

**CENTRAL OTAGO DISTRICT COUNCIL**  
**LOOP ROAD LTD RC 230107**  
**S42A PLANNING REPORT**

<b>APPLICATION</b>	<b>RC 230107</b>
<b>APPLICANT</b>	<b>MULLER FAMILY TRUST</b>
<b>ADDRESS</b>	<b>222 PEARSON ROAD, CROMWELL</b>
<b>LEGAL DESCRIPTION</b>	<b>SECTION 48 SARITA SUBDIVISION AND SECTION 1-3 SURVEY OFFICE PLAN 23017 HELD IN RECORD OF TITLE OT7D/1154</b>
<b>ACTIVITY STATUS</b>	<b>NON-COMPLYING</b>

**BACKGROUND**

**Site Background:**

- [1] 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.
  - A viticultural contracting business (Grape Vision), 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.
  - A topsoil recycling and landscaping supplies business (Central Screening) is located 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, container, portacoms and other equipment to the horticulture, network utility and other industries.
- [2] The applicant was informed by the Council's Monitoring and Enforcement team that the commercial activities on the site necessitated resource consent. This notification followed a complaint from a property owner in the surrounding environment.
- [3] 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.

### **Application Background**

#### **Site**

- [4] The site comprises two 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**

- [5] 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.

- [6] With respect to wastewater, the Grape Vision area includes a toilet with a closed septic system that will be regularly pumped out for safe off-site disposal.
- [7] 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.
- [8] The application states that there is ample space within the site for manoeuvring and parking as required.
- [9] The details of the proposed activities are provided above in the background section of this report and further described 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;
- Upto 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.

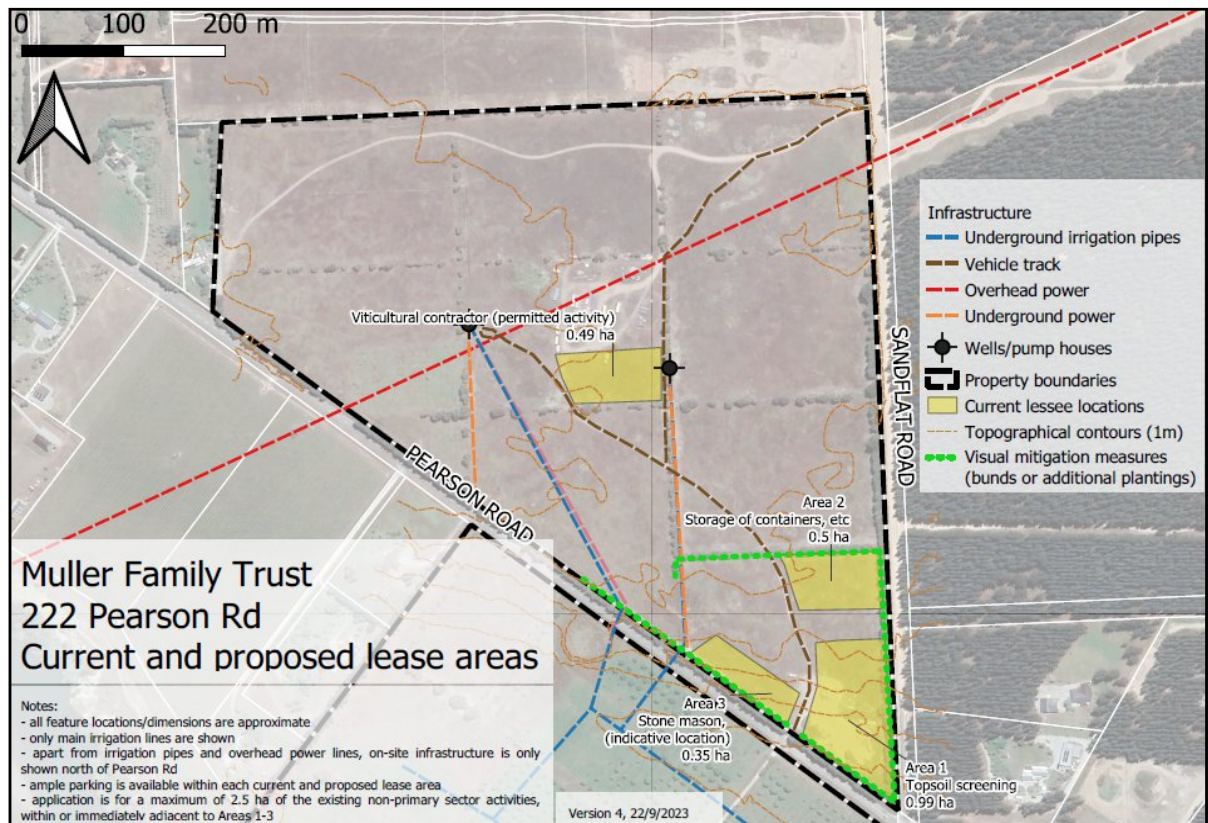
#### Grape vision

- 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 the site per day, with typically one two-way truck movement per day and occasionally up to five;
- No retail activities are proposed 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 sign is proposed by way of this application, which is proposed to be double-sided, no more than 3 m<sup>2</sup> in area, and placed near the site entrance on Pearson Road;
- The application advises that the sign 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

[10] 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 m<sup>3</sup>, 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.*

## **District Plan:**

### Central Otago District Plan

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

- The Plan provides for more than three persons to be engaged in an activity of commercial or industrial nature in the Rural Resource Area as a discretionary activity in accordance with 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.

### **National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health**

- [12] The National Environment Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS) requires that any subdivision consent or change in the use of land where there may be contaminants that are a risk to human health should be considered in terms of the NES-CS.
- [13] The applicant has obtained a search of Council records which demonstrates that the site has not or is not likely to have had HAIL use in accordance with the Regulation. I consider that the NESCS is not triggered by this application.
- [14] There are no other National Environmental Standards relevant to this application.

### **Overall Status**

- [15] Where an activity requires resource consent under more than one rule, and the effects of the activity are inextricably linked, the general principle from case law is that the different components should be bundled and the most restrictive activity classification applied to the whole proposal.

- [16] In this case, there is more than one rule involved, and the effects are linked. As a result, the proposal is considered to be a non-complying activity in terms of the Operative Central Otago District Plan pursuant to sections 104, 104B and 104D of the Resource Management Act 1991 (the Act).
- [17] In terms of section 104D the Council may grant resource consent for a non-complying activity only if it is satisfied that either:
- (a) *The adverse effects of the activity on the environment ... will be minor; or*
  - (b) *The application is for an activity that will not be contrary to the objectives and policies of ... the relevant plan, ...*
- [18] Section 104B enables the Council to grant or refuse consent to a non-complying activity and if granted, to impose conditions of consent.
- [19] Section 104(1) requires that subject to Part 2, the Council shall have regard to any actual or potential effects of allowing the activity; any relevant provisions of the plan or proposed plan; and any relevant national or regional planning document.

#### **COMMENT ON PROPOSAL:**

##### ***Part 2 of the RMA and Section 104(1)***

- [20] This application must be considered in terms of Section 104 of the RMA. Subject to Part 2 of the RMA, Section 104(1) sets out those matters to be considered by the consent authority when considering a resource consent application. Considerations of relevance to this application are:
- (a) *any actual and potential effects on the environment of allowing the activity; and*
  - (b) *any relevant provisions of:*
    - (i) *A national environmental standards*
    - (ii) *Other regulations;*
    - (iii) *a national policy statement*
    - (iv) *a New Zealand coastal policy statement*
    - (v) *a regional policy statement or proposed regional policy statement*
    - (vi) *a plan or proposed plan; and*
  - (c) *any other matters the consent authority considers relevant and reasonably necessary to determine the application.*

##### **Sections 108 and 220**

- [21] Sections 108 and 220 empower the Hearings Panel to impose conditions on a resource consent should it be of a mind to grant consent.

##### **WRITTEN APPROVAL**

- [22] The written approval of the persons detailed below have been obtained. In accordance with sections 104(3)(a)(ii) of the Resource Management Act 1991, the Council cannot have regard to the effects of the activity on these persons.

- *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 red stars

## NOTIFICATION AND SUBMISSIONS

[23] A notification decision was made on 4 December 2023 that determined that the application warranted public notification. The submission period closed on 1 March 2024 and 12 submissions were received by the closing date. The submissions are summarised as follows:

*Table 1: Summary of Submissions*

Submitter	Summary of submission	Decision requested	Wishes to be heard
Juanita Doherty & Ricky Ryan	The submitter fully supports this submission as it brings growth and revenue.	Support	Unspecified
Robert Cameron	The submitter supports the proposal as: <ul style="list-style-type: none"> <li>• Their property is across the river from the</li> </ul>	Support	No

Submitter	Summary of submission	Decision requested	Wishes to be heard
	<p>applicant's property and they have not had any noise issues.</p> <ul style="list-style-type: none"> <li>• The proposed signage and removal of three trees for visibility is acceptable.</li> <li>• No issues with traffic movements have been experienced by the submitter.</li> <li>• The proposed activities do not fit into town industrial/commercial.</li> </ul>		
Ritchard & Sandra Guyton	Not specified	Support	Yes
James Dicey Grape Vision	<p>The submitter supports the proposal as:</p> <ul style="list-style-type: none"> <li>• Contractors are essential for the viticultural industry.</li> <li>• The submitter considers that the use of the rural land for viticultural contracting activities, is permitted and that the Grape Vision yard should be excluded from conditions of consent.</li> <li>• There are only few staff that are permanently based at the yard.</li> <li>• The location of the yard is far away from dwellings and the road and difficult to see from the road.</li> <li>• Very few traffic movements down Pearson Road.</li> <li>• The proposed signage is appropriate for the activity.</li> <li>• The volume of equipment requires additional space to store, and is not suitable for an industrial area.</li> </ul>	Support	Yes
Carl Blackler - CV Blackler Ltd t/a Central Screen	<p>The submitter supports the application as:</p> <ul style="list-style-type: none"> <li>• The Cromwell Township and surrounding industrial areas would not be ideal for screening and storing soil and dust suppression will be harder.</li> <li>• If Central Screening were to become unavailable, landscapers would find themselves needing to move further afield.</li> <li>• This is the right site for the business, where it has been running on this site for approximately 8 years.</li> </ul>	Support	Yes
Gregory lane	<p>The submitter supports the application as:</p> <ul style="list-style-type: none"> <li>• The submitter owns a property directly south of the property in question.</li> <li>• The submitter has never noticed noise from the current activities on this site</li> <li>• While the activities are visible from their restaurant at 73 Felton Road, they are not distinctly visible and mitigation measures</li> </ul>	Support	No

Submitter	Summary of submission	Decision requested	Wishes to be heard
	<p>proposed will decrease potential visibility further.</p> <ul style="list-style-type: none"> <li>• There isn't a noticeable increase of traffic on Pearson Road and Sandflat Road, from the activity.</li> <li>• The proposed signage appears appropriate and beneficial to alert traffic.</li> <li>• The submitter agrees that the site is located in an ideal location.</li> </ul>		
Heritage New Zealand (HNZPT)	<p>The submitter notes that:</p> <ul style="list-style-type: none"> <li>• An archaeological assessment has not been included in the application; therefore, the application has insufficient information to determine effect on historic heritage.</li> <li>• Any earthworks within the development area may trigger requirements under the archaeological provisions of Heritage New Zealand Pouhere Taonga Act 2014.</li> <li>• NNZPT recommends avoidance of potential archaeological features and mitigation of adverse effects to any archaeological sites wherever possible.</li> </ul>	Neutral	No
Tegan Wilson	<p>The submitter supports all parts of application with amendments, including:</p> <ul style="list-style-type: none"> <li>• The Council (not Muller Trust) should seal the rest of Sandflat Road.</li> <li>• Hours of operation limited to 7-6pm weekdays and 9-4pm weekends and public holidays.</li> </ul> <p>The submitter notes that the application does not impact significantly on neighbours due to the distance from other houses.</p>	Support	No
Kā Rūnaka	<p>The submitter notes that the sign is located in a draft Wāhi Tūpuna area known as Kawarau Trail and Roaring Meg. Kā Rūnaka are concerned that resource consent may be granted for inappropriate use and development in cultural landscapes without appropriate controls (by way of consent conditions) as to the location, scale, timing and nature of activity or effects.</p>	Neither	Yes
Charlae Cherie Foster	<p>The submitter supports the proposal as:</p> <ul style="list-style-type: none"> <li>• Absolutely no objections to any buildings whatsoever.</li> </ul>	Support	
Bruce Wilson	<p>The submitter supports the application as a neighbour of the site, as the products are needed for the growth and wealth of the community.</p>	Support	
Ross Maclean	<p>The submitter supports the application as their house is right on the boundary and it would be good to see this land put to good use.</p>	Support	

### Late submission

Submitter	Summary of submission	Decision requested	Wishes to be heard
Gillian Wilson & Raewyn Paviour	The submitter supports the proposal as: <ul style="list-style-type: none"><li>• The activities are appropriate for the land in question.</li><li>• The activities have not impacted their property in any way including noise, visual effects, traffic issues or signage.</li><li>• The impact of these businesses is less an impact than Highland's motorsport park.</li></ul>	Support	No

[24] It is my recommendation that the time frame for the submission period be extended for RC230107 pursuant to S37A of the RMA, and that the late submission be accepted. This is due to the timing in which it was received, before a hearing date was set, circulation of the Section 42A Report, and circulation of the evidence. Accepting the late submission will ensure a full range of opinions are available to the Panel. There is no identified disadvantage to the applicant or any other submitter by extending the submission timeframe, given the timing in which the submission was received on 7 March 2024, seven days after the submission closing date.

### Preliminary Matters

[25] The Section 95 report for RC230170, states that crushing will be undertaken on the site. The applicant has since clarified that there are no crushing activities on the site.

## EFFECTS ON THE ENVIRONMENT

### Permitted Baseline

[26] Under sections 95D(b) and 104(2) of the Resource Management Act 1991, the Council may disregard an adverse effect of an activity on the environment 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.

[27] In this case, there are no permitted retail or commercial activities in the Rural (Residential) Resource Area under the Central Otago District Plan, therefore, it is not considered that applying a permitted baseline is helpful in this circumstance.

### Receiving Environment

[28] The existing and reasonably foreseeable receiving environment is made up of:

- The existing environment and associated effects from lawfully established activities;
- Effects from any consents on the subject site (not impacted by proposal) that are likely to be implemented;
- The existing environment as modified by any resource consents granted and likely to be implemented; and
- The environment as likely to be modified by activities permitted in the district plan.

- [29] For the subject site, the existing and reasonably foreseeable receiving environment comprises rural land, containing an orchard on the southern side of Pearson Road, a rural selling place, and associated signage. For clarity, while a rural contracting operation, a topsoil screening business and a storage business are located on the site, resource consent is sought for these activities, by way of this application. These activities, therefore, do not form part of the receiving environment.
- [30] For adjacent land, the existing and reasonably foreseeable receiving environment comprises established viticulture and horticulture activities, with lifestyle blocks. It is considered that the adjacent land is used and will be used for rural residential and productive purposes.

### **Assessment Matters**

- [31] The application is for a non-complying activity and, therefore, the assessment is not restricted. For expediency, relevant matters have been grouped below. No regard has been given to any trade competition or any effects of trade competition.

### **Visual and landscape effects**

- [32] The proposal will result in the visual appearance of built form scattered across the site. Although the existing Grape Vision contractors' yard, topsoil business, and storage business are intermittently visible from Sandflat Road (as illustrated in Figure 5 below), and it is expected that the stonemasonry business might also be partially visible, these activities do not stand out significantly in the landscape. This is due to the large separation distance from the onsite buildings and structures to the road, the flat topography of the site, and the established vegetation surrounding the boundaries of the site as shown in Figure 6 and 7 below.



**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 (which is proposed to be shifted to the south-eastern corner).



**Figure 6:** Shelterbelt adjacent to the southern boundary of Pearson Road, taken from the southern side of Pearson Road. Source: Site visit.



**Figure 7:** Shelterbelt adjacent to the eastern boundary of the site on the corner of Pearson Road and Sandflat Road.

- [33] 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, I consider that it is 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.

- [34] To mitigate the visual appearance of the activities onsite and the colour breach as a result of the white shelter located in the Grape Vision yard, the application proposes bunding and additional planting along the site boundaries. While the activities will be visible on the site until such time as the vegetation has grown to screen the activity, I do not consider that the short-term effects will be inappropriate, given the separation distance from the activities to the road, and the modified nature of the existing environment. I note that the landscape in this area is that of a moderately intensively developed rural landscape, including 'lifestyle' blocks, vineyards, orchards and pastoral farms. I also note that existing landscaping will ensure the activities assimilate well into the existing environment such that the effects on the landscape will be appropriate.
- [35] While the intensity of the proposed activities, and level of built form across the 2.5-hectare area<sup>1</sup> of land, is higher than can be anticipated in the zone, when observed from the road and neighbouring properties, the activities are anticipated to appear consistent with typical rural contracting operations, which are common in a rural environment. This is largely due to the mature vegetation surrounding the site's perimeter, which obscures the activities. In addition to this, when considering the additional landscaping proposed by way of bunding and planting, and the separation distances from the activities to the road and neighbouring properties (which have not provided written approval), I do not consider this activity will result in inappropriate visual effects and will not appear out of place in the surrounding environment.

### **Rural Amenity Values and Character Effects**

- [36] Commercial and industrial activities in the district's rural areas can have adverse effects on landscape and rural amenity values through the proliferation of larger buildings and signage, noise effects, traffic effects, generation of large volumes of waste and effects on convenience of people where they have to travel long distances to access retail activities.
- [37] In this case, a total of 15 persons are proposed to operate the stone masonry, topsoil screening and contractors yard businesses. I note that the submission of Mr Dicey states that he does not consider the viticultural contractor's yard to require consent, as it relates to viticultural activity. However, I disagree with this interpretation of Rule 4.7.6B<sup>2</sup> as there are presently no viticultural activities undertaken on the site i.e. growing of grapes, whereby this activity is essentially a contractor's yard and industrial in nature. In addition to this, the contractors yard results in various other breaches to the District Plan, as it is not fully screened from outside of the site, and a colour breach is proposed as a result of the shelter. As no permitted baseline has been applied, and the application is assessed as a non-complying activity, the effects of the contractors'

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<sup>1</sup> Area of land proposed

<sup>2</sup> Rule 4.7.6B states that: "No more than 3 persons shall be engaged in any activity of a commercial, industrial or manufacturing nature except in areas identified as "Rural Residential" ([RR]) on the planning maps. For the purpose of this rule, farming, horticulture, viticulture, network utilities and forestry activities are excluded from an activity of a commercial, industrial or manufacturing nature"

yard are considered by way of this assessment and any recommended conditions will be applicable to this activity.

- [38] The commercial and industrial activities primarily involve the storage, maintenance, sale, construction and transport of materials to and from the site. As assessed above, 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 residential environment to a more than minor degree.
- [39] 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 and the stone masonry business will be out of character with a typical rural residential environment.
- [40] Notwithstanding the above, when considering this particular site, which already contains extensive screening, in an area that is relatively mixed use, I consider that the activities can be managed, to ensure they are relatively discrete.
- [41] The applicant confirmed that noise levels will comply with the volume standards in Rule 4.7.6E of the District Plan and has volunteered conditions requiring the noisiest commercial activities to occur between 8am - 6pm Monday to Friday and 9am to 2 pm Saturdays. In addition, the hours of operation for the stone masonry business are proposed to be between 7 am-6 pm Monday-Friday and on occasion from 8 am-2 pm on a Saturday. I note that the submission of Ms Wilson is also supportive of restricting operational hours. While, the compliance with noise standards is not supported by expert evidence and the applicant has not taken into account the effect on ambient noise levels, when considering the closest notional boundary (where owners and occupiers have not provided written approval) being approximately 365 metres from the activity, and separated by bunding onsite, I consider there is sufficient separation distance and proposed bunding to mask any noise generated onsite. I further note that many of the neighbouring properties submitted in support of the application, and noted that noise was not experienced from the existing activities on the site.
- [42] Dust generation from topsoil screening is proposed to be mitigated with water which is obtained from an onsite bore. The applicant proposes that future dust-generating activities will be required to have dust suppression in place, to ensure that minimal or no dust emissions occur outside the site. If the Panel is of mind to grant consent, I consider that a condition should be imposed requiring the applicant to submit a dust management plan to Council.
- [43] The storage of materials is not an unanticipated activity in the rural environment, so long as it is appropriately screened. In this case, the materials for the various activities within the site will be visible intermittently from outside of the site. I note that while the activities are clustered to an extent, the application proposes to utilise upto 2.5 hectares of land. It is considered that the various storage activities across the site coupled with the proposed supporting structures, may appear unnatural and out of



character with a typical rural environment. Notwithstanding this, as detailed earlier in this report, I consider the environment in which the site is located to be highly modified. Although I recognise that this proposal will contribute to cumulative effects on the rural character of the area, I do not consider this proposal will cause these effects to become significant.

- [44] The application was publicly notified and neighbours were made aware of the proposal. No submissions in opposition were received from surrounding neighbours. On the contrary, many submissions in support were received from neighbouring properties, stating that the existing activities onsite do not create noticeable traffic generation, landscape, noise or dust effects and that the activities are appropriately located.
- [45] It is considered that cumulatively, while the proposed activities have the potential to compromise the open space and natural character that is expected to be experienced in a rural residential environment, that the potential effects can be adequately mitigated by conditions of consent, relating to noise, dust and landscaping such that the proposal will maintain the open space and amenity values of the surrounding rural environment.

### **Signage**

- [46] 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 3m<sup>2</sup>. The entrance sign is discrete in size and is not prominent when viewed from outside of the site, due to the established trees surrounding the property boundary and 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.
- [47] In terms of the relationship with the other signs approved on the site through the previous resource consent, I consider there to be sufficient separation and variation between the signs. In this context, I do not consider that the proposed signage will result in more than minor effects on landscape values, or on the operation of Peason Road.

### **Light Spill**

- [48] In accordance with Rule 12.7.6 of the Plan, "*No activities shall result in greater than 10 lux spill (horizontal and vertical) of light onto any adjoining property or road, measured at the boundary of a road or the notional boundary of a neighbouring property*".
- [49] The application does not include any provisions for exterior lighting and has limited the operation hours for the activities onsite, to be operational during the hours of 8 am-6 pm, Monday to Friday and 9am to 2 pm Saturdays. Notwithstanding this, the applicant has not restricted the hours for the contractor's yard activity and the storage activity. Lightspill from external lighting can be a nuisance and can be avoided by careful siting and design of lighting fixtures. As such, if the Panel is of mind to grant consent, I deem it appropriate to include a condition of consent which addresses the use of outdoor lighting, if applicable, particularly with regard to minimising the light pollution from fixed lighting in relation to neighbouring properties and the road.

### **Out of Zone Retail Activity**

- [50] 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.
- [51] 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.

### **Sustainable Land Use and Reverse Sensitivity**

- [52] It is noted that no permanent buildings are proposed on the site, by way of this application. In terms of the contractor's yard, while this does not currently service the site, the applicant considers that it will support future viticultural uses of the site. The nature of the activity on the site is well established and not sensitive, and is not expected to result in any reverse sensitivity effects. Overall, it is determined that the proposal will not adversely affect the sustainable use of the subject or surrounding land.

### **Heritage and cultural effects**

- [53] The submission of HNZPT states that an archaeological assessment has not been included in the application, therefore, the application has insufficient information to determine effect on historic heritage. Notwithstanding this, no earthworks on site are proposed by way of this application, therefore, I consider the imposition of an accidental discovery protocol condition to be appropriate to manage the effects on historic heritage.
- [54] The submission of Aukaha on behalf of Kā Rūnaka, raises that the site is located in a draft wāhi tūpuna area known as Kawarau Trail and Roaring Meg. Notwithstanding this, they indicate that appropriate conditions can be imposed to protect the cultural landscape, by way of managing the scale, timing, and the nature of the activity and associated effects. As detailed in this report, if the Panel was of mind to grant consent, I consider that appropriate conditions can be imposed to mitigate the impact of this proposal on this landscape, and therefore, the effects on cultural and heritage values will be minor and appropriate.

### **Servicing**

- [55] The applicant advised that there is existing infrastructure onsite to service the activities, including toilet facilities at the contractors' yard and water supply by way of an onsite bore.
- [56] Council's Engineer assessed the existing infrastructure and raised concerns with the proposed wastewater disposal arrangements onsite, as only one toilet was proposed for all activities. Council's Engineer recommended that should consent be granted that a wastewater disposal management plan for toilets on the property for use by employees and customers of the business activities be provided to Council for approval. In addition to this that appropriate conditions be imposed relating to the standard of access.

[57] I agree with the assessment of Council's Engineer, and consider there to be less than minor effects on servicing and infrastructure, subject to the imposition of appropriate conditions of consent.

[58] I note that the submission of Ms Wilson states that the Council should seal Sandflat Road, as a result of this proposal. Notwithstanding this when considering the assessment of Council Engineers, which concludes that the existing roading is appropriate for the activity, I do not consider the sealing of Sandflat Road to be necessary.

### **Financial contributions**

[59] Financial contributions have been calculated as follows:

<b>Activity</b>	<b>Payment</b>
Water Supply	\$Nil
Wastewater	\$Nil
Reserves	\$Nil
Roading	\$9,715.42 +GST
<b>Total</b>	<b>\$9,715.42 +GST</b>

[60] This development/financial contribution demand has been calculated in accordance with Council's Policy on Development and Financial Contributions effective from 1 July 2021.

### **POSITIVE EFFECTS**

[61] The submissions in support raise a number of positive effects as a result of the proposal including the following:

- It would be good to see this land put to good use.
- The products provided on this site are needed for the growth and wealth of the community.
- If Central Screening were to become unavailable, landscapers would find themselves needing to move further afield.
- The contractors yard is essential to support surrounding viticultural activities.
- The location of the site is suitable for the proposed activities as they would not fit into an industrial or commercial area.

### **SUBSTANTIVE DECISION ASSESSMENT**

#### **Effects**

[62] In accordance with section 104(1)(a) of the Resource Management Act 1991, the actual and potential adverse effects associated with the proposed activity have been assessed and outlined above. It is considered that the adverse effects on the environment arising from the proposal are more than minor, in terms of amenity effects. However, the adverse effects on the environment are less than minor in terms of landscape, servicing and access, heritage and cultural values, and sustainable land use and reverse sensitivity, subject to the recommended conditions of consent. It is

noted that the issues raised within the HNZPT and Aukaha submissions can be adequately addressed by conditions of consent, and no other adverse effects on the public or neighbours were raised during the submission process. Overall, I consider that the effects of this proposal are acceptable.

### **Offsetting or Compensation Measures**

- [63] In accordance with section 104(1)(ab) of the Resource Management Act 1991, there are no offsetting or compensation measures proposed or agreed to by the applicant that need consideration.

### **Objectives and Policies**

- [64] In accordance with section 104(1)(b) of the Resource Management Act 1991, the following objectives and policies of the Central Otago District Plan were taken into account when assessing the application:

#### **Central Otago District Plan**

- [65] The objectives and policies of the Plan that are of particular relevance to this application include:

4.3.1 Objective - Needs of the District's People and Communities

*To recognise that communities need to provide for their social, economic and cultural wellbeing, and for their health and safety at the same time as ensuring environmental quality is maintained and enhanced.*

4.3.3 Objective – Landscape and Amenity Values

*To maintain and where practicable enhance rural amenity values created by the open space, landscape, natural character and built environment values of the District's rural environment, and to maintain the open natural character of the hills and ranges.*

4.3.5 Objective – Water Resource

*To maintain and enhance the quality of the District's water resources by avoiding, remedying or mitigating the adverse effects of land use activities adjacent to water bodies.*

4.3.6 Objective - Margins of Water bodies

*To preserve the natural character of the District's water bodies and their margins.*

4.3.7 Objective – Soil Resource

*To maintain the life-supporting capacity of the District's soil resource to ensure that the needs of present and future generations are met.*

4.3.8 Objective – Significant Indigenous Vegetation and Habitats of Indigenous Fauna

*To recognise and provide for the protection of areas of significant indigenous*

vegetation and significant habitats of indigenous fauna.

4.4.2 Policy – Landscape and Amenity Values

To manage the effects of land use activities and subdivision to ensure that adverse effects on the open space, landscape, natural character and amenity values of the rural environment are avoided, remedied or mitigated through:

- (a) The design and location of structures and works, particularly in respect of the open natural character of hills and ranges, skylines, prominent places and natural features,
- (b) Development which is compatible with the surrounding environment including the amenity values of adjoining properties,
- (c) The ability to adequately dispose of effluent on site,
- (d) Controlling the generation of noise in back country areas,
- (e) The location of tree planting, particularly in respect of landscape values, natural features and ecological values,
- (f) Controlling the spread of wilding trees.
- (g) Encouraging the location and design of buildings to maintain the open natural character of hills and ranges without compromising the landscape and amenity values of prominent hillsides and terraces.

4.4.3 Policy - Sustainable Management of Infrastructure

To ensure that the development of infrastructure in the rural environment promotes sustainable management by:

- (a) Requiring developers to contribute a fair and reasonable proportion of the costs involved, and
- (b) Maintaining and enhancing the safe and efficient operation of the infrastructure network (including roading), while avoiding, remedying or mitigating adverse effects.

4.4.5 Policy - Effects on Water Quality

To assist the Otago Regional Council in its role of maintaining and enhancing water quality, by ensuring allotments are adequate for effluent disposal requirements and encouraging the use of land management techniques that maintain and/or enhance the life supporting capacity of water.

4.4.6 Policy – Adverse Effects on the Soil Resource

To ensure that the location, construction and/or operation of land use activities and subdivision make adequate provision for the protection of the soil resource by avoiding, remedying or mitigating the adverse effects of practices which may cause:

- (a) Erosion, instability or loss of topsoil,
- (b) Loss of nutrient or incidence of soil contamination,
- (c) Loss of soils with special qualities,
- (d) A reduction in vegetation and moisture holding capacity, and
- (e) Soil compaction

4.4.7 Policy – Significant Indigenous Vegetation, Wetlands and Wildlife

To protect areas of:

- (a) Significant indigenous vegetation,
- (b) Significant habitats of indigenous fauna,
- (c) Significant wetlands,
- (d) Indigenous vegetation or habitats that support a significant indigenous freshwater fishery, and
- (e) Habitats of statutorily managed sports fish and game from the adverse effects of land use activities and subdivision and to promote and encourage, where practicable, the retention, enhancement and reinstatement of indigenous ecosystems within the District.

4.4.8 Policy – Adverse Effects on the Amenity Values of Neighbouring Properties.

To ensure that the effects associated with some activities including (but not limited to):

- (a) Noise (including noise associated with traffic generation, night time operations), and vibration,
- (b) The generation of a high level of traffic, in particular heavy vehicles,
- (c) Glare, particularly from building finish,
- (d) A reduction in visual amenity due to excessive signage and the storage of goods or waste products on the site,
- (e) The generation of odour, dusts, wastes and hazardous substances, and
- (f) The use and/or storage of hazardous goods or substances

do not significantly adversely affect the amenity values and privacy of neighbouring properties or the safe and efficient operation of the roading network.

4.4.9 Policy - Effects of Rural Activities

To recognise that some rural activities, particularly those of a short duration or seasonal nature, often generate noise and other effects that can disturb neighbours by ensuring that new developments locating near such activities recognise and accept the prevailing environmental characteristics associated with production and other activities found in the Rural Resource Area.

4.4.10 Policy – Rural Subdivision and Development

To ensure that the subdivision and use of land in the Rural Resource Area avoids, remedies or mitigates adverse effects on:

- (a) The open space, landscape and natural character amenity values of the rural environment in particular the hills and ranges,
- (b) The natural character and values of the District's wetlands, lakes, rivers and their margins,
- (c) The production and amenity values of neighbouring properties,
- (d) The safety and efficiency of the roading network,
- (e) The loss of soils with special qualities,
- (f) The ecological values of significant indigenous vegetation and significant habitats of indigenous fauna,
- (g) The heritage and cultural values of the District,
- (h) The water quality of the District's surface and groundwater resources, and
- (i) Public access to or along the rivers and lakes of the District, particularly through the use of minimum (and average) allotment sizes.

- [66] I have concluded that the proposal will be consistent with the developed landscape character of the area. Proposed structures will not be prominent when viewed from outside of the site and the proposal will maintain the character and amenity values experienced by nearby properties, subject to conditions of consent. I consider the proposal to be consistent with Objective 4.3.3 and Policy 4.4.2.
- [67] Suitable infrastructure is able to be provided by the applicant for the proposed activities onsite, subject to conditions of consent. I consider the proposal to be consistent with Policy 4.4.3.
- [68] I have concluded that the proposal will not significantly adversely affect the amenity values of neighbouring properties, and note that many neighbouring properties submitted to the proposal, and considered that the existing and proposed activities fit well into the surrounding environment. I consider the proposal to be consistent with Policy 4.4.8.
- [69] I have concluded that the proposed development will not result in a significant risk to human health and safety, or to property. The proposed activities will not intensify the hazard risk for other sites, and I consider the proposal to be consistent with Objective 17.3.1 and Policies 17.4.2, 17.4.3 and 17.4.6.
- [70] Policy 4.4.10 is a catchall policy intended to ensure all development in rural areas addresses its adverse effects on a range of matters, including on landscape and amenity values, the amenity values of neighbouring properties, ecological, cultural and heritage values and on the operation of the roading network. For the reasons provided throughout this report, I consider the proposal to be consistent with this policy.
- [71] Objective 4.3.1 is a catchall objective intended to provide for a wide variety of activities in rural areas, provided that they maintain and enhance the environmental qualities of the area. The proposal will have a notable economic and social benefit through increased potential for viticultural servicing, providing for the landscape industry and storage of items, that would not fit in a commercial or industrial area. It achieves this while not detracting from the particular character of the area. I consider the proposal to be consistent with this objective.
- [72] Taking into consideration the existing activities occurring on the site, that the current productive use of the land will remain unchanged, that the proposed expansion will provide for business growth with the area and that the proposal is not anticipated to give rise to unacceptable adverse effects in respect of landscape, amenity, transportation and provision of services, overall, it is considered that the proposal is consistent with Policies 4.4.2 and 4.4.3.
- [73] Noise and traffic effects arising from activities on the site are expected to be easily accommodated by the site and noise and dust effects are expected to be managed by conditions of consent. It is considered that the proposal is consistent with Policy 4.4.8. No reverse sensitivity effects have been identified and, as such, the proposal is considered consistent with Policy 4.4.9.
- [74] Section 12 of the Operative District Plan contains objective and policies with respect to signs which I consider to be of particular relevance in this instance. These are:

**12.3.3 Objective - Reducing the Adverse Effects of Signs**

To avoid, remedy or mitigate the adverse effects of signs on traffic and the general amenity values of the District while recognising that signs are a necessary adjunct to many activities.

**12.4.4 Policy – Signs**

To determine the suitability of signs in any given location by having regard to the sign's effect on the following matters:

- (a) The safe and efficient operation of the roading network, and
- (b) The amenities of the locality, and
- (c) Landscape values, and
- (d) The character and scale of the building, site or area, and
- (e) Any heritage, historical or cultural values present.

**12.4.6 Policy - Public Safety and Information Signs**

To enable the display of signs necessary for reasons of public safety and information within the District.

[75] In terms of Objective 12.3.3, and for the reasons discussed above, I consider that the signage will not have an adverse effect on traffic and general amenity values, and that the signage is necessary to direct traffic to the site.

[76] I consider the sign is located in a suitable position having regard to the matters listed in Policy 12.4.4. Council Engineers assessed the proposal and did not raise concerns with the lettering size and the location in which it is situated. The signs simplistic design will mean that it will not have adverse effects on the safe and efficient operation of the roading network. The sign is located on a modified valley floor that features a number of built structures. The sign is also consistent with Policy 12.4.6 that will display information in relation to the activities located on the site.

[77] My conclusion is that the proposed land use is not contrary to the relevant objectives and policies of the Operative District Plan.

**SECTION 104D 'GATEWAY TEST'**

I have previously noted that the proposed land use is a non-complying activity and in terms of section 104D the Council may grant resource consent for a non-complying activity only if it is satisfied that either: -

- a) *The adverse effects of the activity on the environment ... will be minor; or*
- b) *The application is for an activity that will not be contrary to the objectives and policies of ... the relevant plan, ...*

For the reasons outlined in the body of this report, while I consider that the proposal has the potential to result in more than minor effects in terms of the effects on amenity values, I consider the proposed application is not contrary to the objectives and policies of the District Plan. I, therefore, consider that the proposal meets one limb of the 'gateway test' for non-complying activities provided for under Section 104D(1) of the Act.

**Partially Operative Otago Regional Policy Statement 2019**

[78] The Partially Operative Otago Regional Policy Statement (POORPS) was declared partially operative on 15 March 2021. Specific to this proposal are the following objectives and policies:



Objective 5.3

*Sufficient land is managed and protected for economic production.*

*Policy 5.3.1 of the PORPS seeks to manage activities in rural area to support the region's economy and communities by:*

- (a) Enabling primary production and other rural activities that support that production;*
- (b) Minimising the loss of significant soils;*
- (c) Restricting the establishment of incompatible activities in rural areas that are likely to lead to reverse sensitivity effects;*
- (d) Minimising the subdivision of productive rural land into smaller lots that may result in rural residential activities;*
- (e) Providing for other activities that have a functional need to locate in rural areas.*

[79] Objective 5.3 seeks to manage and protect land for economic production through various controls, including minimising loss or soils, restricting the establishment of incompatible activities. As detailed in the submissions in support, the activities proposed, in particular the topsoil screening business and contractors' yard are essential for rural activities within the receiving environment. While they will not enhance production activities, I note that no permanent structures are proposed, therefore, the productive land will be maintained. The proposal is considered to be consistent with Objective 5.3 and Policy 5.3.1.

[80] Overall, I consider that the proposal is consistent with the POORPS.

**Proposed Regional Policy Statement 2021**

[81] The Otago Regional Council notified the new Proposed Otago Regional Policy Statement (Proposed ORPS) on 26 June 2020 and on 30 September 2022 notified the freshwater planning instrument components of the RPS. Both RPS's are consistent with relevant national direction. There are no provisions within the freshwater planning components of the RPS that are applicable to this application so they have not been assessed. As the Proposed ORPS's have not yet been tested, more weight will be applied to the provisions in the POORPS (as assessed above) which was updated on March 15 2021.

Policy LF-LS-P20 – Land use change

*Promote changes in land use or land management practices that improve: (1) the sustainability and efficiency of water use, (2) resilience to the impacts of climate change, or (3) the health and quality of soil.*

Objective UFD-O4 – Development in rural areas

*Development in Otago's rural areas occurs in a way that:*

- 1) avoids impacts on significant values and features identified in this RPS,*
- 2) avoids as the first priority, land and soils identified as highly productive by LF-LS-P19 unless there is an operational need for the development to be located in rural areas,*
- 3) only provides for urban expansion, rural lifestyle and rural residential development and the establishment of sensitive activities, in locations identified through strategic planning or zoned within district plans as suitable for such development; and*

- 4) *outside of areas identified in (3), maintains and enhances the natural and physical resources that support the productive capacity, rural character, and long-term viability of the rural sector and rural communities.*

Policy UFD–P7 –Rural Areas

*The management of rural areas:*

1. *provides for the maintenance and, wherever possible, enhancement of important features and values identified by this RPS,*
2. *outside areas identified in (1), maintains the productive capacity, amenity and character of rural areas,*
3. *enables primary production particularly on land or soils identified as highly productive in accordance with LF–LS–P19,*
4. *facilitates rural industry and supporting activities;*
5. *directs rural residential and rural lifestyle development to areas zoned for that purpose in accordance with UFD–P8,*
6. *restricts the establishment of residential activities, sensitive activities, and non-rural businesses which could adversely affect, including by way of reverse sensitivity, the productive capacity of highly productive land, primary production and rural industry activities, and*
7. *otherwise limits the establishment of residential activities, sensitive activities, and non-rural businesses to those that can demonstrate an operational need to be located in rural areas.*

[82] As discussed in this S42A Report, the proposal does not fragment rural land. When considering the relatively modified nature of the receiving environment, it is my opinion that the activities will not inappropriately compromise the rural amenity values associated with open space and natural character that is expected to be experienced in a rural environment, due to the extensive screening onsite and the location of the activities, which are setback from boundaries and from neighbouring properties.

[83] Overall, the proposal is considered to be consistent with the PRPS. As outlined above, more weight is provided to the POORPS as the PRPS has not been not been adequately tested.

**OTHER MATTERS**

[84] Section 104(1)(c) of the Resource Management Act 1991 requires the Hearings Panel to have regard to any other matters considered relevant and reasonably necessary to determine the application. The matters of precedent and plan integrity are considered relevant here. I recognise that in times gone by the "true exception" test was regularly applied by the Court to non-complying activities.

[85] It is considered that the test is no longer compulsory as determined in *Mason Heights Property Trust v Auckland Council* [2011] NZEnvC 175, para [88]. However, *Mason Heights Property Trust v Auckland Council* does note that the test can assist in assessing whether issues of precedent are likely to arise and whether the proposal meets the objectives and policies of the Plan by an alternative method, especially where contrary to the objectives and policies of the relevant plan. This approach was supported *Cookson Road Character Preservation Society Inc v Rotorua District Council* [2013] NZEnvC 194.

[86] In this instance, the proposal is not considered contrary to the objectives and policies of the District Plan, RPS, PRPS or Part 2 and the environmental effects are considered to be appropriate, as such, it is not considered necessary to apply the true exception test in this instance. The District Plan identifies and seeks to maintain and protect the values of the Rural (Residential) Resource Area. While under this proposal the extent of non-rural activities will increase on the site, the proposal will only introduce effects which can be managed and are localised to the immediate area. The issues raised within the HNZPT and Aukaha submissions can be adequately addressed via conditions of consent.

[87] I consider that, given the existing activities on the subject site, the nature of the activities, which can be managed in this environment, and are essential to support rural productive purposes in the wider environment, it is considered that there are sufficient elements to set this proposal apart such that it is not expected to create an undesirable precedent or threaten the integrity of the district plan.

**OFFSETTING OR COMPENSATION MEASURES:**

[88] In accordance with Section 104(1)(ab) of the RMA, consideration for offsetting or compensation measures is required. The applicant has not offered offsetting or compensation measures.

**PART 2 OF THE RESOURCE MANAGEMENT ACT 1991**

[89] The purpose of the RMA to promote the sustainable management of the natural and physical resources detailed below:

*'managing the use, development and protection of natural and physical resources in a way or at a rate which enables people and communities to provide for their social, economic and cultural well being and for their health and safety while:*

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations: and*
- (b) Safeguarding the life-supporting capacity of air, water, soil and ecosystems: and*
- (c) Avoiding, remedying, or mitigating any adverse effect of activities on the environment.'*

[90] In respect of the other matters set out in Section 7, the following matters are considered relevant:

- 7(a) kaitiakitanga*
- 7(b) the efficient use and development of natural and physical resources:*
- 7(c) the maintenance and enhancement of amenity values:*
- 7(d) intrinsic values of ecosystems:*
- 7(f) maintenance and enhancement of the quality of the environment:*
- 7(g) any finite characteristics of natural and physical resources:*

[91] It is assessed that when considered in context of the surrounding land use and the current productive potential of the land, the proposal will not undermine the matters set out in sections 7(b) and 7(g). With regard to sections 7(c) and 7(f), the assessment of environmental effects informs that the amenity values of the area are maintained as will the quality of the surrounding environment due to the position, size and design of

the sign and the proposed storage, commercial and retail activities. Overall, the proposal is considered to be consistent with Part 2 of the Act.

## RECOMMENDATION

After having regard to the above planning assessment, I recommend that:

1. Having regard to the information available to me prior to the Council's consideration of the application, I recommend that the proposal be considered as an application for land use consent to a non-complying activity in terms of Sections 104, 104B and 104D of the Resource Management Act 1991.
2. For the reasons detailed in the body of this report, I have come to the view that while adverse effects on the environment will be more than minor in terms of amenity effects, they will be appropriate, and that granting consent will not be contrary to the objectives and policies of the Operative District Plan or to any regional or national planning document or to the purpose and principles of the Act.

I, therefore, recommend that the Panel **grant** consent to the application for land use consent to establish signage, storage, commercial and retail activities in the Rural (Residential) Resource Area, subject to the conditions in Appendix 1.



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Olivia Stirling  
**Planning Consultant**  
Date: 22 April 2024

## **APPENDIX 1 – RECOMMENDED CONDITIONS**

1. The development must be undertaken/carried out in accordance with the revised Assessment of Environmental Effects, titled, *222 Pearson Rd, Cromwell Muller Family Trust*, dated 20 November 2023, and prepared by Tim Muller and the plans attached as Appendix 2.
2. If there are any inconsistencies between the above information and the conditions of this consent, the conditions of this consent will prevail.

### **Site Operation**

3. This consent authorises the operation of a contractor's yard/ topsoil screening business/ a stone mason business/ and a storage business as detailed in the application RC230107. The structures shall be located as per the Landscaping Plan, titled *Muller Family Trust, 222 Pearson Rd Landscaping Plan*, dated 9 November 2023, attached as Appendix 2.
4. No permanent buildings shall be established on site in relation to the contractor's yard/ topsoil screening business/ stone mason business/ and storage business.
5. The contractor's yard/ topsoil screening business/ stone mason business/ and storage business shall not collectively occupy more than 2.5 hectares of the site, as indicated on the Current and Proposed Lease Areas plan, version 4, as attached as Appendix 2.
6. No more than 15 persons shall be engaged in the combined contractor's yard/ topsoil screening business/ stone mason business/ and storage business at any given time.
7. The stone masonry and topsoil screening business may only operate between 7am – 6 pm, Monday to Friday and between 8am to 2pm, on a Saturday or Public Holiday. The stone masonry and topsoil screening business shall not operate on a Sunday.
8. No stone cutting or screening associated with the stone masonry and topsoil screening businesses shall be undertaken within the first hour of operation, before 8am Monday-Friday or 9am on a Saturday or public holiday.
9. Noise associated with all of the activities on the site shall not exceed the limits stated in Rule 4.7.6E of the Central Otago District Plan.
10. Within three months of the granting of this consent, the consent holder shall submit a dust management plan to Council's Chief Executive for approval, demonstrating how all dust-generating activities shall be managed to prevent any persistent discharges of visible dust across the site boundary.
11. All materials stored outside in the current R&R Hiab lease area shall be relocated to within the area shown on the plans appended as Appendix 2 within 3 months of the granting of this consent.

### **Signage**

12. The double sided 3m<sup>2</sup> sign off the driveway access point, off Pearson Road, shall be established, in accordance with the design plan provided in the revised Assessment

of Environmental Effects, titled, *222 Pearson Rd, Cromwell Muller Family Trust*, dated 20 November 2023 and attached as Appendix 2.

### Building Design Controls

13. 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.

### Earthworks

14. If the consent holder:
    - (a) discovers koiwi tangata (human skeletal remains), waahi taoka (resources of importance), waahi tapu (places or features of special significance) or other Maori artefact material, the consent holder must without delay:
      - (i) notify the Consent Authority, Tangata whenua and Heritage New Zealand and in the case of skeletal remains, the New Zealand Police.
      - (ii) stop work within the immediate vicinity of the discovery to allow a site inspection by Heritage New Zealand and the appropriate runanga and their advisors, who must determine whether the discovery is likely to be extensive, if a thorough site investigation is required, and whether an Archaeological Authority is required.

Any koiwi tangata discovered must be handled and removed by tribal elders responsible for the tikanga (custom) appropriate to its removal or preservation.

Site work must recommence following consultation with the Consent Authority, Heritage New Zealand, Tangata whenua, and in the case of skeletal remains, the New Zealand Police, provided that any relevant statutory permissions have been obtained.
  - (b) discovers any feature or archaeological material that predates 1900, or heritage material, or disturbs a previously unidentified archaeological or heritage site, the consent holder must without delay:
    - (i) stop work within the immediate vicinity of the discovery or disturbance; and
    - (ii) advise the Consent Authority, Heritage New Zealand, and in the case of Maori features or materials, the Tangata whenua, and if required, must make an application for an Archaeological Authority pursuant to the Heritage New Zealand Pouhere Taonga Act 2014; and
    - (iii) arrange for a suitably qualified archaeologist to undertake a survey of the site.
- Site work must recommence following consultation with the Consent Authority.

### Access

15. The existing vehicle entranceway from Pearson Road to the subject property on the northern side of Pearson Road shall be demonstrated to comply with the requirements of Part 29 of Council's Roading Policies January 2015, or upgraded in accordance with these requirements.

16. The existing vehicle entranceway from Sandflat Road to the subject property shall be demonstrated to comply with the requirements of Part 29 of Council's Roading Policies January 2015, or upgraded in accordance with these requirements.

#### Landscaping

17. Landscaping must be undertaken in accordance with the Landscaping Plan, titled *Muller Family Trust, 222 Pearson Rd Landscaping Plan*, dated 9 November 2023, attached as Appendix 2.
18. The landscaping shall be established within 6 months or by the following spring. Any dead or diseased plants shall be replaced within the next growing season.
19. Landscape planting undertaken on site shall comprise of native plants that are suited to the local environment and shall not include any potentially wilding species, including Douglas Fir, Larch, Willow and all Pinus species.

#### Outdoor Lighting

20. If outdoor lighting is to be established, an outdoor lighting plan to minimise external light pollution from fixed lighting prepared by a suitably qualified person must be submitted to the Planning Manager for certification as being in accordance with this condition before commencement of any building work. As a minimum, the lighting plan shall address the following design considerations:
  - a) All external lighting must be down lighting only, with the exception of in-pool lighting and, ground level low luminosity lighting used to illuminate pathways etc.
  - b) External lighting must not be used to accentuate or highlight built form, or landscape features as viewed from State Highway 8.
  - c) No external lighting may be lit except when the lit area is occupied by persons. All exterior lighting must be on a timer switch or movement sensor as to turn off when not in use.
  - d) Shielding: All outdoor lighting (with the exception of pool lighting and very low luminosity pathway lighting) must be shielded from above in such a manner that the edge of the shield shall be below the whole of the light source.
  - e) All outdoor lighting must be directed away from adjacent properties and the State Highway.
  - f) The spill of interior light as seen from the State Highway must be minimised including through not using interior lights when no-one is resident in the structures.

#### Telecommunication and Electricity Services

21. Any new or extensions to power and telecommunication services shall be installed at the site to the requirements of the developer and the service providers.
22. Any new or extensions to power and telecommunication services within the site shall be located underground.

#### Wastewater

23. Within three months of the approval of this consent, the consent holder shall submit a wastewater disposal management plan for toilets on the property for use by employees and customers of the business activities to Council's Chief Executive for approval.

### Firefighting

24. Within three months of the granting of consent, firefighting supply is to be provided in accordance with New Zealand Fire Service Water Supplies Code of Practice SNZ PAS 4509:2008. The Code of Practice provides a range of options for the provision of firefighting and, therefore, written agreement with the New Zealand Fire Service on the firefighting water supply shall be provided to the Chief Executive.

### Stormwater

25. Stormwater from buildings and impermeable surfaces shall either be collected and discharged to soakpit(s) or stored for beneficial reuse on site and shall be contained entirely within the confines of the property.

### Review of Resource Consent Conditions

26. In accordance with Section 128 of the Resource Management Act 1991, the conditions of this consent may be reviewed on and in the period within 6 (six) months upon each anniversary of the date of this consent, if, on reasonable grounds, the consent authority finds that:
- a) There is or is likely to be an adverse environmental effect as a result of the exercise of this consent, which was unforeseen when the consent was granted;
  - b) Monitoring of the exercise of the consent has revealed that there is or is likely to be an adverse environmental effect; or
  - c) There has been a change in the circumstances and the conditions of consent are no longer appropriate in terms of the purpose of the Act.
27. The consent holder shall pay to the Council all required administration charges fixed by the Council pursuant to section 36 of the Act in relation to:
- a) Administration, monitoring and inspection relating to this consent; and
  - b) Charges authorised by regulations.
28. Unless it is otherwise specified in the conditions of this consent, compliance with any monitoring requirement imposed by this consent shall be at the consent holder's expense.

### **ADVICE NOTES:**

1. All earthworks to develop and/or landscape each lot shall comply with Rule 4.7.6J of the Central Otago District Plan or additional resource consent will be required.
2. The consent holder's attention is brought to Rule 4.7.6E(a) of the Central Otago District Plan which requires that:

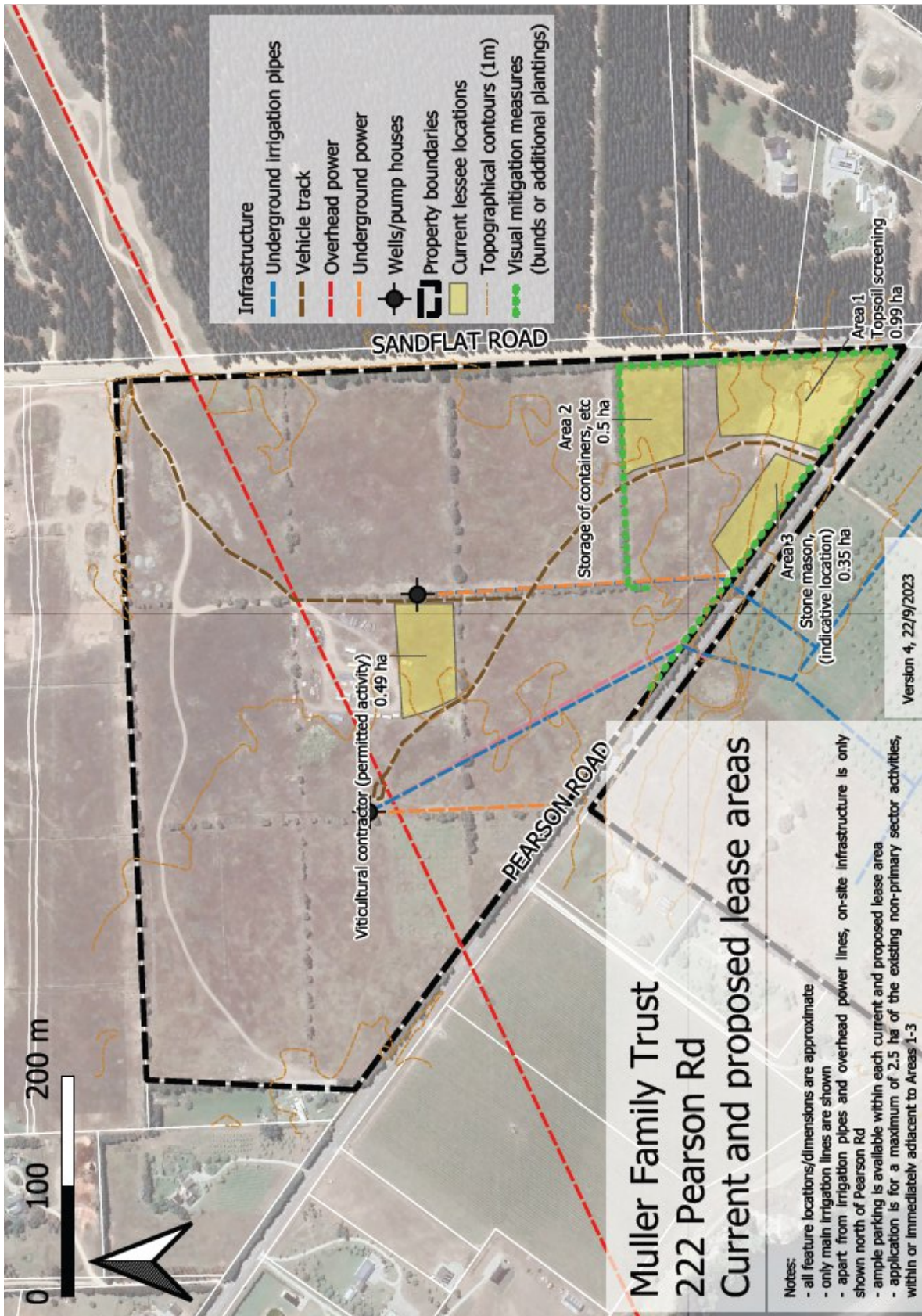
*"All activities shall be conducted so as to ensure the following noise limits are not exceeded at any point within the notional boundary of any dwelling, resthome or hospital, or at any point within any Residential Resource Area or any Rural Settlements Resource Area:*

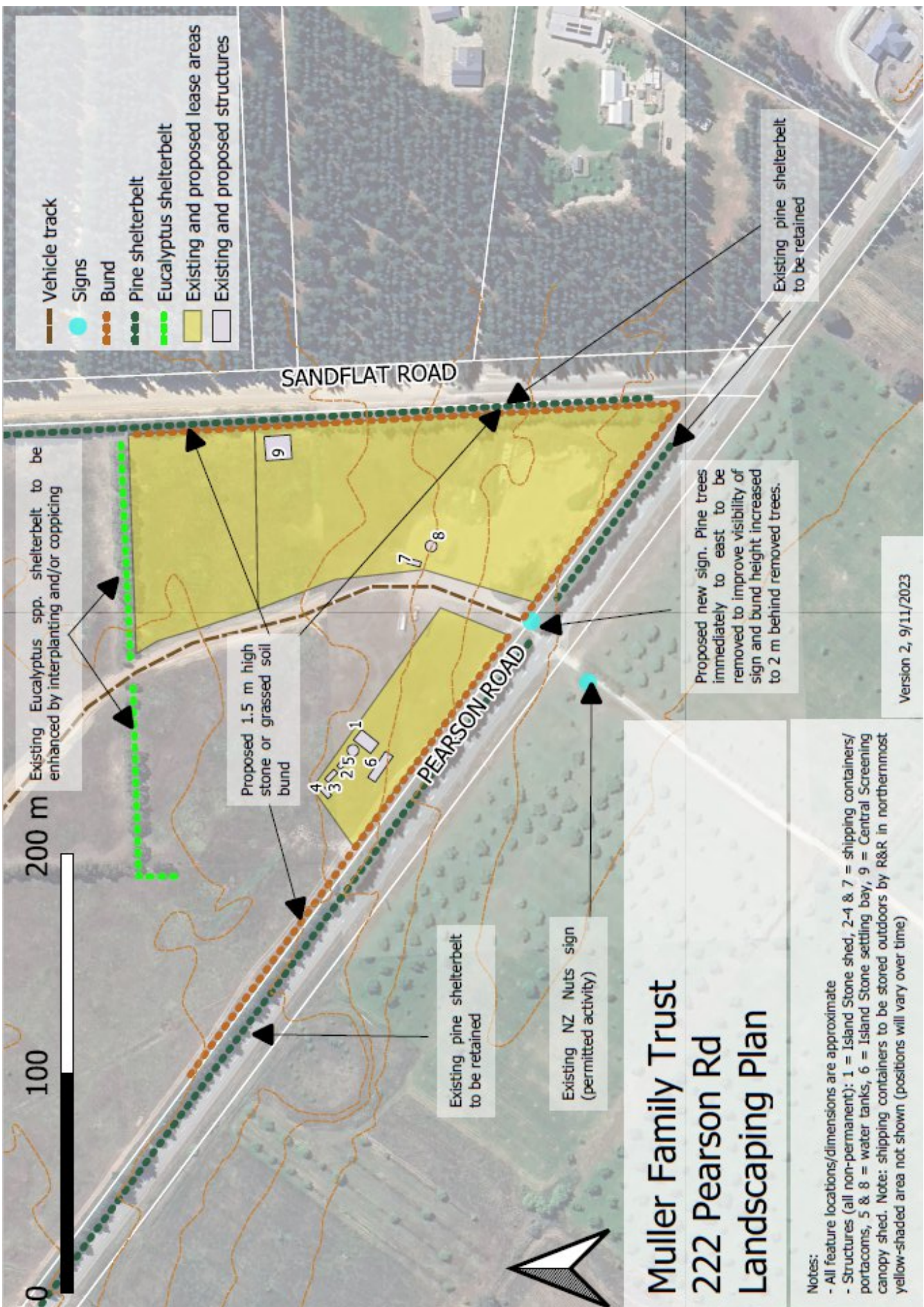
<i>On any day 7:00am to 10:00pm</i>	<i>55 dBA L10</i>
<i>10:00pm to 7:00am the following day</i>	<i>40 dBA L10</i>
	<i>70 BA Lmax"</i>



3. During site works if European or Chinese artefact material is discovered the consent holder shall immediately contact the New Zealand Historic Places Trust.
4. Many sites in Central Otago have archaeological value. The provisions of the Heritage New Zealand Pouhere Taonga Act 2014 confirm that any site with evidence of human occupation or activity prior to 1900 is considered an archaeological site. Many of these sites have not been formally identified through survey. The modification, damage or destruction of any known or unknown archaeological site by a landowner or contractor without an archaeological authority from Heritage New Zealand is a criminal offence under this Act. Please note that this Consent is not an Archaeological Authority. It is recommended that the consent holder contact Heritage New Zealand's archaeologists for more information.
5. On-site disposal shall comply with the Otago Regional Council requirements.
6. Development contributions for roading of \$9,715.42 (exclusive of goods and services tax) are payable for pursuant to the Council's Policy on Development and Financial Contributions contained in the Long-Term Council Community Plan. Payment is due upon application under the Resource Management Act 1991 for certification pursuant to Section 224(c). The Council may withhold a certificate under Section 224(c) of the Resource Management Act 1991 if the required Development and Financial Contributions have not been paid, pursuant to section 208 of the Local Government Act 2002 and Section 15.5.1 of the Operative District Plan.
7. It is the consent holder's responsibility to obtain all necessary Temporary Traffic Management Plans, Corridor Access Requests or any other approvals to undertake works within the road reserve. These approvals should be obtained prior to the works commencing.
8. In addition to the conditions of a resource consent, the Resource Management Act 1991 establishes through sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
9. Resource consents are not personal property. The ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
10. It is the responsibility of any party exercising this consent to comply with any conditions imposed on the resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in section 339 of the Resource Management Act 1991.
11. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.

Appendix Two:





0 100 200 m

0 100 200 m

0

SANDFLAT ROAD

PEARSON ROAD

Existing Eucalyptus spp. shelterbelt to be enhanced by interplanting and/or coppicing

Proposed 1.5 m high stone or grassed soil bund

Existing pine shelterbelt to be retained

Existing NZ Nuts sign (permitted activity)

Proposed new sign. Pine trees immediately to east to be removed to improve visibility of sign and bund height increased to 2 m behind removed trees.

Existing pine shelterbelt to be retained

# Muller Family Trust 222 Pearson Rd Landscaping Plan

Notes:  
 - All feature locations/dimensions are approximate  
 - Structures (all non-permanent): 1 = Island Stone shed, 2-4 & 7 = shipping containers/portacombs, 5 & 8 = water tanks, 6 = Island Stone settling bay, 9 = Central Screening canopy shed. Note: shipping containers to be stored outdoors by R&R in northernmost yellow-shaded area not shown (positions will vary over time)

Version 2, 9/11/2023

