NOTICE OF MEETING

Notice is hereby given that a Meeting of the Hearings Panel will be held in the Council Chambers First Floor, Civic Administration Building, 101 Esk Street, Invercargill On 17 December 2014 at 9.00 am

Bob Nixon (Commissioner)

EIRWEN HARRIS
MANAGER, SECRETARIAL SERVICES
# AGENDA

1. APOLOGIES

2. REPORT TO THE HEARINGS PANEL

   2.1 HEARING: 110 – 120 ELLES ROAD AND 198 BOWMONT STREET, INVERCARGILL

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Report to the Commissioner
17 December 2014

Heard by Bob Nixon, Commissioner

HEARING: 110-120 ELLES ROAD AND 198 BOWMONT STREET, INVERCARGILL

A copy of the report, including a recommendation, is attached.

Report compiled by: Judith Christie
Resource Management Officer

Report endorsed by: Joanna Shirley
Policy Planner
HEARING

Applicant  McDonald's Restaurants (New Zealand) Limited

Application  Establish and operate a commercial activity greater than 150m² (a McDonald's Restaurant).

Demolish a structure greater than 80m² within the Domicile Sub-Area.

Site  110-120 Elles Road and 198 Bowmont Street, Invercargill (Aerial photograph Appendix 1)

Legal Description  Lots 3, 4, 5 and 9, 5 Block III DP 27

Classification  Domicile Sub-Area of the Invercargill City District Plan (the Operative District Plan).

Residential 1A Zone of the Proposed Invercargill City District Plan 2013 (the Proposed District Plan).

Activity Status  Rule 4.33 (The Activity Table) of the Operative District Plan states that a commercial activity greater than 150m² in area within the Domicile Sub-Area is a non-complying activity. The demolition of the dwelling at 198 Bowmont Street is a restricted discretionary activity under Rule 4.30 of the Operative District Plan.

When two consent categories apply to a resource consent application, the accepted convention is to use the higher category. Overall, therefore, the application is for a non-complying activity.

Process  The application was received on 9 September 2014. On 12 September 2014 the Director of Environmental and Planning Services decided to process the application in a fully notified manner, and it was notified on 17 September 2014.

Procedural matter  Nineteen people and organisations provided a written response to the Council regarding the application.

Before the consideration of the application commences, the Commissioner needs to be satisfied that the correct decision has been made regarding which of the responses were submissions and which were comment.

Although some of the responses were clearly submissions, some respondents stated that they were making comment only. It was unclear when reading other responses as to whether they were intended to be submissions or comment.
After seeking advice from the Council’s solicitor I considered 13 responses as submissions, because they were either submitted on the prescribed form, or the respondent stated that they were making a submission.

I considered six of the responses as comments rather than submissions – they raised concerns about the quality of the food offered and the desirability of healthy lifestyles, and the connection between socio-economic deprivation and geographic access to fast food outlets. They were not on the prescribed form and they did not indicate that a submission was being made.

In addition to the submissions and comment, an electronic petition with 130 signatures has been received by the Council. The petition opposed the application and promoted healthy lifestyles. The petition was not considered to be a submission.

A table of all responses is attached as Appendix 2.

It is recommended that the Commissioner accepts the 13 submissions as set out in Appendix 2.

It is further recommended that the Commissioner rejects as submissions those six responses listed in Appendix 2 as comment only, along with the petition listed in Appendix 2.

Key issues

Key issues centre around signage, noise, height, private open space and density, glare and lightspill, transportation, infrastructure, and contaminated land.
1. THE APPLICATION

The application is to establish and operate a commercial activity (a McDonald's Restaurant) within the Domicile Sub-Area. The restaurant is 397m$^2$ and the site is 3358m$^2$ in area. The application includes a drive through facility, indoor seating, an internal playland, a McCafe, and an uncovered parking area. Although a McCafe and playland are included in the application, the franchisee may instead choose to provide a limited McCafe selection and use the additional space for further seating.

The restaurant will trade between the hours of 5.30 am and 12.00 midnight, seven days per week, and will employ approximately 40 people with an average of eight to ten staff being on the site at any one time.

Seventy-seven seats are proposed within the building. If the McCafe service area and playland are not utilised, a further 20 seats will be installed.

The entrance/exit will be close to the north boundary of the site, where vehicles entering the site will either circulate in a clockwise direction through the car park to the south of the building where the drive through is situated, or park in a car park which provides for 42 car parks.

A dwelling on 198 Bowmont Street will also be demolished.

2. SITE AND LOCALITY DESCRIPTION

The subject site comprises 3,358m$^2$ of land over four Lots, situated on the north-east corner of Elles Road and Bowmont Street. Three of the Lots are vacant, and the fourth contains a dwelling and garage which will be demolished as part of the development.

Immediately to the north of the site is a car sales yard which has a resource consent, a shop which is currently vacant, and residential dwellings along Ettrick Street. The City's Town Belt is situated across Elles Road to the west, which is used for sporting activities and for recreation. To the south along Elles Road and east along Bowmont Street are residences.

There is other non-residential development along Elles Road, which will be discussed later in this report.

Bowmont Street is a typical, urban street linking Elles Road to Nelson Street. Elles Road is a busy, arterial road running south from Bluff Highway (State Highway 1) to Tay Street, where it connects again to State Highway 1 as it heads towards Dunedin. Elles Road changes at Tay Street to become Queens Drive and ends at Bainfield Road, which connects to State Highway 6 and Queenstown. Elles Road has single north and south lanes, with a median strip. There is a footpath which runs along the east side of it, adjacent to the subject site. Footpaths line both sides of Bowmont Street.

A locality plan is attached as Appendix 3.
3. PLANNING HISTORY

There has been a history of residential activity on all of the Lots subject to this application. Dwellings on Lots 3, 4 and 5 DP 27 were demolished in the 1990s. An empty dwelling remains on Lot 9 DP 27, and its demolition forms part of this application.

In 2007 an application was made by Ezy Clean Car Wash Ltd to construct and operate an industrial activity (an automated car wash) on the site. The Council Hearings Panel's decision to refuse consent was appealed to the Environment Court. The Judge's decision is attached as Appendix 4.

The car wash was originally to operate 24 hours a day, seven days a week, and the entrance was to be from Bowmont Street. 22.6m² of attached and freestanding signage was proposed, along with some strip signage along the building. The height of the building exceeded that permitted by the District Plan by three metres and did not meet requirements for private open space and density. The amount of noise and lightspill created by the activity was unclear. During the Environment Court Hearing the applicant clarified that noise limits would be met, offered to reduce the hours of operation, limit the signage to 8m² and also to remove the roof of the car wash bays to mitigate visual effect.

The Judge accepted evidence that limits regarding noise, odour and lightspill would be met. However, he expressed his concern regarding headlight glare and the proposed signage, stating that even at 8m², the signage would be "of some significance in defining the character of the area".

The Judge also stated that the area was predominantly residential, although the traffic volumes on Elles Road meant that residential amenity, particularly due to traffic frequency and noise, was lower.

The Council's decision was upheld.

4. PART 2 OF THE RESOURCE MANAGEMENT ACT 1991

Section 5 of Part 2 of the Resource Management Act 1991 (the RMA) sets out its purpose and principles, which are:

(1) To promote the sustainable management of natural and physical resources.
(2) Sustainable management means 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 wellbeing 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 effects of activities on the environment.
Comment
Part 2 of the RMA forms the basis for the Council to consider all resource consent applications. It is considered that the application meets the purpose and principles of the Act.

5. SECTION 104 RESOURCE MANAGEMENT ACT 1991

Section 104 of the Resource Management Act 1991 (the RMA) sets out the matters which the Council must have regard to when considering an application for a resource consent.

When considering an application for resource consent and any submissions received, the Council must, subject to Part 2 of the Resource Management Act, have regard to:

(a) Any actual or potential effects on the environment of allowing the activity and;
(b) Any relevant provision of:
   (i) A national environmental standard
   (ii) A regional policy statement or proposed regional policy statement
   (iii) A plan or proposed plan; and
(c) Any other matter the consent authority considers relevant and reasonably necessary to determine the application.

Section 104D of the RMA also applies to the application and will be discussed later in my report.

Comment
When considering this application, regard must be given to all relevant matters in Section 104 of the RMA. The National Standard for Assessing and Managing Contaminants in Soil to Protect Human Health is relevant to this application. Regard has been given to the Operative and Proposed Regional Policy Statements, and it is considered that the proposed activity is not inconsistent with the objectives and policies set out in them.

Regard has also been given to the relevant Objectives and Policies of the Operative and Proposed Invercargill City District Plans, which are discussed in more detail in my Assessment of Environmental Effects. Relevant extracts from both District Plans are attached as Appendix 5.

6. WRITTEN APPROVALS

The applicant has provided written approval from the following parties:

The Occupier 102 Elles Road
The Occupier 102 Elles Road
The Owner 102 Elles Road
The Occupier 202A Bowmont Street
The Occupier 202B Bowmont Street
The Occupier 202C Bowmont Street
The Owner 202A-C Bowmont Street
The Occupier 197 Bowmont Street
Section 104 (3) of the Resource Management Act states that the Council cannot regard the effects on the above people when forming an opinion regarding the granting of resource consent.

7. SUBMISSIONS

Thirteen individuals or organisations made submissions during the notification period. They raised several concerns, including:

- The increase of rubbish
- Odour
- Construction and traffic noise
- Loss of privacy
- Bright lighting
- Whether or not the restaurant would increase its hours to a 24 hour operation
- Possible previous contamination of the site
- Waste material and the need for a sump.

The submitters' concerns are discussed in my report under the Assessment of Environmental Effects.

Submitters also raised issues of obesity and the promotion of healthy lifestyles, socio-economic implications, decreasing land and house values, the safety of children, and the increase in anti-social behaviour. These matters are discussed under "Other Matters" in the Assessment of Environmental Effects.

8. ASSESSMENT OF ENVIRONMENTAL EFFECTS

Introduction
The Activity Table of the Operative District Plan sets out the primary purpose of the Domicile Sub-Area, stating that it is to provide for "residential land use activities" including residences and associated buildings and reserves. The amenity values envisaged include:

- Low levels of adverse effects that could lower the quality of the environment for those living in such areas, including glare, noise, odour, lightspill and signage
- Well maintained land and structures
- Freedom from nuisance from demolition activities and electrical interference
- Private and public open space
- Low to moderate levels of traffic
- Adequate off street parking
- Low to medium height of structures
- Presence of heritage values
These values give the Domicile Sub-Area a particular character and require the list of permitted activities, with associated environmental standards, to be narrow. Those activities that could be suitable on some, but not all, sites in the Sub-Area are listed as discretionary. Other activities are generally unsuitable for a residential area because they conflict with its values, and therefore they are listed as non-complying.

The matters above form the basis of the Assessment of Environmental Effects, which are discussed under the following headings:

A. BULK AND LOCATION
B. SIGNAGE
C. NOISE
D. ODour
E. THE DISPOSAL OF RUBBISH
F. LIGHTSPILL AND GLARE
G. TRANSPORTATION AND OFF STREET PARKING
H. INFRASTRUCTURE
I. DEMOLITION
J. NATIONAL ENVIRONMENTAL STANDARD FOR ASSESSING AND MANAGING CONTAMINANTS IN SOIL TO PROTECT HUMAN HEALTH (NES)
K. PRECEDENT AND CUMULATIVE EFFECT
L. OTHER MATTERS

A. BULK AND LOCATION

**Applicant's comment**

The applicant states that the proposed restaurant is single level and stand alone, located within the south-western part of the site. The design is not considered to be overly dominant and it incorporates a good level of modulation and use of varying, but cohesive, materiality to afford visual interest.

Both the building and the access have been separated as far as possible from nearby residential land uses and vehicle circulation and parking is located in the centre of the site, with access adjacent to an existing commercial activity.

A vegetated earth mound along the southern part of the boundary will screen the site from much of the residential streetscape of Bowmont Street, and separation distances from adjoining and nearby residential properties will enable direct sunlight access and avoid shadowing.

Hedges 1.2m high are planned along the remainder of the south boundary, along with a three metre high acoustic wall which is set back from the street. On the eastern and northern boundaries, two metres high acoustically effective fencing is proposed. A 1.2 metre high hedge is proposed along the western boundary. The hedges will mitigate the effect of vehicle headlights.

The applicant concludes that the site layout, landscaping and screening maintains the mixed-use amenity and character of Elles Road.
The applicant has also commented on the Environment Court decision with regard to a proposal to construct and operate an automated car wash on the site, concluding that it is materially different to the McDonald's proposal and that the assessment of the Ezy Clean proposal that led to the Council's and then the Environment Court's decision do not apply to the McDonald's proposal.

Discussion
A commercial activity greater than 150m² in the Domicile Sub-Area is a non-complying activity, indicating that such developments are generally unsuitable within the residential area. Whether or not the site is suitable for large commercial activity, and how the surrounding residential amenity may be affected by it, must therefore be carefully considered.

As a result of existing use and historical consents there are several commercial activities along Elles Road, and particularly to the north of the site, the "feel" of this area is not particularly residential. The area to the south and east of the site, however, does remain predominantly residential. In the block that the development is proposed, bound by Bowmont, Princes and Ettrick Streets and Elles Road, the only current commercial activity is an empty retail store and a car sales yard adjacent to the site itself, which are located on a site previously occupied by a garage.

The bulk and form of the proposed restaurant differs from the car wash which was refused consent. It meets the requirements of the Domicile Sub-Area for height and private open space and density. The use of a vegetative earth mound and hedges, along with acoustic fencing, will reduce the effect of noise and glare from vehicle headlights and will also mask the car parking area. The access to the proposed restaurant is from Elles Road only, whereas the exit proposed in the car wash application was on to Bowmont Street. The activity will not be as intrusive in the streetscape when viewed from Bowmont Street.

It is also considered that a restaurant, as a commercial activity, is more in keeping with the amenity of a residential area than, say, an industrial activity such as a factory or a car wash. Other commercial activities, including restaurants and fast food outlets, are situated within the Suburban Services Sub-Area five blocks to the south, and exist there as of right, subject to environmental standards.

Invercargill's Green Belt — a strip of land set aside by J T Thomson in 1865 as part of the original town plan — contributes significantly to the form of the city and provides areas for recreation and enjoyment. The portion of the Green Belt directly opposite the subject site is regularly used for winter sports and other recreation and the city's only dog park is one block to the south. Additional commercial activity opposite the Green Belt will have a visual effect on its users, particularly the signage which will have a more than minor visual effect. This is discussed under a separate heading in my report.

If consent is granted, a condition will need to be imposed to ensure that the plantings and vegetation shown on the plans provided with the application are planted and maintained in good health.
B. SIGNAGE

**District Plan rules**
The Operative District Plan permits the following signage within the Domicile Sub-Area:

<table>
<thead>
<tr>
<th>Description</th>
<th>Maximum area or height</th>
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<tbody>
<tr>
<td>Maximum area of free standing signage and signage attached at an angle to</td>
<td>1.5m²</td>
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<tr>
<td>buildings</td>
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<tr>
<td>Maximum height of freestanding signage</td>
<td>2m</td>
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<tr>
<td>OR</td>
<td></td>
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<tr>
<td>Maximum area m² of signage painted on to, or attached parallel to, buildings</td>
<td>1.5m²</td>
</tr>
</tbody>
</table>

A. The signage shall directly relate to the activity that is occurring on the site
B. All signage other than that attached to verandahs shall be contained within the legal boundaries of the site
C. Any signage attached to a building shall not exceed the height of that building
D. Any signage attached parallel to a building shall not extend from the building by more than 200mm
E. No signage shall be mobile or rotate
F. Illuminated signage shall be permitted within all Sub-Areas other than the Domicile, Rural and Otatara Sub-Areas
G. Flashing signage shall be permitted in the City Centre Sub-Area only

In measuring the area of any signage:
A. The area of any double sided signage, with less than 200mm between each face, shall be calculated on the basis of a single sided sign.

Failure to meet the requirements for signage is a restricted discretionary activity in the Operative District Plan. The matters over which the Council shall exercise its discretion are:
A. The effects of signage on the safety and visibility of transportation networks and on aircraft operations
B. The size and character of the signage
C. The illumination of the signage and the effects of lightspill
D. The siting of the signage with respect to sightlines pertaining to any road or rail intersection, or accessway on to a road
E. Effects on the visual and aesthetic coherence of the surrounding environment
F. Effects on outstanding natural features and landscapes
G. Effects on heritage values of sites, structures, places and areas
H. Cumulative effects of signage

**Description of the signage**
The Operative District Plan allows directional signage, so this signage is not included in the total amount of signage on the site. Examples of directional signage include Give Way, No Entry signs and Height Restrictors, and should not be considered part of the overall signage on the site.

The proposed external signage includes:
- 1 x naming pylon sign, featuring the words "Drive Through" and the Flying Arch symbol, situated a few metres south of the entrance to the site. The sign, which sits on a pole 3.3m high, is 7m high in total and each face is approximately 13.5m². Because there is more than 200mm between each face, both faces must be measured, so the total amount of this sign is 26.88m². The sign is illuminated and exceeds permitted height.
1 x column sign, featuring the words “Welcome” and the Flying Arch, which is situated to the north of the entrance. The sign is 2.3m high. 1.7m of it forms the base, and the signage itself measures approximately 0.4m². The sign is illuminated and exceeds permitted height.

1 x sign featuring the word “McDonald’s”, attached to the north wall of the restaurant. The sign is approximately 3m² in area and is illuminated.

3 x signs featuring the Flying Arch, attached to the north wall of the restaurant, the east wall of the restaurant and as part of the blade sign. Each sign measures 1.6m² so the combined size of this signage is approximately 5m². The signs are illuminated.

1 x sign featuring the word “McCafe”, attached to the west wall of the restaurant. The sign is approximately 2.3m² in area and is illuminated.

1 x sign featuring the word “McCafe”, which is part of the blade sign. The sign is approximately 0.8m² in area and is illuminated.

One of the Flying Arch signs and the smaller “McCafe” sign are displayed at the top of a 7m high x 2m wide, red blade, and the entire blade is considered to be signage because it is in the company’s colours. There is signage on only one side of it, so this sign is measured at 14m². Only the words on the sign are illuminated. The blade exceeds permitted height.

Six illuminated menu boards which each measure 1.1m² to a height of 2.2m. The combined area of the menu board signs is 6.6m². The signage exceeds permitted height.

Two flags, nine metres high, situated to the north of the restaurant. The flagpoles exceed permitted height.

There is therefore a total of approximately 56m² of external signage, most of which is illuminated. The freestanding signage exceeds the Operative District Plan’s requirement for a two metres maximum height.

A large portion of the signage comprises the naming pylon sign, both faces of which must be measured. Another 14m² comprises the blade sign which, although featuring signage on only the top portion, must be measured in its entirety because of its corporate colours. The combined area of these two freestanding signs is approximately 40m².

**Applicant’s comment**
The applicant states that the main signage associated with the activity is the naming pylon sign and the building signage. They state that this signage, while not residential in character, is appropriate in the context of the Elles Road environment as there is other naming and advertising signage in association with commercial activities in the vicinity. The interspersing of commercial, community and residential activity ensures that cumulative visual effects or “visual clutter” will not occur.

The applicant states that the 7m pylon sign is lower than the maximum height permitted in the Domicile Sub-Area, and will comply with night time lighting levels. The applicant does not believe that it will be an unduly dominant visual feature in the streetscape, and the narrow pole on which the sign sits (rather than a blade) assists with this.

The pylon sign and the building naming signage are both located within the western part of the site, sufficiently separated from surrounding residential properties.
Building naming signage is integrated into the building design, flush to the building, and the signs will not all be viewed at once. The colour scheme of the building and associated building signage will not be unduly visually intrusive.

The directional signage within the site is low and well screened from adjoining properties.

The visual impacts of the signage on the Town Belt to the west of the site are considered by the applicant less than minor due to the separation across a wide transportation corridor.

The site is relatively large and is able to accommodate this level of signage to avoid visual clutter that may occur on a smaller site.

The applicant concludes that while the signage is not residential in character, it is not unduly intrusive owing to the location on Elles Road, the separation of the main naming signage from adjoining residential properties, and the ability to largely screen directional signage within the site. They believe that consequently, the visual amenity and character effects of the signage will be no more than minor.

**Submitters' comment**

None of the submitters raised the issue of signage, although one submitter did express concern regarding increased lighting. The illuminated signage will add to this effect.

**Discussion**

56m² of (external) signage is at least 50m² more than the District Plan allows within the Domicile Sub-Area. Further, most of the signage is illuminated, which is not permitted. Apart from stating that the pylon naming sign will comply with lighting levels at night, the applicant has not addressed the effects of a large amount of illuminated signage on residential amenity.

The Objectives and Policies of both the Operative and the Proposed District Plans expect low levels of visual intrusion from signage and the Objectives and Policies of the Proposed District Plan explain the reason that the size and nature of signage must be controlled: "In residential areas there is an expectation that the use of buildings and property will be predominantly residential. Signage of sufficient size and clarity to enable people to find someone offering a professional service from home is appropriate. Signage which hints at a residential property being used for predominantly non-residential purposes is likely to be seen as a visual intrusion. Advertising signage which does not relate to the activity on the site is not appropriate in a residential area". This explanation makes it clear that a large amount of highly visible signage is not envisaged in residential areas.

The applicant has designed the site in such a way that the signage attached to the restaurant will not be seen by residents to the south and east, and this mitigates the effects of the attached signage on those residential properties. I consider therefore that the signage attached to the building is acceptable, particularly because (apart from the Flying Arch signs) although illuminated they are not brightly coloured and not all of the attached signage would be seen at one time.

The pylon naming sign, the red blade sign to the south of the restaurant, and the flags, however, will all have a significant environmental effect.
The 7m high pylon sign, which is five metres higher than permitted, will have the most effect on the amenity of the surrounding area. The height, size and illumination of this sign will make it clearly visible many blocks to the north and south along Elles Road and also along Tweed Street. Further, I do not agree with the applicant that the visual impacts of this sign on the Town Belt to the west of the site will be “less than minor” because of the width of Elles Road. The signage will be easily seen by users of the Green Belt to the west, and will be a dominating feature on the streetscape, particularly when it is illuminated during the hours of darkness.

The Flying Arch and McCafe signs within the top third of the 7m high red blade are both illuminated, and will be highly visible from the west and to people travelling along Elles Road.

The 9m high flag signage to the north of the restaurant, one of which features the company’s logo, will be highly visible from all directions.

The applicant has stated that “naming/advertising signage is not an uncommon feature along Elles Road due to the intermittent commercial activities along this transportation route” and that the mixture of activities along the road ensures that the cumulative effects of “visual clutter” will not occur.

There is a significantly greater amount of signage in the vicinity than might be expected within a residential area, but this signage has come about as a result of existing use rights, or from consents granted in the past. It may be useful to describe other signage within the vicinity and why such signage was permitted or consented.

- 66 Elles Road (ILT Liquorland). The site features a large amount of signage, mostly established when it was within a separate Licensed Premises Zone under the 1989 City of Invercargill District Scheme.
- 76 Elles Road (KFC Restaurant). Consent, including for signage, was granted in 1991. A further resource consent to alter the KFC restaurant was granted in 2007, which included a total area of signage of 20.31m². The signage consisted of two, 1.82m² KFC lettering signs on the south and north exteriors of the building, the Colonel’s image on the west side of the building, and illuminated blade sign which was calculated at 12m². The area of the new signage was a reduction from the original resource consent, and the height of the freestanding blade was reduced from 6.75m to 6.027m.
- 96 Elles Road (formerly a garden shop with associated signage) was granted resource consent in 2007 for a commercial activity on the site, including 11m² of signage. The site is now consented for a communal activity, but the signage has not increased.
- 290 Ettrick Street is a takeaway and restaurant, which has been on the site for many years. Included in the signage on the site is a large, freestanding sign.
- 102 Elles Road is a site occupied by a consented car sales yard and also has resource consent, granted in 2010, for a fruit and vegetable shop which included 5m² of signage. The resource consent for the car sales yard permits vehicle signage along with signage within the windows of the building on the yard. Flag signage is not permitted.

The 2009 Environment Court ruling on the car wash application included comment from the Judge with regard to signage. He stated “... There is not an expectation of commercial signage within the Domicile Sub-Area, and this is one of the features which distinguishes the area generally from commercial areas. Whilst we accept that
there are a number of signs along El/es Road, many of those appear to have existing use rights, having been installed prior to the operation of the current Plan. Overall we see signage as an effect, even at 8m², that would be of some significance in defining the character of the area."

The current signage in the area does not set a precedent to allow more signage, which will have an effect on the visual and aesthetic coherence of the surrounding environment which is more than minor.

B. NOISE

District Plan rules

The Operative District Plan states that sound levels shall be measured in accordance with the provisions of NZS6801:1991:Measurement of Sound and assessed in accordance with the provisions of NZS 6802 1991: Assessment of Environmental Sound. (The Proposed District Plan sets out the same noise limit requirements as the Operative District Plan, but uses NZS 6803: 1999 to assess noise, and the applicant's consultant has used this standard.)

All activities within the Domicile Sub-Area shall be designed and operated so that the following noise limits, measured on or beyond the site boundary, are not exceeded:

<table>
<thead>
<tr>
<th>Time Period</th>
<th>L10 dBA</th>
<th>Lmax dBA</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.00 am – 10.00 pm</td>
<td>55</td>
<td>70</td>
</tr>
<tr>
<td>10.00 pm – 7.00 am</td>
<td>40</td>
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</tbody>
</table>

Applicant's comment

The applicant has supplied an Assessment of Noise Effects, prepared by Hegley Acoustic Consultants. The Acoustic report has concluded that for the majority of the time the voice boxes will not be heard above the existing background noise. The rubbish collection will take place during the day, and because the collection point is to the east of the building, this activity will take place well away from residences. The noise from vehicles is expected to have only a secondary effect on the overall noise environment in the area.

Overall, the report concludes that the noise received at adjoining and facing residential properties will comply with the maximum noise levels set out in the District Plan. The applicant therefore considers that the effects of the acoustic effects of the proposal will be less than minor.

Submitters' comment

One of the submitters raised the issue of noise during the construction phase, stating that both he and his partner are shift workers who sleep during the day. Another submitter was concerned about closer traffic noise.

Discussion

Sources of noise include the mechanical plant on the roof of the restaurant, the voice boxes, rubbish collection, vehicle noise, and the noise of patrons using the restaurant.

The provision of noise barriers in the form of acoustic fencing will assist in lessening the effects of noise on neighbours. In addition to this, the applicant has agreed to cordon off the eastern section of the car park, which is nearest neighbouring properties, between the hours of 10.00 pm and 7.00 am.
The application was referred to the Council's Environmental Health Section. The Team Leader – Environmental Health noted that, although the AEE has stated that noise levels will comply with the Operative District Plan, the assessment of noise effects appeared to be based on assumption only. No actual noise measurements from similar businesses were presented in the report. In addition to this, the age of the surrounding dwellings is such that they are unlikely to be fully insulated and therefore may be more sensitive to noise.

The Team Leader – Environmental Health has recommended that the applicant obtain actual noise readings from existing businesses of a similar nature, surroundings and construction. She has also suggested that noise mitigation measures could be offered to neighbouring dwelling owners, e.g. double glazing of windows, if noise becomes an issue.

The noise assessment does not include current readings at the site and at surrounding properties. Elles Road is a busy traffic environment, and it would be helpful to provide information regarding the current background noise levels to provide a comparison to the increased noise levels that the activity would generate.

Two of the submitters, who both commented about noise, live at 293 Ettrick Street, north of the site and adjacent to its access. Diagrams provided with the acoustic report predict that noise levels on the back portion of this property would be 40 – 45 dBA L10° during the day. During night time hours a 40dBA L10° noise contour is identified over the same area, so the decibel reading is at its limit.

Noise is a complex issue, and the Commissioner should be satisfied that the report provided by Hegley Consultants is robust and descriptive enough to provide an assurance that noise limits will be acceptable. While technically meeting the requirements for noise limits, the nature of the noise may be such that it creates a nuisance. For example, what sort of noise do chiller units produce? Will intermittent noise such as the closing of car doors be intrusive?

There will be additional noise during the construction phase, but this will be temporary. Noise nuisance can be controlled by the imposition of conditions regarding compliance with NZS6807:1999 Acoustics Construction Noise, along with limiting the hours that construction can be undertaken.

D. ODOUR

District Plan rules
The Operative District Plan states that within the Domicile Sub-Area there should be low levels of adverse effects that could lower the quality of the environment for people living in such areas, including odour.

Applicant's comment
The applicant states that all vents and extraction fans of the proposed restaurant are located a sufficient distance from adjoining residential boundaries to afford dissipation of any smell, and avoid odour effects.

Submitters' comment
Two of the submitters raised the issue of odour. One submitter stated that the smell from the Dee Street McDonald's restaurant can carry as far away as the Invercargill Prison, 200 metres away.
Discussion
The Environmental Health Manager has requested that the applicant ensure that there is an adequate system in place to mitigate any potential odour, including a filtered extractor fan, and a covered and ventilated area for the storage of rubbish. The applicant has stated that all kitchen waste goes into a fully enclosed corral and is cleared regularly.

It is considered that if the recommendations of the Environmental Health Manager are met, the effects of odour will be acceptable.

E. THE DISPOSAL OF RUBBISH

Applicant's comment
The applicant states that approximately seven rubbish bins will be provided around the car parking area and outside the building, and that there is a keen commercial interest to ensure the site and its surrounds are kept tidy.

All kitchen waste goes to a fully enclosed corral and is cleared regularly.

Submitters' comment
Three of the submitters raised rubbish as an issue. One of the submitters, who supported the application, requested that the Council consider establishing more rubbish bins in the area.

Discussion
The rubbish bins will be located to the east of the restaurant, some distance from the nearest dwellings, and for this reason odour should not be an issue.

It is in the interest of McDonald’s to keep the site itself tidy and clear of rubbish, and I expect that this will occur. The applicant has less control on rubbish outside the site, and this will become the responsibility of the Council to police.

F. LIGHTSPILL AND GLARE

District Plan rules
The Operative District Plan states that within the Domicile Sub-Area there should be low levels of adverse effects that could lower the quality of the environment for those living in such areas, including lightspill and glare.

Applicant's comments
A lighting plan was provided with the report, showing that the light levels on the site are lower than the maximum levels of the District Plan at the boundaries of the site.

The eastern portion of the car park will be closed off from 10.00 pm to 7.00 am and the lighting in this part of the site will also be turned off. Low level planting and fences will screen headlight sweep from vehicles circulating around the site.

The glazing of the restaurant building is designed to be of low reflectivity, and other areas of the building will be matt finished.

Submitters' comment
One of the submitters said that there would be bright lighting.
Discussion
There will be no lightspill or glare from the restaurant itself, and any headlight sweep will occur as cars exit on to Elles Road, which is acceptable.

The lighting plan provided with the application does not show the effects of the illuminated signage, including the naming pylon sign and the column sign, and the applicant has not addressed the effects of lightspill from these signs or the effect that their illumination may have on the streetscape.

G. TRANSPORTATION AND OFF STREET PARKING

District Plan rules
The Operative District Plan's requirements for off street parks are:

Commercial Activity (Restaurants):
One staff car park per two staff or part thereof on the site at any time, plus one car park per four persons to be accommodated in the restaurant.

Where parking spaces are provided for non-residential activity located within or adjoining the Domicile Sub-Area, the area comprising the off street parking spaces, together with their respective access drives and aisles, shall:

1. Be screened by a close boarded fence, solid wall or hedge not less than 1.8m in height
2. Be designed to comply with Council's Code of Practice for Land Development.

Provision shall be made for loading and unloading facilities and manoeuvring spaces on site for vehicles servicing that activity. Where any loading facility is provided:

1. It shall be so designed that vehicles using the facility are able to enter and leave the site in forward gear
2. The facility and any associated vehicle manoeuvring area, shall be designed to comply with Council's Code of Practice for Land Development.

The dimensions, formation and surfacing of vehicle accesses to, and egresses from, roads shall comply with Council's Code of Practice for Land Development.

Description
Elles Road is a two lane road with a painted flush median along the centre. There is a 3m wide parking shoulder on the east side of the road along with a 3.6m wide footpath. On the west side of the road there is a 1m wide shoulder and no footpath. The intersection of Bowmont Street and Elles Road is governed by a Give Way sign. Bowmont Street has footpaths on both sides of the road.

The access to the site will be via a two way entrance and exit, close to the northern boundary on Elles Road.

The plans provided with the application show 42 on site parking spaces, including two accessible parks. The applicant intends to chain off the eastern portion of the car park from 10.00 pm to 7.00 am to mitigate the effects of night time noise on the neighbours to the east of the site.
Plans also show that there will be a close boarded wall surrounding the car parking area.

**Applicant’s comment**

The applicant states that off street car parking requirements of the Operative District Plan will be met, and has provided a Traffic Impact Assessment (TIA), which supplies information with regard to traffic flows along Elles Road. A traffic count during a peak hour showed an hourly total of 1168 vehicles, and this indicates 10,000 – 12,000 vehicles a day. During the peak hour, 19 vehicles turned into Bowmont Street, and four turned from Bowmont Street into Elles Road.

The TIA predicts that on busiest weekdays, 500 – 550 customers may visit the restaurant (1,000 – 1100 vehicle movements). The busiest times of the day are lunch and dinner times.

At least 35% of customers are expected to be “pass by” trade – people who call in to McDonald’s while travelling to another destination, so the actual level of traffic added to the road network is about 65% of the actual custom, or some 65 vehicle movements in the afternoon peak period. Approximately 10% of the restaurant’s custom will be foot traffic.

With regard to the entrance, the TIA states that the location of the access is well away from the Bowmont Street corner, and the length of the driveway into the site will minimise delays for entering vehicles. The proposed car parking will be more than adequate to meet all normal peak parking demand.

The TIA concludes that the activity on the site will be able to operate safely and efficiently with a less than minor effect on the traffic environment. It recommends a Traffic Management Plan (TMP) be required to be prepared and approved prior to construction work commencing to minimise the effects of heavy traffic and noise, and that this should be a condition of resource consent.

In addition to providing the TIA, the applicant states that screening provided along all boundaries adjacent to residential properties is designed to visually and physically separate the residential area of Bowmont Street from the site’s car parking area.

**Discussion**

The Council’s Roading Manager was asked to make comment regarding the application. He has advised that 116 Elles Road has an existing 6m wide asphalt vehicle crossing in sound condition, with good visibility to the north and south. 198 Bowmont Street has an existing 3m wide asphalt vehicle crossing in sound condition with good visibility to the east and west.

The Roading Manager has requested that a new, 6.4m wide heavy duty crossing be constructed 3m from the north boundary of 110 Elles Road, to Council standards and by an approved contractor. The existing redundant vehicle crossings on Elles Road and Bowmont Street are to be removed, kerb and channel re-instated to full height, and the paving converted to topsoil and grassed. In addition to this, the applicant should provide interceptor drainage and a sump to stop water runoff to the street from the driveway, if the area of fall to the street exceeds 40m². With regard to road marking, the existing 2.5m flush median should be altered with a right turn bay, designed by the Council’s Engineering Services Group, at the expense of the applicant. If consent is granted, conditions of consent would ensure that the requirements of the Roading Manager are met.
20 car parks are required for the restaurant users, and four car staff car parks are required. The number of 42 available on-site parks exceeds the requirement of the District Plan, and will continue to comply if the McCafe or playland area is taken up with more seating.

The chaining off of the eastern portion of the car park is a practical solution to the problem of night time noise for neighbours to the east, and because this will take place outside busy times, there will be little effect on the availability of on-site car parking.

The proposed loading area will share space with six car parks but deliveries and pick-ups will occur outside busy times, and I am satisfied that this solution is acceptable and will not result in the shortfall of car parks.

The Operative District Plan's requirement for a 1.8m high fence or hedge bordering the car park will not be met along a portion of the south boundary, but the proposed 1.2m high hedge will be sufficient to screen headlights from vehicles.

H. INFRASTRUCTURE

District Plan rules
Rule 3.34.23 of the Operative District Plan states that where applicable, all infrastructure shall comply with the Council's Code of Compliance for Land Development.

A new rule in the Proposed District Plan is now operative. The rule requires that the minimum area of permeable surface on a site within a residential zone is to be 30% of the gross site area. Where this rule cannot be met, applications should address the following matters:
A. Alternative methods of slowing stormwater runoff from the site
B. Measures to address the effects of stormwater contamination

Applicant's comment
The applicant has provided a Services Assessment prepared by Bonisch Consultants, which concludes that there are reticulated services with sufficient capacity to meet requirements for wastewater, water, power and telecommunications.

25.3% of the site will be permeable surface.

Submitter's comment
Environment Southland submitted on the application, and recommended that given the high use that the site will generate and the likely attraction of waste material, a large two bay sump should be installed in the car park/amenities area.

Discussion
The application, including the Services Assessment, was referred to the Council's Drainage Manager and Water Manager.

The Water Manager has stated that there must be only one water connection to the site, and that currently the total site is served by one connection at 198 Bowmont Street. This connection may be used if it is of sufficient capacity and in a suitable
location, but if it is not used it must be disconnected by making application to the Council. An application for a new connection can then be made.

The Drainage Manager's only concern is with regard the amount of impermeable area on the site. The applicant has proposed a possible remedy for this by the construction of a holding tank on the stormwater system to retain and manage peak flows of stormwater. Because details of this are not provided with the application, the Drainage Manager has requested that if resource consent is granted a condition should require that plans be developed for a suitably designed on site stormwater system to compensate for the lack of permeable area, and approved by the Drainage Manager. He does not consider that Environment Southland's recommendation for a two bay sump is necessary.

I. DEMOLITION

The applicant intends to demolish a 108m$^2$ wooden dwelling from the site at 198 Bowmont Street.

District Plan rules
The Operative District Plan states:
The demolition or removal of all buildings and structures within an area of more than 80m$^2$ is a restricted discretionary activity.

The matters over which Council shall exercise its discretion are:
1. Screening mechanisms if needed
2. Mitigation of the effects of any earthworks undertaken in association with the demolition
3. Site rehabilitation
4. The imposition of a bond or financial contribution (if required) to ensure the completion of rehabilitation.

Applicant's comments
The applicant states that the demolition/removal activity will be of short duration and can be undertaken during the daytime to avoid nuisance noise effects of the demolition.

Discussion
Conditions of resource consent would ensure that the demolition takes place while meeting requirements for the removal of rubbish from the site. Screening mechanisms are not necessary, because the site is not within an area of particularly high foot traffic volumes. I do not consider that it would be necessary to impose a bond, because it is clear that once the dwelling is removed, the site would be developed for its new use.

J. NATIONAL ENVIRONMENTAL STANDARD FOR ASSESSING AND MANAGING CONTAMINANTS IN SOIL TO PROTECT HUMAN HEALTH (NES)

The NES came into force in 2012, and requires every territorial authority in New Zealand to ensure that land affected by contaminants in soil is appropriately identified and assessed before it is developed. The property to the north of the site and adjacent to it has a history of use for activities which are on the Hazardous Activities and Industries (HAIL) List, including a petrol station with underground tanks.
Applicant’s comment
The applicant has provided a Detailed Site Investigation (DSI) from Davis Consulting Group, which concludes that historical land use activities may have impacted the soil quality of the site. Based on the results of the site investigation, Davis Consulting Group concludes that it is highly unlikely that there is a risk to human health or the environment from the land use change proposed for the site.

The DSI found elevated levels of lead were found across the site, which may be associated with former lead based paint residues or from the historic use of leaded fuel in vehicles. While the concentrations were elevated, they remain well below the NES soil contaminant standards for commercial and industrial land use. However, heavy metal results did exceed the Class A landfill criteria, and will require further investigation to determine an appropriate disposal path, should off-site disposal be required.

Submitter’s comment
Environment Southland’s submission included a request for information on the site’s current or previous use to determine whether the site is or has been associated with hazardous substances. They do not hold any record of hazardous substances on the property, but note that their records are incomplete.

Discussion
The Detailed Site Investigation report provided with the application fulfils the requirement of the Section 9 of the NES, which states “These regulations do not apply to a piece of land described in subclause 7 or 8 about which a detailed site investigation exists that demonstrates that any contaminants in or on the piece of land are at, or below, background concentrations”.

If resource consent is granted, a condition should be imposed, requiring that a safe disposal path be followed if off-site disposal of soil is required.

K. PRECEDENT AND CUMULATIVE EFFECT

The Resource Management Act defines a cumulative effect as an effect that arises over time or in combination with other effects. Precedent occurs when an activity is used as an example or instance to justify later similar occurrences.

There are various other activities, including restaurants, in the vicinity. Allowing the proposal to proceed in its present form may make it easier for further development, along with a large amount of signage, along Elles Road.

The addition of a large commercial activity will have a cumulative effect on the surrounding environment which, although zoned Domicile, already contains a number of commercial activities. It will further erode the residential amenity of the surrounding area, particularly because of the large amount of signage proposed.

L. OTHER MATTERS

Other matters raised by submitters included, in general terms:
- Unhealthy food
- The placement of the restaurant in a low socio-economic area
- Positive employment opportunities
- Increased business in South Invercargill
- Concern that it may become a 24 hour operation
- Children's safety
- Drunks and anti-social behaviour
- Effect on property values

The above matters are given consideration under Part 2 of the Resource Management Act, which states that natural and physical resources are to be sustainably managed in a way which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety. While the Act does not explicitly seek to achieve social or economic outcomes, any decision must take into account the impact of the use of physical or natural resources on social, cultural and economic outcomes.

The overwhelming majority of submissions, and comment, centred around unhealthy food choices and obesity. Submitters were also concerned that the placement of the restaurant in a low socio-economic area would have a greater impact than it might have elsewhere in the city. While this social issue is relevant under Part 2 of the Resource Management Act, the District Plan's Objectives and Policies and rules do not provide for the consideration of this matter with regard to adverse environmental effects, and negative effects will also be balanced by increased business and employment opportunities in the area.

There may be an increased incidence of drunken and other anti-social behaviour, which would have a negative social impact, but again the District Plan does not provide for consideration of this matter.

One submitter expressed concern that the restaurant would soon become a 24 hour operation. This could not happen unless a change of conditions to the original resource consent was applied for and granted, and as part of that the Council would identify affected parties who would have the right to object.

A submitter was concerned that the presence of the restaurant would have a negative effect on the value of surrounding properties. Case law holds that property values reflect "effects" of a proposal and the extent to which they are avoided, remedied or mitigated. To consider property values as a separate effect would be to consider these other effects twice and would therefore be "double dipping".

9. CONCLUSION

The Invercargill City District Plan states that commercial activities greater than 150m² within the Domicile Sub-Area are non-complying activities because such developments are generally unsuitable within the context of residential amenity. This is reinforced by the Proposed Invercargill City District Plan 2013, which states that overall residential amenity is best maintained by controlling or excluding non-residential activities and by requiring compliance with environmental standards. The Objectives and Policies of both District Plans therefore make it clear that this proposal must be considered carefully to ensure that the amenity of the surrounding residential area is not unduly compromised.

The proposed McDonald's restaurant will meet most of the environmental standards of the Operative District Plan. It will comply with height, density, and side yard requirements. The Environmental Health Manager believes that odour will not be a
problem providing the right procedures are carried out. Lightspill and glare will be minimal, with the possible exception of the illumination from signage, which has not been discussed by the applicant.

Ample car parking has been provided to serve the activity, and the applicant has put some thought into screening the site in a way that is attractive while ensuring that the car parking area and other activities are not visible from the street.

The Council’s Asset Managers are generally satisfied that, with the impositions of conditions, the standards for transport, water and drainage can be met.

The noise report provided with the application concludes that noise levels will be met, although noise levels are very close to the limit at the boundaries of two properties along Ettrick Street. The Environmental Health Manager has expressed some reservations regarding the robustness of the Acoustic Report, and further clarification should be provided at the Hearing with regard to the effects of noise before we can be confident that the effects of noise will be minor.

The proposed signage does not meet either threshold contained in Section 104D. In particular, the two large freestanding signs have a combined measurement of 40m² if the District Plan’s requirement for measurement are used, and will have a visual effect on the amenity of the surrounding area. The existing signage along Elles Road plays a large part in the commercialisation of an area which is zoned Domicile. The addition of these signs will have a cumulative effect within a residential area which is already compromised by commercial signage, but whose residents have a right to maintain their residential amenity.

The visual effect created by the illumination of the signage also needs to be clarified, including the effects of lightspill.

An Environmental Court ruling for a proposed activity on the same site made it clear that there is not an expectation of commercial signage within the Domicile Sub-Area, and this is one of the features which distinguishes the area generally from commercial areas.

Unless the applicant can assure the Commissioner that the nature as well as the level of noise will be acceptable, and until the signage (in particular the pylon sign, the blade sign and the flags) is reduced, resource consent should not be granted because the “gateway” test set out in Section 104D of the Resource Management Act 1991 is not met.

10. 104D OF THE RESOURCE MANAGEMENT ACT 1991

Section 104D of the RMA sets out particular restrictions for non-complying activities.

(1) Despite any decision made for the purpose of [section 95A(2)(a) in relation to adverse effects], a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either –
(a) the adverse effects of the activity on the environment (other than any effect to which [section 104(3)(a)(ii)] applies) will be minor; or
(b) the application is for an activity that will not be contrary to the objectives and policies of –
(i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or
(ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or
(iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.

The Objectives and Policies of both the Operative and the Proposed District Plans must be considered with regard to the application. The Operative District Plan's objectives include the maintenance and enhancement of the amenity values that occur throughout the Invercargill District. Within the Domicile Sub-Area, these values include peace and tranquillity with regard to noise, and low levels of visual intrusion from signage. The site is within the Residential 1A Zone of the Proposed District Plan, which allows for medium density housing. The Proposed District Plan states that residential amenity is best maintained by controlling or excluding non-residential activities and by requiring compliance with environmental standards. These include the protection of residential amenity by controlling the size and nature of signage.

For the reasons outlined in my Assessment of Environmental Effects above, it is considered that the adverse effects, particularly with regard to signage, will be more than minor, and further that the application is contrary to the Objectives and Policies of both the Operative and Proposed District Plans. Under Section 104D, therefore, the Consent Authority cannot grant resource consent.

11. RECOMMENDATION

That the application be declined, for the reasons outlined above. It is considered that the effects are more than minor, particularly with regard to signage, and that it does not meet the objectives and policies of the Invercargill City District Plan.

12. APPENDICES

Appendix 1 Aerial photograph of the site
Appendix 2 Table of submissions and comment
Appendix 3 Aerial photograph of the locality
Appendix 4 Environment Court decision C117/2008
Appendix 5 Objectives and Policies of the Invercargill City District Plan and the Proposed Invercargill City District Plan 2013
<table>
<thead>
<tr>
<th>REC.</th>
<th>NAME</th>
<th>ADDRESS</th>
<th>TYPE</th>
<th>FOR/OPPosed</th>
<th>REASONS GIVEN</th>
<th>APPEAR?</th>
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<tr>
<td>22/9</td>
<td>Tom Benjamin</td>
<td>315 Tramway Road Invercargill</td>
<td>Submission</td>
<td>Opposed</td>
<td>Unhealthy food</td>
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<td>22/9</td>
<td>Pheng Taing</td>
<td>219 Pomona Street Invercargill</td>
<td>Submission</td>
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<td>Unhealthy food, Take business from South City, More rubbish</td>
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<td>15/10</td>
<td>Stephen Hackett</td>
<td>293 Ettrick Street Invercargill 9012</td>
<td>Submission</td>
<td>Opposed</td>
<td>House and land values, More rubbish, Odour, Construction noise, Eventual 24 hr operation</td>
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<td>15/10</td>
<td>Vicki Hackett</td>
<td>293 Ettrick Street Invercargill 9012</td>
<td>Submission</td>
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<td>House and land values, Traffic noise, Odour, Privacy, Children’s safety, Rubbish, Drunks and anti-social behaviour, Bright lighting</td>
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<td>10/10</td>
<td>Sport Southland (Brendon McDermott)</td>
<td>PO Box 224 Invercargill</td>
<td>Submission</td>
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<td>Unhealthy food (includes several recommendations)</td>
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<td>10/10</td>
<td>Daniel Tawaroa</td>
<td>6 Purdue Street Invercargill</td>
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<td>Environment Southland</td>
<td>Private Bag 90116 Invercargill</td>
<td>Submission</td>
<td>Neutral</td>
<td>More info on history of site re contamination, Waste material and need for sump</td>
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<td>8/10</td>
<td>Inv Youth Council</td>
<td>Private Bag 90104 Invercargill</td>
<td>Submission</td>
<td>Neutral</td>
<td>Poor socio-economic area, (but) Employment opportunities</td>
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<td>Type</td>
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<td>Donna Hotop</td>
<td>239 Crinan Street Invercargill</td>
<td>Submission</td>
<td>Support</td>
<td>Employment opportunities More rubbish bins 1 less derelict section</td>
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<td>24/9/14</td>
<td>Gavin Cook</td>
<td>408 Ellesmere Road R D 2</td>
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<td>Brian Millar</td>
<td>102 Elles Road Invercargill</td>
<td>Submission</td>
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<td>(Tenant of 102 Elles Road)</td>
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<td>Colin and Norma Anderson</td>
<td>168 Chesney Street Invercargill</td>
<td>Submission</td>
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<td>Ian Densie</td>
<td>498 Racecourse Road Invercargill</td>
<td>Submission</td>
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<td>Elles Road Veterinary Centre (Dr Sandy Cooper)</td>
<td>226 Elles Road Invercargill</td>
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<td>Support</td>
<td>Tidy up area Provide options Employment opportunities</td>
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<td>9/10/14</td>
<td>Southern District Health Board</td>
<td>Private Bag 1921 Dunedin 9054</td>
<td>Comment</td>
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<td>Southern Primary Health Organisation</td>
<td>PO Box 218, Dunedin 9054</td>
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<td>13/10/14</td>
<td>David Russell</td>
<td>90 Princes Street Invercargill</td>
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<td>Cancer Society</td>
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<td>10/10/14</td>
<td>Heart Foundation</td>
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BEFORE THE ENVIRONMENT COURT

Decision No. C 117/2008

IN THE MATTER of the Resource Management Act 1991 (the Act)

AND

IN THE MATTER of an appeal under section 120 of the Act

BETWEEN

EZY CLEAN CAR WASH LIMITED

(ENV-2008-CHC-108)

Appellant

AND

INVERCARGILL CITY COUNCIL

Respondent

Hearing: at Invercargill on 22-23 September 2008

Court: Environment Judge J A Smith

Environment Commissioner A J Sutherland

Environment Commissioner D H Menzies

Appearances: Mr R T Chapman for Ezy Clean Car Wash Limited (Ezy Clean)

Mr M D Morris for the Invercargill City Council (the Council)

Date of Decision: October 2008

DECISION OF THE ENVIRONMENT COURT

A: Appeal refused. The decision of the Council is confirmed.

B: Any application for costs to be filed within ten working days, response within ten working days and final comment (if any) within five working days thereafter.
REASONS

Introduction

[1] Ezy Clean applied to the Invercargill City Council for a consent to construct a car wash facility in a Domicile Zone (Residential). The application is for a non-complying activity and was refused by the Council.

[2] It is the position for Ezy Clean that the application satisfies both the threshold tests under section 104D and should be granted consent in the exercise of the Court’s discretion. There are criticisms of the Council decision, with the inference that the Court should not follow that decision, although it must have regard to it under section 290A of the Act.

Background

[3] Ezy Clean wish to establish a car wash enterprise at 116-120 Elks Road, Invercargill where there are two existing certificates of title. These comprise some 1,618 m² on the north-east corner of the Elles Road and Bowmont Street intersection. Annexed hereto and marked “A” is a copy of a site plan showing the general aspects of the proposed development and its relationship to the roads.

[4] The property on the adjoining boundary to the immediate north is owned by the appellant and is currently an open site. We were told Ezy Clean may either sell the site or look to establish another commercial use on it.

[5] To the east is a residential dwelling owned by an original objector to the proposal who did not give evidence to the Court. Nevertheless, it was common ground that the effects on that dwelling needed to be taken into account.

[6] On the opposite side of Bowmont Street there are two residential dwellings, one of which is directly opposite the proposed exit point to the car wash. Again this
objector did not give evidence to the Court but the effect on that party must be taken into account by the Court.

[7] The main features of the proposal are that there would be five manual wash bays, two automatic wash bays, seven vacuum bays and a plant room. There would be access only from Elles Road, six metres wide, and a similar six metre wide exit on to Bowmont Street. The majority of the site would be paved in concrete, with a small amount of landscaping on the Elles Road and Bowmont Street frontages. It is now intended that the business would operate seven days a week from 7 am to 10 pm and that quick-action roller doors would be fitted to the exits of the automatic bays to mitigate noise, odour, spray and dust from the bays. We also note that in closing Mr Chapman suggested that they may delete the roofing to the seven vacuum bays and the connecting works intended from the fenceline to the edge of the façade indicated in the proposal that was submitted to the Council. They would also operate only to 8 pm in winter months if considered necessary by the Court.

The existing environment

[8] Elles Road is a busy road by Invercargill standards with in excess of 13,000 vehicles per day. Bowmont Street is a significantly quieter side street, although no precise figures were given for traffic generation in that street. The western side of Elles Road in this location is a long reserve area between Dalrymple Street in the south and Tay Street in the north. With the exception of a business area at the corner of Elles Road and Tay Street and the South City Shopping Area at the corner of Grace Street and Elles Road south of Dalrymple Street, the majority of the area is zoned Domicile Area. Within that there are a number of designations, including such things as the sports stadium, swimming complex, schools and the like. In practical terms, however, to the east of Elles Road between Tweed Street and Dalrymple Street and John Street in the south the area is residential.

[9] Elles Road is a minor arterial road in terms of the Plan and provides access to this large residential area, together with connections to the hospital and beyond that to the state highway. It is a key transportation route in Invercargill and, as a result, the residential amenity, particularly due to traffic frequency and noise, is lower on Elles
Road than it would be on other residential streets. Given the high traffic volumes, a number of businesses have sought to establish on this street and take advantage of the vehicle accessibility.

[10] Between Tweed Street and Dalrymple Street where the South City centre starts there are some eight or ten businesses consisting of Liquorland, KFC, a doctors' surgery, Abacus Precision Instruments, Moon's Chinese Restaurant, Char Kai Diner, 148 on Elles Restaurant, Elles Road Bible Chapel and Strathern Inn Restaurant and Gaming Lounge. Over the same stretch of road there are also a number of dwellings. In total there appear to be around 34 buildings, of which around 24 are residences.

[11] Most of the businesses have been established for a significant period of time, with Abacus Precision Instruments being a recent exception. That activity occupies buildings previously operated by a garden centre. Other newer buildings replace previous buildings on the sites according to the Council witness, Ms J A Christie.

[12] When viewed only in the context of other properties on Elles Road, we accept this particular area reads as mixed. Part of this is due to the fact that the road is long and a number of businesses can be seen along its length. However, when viewed in the context of the areas immediately behind Elles Road, this area remains predominantly residential. That is its zoning in terms of the Plan and that zoning was undertaken with clear knowledge of the existing buildings on Elles Road. In doing so the Council has concluded that the Plan provisions relating to this Domicile Area generally should apply to this road notwithstanding that there is some compromise of the residential characteristics.

[13] In that regard permitted activities include home stays, residential care and educational activity already existing. Discretionary activities include community activities, for example, churches, education activities after October 2002, health care facilities, hospital activities, and marae. Importantly, service stations on sites accessed from major and minor arterial roads are also discretionary.
The planning context

[14] We conclude it is clear that the Council considered that there might be further activities which would occur on Elks Road within the Domicile Zone. Reference to service stations on major and minor arterial roads clearly includes Elks Road. It therefore appears that the Council concluded that even for these activities consent would be required and this would include particular reference to the purpose and values of the Domicile Sub-Area at rule 4.33.3. The amenity values identified at rule 4.33.3.1 include:

(A) Low levels of adverse effects that could lower the quality of the environment for those living in such areas, including glare, noise, odour, lightspill and signage
(B) Well maintained land and structures
(C) Freedom from nuisance from demolition activities and electrical interference
(D) Private and public open space
(E) Low to moderate levels of traffic
(F) Adequate off-street parking
(G) Low to medium height of structures
(H) Presence of heritage values.

[15] Provision 4.33.3.2 gives explanation to amenity values described in 4.33.3.1:

These values give the Domicile Sub-Area a particular character and require the list of permitted activities, with associated environmental standards, to be narrow. Those activities that could be suitable on some, but not all sites, in the Sub-Area are listed as discretionary. Other activities are generally unsuitable for a residential area because they conflict with its values, and therefore they are listed as non-complying.

Accordingly any non-complying activity within the Domicile Area needs to demonstrate that it does not conflict with the values listed in rule 4.33.3.1.
[16] Mr Chapman drew comparisons between the discretionary activity of service stations and suggested there was little to differentiate between this activity and a service station site. We do not agree that that is the correct comparison. A service station is in itself discretionary and there can be no guarantee that a service station on the corner of Elles Road and Bowmont Street would gain Council approval. Again that would depend on the extent to which the particular service station met the values listed in rule 4.33.3.1.

Consideration of the application as against the Plan provisions

Adverse effects (rule 4.33.3.1(A))

[17] We accept that there are some aspects of the quality of the residential environment which this application would meet. In particular we accept Mr N I Hegley's evidence that the site would meet the noise requirements with the mitigation measures intended, particularly the enclosure of machinery within the plant room and the use of the noise-reducing doors on the automatic car wash bays.

[18] We do not understand there to be any argument as to odour issues and we are satisfied that lightspill from stationary lighting on this site could be designed and installed to avoid any problem on neighbouring properties.

[19] Issues of headlight glare or spill and signage do, however, give us direct concern. All vehicles exiting the site will exit onto Bowmont Street. Most will be undertaking a right hand turn on to Bowmont Street to re-enter Elles Road. The owner of the property directly opposite submitted a concern about lightspill. Although this might be addressed by the construction of either a fence or blackout curtains on the property, the owner was not before the Court and we were unable to test whether such a course of action would be acceptable.

[20] For current purposes we accept that the use of the site at night may lead to lightspill on to the property opposite the exit. In his closing, Mr Chapman suggested this might be addressed by reducing the hours of operation at night to 8 pm in winter. We agree that this would assist but acknowledge that there would still be hours of
darkness through the majority of the year when such lightspill would comprise a small degree of nuisance.

[21] In respect of signage, the signs as originally proposed were some 16 m² and 9 m² in size, giving a total of 25 m². Signage within the Domicile Area is limited generally to a total of 1.5 m². Even then, from our observation such signage is very rare within the Domicile Area.

[22] In closing Mr Chapman suggested that the signage might be reduced to a total of some 8 m² and the building painted in colours more neutral and acceptable within a residential area. He suggested that as the Council had approved an 8 m² sign on another property, that set an appropriate benchmark. Ms Christie’s planning evidence was that the other signage had been approved to replace an existing sign and is therefore an existing use right.

[23] Our comparison for signage is with the Domicile Sub-Area provisions. There is not an expectation of commercial signage within the Domicile sub-area and this is one of the features which distinguishes the area generally from commercial areas. Whilst we accept that there are a number of signs along Elles Road, many of those appear to have existing use rights, having been installed prior to the operation of the current Plan. Overall we see signage as an effect, even at 8 m², that would be of some significance in defining the character of the area.

[24] Finally, there was general concern expressed as to access and use of the site both at night and outside operating hours. There was a concern that people may gather on the site, either in vehicles during operating hours or by individuals outside those hours. We consider that one of the significant differences with this activity is that there is no element of personal occupation and ownership attributable to the activity. It is and will remain a commercial activity inserted into a residential zone. It does not include elements of private occupation, fellowship or community which would occur if the property was occupied by one or more persons. Although not specifically recognised under 4.33.3.1(A) we conclude it is a key feature of residential land use as discussed in rule 4.33.3.1.
Private and public open space (rule 4.33.3.1(D))

[25] This is another reflection of the distinctions in a Domicile Area which are confused in this application. Whereas the reserve is clearly a public area, the Ezy Clean Car Wash demonstrates both private and public elements. This could lead to its occupation both during and outside operating hours. We acknowledge Council has concerns as to security and safety for residents. Even if not realised, a site such as this can insert an unsettling element into the character of a residential area.

Traffic (4.33.3.1(E))

[26] Clearly Elles Road carries a significant volume of traffic and this adversely affects the residential character of Elles Road. Business activity is not at this stage to such a level that it has overtaken the dominant residential character. More importantly, this particular activity may generate levels of traffic in the order of 500 vehicle movements per day – 250 in and 250 out. Only the vehicles exiting on to Bowmont Street are of concern. Nevertheless 250 vehicles exiting on to Bowmont Street every day is a different level of activity to that which would be realised from general residential activity. If the site was converted for a block of flats, a permitted activity, there might be expected to be up to ten vehicle movements associated with each unit.

[27] Mr G J Gilder, planner for the appellant, suggested that the property could be used for flats but did not specify a maximum number. Given some of the controls within the Plan, we suspect that ten units would be a very high number on these two lots. We will discuss the structures themselves in a moment but, assuming a generation of ten vehicle movements per unit per day, this would be a total of 100 movements per day. There is no guarantee that any of those movements would necessarily occur onto Bowmont Street, but if a similar entry/exit arrangement was made as for the car wash, then some 50 vehicles (exit only) would enter Bowmont Street. This is only one fifth of that to potentially be generated from the proposed activity. In practical terms we have concluded that a significant distinction between a permitted activity and the current proposal is the level of traffic generation on to Bowmont Street.
We accept that this application would involve lower height of structures than would be permitted in the Residential Zone. Heights of up to ten metres within a set-back envelope are permitted. In this case there are several intrusions into the set-back height planes, particularly on the eastern boundary. As proposed originally to the Court, the roof of the vacuum bays would stretch along the majority of the eastern boundary, presenting an industrial façade. In closing Mr Chapman suggested that the entire roof of the vacuum bays could be removed, leaving only the vacuum pods and storage areas.

We are not sure as to the practicability of this, given the weather in Invercargill. However, assuming for the moment that the application were granted on that basis, we accept that that would mean that the remaining structures on site (the wash bays) would be around half the permissible height. On the other hand, they will be visible and clearly of a commercial/industrial nature compared with the articulation of an apartment building with windows, balconies and the like. Although we agree that the height of the building is lower than would be permissible in the Domicile Area, the nature of the structures is such as to negate any benefits that might otherwise be achieved.

Other provisions of the Plan

We have already discussed that the focus of this Plan is upon preserving the residential character of the Domicile Area. It is restrictive in respect of other activities which can be conducted. In a number of respects this application conflicts with the values of the residential area.

Mr Chapman suggested that a comparison should be drawn with the discretionary activity of a service station. This might be a matter which could be considered by the Court under section 104(1)(c) of the Act. However, for the reasons we have already given, we do not believe that is an appropriate comparison. It is not part of the environment, nor is it part of the baseline the Court may in its discretion consider under section 104(2). We do not consider that consent can be seen as a foregone conclusion for a service station on this site, and the very impacts we have
discussed in respect of this car wash facility may also impact upon a service station consent.

The integrity of the Plan

[32] A major concern for the Council was the integrity of their Operative Plan. Despite the apparent conflict with a number of other activities taking place along Elles Road, we are satisfied with Ms Christie's planning evidence as to the ways in which those activities came about. Upgrades for the KFC in 2007, for example, merely updated a previous consent granted in 1991. The doctors' surgery erected in 1993 replaced a former antique shop. Even Abacus Precision, for which consent was granted in 2007, replaced a garden centre activity in place since 1991. Ms Christie believes that there may have been a shop on that site even before the garden centre, but is unable to confirm this. Moon's Chinese Restaurant and Char Kai Diner are both of considerable antiquity, operating before there was an Operative District Scheme in Invercargill.

[33] In practical terms we are not able to see any action by the Council which has undermined the integrity of its Plan and accordingly the consistent administration of the Operative Plan becomes a matter of some importance. Simply because a site is zoned as a Domicile Sub-Area and is on a busy road cannot in itself constitute a justification for granting a consent to the activity.

Approach to determination of non-complying activity

[34] It is clear that a non-complying activity must meet at least one of the threshold tests under section 104D. Even if it does so, the Court has a full discretion as to whether a consent is granted under section 104 of the Act. Section 104 considerations are subject to Part 2. The threshold tests under section 104D are in themselves difficult to measure. The effects must be no more than minor or the application cannot be contrary to the objectives and policies of the Plan.

[35] We will first look at whether we would be minded to exercise our discretion to grant consent and then examine the thresholds as exit thresholds in the circumstances of
this case. Our reason for doing so is the close connection between the issues in section 104 generally and the threshold tests.

**Part 2 of the Act**

[36] The single purpose of the Act of sustainable management is defined under section 5. There is no doubt that in granting this consent we would be enabling not only the applicants but members of the community to clean their vehicles in a convenient manner. On the other hand, that activity is contemplated within the Business Sub-Areas where it appears to be included within the definition of *commercial activity* as permitted. Similarly, the city centre provides for commercial activity, as do the suburban service centres. Accordingly, we must view the Plan as enabling people living within the Domicile Area to have some certainty as to the range of activities that will be conducted in that area and the character and amenity of the area in which they live.

[37] We have concluded that the effect of granting this consent would be to compromise the values of the Domicile sub-area and also the consistent administration of an operative Plan. Furthermore, there is nothing to establish that this application constitutes a true exception within the zone, nor that it can achieve the objectives and policies of the Plan by an alternative method.

[38] Section 290A requires the Court to have regard to the Council’s decision. We reach a similar conclusion, although for slightly different reasons. In particular, we would emphasise the conclusion of the Council that:

\[\text{... the development would detract from the predominance of residential land use activities in the area.}\]

**The exit threshold**

[39] It is not, strictly speaking, necessary for us to consider section 104D. However, given that it was the reason given for the Council decision, we conclude:
(a) that the application, while not contrary to the objectives and policies of the
Plan, is in conflict with a number of provisions and the key amenity
outcome sought for the residential area. We agree that it would detract
from the predominance of residential land use activities in the area;
(b) we conclude the intended signage comes perilously close to making the
effects more than minor. Taken in combination with the other adverse
effects we have discussed, including the traffic generation on to Bowmont
Street, headlight glare/spill, and security and safety issues, we have
concluded that the effects would together be regarded as more than minor.

[40] This would then mean we could consider the application as passing one
threshold test but it would be refused on the basis outlined already.

Outcome

[41] The appeal is disallowed and the decision of the Council is confirmed.

[42] Any application for costs is to be filed within ten working days, any reply within
ten further working days, and final reply (if any) five working days thereafter.

DATED at CHRISTCHURCH this 30th day of October 2008

For the Court:

J A Smith
Environment Judge

Issued: 30 OCT 2008
RELEVANT EXTRACTS FROM THE INVERCARGILL CITY COUNCIL DISTRICT PLAN (THE OPERATIVE DISTRICT PLAN)

SECTION TWO - SIGNIFICANT RESOURCE MANAGEMENT ISSUES

2.10 TRANSPORTATION

2.10.2 The transportation network is a significant physical resource which can affect and be affected by land use activities.

2.14 AMENITY VALUES OF THE DISTRICT

2.14.2 For the purposes of this Plan, amenity values have been identified as being a combination of:
   A. The existing characteristics of an area
   B. The qualities that contribute to people's appreciation of that area's pleasantness, aesthetic coherence, and cultural and recreational attributes

SECTION THREE - OBJECTIVES AND POLICIES

3.10 TRANSPORTATION

3.10.2 A. Effects on transportation networks: To provide for the safe and efficient operation of transportation networks by controlling the effects of other land uses on the transportation networks, including glare and electrical interference

   E. Vehicles on site: To require land use activities to make provision for safe, well designed and located access and egress, parking, loading and unloading, manoeuvring areas and screening on site.

   F. Effects on Roading – To manage the adverse effects of land use activities on the roading network by considering, in relation to applications for resource consent:
      • The type and number of vehicles that will be using the roading network as a consequence of the proposed activity
      • The classification of the road within the hierarchy
      • The provision of adequate off street parking and loading facilities and associated manoeuvring areas
      • The location and structure of site accesses and egresses
      • The impact of any structure or vegetation on visibility of drivers
      • The potential for any road icing or light strobing
      • The cumulative effects of land use on the land transportation network
      • The type and placement of advertising structures; and
      • The location of activities likely to attract significant traffic movements.

   J. Residential and pedestrian environments – to manage the effects of traffic on residential or pedestrian oriented environments
3.14 AMENITY VALUES

3.4.1 To maintain and enhance the amenity values that occur throughout the District.

3.14.2 To identify the natural and physical characteristics which contribute or impact upon the amenity values of the District.
   a. Noise and vibration
   b. Odour
   c. Glare
   d. Electrical interference
   e. Lightspill
   f. Wind
   g. Signage
   h. Hazardous substances
   i. Dilapidated structures and ill-maintained lands
   j. Demolition or removal activities
   k. Height and location of structures
   l. Protection areas
   m. Private open space and density
   n. Landscaping, planting and screening
   o. Public open space
   p. Weather protection
   q. Relocation of previously used residential buildings

1. Noise and vibration
   a. To manage noise generated by land use activities and activities on the surface of water in order to maintain a level that reflects the characteristics of the different Sub-Areas of the District by
      i. Controlling the time of day noise can be emitted; and
      ii. Setting standards for maximum noise levels acceptable in different areas

2. Odour
   To have regard to odour generated by land use activities.

3. Glare
   To have regard to significant glare from buildings and structures by considering:
      a. Its intrusion on the safe and efficient operation of transport; and/or
      b. Its intrusion on the neighbourhood.

5. Lightspill
   To manage lightspill generated by land use activities in order to maintain an acceptable level by:
      a. Controlling the time of day that lightspill may occur; and
      b. Setting standards for maximum lightspill levels acceptable in different areas.

7 Signage
   a. To manage the intensity of signage to reflect the characteristics of different Sub-Areas of the District by controlling:
      i. The size and character of signage; and
      ii. The illumination of signage
   b. To manage significant effects of signage in relation to applications for resource consent by considering:
i. The effects of signage on the safety and visibility of transportation networks and on aircraft operations

ii. The size and character of the signage

iii. The illumination of the signage and the effects of lightspill

iv. The siting of the signage with respect to sight lines pertaining to any road or rail intersection, or accessway on to a road

v. Effects on the visual and aesthetic coherence of the surrounding environment

vi. Effects of outstanding natural features and landscapes

vii. Effects on heritage values of sites, structures, places and areas; and

viii. Cumulative effects of signage.

9. **Dilapidated structures and ill-maintained lands**
   To manage the adverse effects of dilapidated structures and ill-maintained lands and sites on amenity values.

10. **Demolition or removal activities**
    To manage the adverse effects of demolition or removal activities on amenity values by ensuring the cleanup, screening and maintenance of sites.

11. **Height and location of structures**
    To manage the height of structures by controlling maximum height and their relationship to site boundaries, or in the case of the Airport, flight paths.

14. **Landscaping, planting and screening**
    To promote landscaping, planting and screening initiatives which can maintain and enhance amenity values.

3.14.7 To identify the urban and country areas of the District which can be further divided into Sub-Areas based on specific amenity values. To require the maintenance and enhancement of the amenity values of the Sub-Areas, or identify specific limiting characteristics.

1. **Domicile Sub-Area**

   Noise and vibration – peace and tranquility. Low levels, with even lower noise levels at night. Low to moderate density of traffic.

   Odour – Minimal levels of odour emissions

   Glare – Low levels of glare

   Lightspill – Low levels of lightspill

   Signage – Low level of visual intrusion from signage

   Dilapidated structures – well kept and maintained lands and structures

   Demolition or removal activities – Freedom from nuisance

   Height of structures – Control of the height of structures to maintain aesthetic coherence and incidence of daylight

   Landscaping planting and screening – on a scale appropriate to site size and orientation
Transportation – Safety and visibility along transportation networks. Low to moderate density of traffic. Uncongested transportation networks. Adequate off-street parking

In addition, the Domicile Sub-Areas offer an opportunity for:

a. A predominance of residential land use activities;

b. Accessibility to retail and educational activities; and

c. Accessibility to places of employment

The Methods of Implementation set out in the District Plan are discussed as part of the Assessment of Environmental Effects

RELEVANT EXTRACTS FROM THE PROPOSED INVERCARGILL CITY DISTRICT PLAN 2013 (THE PROPOSED DISTRICT PLAN)

The Proposed Invercargill City District Plan was notified on 24 August 2013, and the Issues, Objectives and Policies, along with some of the rules, must now be considered. (Of these rules to be considered, the only one considered to be of relevance to this application is the rule pertaining to permeable surface.)

2. ISSUES, OBJECTIVES AND POLICIES

2.2 Amenity Values of the District

For the purposes of this District Plan, amenity values have been identified as

"Those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes." (s2 Resource Management Act 1991)

It is these amenity values when combined that provide the context and opportunity for the district to evolve and develop.

Amenity values vary from place to place and person to person. However, shared common amenity values are apparent. Areas which share amenity values in this way are identified and recognised in this District Plan as zones.

Amenity values are an amalgamation of physical qualities and attributes of an area and development decisions made in the past.

2.2.1 Issues

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<th>Significant resource management issues for amenity values of the district are:</th>
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<td>1. Subdivision, land use and development can have adverse effects on the amenity values of the district.</td>
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<td>2. Amenity conflicts often arise when subdivision occurs or land use changes.</td>
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Note: Objectives and policies relating to "amenities" are set out on a zone by zone basis.
2.36 Residential I Zone

2.36.1 Issues

The significant resource management issues for the Residential I Zone are:

1. The quality of the city's housing stock depends on an ongoing process of development and redevelopment.
2. Poor urban design can affect the advantages of Invercargill in terms of convenience, accessibility and short travel times.
3. Increasing residential densities can have adverse effects on residential amenity. This "amenity" includes in particular adequate provision for density and coverage, for outdoor living, for incidence of sun, and for car parking.
4. Residential amenity can be affected by non-residential activities within or adjoining the residential zone.

2.36.2 Objectives

Objective 1: The maintenance and ongoing development of the zoned areas as residential neighbourhoods offering a high degree of amenity to their inhabitants is provided for and encouraged.

Objective 4: Provision is made for good accessibility to service and retail activities, educational establishments, and to places of employment.

Objective 5: High quality urban design is incorporated into new development and redevelopment.

Objective 7: Urban growth and development is managed in ways that:
   (A) Support existing urban areas.
   (B) Promote development of existing urban areas ahead of greenfield development.
   (C) Promote urban growth and development within areas that have existing infrastructure capacity.
   (D) Plan ahead for the expansion of urban areas.
   (E) Promote compact urban form.

Objective 8: The amenity values of the Residential I Zone are maintained and enhanced.

Policy 3 Urban Design: To encourage good urban design in terms of:
   (A) Context.
   (B) Character.
   (C) Choice.
   (D) Connections.
   (E) Creativity.
   (F) Custodianship.
   (G) Collaboration.

Explanation: Promoting good urban design in the suburban areas of the city is an important part of reinforcing their function as the city's day to day living spaces.

There are seven essential design qualities:
(A) **Context:** Seeing that buildings, places and spaces are part of the whole town or city.

(B) **Character:** Reflecting and enhancing the distinctive character, heritage and identity of our urban environment.

(C) **Choice:** Ensuring diversity and choice for people.

(D) **Connections:** Enhancing how different networks link together for people.

(E) **Creativity:** Encouraging innovative and imaginative solutions.

(F) **Custodianship:** Ensuring design is environmentally sustainable, safe and healthy.

(G) **Collaboration:** Communicating and sharing knowledge across sectors, professions and with communities.

**Policy 4 Stormwater runoff:** To minimise loadings on the stormwater reticulation system caused by rainfall events and to improve the water quality of stormwater flows by requiring that site development associated with new housing is designed to incorporate impermeable surfaces.

**Explanation:** Climate change is likely to mean that rainfall in Invercargill may become higher on average but, more significantly, there is likely to be increased incidence of extreme climatic events. Currently, Invercargill's stormwater systems are designed for 55% permeability, which means that rain falling on 45% of the site is immediately disposed of through the stormwater reticulation system. Lessening the immediate effect of peak stormwater flows on stormwater systems will reduce the risk of localised surface flooding.

There is also increasing concern about the condition of Southland’s waterways. Urban stormwater can contain pollutants and organic matter.

Design to mitigate stormwater effects needs to encompass the whole of the area under development, including roads and open spaces as well as housing lots. Best practical means are necessary to minimise pollution of waterways by urban stormwater.

**Policy 7 Incidence of daylight and sunlight:** To ensure light and sunlight incidence to the subject property and to neighbouring properties for amenity, home heating (energy conservation) and health reasons.

**Explanation:** An important dimension to sustainability is enabling maximum practical use of daylight and sunlight for internal illumination and heating of buildings.

Seasonal variations in sun angles, sunrise and sunset affect the incidence of daylight and sunlight. As a performance guide for the District Plan, as a minimum amenity sun should be available to the floor of the living area of a dwelling at midday in midwinter. This can be achieved by setting limits on height of neighbouring buildings and also through good site design (e.g. using the outdoor living space to achieve the required distance from the northern boundary).

**Policy 8 Space around buildings:** To maintain the residential scale and amenity of space around and between buildings.

**Explanation:** The proportion of the site covered by buildings is an important determinant of residential amenity. This can reduce significantly on the property and on adjoining properties if more than around 40% of the site is covered in
buildings. Excessive building coverage has other undesirable effects, such as overloading the city's stormwater reticulation system.

**Policy 9 Noise:** To maintain low daytime ambient noise levels and lower night time ambient noise levels consistent with residential use of the area, recognising that some parts of the Residential Zone are subject to higher levels of noise generated by transportation activities.

**Explanation:** The residential areas of the city have the lowest tolerance to noise of any of the city environments. "Peace and tranquillity" are important dimensions to residential amenity for most people. Excess noise, especially if it occurs repeatedly, can engender a reaction of increased intolerance. Noise is the most common issue in neighbourhood disputes in which the Council has to become involved.

Residential "peace and tranquillity" is affected by major transportation infrastructure, in particular the State Highways, the railway and the airport. However, it is important that the functioning of this essential infrastructure is not compromised by reverse sensitivity issues involving noise, and provisions in the District Plan are necessary to achieve this.

**Policy 10 Odour:** To ensure absence of nuisance from objectionable odour.

**Explanation:** People expect not to be bothered by objectionable odour in residential areas.

**Policy 11 Glare:** To ensure freedom of nuisance from glare.

**Explanation:** People expect not to be bothered by glare from the built environment in residential areas.

**Policy 13 Lightspill:** To minimise lightspill.

**Explanation:** Lightspill (e.g. from security lighting) can be a source of annoyance to residents. The character of the night sky, with its starscapes, cloud effects and occasional glimpses of the Aurora Australis, is also an amenity of the residential areas of Invercargill and can be masked by light "pollution".

**Policy 15 Signage:** To protect residential amenity by controlling the size and nature of signage.

**Explanation:** In residential areas there is an expectation that the use of buildings and property will be predominantly residential. Signage of sufficient size and clarity to enable people to find someone offering a professional service from home is appropriate. Signage which hints at a residential property being used for predominantly non-residential purposes is likely to be seen as a visual intrusion. Advertising signage which does not relate to the activity on the site is not appropriate in a residential area.

**Policy 17 Demolition or removal activities:** To manage the adverse effects of demolition or removal activities on amenity values by ensuring the clean-up, screening and maintenance of sites.

**Explanation:** Although normally temporary and localised, demolition activities can create a significant nuisance. There is an obligation to ensure that
demolition materials are disposed of responsibly. There is also a need to ensure that the site is made safe, clean and tidy in a timely manner.

**Policy 20 Height and location of structures:** To maintain a 1-2 storey scale for development.

**Explanation:** The great majority of housing in Invercargill is single storey stand-alone dwellings and set back from front, side and rear boundaries. A minority of houses are two storeys. While redevelopment and "infill" development can achieve high levels of amenity, the overall characteristic of Invercargill is of structures of modest height placed with space around them on individual sections. This characteristic is an important dimension of amenity.

**Policy 21 Car parking and vehicle manoeuvring:** To require provision for residents to park their vehicle(s) on-site and to manoeuvre them safely on and off the formed road.

**Explanation:** The ability to park one's own vehicle "off the road" is important to most people. Space to park at least one car (small dwellings) or two cars is expected. Parking vehicles on a semi-permanent basis on the roadside is a waste of expensive road space. Occasional visitor or delivery vehicle parking on the roadside is normally accepted. There is potential for hazard, especially where motor vehicles cross the public footpath, that needs to be minimised.

2.37 **Residential 1A (Medium Density) Zone**

2.37.1 **Issues**

In addition to the Issues detailed in Residential 1, the significant resource management issues for the Residential 1A (Medium Density) Zone are:

1. The issues identified above for the Residential 1 Zone.
2. Medium density housing can lead to decrease in amenity unless it is planned and developed comprehensively.
3. Residential amenity can be compromised by separation of medium density housing from commercial areas and public reserves.

2.37.2 **Objectives**

**Note:** All objectives and policies that apply to the Residential 1 Zone also apply to the Residential 1A Zone.

The following are additional Objectives and Policies that apply within the Residential 1A Zone.

**Objective 1:** The opportunity for medium density housing as a residential redevelopment option is provided for within the zoned areas.

**Objective 2:** Opportunities for urban intensification and redevelopment within Invercargill's existing urban areas are encouraged, in a manner which adds critical mass to support the Central Business District and the South City Business 2 Zone, by making specific provision for medium density housing.

**Objective 2:** Comprehensive redevelopment of older, obsolete residential properties is encouraged.
Objective 3: Medium density housing developments are well designed, offering a high level of amenity to the residents in the new units and maximising beneficial effects, and minimising adverse effects, on the surrounding neighbourhood.

2.17 Transportation

2.17.1 Issues

The significant resource management issues for transport are:

1. Ineffective integration of land use and transport networks can have adverse effects on the safety, efficiency, effectiveness and accessibility of Invercargill's transport infrastructure.
2. Transport corridors and related transport movements can give rise to adverse public health and environmental effects.
3. There are pressures on Invercargill’s transport infrastructure as a result of demographic changes, projections of increased freight, and land use change, and there are limited transportation options available to address these pressures.
4. The efficiency and convenience offered by the city’s grid street pattern can be compromised by poor urban design.

2.17.2 Objectives

Objective 1: Development of transport infrastructure and land use takes place in an integrated and planned manner which:

(A) Integrates transport planning with land use.

(B) Protects the function, safety, efficiency and effectiveness of the transport system.

(C) Minimises potential for reverse sensitivity effects to arise from changing land uses.

(D) Provides for positive, social, recreational, cultural and economic outcomes.

(E) Minimises the potential for adverse public health and environmental effects.

2.17.3 Policies

Policy 4 Standards: To set development standards for road design, vehicle access, loading, parking and manoeuvring facilities, public transport, and walking and cycling networks.

Explanation: Minimum standards are required to ensure safe access and egress, loading and unloading, manoeuvring for vehicles. Minimum standards are also required to provide for safe and efficient public transport, walking and cycling networks.

Policy 5 Adverse Effects: To manage subdivision, use and development adjacent to transport infrastructure in such a way as to avoid, remedy or mitigate potential effects, including reverse sensitivity effects on transportation infrastructure.

Explanation: Controls are necessary so that the effects of subdivision and land use activities are not incompatible with the safe and efficient operation of transportation networks.