

CENTRAL OTAGO DISTRICT COUNCIL
S95A-F DECISION FOR RC230107
222 Pearson Road, Cromwell

INTRODUCTION

The application seeks land use consent for various commercial activities, signage and outdoor storage at 222 Pearson Road, Cromwell.

Site Background

Various commercial activities are currently undertaken on the site and have been for a number of years, which include:

- NZ Nuts Producers Ltd (NZ Nuts) operate a nut orchard on the site, primarily on the southern side of Pearson Road. On 2 December 2022, resource consent RC220369 approved the establishment of a rural selling place associated with the orchard within a produce stall and three associated signs.
- Grape Vision is a viticultural contracting business, and operate a contractor's yard on the northern side of Pearson Road, containing a semi-enclosed workshop, portacoms, a large white shelter and outdoor storage space for various pieces of viticultural equipment. The contractors' yard is partially visible from Sandflat Road, to the east of the site. The applicant has advised that there are 2.5 full-time equivalent staff based at the yard, with other staff visiting sporadically during the work day to collect equipment.
- Central screening is a topsoil recycling and landscaping supplies business near the Pearson Road /Sandflat Road corner of the site. They primarily supply topsoil, manure, and gravel products to landscaping contractors etc.
- R&R Hiabs Ltd (R&R) provide trucking services and hire of containers, portacoms and other equipment to the horticulture, network utility and other industries.

The applicant was informed by the Council's Monitoring and Enforcement team that several commercial activities on the site necessitated resource consent. This notification followed a complaint from a property owner in the surrounding environment, concerning increased traffic and loud truck engine breaking.

Application background

The applicant originally proposed to establish three leases collectively to occupy approximately 2.5-3.0 ha of the site, and identified a larger area for potential future businesses on the site. Concerns with this proposal were raised by the processing planner at the site visit, as there was too much uncertainty of the potential effects of unknown activities within the area of the site marked for potential future businesses. The applicant has since revised the application to only allow four leases on the site, with an additional 0.17ha space to be used in the case that one of the businesses were to grow in the future.

Site

The site comprises four parcels of land, held within one record of title (OT7D/1154) and is legally described as Section 48 Sarita Subdivision and Section 1-3 Survey Office Plan 23017. The site contains an area of 80 hectares and is located in the Rural (Residential) Resource Area, with a High Voltage Transmission line transecting the site. The activities proposed by

way of this application are located on the allotment on the northern side of Pearson Road, which also has street frontage to Sandflat Road and is heron referred to as the subject site.



Figure 1: Screenshot of the site, highlighted in blue. The allotment shown further north is considered as the subject site heron. Source Emap.

Proposal

The applicant seeks to formalise the existing activities on site and proposes an additional business for stone masonry on the southern side of the site, adjacent to Pearson Road. The activities are proposed to generally be undertaken within the areas shown on the site plan in Figure 2 below. In total the existing and proposed lease areas cover 2.5 hectares of the site.

With respect to wastewater, the Grapevision lot includes a toilet with a closed septic system that will be regularly pumped out for safe off-site disposal.

Water is available on the site via two bores (authorised by ORC consent RM17.111.01), and is available to tenants for non-potable uses such as dust suppression and equipment washdown.

The application states that there is ample space within the site for manoeuvring and parking as required.

The details of the proposed activities are provided above in the background section of this report and below:

Central Screening

- Retail activity is proposed, to allow the general public to collect manure or screened materials directly from the site;
- Proposed operational hours are from 7 am to 6 pm Monday through Friday, and from 8 am to 2 pm on Saturdays;
- Up to 6 employees are proposed to be present on site at any one time;
- The proposed structures consist of an existing shipping container and a canopy workshop secured with shipping containers, which has not been set up on the site yet.

R&R Hiab Ltd (R&R)

- It is proposed that R&R provide trucking services and hire of containers, portacoms and other equipment to the horticulture, network utility and other industries;
- Currently, R&R is also providing storage for several relocatable classrooms on behalf of the Ministry of Education. However, this arrangement is temporary, and these classrooms are anticipated to be relocated within the next few months, as indicated in the application.
- While no permanent employees will be stationed on-site, R&R's drivers will visit during regular work hours throughout the week to deliver and retrieve stored items, and occasionally on Saturdays.

Grape vision

- The area occupied by Grape Vision contains a semi-enclosed workshop, portacoms, and outdoor storage space for various pieces of viticultural equipment. At present there are no grape plantings on the property;
- The application proposes netting around the site to further mitigate the visibility of the equipment;
- It is proposed that 2.5 full-time equivalent staff will be based at the yard, with other staff visiting sporadically during the work day to collect equipment, etc.

Stone Masonry

- It is proposed to establish a small natural stone cutting operation primarily processing local schist into a light weight stone cladding product. This product will be distributed locally and nationally to support both residential and commercial construction;
- Operating hours for the stone masonry business are proposed to be from 7 am to 6 pm on weekdays and occasionally from 8 am to 2 pm on Saturdays;
- The application acknowledges that the cutting process produces some machine noise but assures that this noise will remain within the Central Otago District Council noise limits;
- All cutting will be wet cutting, therefore, minimising any dust effects;
- While it is initially anticipated that two to three staff members will be present on-site permanently, this number may increase to six over time or as demand grows;
- It is estimated that up to 10 light vehicles will access their site per day, with typically one two-way truck movement per day and occasionally up to five;
- There are no plans for retail activities as part of the stone masonry business on-site;
- The structures proposed for this operation include a shed, three shipping containers, a settling bay (a canopy workshop anchored with shipping containers), and a water tank.

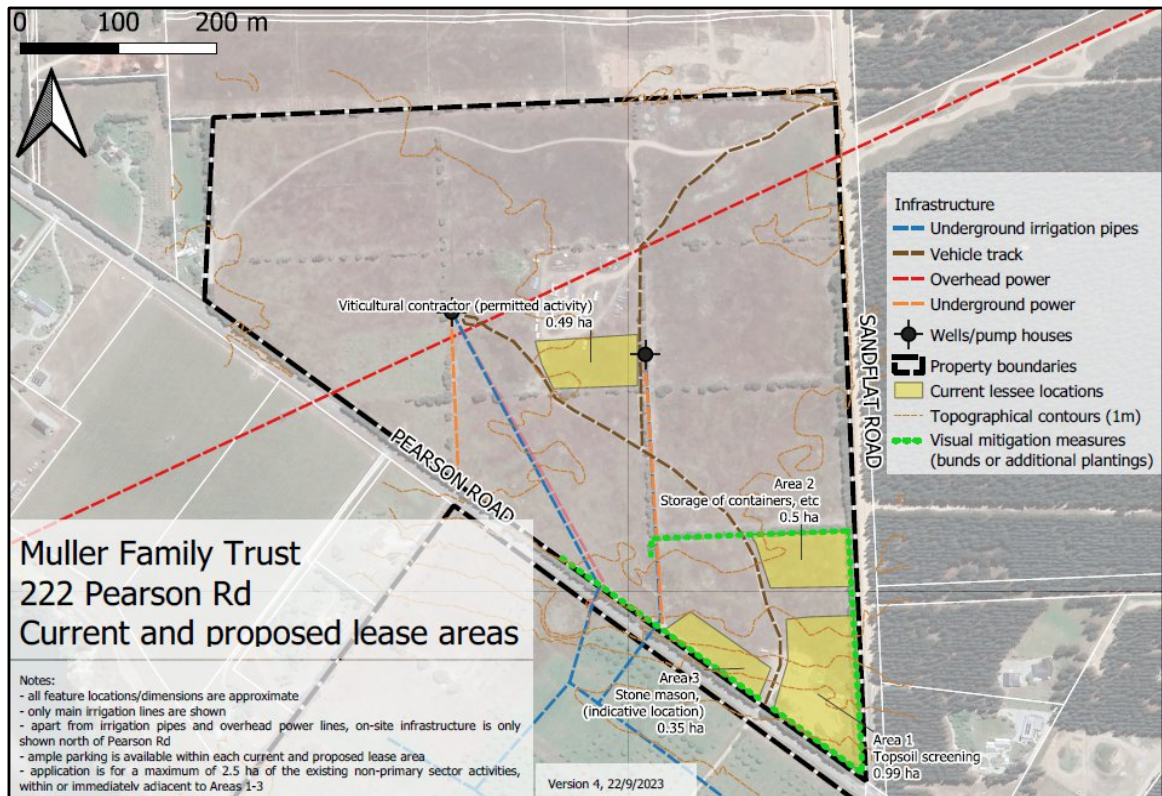


Figure 2: Site plan showing the location of the proposed activities on site.

Signage

- One additional sign is proposed by way of this application, which is proposed to be double-sided, no more than 3 m² in area, and placed near the site entrance on Pearson Road;
- The application advises that the signs will comply with the size, lettering and placement requirements as detailed in Section 12.7.5 of the District Plan;
- The application proposes to remove three trees along Pearson Road, to provide visibility to the sign;
- The applicant has provided a mock-up of the proposed sign as shown in Figure 3 below.



Figure 3: Mock up of the proposed sign. Source AEE

Proposed conditions

The applicant has offered a number of conditions to assist in mitigating the effects of the activity as follows:

1. *Visual mitigation measures shall be put in place along the green lines shown in the current and proposed lease areas plan, version 4 as follows:*
 - i. *Along property boundary: within 3 years of commencement of this consent.*
 - ii. *Within property boundary: by April 2024.*

Advice note: visual mitigation will generally be bunds along the site boundary and additional plantings or coppicing to fill out existing shelterbelts within the boundary, as shown on the attached landscaping plan. The timeline mentioned here and in the following condition are to enable trees to be planted during the growing season within the site, and for sufficient waste rock to accumulate for bund formation along the boundaries.

2. *Should any trees planted along the green lines shown in the Current and Proposed Lease Areas plan, version 4 die or require removal (due to risk of falling, etc), they shall be replaced by the end of the following April after this is observed.*

Advice note: established trees cut off near the base for the purposes of coppicing (encouraging vigorous new growth of low branches for near-ground visual screening) would not be in breach of this condition, and replanting near coppiced trees is only required if the coppicing fails.

3. *All dust-generating activities shall be managed to prevent any persistent discharges of visible dust across the site boundary.*
4. *All noise-generating activities shall be managed to prevent noise in excess of 55 dBA (L10) or 70 dBA (Lmax) at the notional boundary of the nearest dwelling.*

Advice note: these are the daytime noise limits under Rule 4.7.6F of the CODP, i.e. consistent with what noise can be generated as a permitted activity.

5. *Topsoil screening, stone cutting and any other activities with the potential to generate noise at or close to the levels described in Condition 4 shall be carried out only during the hours of 8 am-6 pm, Monday to Friday and 9am to 2 pm Saturdays.*
6. *This consent permits a maximum of one sign to be constructed, with a maximum area of 3 m³, and with the location and design of the sign to be as described in the application.*

Advice note: For clarity, this is in addition to the signage at the property already allowed under consent RC 220369, signs for navigation within the site, and any other signage allowed as a permitted activity under the CODP.

7. *All buildings excluding the existing Grapevision workshop canopy shall be painted in a shade of brown, green, grey blue, grey, terracotta, tussock or dark red which is similar to or darker than colours already present in the surrounding environment, with a reflectivity value of less than 32% for rooves and 38% for all other external surfaces.*
8. *The consent holder shall keep a record of any breaches of the above conditions and/or complaints, and provide this record to CODC annually, together with a description of the response to the issue and any changes to site management implemented as a result.*

9. *Non-primary sector activities at the site shall be as described in the application, and in particular: shall not involve any permanent buildings, and shall collectively occupy no more than 2.5 ha at the site, as indicated on the Current and Proposed Lease Areas plan, version 4.*

10. *Non-primary sector activities on the site shall be limited to: outdoor storage of containers, construction materials and similar inert products; processing of natural products such as soil and stone (e.g. stonemasonry, topsoil screening); sales of soil, gravel, and similar landscaping products; ancillary activities directly related to one of the above.*

Advice note: conditions 9 and 10 are not intended to restrict the existing horticultural and viticultural activities on the site, nor any activities that would otherwise be able to be carried out as permitted activities.

11. *All materials stored outside in the current R&R Hiab lease area shall be relocated to within the area covered by this consent within 3 months of commencement.*

Central Otago District Plan

The proposal requires resource consent for various reasons in accordance with the Central Otago District Plan, as follows:

- Rule 4.7.6B(b)ii of the Plan provides for no persons to be engaged in an activity of commercial or industrial nature in the Rural (Residential) Resource Area. A breach of Rule 4.7.6B(b)ii is a discretionary activity pursuant to Rule 4.7.4(i). In this case, the application proposes up to 15 persons to be permanently located on site for the proposed stone masonry, Central Screening and Grape Vision contractors yard activities. For clarity, the persons engaged in the Grape Vision contractors' yard, have not been excluded from this rule. While the activity is a viticultural contracting business, as there are currently no viticultural activities onsite, the activity is effectively a depot and is considered to be industrial in nature.
- Rule 4.7.5(iv) states retail activity except for as provided by Rule 4.7.2(iii) and 4.7.4(iv) (rural selling place and winery related sales) is to be assessed as a non-complying activity. In this case, the Central Screening business proposes retail activities.
- The Plan provides for signage as a permitted activity under Rule 4.7.6H, providing clauses (1-6) can be complied with. The application proposes to install a 'pre-warning sign' adjacent to Pearson Road. As there are two existing signs within 500 metres of the site entrance as approved by RC220369, the proposed sign will not comply with Rule 4.7.6H(i) of the Plan. The Plan provides a breach of Rule 4.7.6H as a restricted discretionary activity under Rule 4.7.3(i). The Council shall restrict the exercise of its discretion to matters (1-4) outlined under Rule 4.7.3(i) of the Plan.
- In accordance with Rule 4.7.6 F of the Plan any area used for storage purposes that is not enclosed or partly enclosed by a covered building shall be screened from the view of any public road, reserve, other public land or any other adjacent site boundary or resource area boundary. A breach of this rule is a discretionary (restricted) activity in accordance with Rule 4.7.3(i) of the Plan. In this case, each activity proposes storage areas which are visible from Pearson Road and Sandflat Road.
- Rule 4.7.6D specifies the colours and materials in which buildings are required to comply with. In this case a large white shelter is proposed within the Grape Vision contractor's yard which does not comply with the colour pallet and exceeds the required reflectivity

values specified in the Rule. A breach of Rule 4.7.6D is a restricted discretionary activity pursuant to Rule 4.7.3 and the matters of discretion are limited to matters (1-3) outlined in Rule 4.7.3(iii) of the Plan.

SECTION 95A NOTIFICATION

Step 1 – Mandatory public notification

Public notification has not been requested. (s95A(3)(a)).

There has been no failure or refusal to provide further information or the commissioning of a report under section 92(2)(b) of the Act (s95A(3)(b)).

The application does not involve the exchange of recreation reserve land under section 15AA of the Reserves Act 1977 (s95A(3)(c)).

Step 2 – Public notification precluded

There are no rules or national environmental standards precluding public notification (s95A(5)(a)).

The proposal is not exclusively for controlled activities and/or boundary activities (s95A(5)(b)).

Step 3 – If not precluded by Step 2, public notification is required in certain circumstances

The application is not for a resource consent for one or more activities, where those activities are subject to a rule or national environmental standard that requires public notification (s95A(8)(a)).

A consent authority must publicly notify an application if it decides under s95D(8)(b) that the activity will have or is likely to have adverse effects on the environment that are more than minor (s95A(2)(a)). An assessment under s95D is therefore made below.

ASSESSMENT OF EFFECTS ON THE ENVIRONMENT (s95D)

MANDATORY EXCLUSIONS FROM ASSESSMENT (S95D)

A: Effects on the owners or occupiers of land on which the activity will occur and on adjacent land (s95D(a)).

B: An adverse effect of the activity if a rule or national environmental standard permits an activity with that effect (s95D(b) (the permitted baseline, refer to section below).

C: In the case of a restricted discretionary activity, any adverse effect that does not relate to a matter for which a rule or national environmental standard has restricted discretion (s95D(c)).

D: Trade competition and the effects of trade competition (s95D(d)).

E: Adverse effects on any parties who have provided written approval must be disregarded (s95D(e)). In this case the following written approvals have been provided as listed below and shown in figure 4:

- *Ross MacLean, owner of 151 Pearson Rd*
- *Bruce Wilson, owner of 249 Pearson Rd*
- *Vincent Sharp and Brett Harry Flintoff, owners of 153 Sandflat Rd*
- *Rick Guyton and Donna Kay Freeman, owners of 157 Sandflat Rd*



Figure 4: The subject site shown outlined in black and yellow, with the properties where owners have provided written approval shown with green dots

PERMITTED BASELINE (S95D(B))

Under Section 95D(b) of the RMA, an adverse effect of the activity on the environment may be disregarded if the plan permits an activity with that effect. That is, an application can be assessed by comparing it to the existing environment and development that could take place on the site as of right, without a resource consent, but excluding development that is fanciful.

In this case, there are no permitted retail activities in the Rural Resource Area under the Central Otago District Plan. Commercial and industrial activities in rural residential areas require resource consent for engaging any number of persons. Therefore, in this case there is no permitted baseline to be applied for the proposed commercial, industrial and retail activities. For completeness, farming, horticulture and viticultural activities are permitted in the Rural (Residential) Resource Area, this is the permitted baseline.

ASSESSMENT: EFFECTS ON THE ENVIRONMENT

1. *Visual and landscape effects*

The application proposes bunding and additional planting along the site boundaries, the proposed plantings have not yet been established and do not currently contribute to the existing environment. Until this vegetation has grown to fully screen the activity from Sandflat Road and Pearson Road, the short-term visibility effects are considered by way of this assessment.

The road frontage adjacent to Sandflat Road and Pearson Road is primarily lined with a shelterbelt. A site visit completed on 6 September 2023 confirmed that the existing Grape Vision contractors' yard, the topsoil business and the onsite storage business are visible intermittently from Sandflat Road as shown in Figure 5 below. While visible, the activities are not prominent in the landscape due to the large separation distance from the onsite buildings and structures to the road, the flat topography, and the established vegetation surrounding the boundaries of the site.

The applicant proposes to remove three trees along Pearson Road, to enable the proposed sign to be visible from the road, however, in the context of the extensive screening already established onsite, it's unlikely that the absence of these trees will be highly noticeable. Notwithstanding this, once these trees are removed, the operations within the property boundaries will likely become more apparent from the vantage point of Pearson Road.

In terms of the colour breach as a result of the white shelter within the Grape Vision Contractors yard, I do not consider that the structure is a prominent feature in the surrounding environment because of the established vegetation on-site and the distance from the structure to the boundaries.

The landscape in this area is that of a moderately intensively developed rural landscape, including 'lifestyle' blocks, vineyards, orchards, pastoral farms. In this context, I consider that the visual effects of the activities from public view will be minor, at most.



Figure 5: Photo of the site taken from Sandflat Road, with the Grape Vision contractor's yard and the R&R storage area shown circled.

2. Rural Amenity Values and Character Effects

The reasoning provided in Rule 4.7.6B of the District Plan explains that activities of retail, commercial, industrial or manufacturing nature have the potential to significantly compromise the amenity values of the rural environment, and in particular, result in adverse visual effects associated with large structures, the loss of landscape values and obtrusive noise. They can also adversely impact on the safe and efficient operation of the roading network. The thresholds specified in Rule 4.7.6B have been selected on the basis that over and above this scale of operation, adverse effects have the potential to become significant.

In this case, a total of 15 persons are proposed to operate the stone masonry, topsoil screening and contractors yard businesses, whereby no persons are permitted to be engaged in these activities in this zone. The commercial activities primarily involve the storage, maintenance, sale, construction and transport of materials to and from the site. While the visibility effects from the road are expected to be minimal, it is my opinion that the collective intensity of these activities, coupled with various shelters and structures proposed across the site, have the potential to compromise the open space and natural character of the rural environment to a more than minor degree.

As the stone masonry, topsoil screening, and storage businesses on-site intend to function autonomously, it is my opinion that adverse effects will be heightened due to differing operating hours, staff arrivals, truck movements, and the diverse nature of these activities. Individually, each activity might produce effects that are minor on the rural character, due to the lack of visibility from outside of the site. However, I consider that cumulatively the effects of the autonomously operated activities, the extensive area of the site in which the activities cover, and the combined noise from traffic generation, stone masonry and crushing activities, will be out of character with the surrounding environment and will likely result in more than minor effects on the rural amenity values experienced in this environment.

I understand that Council has received at least one noise complaint from persons in the area about noise generated by the onsite commercial activities. During a discussion with Council's monitoring and enforcement officer, they noted that the cause of the complaint was largely related to trucks travelling up and down the road, using air brakes from as early as 6.30am and continuing throughout the day. The applicant confirmed that noise levels will comply with the volume standards in Rule 4.7.6E and has volunteered conditions requiring the noisiest commercial activities to occur between 8am - 6pm Monday to Friday and 9am to 2 pm Saturdays. Notwithstanding this, the ability to comply with the noise standards in the Plan is not supported by expert evidence, whereby, noise generating activities onsite will be required to be actively managed to ensure compliance as they have the potential to cause annoyance if they are not effectively managed.

It is noted that the storage of materials is not an unanticipated activity in the rural environment, so long as they are appropriately screened. In this case, the materials for the various activities within the site will be visible from outside of the site, I note that while the activities are clustered to an extent, the application proposes to utilise up to 2.5 hectares of land. It is considered that the various storage activities across the site coupled with the proposed supporting structures, will appear unnatural and out of character with the surrounding environment.

Overall, it is considered that cumulatively, the proposed activities are not compatible with the rural character of the surrounding environment and have the potential to compromise the open space and natural character that is expected to be experienced in this environment to a more than minor degree.

3. Signage

Signage is proposed to advertise the activities on site. The proposed sign is dark brown in colour with white text and is proposed to be an area of less than 3m². The proposed entrance sign is discrete in size and is not prominent when viewed from outside of the site, when viewed in the context of the established trees surrounding the property boundary. The proposed sign is not in a location where it is likely to cause a hazard to road users. The surrounding area is highly modified, with signage advertising different vineyards, orchards and contractors' yards. In this context, I consider the proposed sign to have a no more than minor effects on visual amenity.

4. Out of Zone Retail Activity

In my opinion the adverse impact on Cromwell's town centre business dynamics as a result of the proposed retail activity is considered to be negligible. Its operation, including the sale of screened topsoil and manure is of a very limited and niche customer base. Additionally, the topsoil business is more similar to an industrial activity and requires a large area of land, which is not possible in Cromwell's town centre.

In conclusion, while maintaining the integrity and vibrancy of Cromwell's Business Resource Area is essential, the proposed retail activity, due to its ancillary and specialised nature is not expected to have a notable adverse impact on the town's central business dynamics.

5. Servicing

Council's engineers assessed that the existing infrastructure, including roads and parking facilities and have not raised any concerns in relation to the proposal. I agree with the assessment of Council's Engineer, and consider there to be less than minor effects on servicing and infrastructure.

DECISION: EFFECTS ON THE ENVIRONMENT (S95A(2))

Overall, the proposed activity is likely to have adverse effects on the wider environment that are more than minor, specifically in relation to rural amenity values and character effects. Therefore, public notification is required under Step 3.

Step 4 – Public Notification in Special Circumstances

Public notification is required if the consent authority decides such special circumstances exist as to warrant the application being publicly notified (s95(9)(a)).

Current case law has defined 'special circumstances' as those "*outside the common run of things which is exceptional, abnormal or unusual, but they may be less than extraordinary or unique.*" The court has also found that special circumstances are deemed to apply where there is likely to be high public interest in the proposal [*Murray v Whakatane DC* [(1997) NZRMA 433 (HC), *Urban Auckland v Auckland Council* [(2015) NZHC 1382, (2015) NZRMA 235].

There is nothing exceptional or unusual about the application that makes public notification desirable in this particular instance. As such, there are no special circumstances that warrant the application being publicly notified.


OVERALL DECISION - S95A NOTIFICATION

Pursuant to 95A(5)(b)(i), public notification is required as identified in the assessment above.

OVERALL NOTIFICATION DETERMINATION

Given the decisions made under s95A, the application is required to be processed on a publicly-notified basis. It is noted that the determination, as to whether an application should be notified or not, is separate from the issues to be considered in making a decision on the application itself.

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Date: 28/11/2023

Reviewed by:



Oli McIntosh
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Date: 4/12/2023

Approved under Delegated Authority by:



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Date: 4 December 2023