

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of an application for subdivision and land use
consents SUB-2015-58, LUC-2015-310 and LUC-
2015-319 at 326 Factory Road, Mosgiel.

BY GLENELG GOSPEL TRUST

Applicants

TO DUNEDIN CITY COUNCIL

The Council

**EVIDENCE OF ALLAN CUBITT
ON BEHALF OF
GLENELG GOSPEL TRUST**

INTRODUCTION

1. My name is Allan Cubitt. I hold Bachelor of Arts and Law Degrees from the University of Otago. I am an affiliate member of the New Zealand Planning Institute and have been involved in resource management matters since 1989. During this time I have been involved in many aspects of planning and resource management throughout the South Island. I was the principal author of three District Plans prepared under the Resource Management Act, being the Southland, Clutha and Central Otago District Plans. I have also participated in the review of numerous District and Regional Plans throughout the South Island for a large range of private clients and I am presently involved in preparation of Clutha's second-generation District Plan.
2. I am the Principal of Cubitt Consulting Limited that practices as planning and resource management consultants throughout the South Island, providing advice to a range of local authorities, corporate and private clients.
3. I am also a Certified Hearings Commissioner having completed the 'RMA: Making Good Decisions' programme. I have conducted numerous hearings on resource consent applications, designations and plan changes for the Dunedin City Council, the Southland District Council, the Timaru District Council, the Waitaki District Council and Environment Southland.
4. I am familiar with the Dunedin City District Plan, the Otago Regional Policy Statement and the other relevant statutory planning documents. I am also familiar with the application site and the surrounding environment. Cubitt Consulting Limited prepared the resource consent application documentation for the proposal.
5. While this is a local authority hearing, I have read and agree to comply with the Code of Conduct for Expert Witnesses set out in the Environment Court Practice Note on Alternative Dispute Resolution, Expert Witnesses, and Amendment to Practice Note on Case Management. My evidence has been prepared on that basis.

SCOPE OF MY EVIDENCE

6. My evidence will cover the following matters:
 - Background to the proposal
 - Status of the proposal
 - Environmental effects
 - The objectives and policies of the District Plan
 - Precedent

7. My evidence is based on the application material, my visits to the site and the surrounding area, the submissions received, the Council Planner's report and the evidence of the other experts retained by the applicant.

BACKGROUND

8. As several submitters and the reporting planner have noted, the applicant has experienced some difficulties with the resource consent for their current church site at Glenelg Street, Kaikorai Valley. These difficulties were limited to traffic management issues on what is a relatively narrow residential street in relation to the occasional large gathering at the Glenelg Street Church. This led to a review of the original 1992 consent in order to determine what level of activity it allowed on that site. The consent itself was silent on this matter and the Church itself never intended to limit the numbers of worshippers that could attend a service. However the attendance guidelines provided in the original application suggested to Council that the consent contained some limits on attendance.
9. Acknowledging these issues, the Trust sought and received a variation to that consent to allow for their continued operation at Glenelg Street. However it has always been the intention of the Church to move from this site to a location with the potential to allow for growth without impacting on its neighbours. The fundamental philosophy of the church is based upon the individual family unit and the wider family community. This means the congregation naturally grows as families grow. Coupled with this is the Church's obligation to occasionally host regionally gatherings, which tended to be the events that caused concern to neighbours in Glenelg Street. (However it should be noted that the management methods put in place at Glenelg Street have addressed those concerns, a point that was acknowledged by the most affected person at the Glenelg Street hearing.)
10. However finding a site of the size necessary to accommodate a growing congregation, and that would allow effects to be internalised, has been a difficult task for the Church. The only zones within which a Church is a permitted activity is the Central Activity zone and the Local Activity zone. However there are few, if any sites, available within these zones of a size and configuration suitable to accommodate the church's needs.
11. Similar issues arise in locating a suitable site within the residential areas of Dunedin. These zoning 'difficulties' have been overlooked by the planning officer, which is disappointing given it is Council's duty to give effect to the purpose of the Act, which includes enabling people and communities to provide for their social and cultural wellbeing. The only sites available that meet the criteria of this particular church appear to be located in the rural zone. The site selected here is large enough to accommodate what is a sizable church campus; is easily accessed (being located on an efficient road network); and is situated on the fringe of the urban area so that effects can be more readily managed but is not so isolated as to cause inefficiencies. Furthermore, the site already contains a significant buffer of vegetation and can

be easily serviced. There are few, if any, similar sites located within the urban area of Dunedin.

12. Churches are not uncommon in the Rural zone and the District Plan recognises this by providing for them as discretionary activities. However the planning officer suggests (at page 26) that this church *“is not proposed to be in the Taieri Plains with the intention of supporting the well-being [of the] rural community rather it is a meeting place for the Brethren community from the wider city...”*. I find this comment rather odd given no church (that I am aware of) is multi denominational. In any event, the site is hardly located within the heart of the Taieri Plain – it sits on the fringe of Mosgiel. In this regard it is ideally placed to service the Dunedin Brethren community particularly the Mosgiel component of that community, which is the only urban area experiencing growth in Dunedin. Being located on an efficient road network, it is also ideally suited to accommodate the wider, regional congregation (Timaru through to Invercargill) which meets on a regular basis, without generating significant adverse effects.
13. Contrary to what the planning officer states, the church proposal has not ‘displaced’ the poultry operation on the site. The site became available because Mrs Wilson, who is the owner of the site, discontinued the poultry operation. The property was offered for sale in March 2013, but there was no interest in the poultry farm operation.
14. At 5 hectares, the site is already a non-complying Rural allotment and is located in an area that is more rural residential in nature than rural. This was also considered an important criterion if a rural site was to be selected. Quite clearly 15 hectares would always be too big for a church site and given that churches are recognised as appropriate in the Rural zone, we doubt that the Plan would anticipate them to be located on sites of this size.
15. Obviously 5 hectares is still too large for a church so logically a subdivision is proposed. To facilitate that, a two lot non-complying subdivision application was lodged in April 2014 by the landowner. Unfortunately that process was not well handled, and the application was unsuccessful. One of the main reasons for the application being refused was that *“...insufficient information has been supplied with the application, or during the Hearing to assess whether the effects of the proposal are less than minor”*. The application did not include the Church proposal, which in my view would have changed the entire nature of that application. This application is not made by a property speculator or by someone seeking to prosper by developing the property for rural residential purposes. It is made by a Church group looking to provide for their social, cultural and spiritual wellbeing.
16. Hence a fresh application has been made to rectify the deficiencies of the previous application (The previous decision has been appealed to the Environment Court and we understand that the appeal has been placed on hold until this application is determined).

THE PROPOSAL

17. The essential element of this application is to enable the development of a Church. Everything else is secondary to that. The notified proposal included a 'manse' associated with the church building, which is quite common with churches in the past but not so common now. The principal reason for the manse was to ensure that someone from the church group was living close to the property for security reasons and to assist with any operational duties (such as opening and closing the facility for scheduled meeting times etc.). Given the location of this church, a manse was considered important as an extra level of security to help protect a fairly sizable investment. It was never a standalone residential activity and the resident would always be a member of the congregation. Contrary to the comment made by the planning officer at paragraph 146, the Council has not been asked to consent to two standalone residential activities whereby the applicant could subdivide, construct both dwellings and then not exercise the right to build the church. The manse has always been promoted as part of the church activity (a community support activity). The location of the manse was also thought to be a useful buffer between the church and the neighbouring residential property.
18. However given the concern that this has caused, the applicant has decided to remove the manse from the proposal.
19. The other aspect of concern to the planning officer, and to some submitters, is the subdivision proposal. As I have noted above, the site has all the attributes the Church requires but is too large for them to maintain as a church campus. I would have thought that if the Rural zone recognises and provides for such activities, then it should also have anticipated that a subdivision may be required to enable them. This is the case here and the site is considered suitable to allow this as the area within which it is located is already fragmented to well below the 15 hectare density sought by the Plan.
20. To that end, the subdivision proposed reflects the size of the two immediately adjoining properties (324 Factory Road at 2.8 hectares and 95 Puddle Alley at 2.9 hectares). Two allotments of approximately 2.5 hectares each will be created to ensure the rural-residential amenity of the surrounding properties is maintained. With the removal of the manse, there is no gain in residential activity on the site as it is now merely relocating the existing residential activity further south on the property.
21. Turning to the church activity itself, there seems to have been some overreaction to what will occur on the site. Mr Williamson's statement sets out the level of activity that will occur at the site. The numbers sought in the application are to future proof the site against the issue the church has encountered at Glenelg Street. Growth in any church is obviously a gradual process and if and when the numbers outlined here are reached, the church will be an

accepted and well integrated part of the environment, and it is unlikely anyone will notice that gradual increase over time.

22. The normal weekly meetings of the Church congregation will barely be noticed by neighbours. The church building and its grounds are designed to internalise all effects. To that end the security fence that has caused some concern will be located within the planted fringe. That planting will be further enhanced by more understorey planting. The building, car parking and associated lighting will not be obvious to anyone looking at the site. A lighting plan to minimise light spill and the visibility of the lights is being prepared. Noise will not escape from the building - it is designed to keep noise out so no noise will escape from it. The car park has been located and designed to ensure noise is kept to a minimum. The church has been sited some distance from the neighbouring property at 324 Factory Road, with the carpark located to the east of the building. A closed board timber paling fence will extend from the building to the north along edge of the car park. These design features will mitigate any noise generated from the car park area.
23. The large, 1300 capacity event is only ever likely to happen every few years or so. The Church held an event of this nature earlier this year for the first time to over 10 years. It did not cause any concerns to neighbours (apart of an issue with a generator left running by caterers). These events are managed by the use of Travel Management Plans that incorporate ferrying people to the site in buses and vans; the use of outside caterers; and the use of temporary amenity infrastructure (such as portaloos). Such events will occur less frequently, and are better managed, than events such as A&P Shows, Gymkhanas and the like that occur regularly in the Rural zone.

STATUS OF THE PROPOSAL

24. This application is to enable the establishment of a church on the site. The Church, as a 'Community Support Activity', is anticipated in the Rural zone by virtue of such activities being identified as **discretionary activities** pursuant to Rule 6.5.6(ii). The subdivision and the new dwelling are both non-complying activities under the operative and proposed District Plans. The planning officer 'bundles' the activities together so that the whole proposal becomes non-complying. I do not believe this is appropriate in this instance.
25. Without the subdivision, the application would be discretionary. However it is unrealistic to expect a community support activity to require 15 hectares of land. This site is well below the 15 hectares minimum, which in my opinion is advantageous to the proposal. However it is still too large for a church activity and hence subdivision is necessary for efficiency purposes. Unfortunately the District Plan is flawed in that while it recognises the need for such facilities in the zone, no thought has been given as to how that may be achieved.

26. To enable the church to establish, the subdivision must first be given effect to. That is a different type of resource consent. It will allow the two land uses to occur but only the residential activity is captured by the minimum lot size approach of the District Plan. The Church is not. The two land use activities are spatially discrete (their respective environmental effects do not significantly overlap) and they will require different management. This has in fact already been confirmed by Council as you will note that two land use reference numbers have been ascribed to this proposal. This was done at the behest Council's Senior Planner handling the application prior to notification because *"... if this proposal obtains consent then a separate land use consent for the church on lot 1 with its own approval and specific conditions and a separate land use consent for the residential land use on lot 2 would be clearer and easier to administer in the future. While this is not the usual way we do things, we have had issues with a single land use covering multiple sites in the past and this appears to be one which would benefit from individual land use consents for each new site."* This illustrates the point I am making.
27. It is appropriate that the subdivision and the proposed residential activity for Lot 2 be bundled together because the same minimum lot size applies and the dwelling is therefore reliant on the subdivision. The church is not caught by that requirement and is not, per se, reliant on the subdivision. The subdivision is to ensure a more efficient use of resources so why should the Church suffer an adverse planning categorisation as a consequence of a technical approach to the issue.
28. Bundling generally occurs when there is one discreet activity that triggers several consents. For example, the use of a heritage building for some commercial purpose. Such an activity may trigger consents under the heritage protection rules; parking rules; signage rules; bulk and location rules; earthworks rules; and the underlying use rules. The activity category could vary from controlled to non-complying. In these circumstances it is appropriate to bundle the consents as they all relate to one activity. Here we have two different land use activities that do not relate to each other. In my view the subdivision and new dwelling (essentially a relocation of the existing dwelling) should be considered non-complying, with the land use to follow on the new title to be created (the church) to be considered as a discretionary activity.
29. This difference is important as it is commonly accepted by the Courts (see LRG Investments v Christchurch City Council CO64/98) that discretionary activities are contemplated by the Plan and are therefore considered an efficient use of resources. They are considered to be suitable for the zone in a general sense but not necessarily on every site. Regardless of how you eventually find on this point, this still stands true as it can only be by way of a technicality that the church would be found non-complying because it does not rely on a minimum site size.
30. Also of significance here is that discretionary activities do not need to meet the Section 104D effects test that adverse effects must be no more than minor (of course even for non-

complying activities, effects can be more than minor if the policy limb is met). The Act in fact anticipates that consent can and will be granted for activities that generate adverse effects. This is reflected in Section 5, the purpose of the Act, which requires people and communities to avoid, remedy or mitigate adverse effects on the environment when providing for their social, economic and cultural wellbeing. This does not require total avoidance of adverse effects or reduction of the effect to “minor”. It is also commonly accepted that discretionary activities cannot be contrary to the policy framework because they are specifically provided for. These factors must be borne in mind when considering whether this proposal promotes sustainable management.

31. However regardless of what test is applied, we have concluded that the proposal, when taken as whole, will not generate effects that are more than minor and will not be contrary to the policy framework.

EFFECTS ON THE ENVIRONMENT

32. Both the application and the planners report address a number of issues in the environmental effects assessment of the proposal. The planning officer concludes that some adverse effects of the proposal will be minor (transportation, hazards, and infrastructural elements) but believes *“the proposed church will likely result in effects on amenity values and rural character that is more than minor.”* (Paragraph 108). Further on in the report (paragraph 133), the comment is made that *“had the proposal considered a more tailored approach to effects mitigation, the effects assessment may have been more sympathetic. These options, or others, may fit within the scope of the application and could potentially satisfy the requirement of the Act”*. I am not entirely sure what this is referring to as the proposal has been fully assessed by experts in the field of landscape and amenity assessment; geotechnical assessment; traffic effects; and waste disposal and servicing issues. The proposal has been designed in accordance with their recommendations to ensure adverse effects are no more than minor. It would seem that Councils advisors in respect to traffic effects, servicing issues and hazard matters agree that these matters can and have been appropriately addressed to the point that adverse effects are minor.

AMENITY EFFECTS

33. These comments are most likely therefore directed at the amenity related effects and I note the comment that had the manse component been deleted, then *“the proposal would be less at odds”*. While I maintain that manse is a legitimate part of a church activity, it has been deleted from the proposal thereby reducing the built density of the proposal and removing the activity associated with it from any amenity effects assessment. I note in this context that these effects would be minor anyway and the neighbour to the west supports the proposal and did not have any concern with the manse.

34. I am a little confused with the amenity related assessments contained in the planners report and Councils landscape architects report. There seems to be a little bit of “having your cake and eating it too” as on the one hand the concern is about the ‘residents’ amenity but the proposal is assessed as if it’s in a ‘normal’ rural zone and because the activity is not a productive rural activity, it has adverse effects on rural character that are more than minor.
35. In the context of assessing effects, I believe the environment must be assessed as it exists, which includes any existing lawful non-complying activities and any future permitted activities, and not the rural environment ‘ideal’ as expressed in the plan. The definition of amenity values refers to the qualities and characteristics “of an area” that contributes to people’s appreciation of it. What the zoning permits or otherwise has no influence on this perception of the actual physical environment of an area at any particular point in time i.e. you cannot superimpose the permitted density over the existing density of the subject environment and ignore what is already there in your assessment.
36. Of significance to this proposal is the density of the surrounding environment, in particular to the south-east of Factory Road, which is relatively densely settled and less open than typical in the Rural zone. This is illustrated by the size of the adjoining properties as follows:

Factory Road:

- 324 – 2.8158 ha
- 322 – 4.0554 ha
- 308 – 4.0469 ha
- 306 – 8.2657 ha
- 290 – 2.0234 ha
- 284 – 3.1864 ha

Puddle Alley:

- 95 – 2.9689 ha
- 144 – 4.0474 ha
- 108 – 5.4541 ha
- 73 – 8.5114 ha
- 72 – 4.0791 ha

37. Also of relevance are the Invermay Agricultural Research Centre and the Duncan Venison buildings located nearby to the north. The buildings associated with these activities are of an institutional and industrial scale and character respectively and along with associated car parking and sealed internal access roads, occupy a significantly greater area of land than what is proposed here. Invermay also employs approximately 120 people but in combination with other tenants on the site, there is potentially around 200 people employed at the site.
38. It is within this physical context that effects on amenity must be assessed. The subject site itself currently contains a significant amount of built development and the associated poultry farm generated a number of adverse amenity related effects (such as the unattractive

appearance of the buildings, the odour and attraction of flies associated with waste generated) which lead to a number of complaints from neighbours. This proposal remedies all of these concerns and it is noticeable that all adjoining neighbours are either supportive or neutral on the application.

39. Mr Sycamore observes at his paragraph 39 that *‘the surrounding undersized rural properties are typically of a similar dimension to the subject site, that is, properties more aligned to the size of the Rural Residential zone’*. If that is the case (and I agree that it is) surely this proposal is a vast improvement in respect to the amenities of the area?
40. Mr Knox agrees with Mr Moore in respect to what I consider are the most important amenity effects but believes some aspects, in particular the proposed parking and traffic movements generated by events would at times be of such a scale as give rise to more significant effects. This again overlooks the fact that the site is very enclosed (and will become more so with the planting programme to be instigated) and that the parking area within the site will not be noticeable. I find it difficult to accept that the use of a road can be perceived as a significant amenity effect but again the intermittent nature of the gatherings, together with the lengthy periods between large events, is being overlooked. In any case, this is not unusual in a rural context. I note the AgResearch submission raises a similar concern but as I have noted above, the Invermay facility could have as many as 200 people traveling to its campus each and every day while rural events (such as an A&P show) are similar to the one off, large scale events proposed here.
41. In my view, Mr Moore’s assessment is the more objective and understanding of the nature of what is proposed here and you should rely on it. In his view adverse landscape related amenity effects are no more than minor. When the baseline for the site is taken into account, I believe that overall amenity related effects will be de minimus.

NOISE, LIGHTING AND GLARE

42. The generation of excessive noise can also impact on amenity and has been raised as an issue by some submitters and the planning officer. I note that the planning officer considers that *“Rural zoned properties have an expectation of a quiet and more protected amenity value than those in built up areas of the city”*. I disagree with that proposition because rural zones are generally productive working environments and are not about protecting amenity for residential activities. This is backed up by the noise levels in the District Plan. There is quite a significant 5 dBA difference in the noise standards between the Residential and the Rural zone, with activities allowed to generate more noise in the Rural zone.
43. However as the application advised, overall noise effects from the proposal are expected to be minor or less and will comply with the noise standards of the plan (corrected noise level of 55dBA during the day and of 40dBA during the evening as measured 50 metres from any

rural dwelling). In this context it is again important to note that for the vast majority of the time the church will essentially be 'inert' in the sense that it will not have any activity associated with it at all. When it is in use, no noise will escape from inside the building – it is designed to keep noise out, which also has the reverse effect of keeping noise in.

44. As the Committee will be aware, City Councils cannot control the noise of vehicles on roads. However it is unlikely that the noise generated by traffic on the road will significantly affect the amenity of the residents in this location given they are all located well back from the roading network. With respect to use of the car park, the proposal has been designed to ensure noise is kept to a minimum. The church has been sited some distance from the neighbouring property at 324 Factory Road, with the carpark located to the east of the building. A closed board paling fence will extend from the building to the north along edge of the car park. These design features will mitigate any noise generated from the car park area. Any car door that may inadvertently be slammed will not exceed the 75 dBA Lmax limit which applies to this site. Movement within the carpark will be a very short duration activity and should not cause any noise concerns. The applicant is also aware of its obligations under section 16 of the Act.
45. In this context it is relevant to note that the Court *Trustees & the Papakura Gospel Hall Trust v Auckland Council [2014] NZEnvC057* accepted evidence that after a short time, people show a significant tolerance to traffic noise. The Court considered the effects of traffic noise on an adjoining neighbour who was significantly closer to the church than neighbours here. They concluded that acoustic treatment consisting of a closed board timber fence would adequately mitigate noise effects. Nothing else was required.
46. It is also relevant note in this context that the Court also concluded that no buffer was necessary around the church given its design "mitigates external effects and could be described as reclusive – keeping to its self and containing effects on site". The same can be said for this church but the difference here is that it is on a larger site and is set further back from boundaries than the church in the Papakura case.
47. With respect to the potential noise effects from the large scale, one off events and the use of marquees, I note that this was considered by Council in LUC-2015-120, which authorised the same use in a more noise sensitive environment than what we have here. These will be very infrequent, short duration events that will be well separated from neighbouring property owners. The noise effects of an event will be less than permitted recreation activities that can occur in the rural zone.
48. With respect to effects from lighting within the car park, the applicant has commissioned a lighting design to ensure these effects are minimal. This, along with the heavily planted fringe, will ensure these effects are no more than minor.

TRANSPORTATION EFFECTS

49. The evidence of Mr Andy Carr, a traffic engineer with Carriageway Consulting transportation, addresses the transportation effects of the proposal. In his opinion, the traffic generated by the proposal *“can be accommodated on the adjacent roading network without capacity or efficiency issues arising, even when the maximum number of attendees are present”*. His analysis concludes that the level of service at the intersection will remain very good; that there are no adverse safety effects from the proposal; and that the existing sight distances available for vehicles turning to or from Puddle Alley (southeast) are appropriate.
50. I note that the planning officer considers the proposal to have no more than minor adverse effects on the transportation network subject to a number of consent conditions. These conditions are acceptable to the applicant.

WASTE WATER AND STORMWATER DISPOSAL

51. A number of issues have been raised with regard to the disposal of waste water and stormwater. The evidence of Mr Derrick Railton has addressed these concerns. These are issues that can be addressed through appropriate design and there is ample room on the site to manage adverse effects so that they will be no more than minor.
52. I note that both the Otago Regional Council and the planning officer identify a number of ORC consenting issues. The applicant and their advisors are well aware of these requirements. However they are generally engineering and design issues. It is not appropriate or efficient to address these matters at this stage of the proposal. They will be considered if and when this consent is granted.

REVERSE SENSITIVITY

53. The AgResearch submission raises the issue of reverse sensitivity and is concerned that the operational efficiency of Invermay could be compromised. Again the potential for the one off, large scale events seems to be the focus of this concern. The normal day to day activity of the church operates outside the normal business hours that many of the organisations their submission highlights are likely to keep. In any event the church is designed not to be affected by the surrounding environment. As I have already noted, the Environment Court decision referred to above concluded that no buffer was necessary around the church given its design “mitigates **external** effects and could be described as reclusive – keeping to its self and containing effects on site”. All Brethren churches follow the same template. On that basis the Church has no qualms signing a restrictive covenant but if you understand how this church operates, then you will realise that this is not needed. There will simply be no issue of reverse sensitivity. If this was a concern in the area, one would have expected the neighbouring residents to have already made complaints as they are likely to be more

affected than this church. As far as I'm aware the only complaints made in the area have been made in relation to the poultry farm that previously operated from this site.

- 54. Nor will reverse sensitivity be an issue for the large events that may utilise marquees in the car park. They will occur very infrequently and will generally be held over the weekend. Given the enclosed nature of the site, it is unlikely attendees will even be aware of the environment around them.
- 55. Reverse sensitivity is simply not an issue in this case.

CONCLUSION – EFFECTS ON THE ENVIRONMENT

- 56. The planning officer's only concern in this regard appears to be the church's effect on amenity and rural character. In my view this concern is misplaced as not enough attention has been given to the intermittent and insular nature of the activity; the fact that built development is similar if not less than what currently exists (particularly now that the manse has been deleted); the fact that there will be no nuisance type effects arising from this proposal as opposed to the previous activity at the site, which is significant in the context of a rural residential environment; the fact that the site is very enclosed with visibility into the site very low; and that the density of development is similar to the surrounding properties.
- 57. All other potential effects, including traffic, noise and lighting, servicing and hazards, can be adequately mitigated to the point they are no more than minor.
- 58. Overall the effects of the church, the relocation of the residential activity and the subdivision to give effect to these activities, will be no more than minor.

OBJECTIVES AND POLICIES OF THE DISTRICT PLAN

- 59. The relevant policy sections of the District Plan are the Sustainability section, the Rural zone provisions and the Transportation and Environmental Issues sections. With respect to the Sustainability section, the planning officer believes the proposal is consistent with the infrastructure provisions but inconsistent with the amenity and natural and physical resources provisions. Dealing with the amenity provisions first, I consider for the reasons already outlined above that the proposal is consistent with the need to maintain and enhance amenity values. As already highlighted, the previous poultry operation had a significant effect on the amenity values of this particular location. Factory farming is also a discretionary activity in the Rural zone because of the potential for such operations to have adverse effects on amenity values. This proposal is also a discretionary activity but will be a significant improvement on the amenity values of the area.
- 60. I don't quite follow the logic of the planning officer in respect to the policies that require protection of significant natural and physical resources. If there is any high class soil on this

property, it is very minimal and restricted to the western boundary. It will not be covered by buildings. Furthermore this policy is flawed as the RMA does require the 'protection' of all significant natural and physical resources; it requires the sustainable use of them.

61. Turning to the Rural policy framework, I agree with the planning officer that the proposal is inconsistent with Policy 6.3.1 which is to provide for activities based on productive use of the land. However Policy 6.3.11 provides for the establishment of activities that are appropriate in the Rural zone if their adverse effects can be avoided, remedied or mitigated. The zone rules anticipate churches being located in rural locations and they are appropriate as a consequence. For the reasons outlined earlier in my evidence this site is well suited to the proposed activity. The plan cannot expect community support activities to locate on 15 hectare sites. This is simply unrealistic and inefficient. The site and its surrounds here are already fragmented to well below the 15 hectare minimum so it is the ideal place to locate such an activity. This will avoid fragmentation of productive rural land elsewhere. The nature and character of this particular area is rural residential and the proposal respects that character. Adverse effects will be no more than minor. Hence I am in total disagreement that the proposal is contrary to Policy 6.3.3 (to discourage fragmentation); Policy 6.3.5 (require activities to be of a scale consistent with the character of the rural area); or Policy 6.3.12 (avoid or minimise conflict between activities). There are elements of inconsistency but overall it does not offend the policy framework of the zone.
62. With respect to the Transportation and Environmental Issues policies, the planning officer generally finds the proposal consistent except in relation to the policies regarding the disposal of waste. You can rely on the evidence of Mr Railton which confirms the planning officer's assessment here is incorrect.
63. Overall I conclude that the proposal is not contrary to the policy framework of the District Plan and is consistent with many elements of it.
64. For reasons outlined above, I also disagree that the proposal is contrary to the policy framework of the Proposed District Plan. Little weight should be placed on this Plan as it is not far enough through the process to be given any serious consideration.

PRECEDENT

65. At paragraph 143, the Planning officer noted that the church is not the crucial aspect in this assessment but believes "*the subdivision of an undersized rural lot, the fragmentation and creation of two residential activities...is fatal to the proposal.*" I agree that the church is not crucial to this issue – it is a discretionary activity and precedent is never a concern with such activities as the zone anticipates them. This needs to be remembered in the context of subdivision proposal also. As I have said earlier, the District Plan is flawed in that while it recognises the need for such facilities in the zone, no thought has been given as to how that

may be achieved. Obviously no one would expect such activities to occur on a 15 hectare site. In this case we have an already undersized allotment located within an already fragmented area of rural land. The proposed subdivision is to enable the church activity, a discretionary activity, and is designed to reflect the size of adjoining allotments to maintain rural residential amenity. With the manse now removed, no additional residential activity is proposed.

66. In my opinion such a proposal should not present any concerns regarding precedent or the consistent administration of the District Plan. While they are provided for in the Rural zone, the development of new churches is not common. This proposal is relatively unique and is entirely different to the earlier subdivision proposal for the site. The circumstances in this case are such that Council is very unlikely to see a similar proposal for some time.

CONCLUSION

67. This proposal is to enable the establishment of a church, an activity which is anticipated in the Rural zone. Its discretionary status is most likely in recognition of the importance of such activities to the social and cultural wellbeing of people and the community. In this context the Environment Court 2014 decision *Trustees & the Papakura Gospel Hall Trust v Auckland Council [2014] NZEnvC057* recognised the need of churches to provide for their religious requirements. That case dealt with a very similar sized church to this but one which was located in a more sensitive environment. Brethren churches around the world follow the same template in terms of design and gathering times, which was noted by the Court in that case. That church had similar meetings (between 9.30am to 12.30pm) every 3rd week for up to 850 people, with a maximum of 950 people 4 times a year. The Court did not find this level of activity to be inappropriate and noted that for the vast majority of the time, the church was essentially 'inert' in the sense that it did not have any activity associated with it at all.
68. The subdivision is to ensure that the site can be managed efficiently and no additional residential activity will be established. The site is already undersized but the subdivision will reflect the nature of the surrounding development which is rural residential in character. The Plan makes no provision for subdivision to enable these facilities but establishing them in an area that is already fragmented and that does not retain 'normal' rural characteristic is seen as the most appropriate option. Adverse effects will be no more than minor and the policy framework of the Plan is not compromised. The non-complying aspects of the proposal pass both s104D gateway tests. Precedent will not be of concern.
69. On this basis it is concluded that the purpose of the Act is best served by granting consent to the proposal.

Allan Cubitt
20 October 2015