in this regard is to be submitted to Council prior to first residential occupation of the Site.
- 4) This application has been assessed in terms of long-term residential use. Commercial Visitor Accommodation is not permitted in this zone (Section 3.8.6c, Ashburton District Plan) and would require a separate resource consent application.
- 5) Pursuant to section 125 of the Resource Management Act 1991, if not given effect to, this resource consent shall lapse five years after the date of this decision unless a longer period is specified by the Council upon application under Section 125 of the Act.

- 6) This consent does not constitute authority to build or undertake private drainage works and it may be necessary for you to apply for a Project Information Memorandum and Building Consent if you have not already done so.
- 7) A copy of this consent and the associated approved drawings should accompany your application for a Project Information Memorandum and Building Consent. If not supplied unnecessary delay may occur in the processing of your application.
- 8) If you disagree with any of the above conditions, or disagree with the additional charges relating to the processing of the application you have the right of objection under sections 357A or 357B of the Resource Management Act 1991. Any objection must be made in writing to Council within 15 working days of notification of the decision.
- 9) The consent holder is requested to notify Council, in writing, of their intention to begin works, a minimum of five (5) working days prior to commencement. Such notification should be sent to info@adc.govt.nz and include the following details:
 - (i). Name and telephone number of the project manager and the site owner;
 - (ii). Site address to which the consent relates;
 - (iii). Activity to which the consent relates; and
 - (iv). Expected duration of works
- 10) The consent holder is requested to notify Council, in writing, once they have completed the works authorised by this resource consent. Such notification should be sent to info@adc.govt.nz including the following details:
 - (i). Resource consent number
 - (ii). Site address to which the consent relates
 - (iii). Statement outlining how the applicant has complied with each of the conditions.