Baseline Assessment

Deferred Zones (RE015)

1.0 Introduction

There are 12 remaining areas with a deferred zoning across four townships within the District, being Darfield (7), Dunsandel (2), Leeston (2) and Rolleston (1).

How they came to be deferred, the reasons for their deferral, their current status and the options going forward differ in respect of each town and in some cases in respect of different areas within the same township.

This report records the methodology followed in reviewing the remaining deferred zones within the Operative Selwyn District Plan, investigating the requirements that need to be satisfied in order that the deferral may be lifted and providing recommendations for what actions, if any, should be taken to address the deferred zones as part of the Selwyn District Plan Review (DPR).

2.0 Operative District Plan Provisions

2.1. Township Volume

While the Selwyn District Plan maps identify land around four townships as being subject to a deferred zoning, the Township Volume does not contain any specific objectives and policies related to this zoning. Rather, objectives and policies recognise the need for urban growth. These have been discussed in RE019: District Wide Urban Growth. However, this volume does contain a number of rules in relation to deferred zones.

Below is a summary of the broader rules which apply to land with a deferred zoning. The more specific rules, as well as any township policies that may apply are discussed later in this report, under the respective township heading.

In the *Introduction to the Rules* section of the Township Volume, there is specific heading for deferred zones. The material provided under this heading relates only to Living Z Deferred Zones, as shown on the planning maps, and identifies a procedure that should be followed in order to lift the deferral. In this regard, the provisions of the Rural zone apply until such time as an Outline Development Plan (ODP) for the area has been made operative in the District Plan and sufficient infrastructure and servicing is available. Following this, the provisions of the Living 1 zone apply to any individual allotment larger than 500m^2, and the provisions of the 'Medium Density areas' apply to any individual allotment smaller than 500m^2.

In Chapter 1: Living Zone Rules – Status of Activities, Rule 1.2.1 states that until such time as the deferred status is uplifted, the rules of the Rural zone shall apply within any deferred Living zone.

Rule 4.6.6 states that the erection of any building in the Living 1A6 Deferred zone in Prebbleton is non-complying. Over time, this land has had its deferred status lifted and, as such, this provision is now considered redundant.

There are also a number of references to deferred zones within Chapter 12: Living Zone Rules – Subdivision that establish criteria that need to be addressed prior to the lifting of the deferred zoning. Table C12.1 – Allotment Sizes provides direction as to the average allotment size anticipated in deferred zones, once the deferral is lifted.

Rule 12.1.7.6 states that any subdivision within a Living Z (Deferred) Zone shall be non-complying where it does not comply with the provisions of the Rural (Inner Plains) Zone.

There is only one area within the District that is still zoned Living Z Deferred, being land at Foster Park, Rolleston. This is discussed in more detail in Section 10 below.

2.2. Rural Volume

Unlike the Township Volume, the Rural Volume of the District Plan does contain a specific policy in relation to deferred zones. However this is only applicable to Living Z Deferred zones. Policy B4.1.15 seeks to ensure that any subdivision or development within Living Z Deferred zones does not compromise the ability to achieve future coordinated urban development in the area. This policy is supported by Rule 10.1.2.13 in the subdivision section.

3.0 Statutory Framework

3.1. Canterbury Regional Policy Statement (CRPS)

The Canterbury Regional Policy Statement (CRPS) became operative in January 2013. It gives an overview of the significant resource management issues facing the region, including issues of resource management significance to Ngāi Tahu.

As considered in the baseline report for RE019 District Wide Urban Growth, the CRPS provides a clear framework in regards to urban growth through the provisions set out in Chapter 5 – Land Use and Infrastructure.

Broadly, urban development should be located such that it is consolidated in and around existing urban areas and enables people and communities to provide for their well-being, health and safety (Objective 5.2.1). While there are no specific objectives or policies that directly refer to the management of deferred land, the CRPS does contain broad policies that need to be considered when land is being developed.

Policy 5.3.3 seeks to ensure that substantial developments are designed and built to be of a high quality. To ensure demonstration of this policy, territorial authorities must include an ODP or specific provisions to consider any substantial development, such as by way of the consideration of a concept plan in its district plan.

Policy 5.3.5 seeks to ensure that development is appropriately and efficiently served for the collection, treatment, disposal or re-use of sewage and stormwater, and the provision of potable water. To give effect to this policy, territorial authorities need to ensure that, before any rezoning of land enabling more intensive development, it is able to be efficiently and effectively served in regards to sewage, stormwater and water, in order to avoid or mitigate adverse effects on the environment and human health.

From this policy guidance, it is understood that urban development should be consolidated around existing townships. Any new development should be able to be serviced and must be supported by an ODP. ODP provide a mechanism for integrating urban development with infrastructure and with existing urban areas, and of achieving the type and form of development necessary to accommodate urban growth in a sustainable way.

As all of the remaining deferred areas are within township boundaries, it is considered that they would consolidate development in and around the townships. However further investigations may be necessary to adequately demonstrate that development within these areas can be serviced and integrated within surrounding areas.

4.0 Council Strategic Documents

4.1. Selwyn 2031: District Development Strategy

Selwyn 2031 provides an overarching strategic framework for achieving sustainable growth across the district to 2031. The strategy identifies solutions to the key underlying issues of planning for population growth; spatial planning, and earthquake recovery. It is intended to be used to guide the future development of the district and inform Council's investment decisions.

Strategic Direction 1: *A more sustainable urban growth pattern* seeks to provide sufficient zoned land to accommodate projected household and business growth, and to promote consolidation and intensification within the existing townships to maintain a clear urban/rural interface and minimise the loss of productive farmland. To achieve the intent of this strategic direction, four key objectives were identified that seek to reinforce taking a strategic approach to managing urban growth, concentrated within the metropolitan Greater Christchurch Area, integrating land use with the provision of infrastructure to ensure a compact urban form.

As the deferred zonings are within the current township boundaries, it is considered that they foreshadow the consolidated growth within the townships and would ensure a compact urban form.

4.2. Ellesmere Area Plan Mahere-ā-Rohe o Waihora 2031 and Malvern Area Plan Mahere-ā-Rohe 2031

The Area Plans were adopted in September 2016. Their primary purpose is to serve as a high-level planning direction to guide growth and sustainable management of Malvern and Ellesmere townships through to 2031.

Both Area Plans concluded that each of the towns within the Malvern and Ellesmere wards had sufficient capacity to meet growth projections through existing zoned land (i.e. developable land or 'plan-enabled' land). This existing capacity included zoned but undeveloped land and developed land with further development potential (i.e. infill). In the case of Darfield and Leeston, this conclusion took into account the existing deferred land as an underlying density had been established, thereby allowing for the calculation of potential yield. However, in Dunsandel the existing deferred land was excluded, given that no underlying density is established as there are a number of issues that need to be addressed. This is discussed further in Section 8 below.

The Area Plans recognized that the substantive merits of zoning land should be considered through the statutory process set out in the RMA, which could include the DPR (including via the submission process), a Council plan change or a privately-initiated request.

5.0 Legal advice in relation to deferred zones

The use of deferred zoning is a legitimate planning technique. However, the validity of deferred zoning provisions is dependent on the clarity and precision of provisions in a district plan.

Important elements of deferred zonings that need to be clear and precise include:

- the identification of the zone, and those activities which are appropriate for the present circumstances;
- the particular changed circumstances that would make the original zone no longer the most appropriate;

- the viability of those changed circumstances occurring (so as to avoid raising unrealistic expectations); and
- the most appropriate zone should the changed circumstances eventuate.

Where deferred zonings have been used in other district plan, a procedure of the removal or uplifting of the deferral is clearly set out. Often these procedures indicate that a deferral can be removed by a formal resolution of Council, once it is satisfied that the circumstances that led to the deferral in the first instance have been resolved. However, where this is the case, the district plan includes clear and precise reasons for the deferral, the preconditions that need to be satisfied and any infrastructure works necessary, as well as the effective zone after the removal of the deferral.

As such, in order to determine if deferred zonings the most appropriate mechanism to use, the level of information required to determine this should be to the same level as that anticipated by s.32 in relation to a plan change. This provides certainty for landholders and the community.

However, a deferral could be considered void where an additional plan change is required to justify its appropriateness, includes uncertainty around permitted land uses, or where no direction has been provided in respect of the provision of infrastructure (such as through the inclusion of such in a LTP). That work must have already been completed and tested. Legal advice in Appendix 3 outlines this further.

6.0 Overview of Section 32 information requirements

The substantive merit of zoning any site must be determined through the statutory process set out in the RMA. To determine the substantive merits, investigations are required that would likely include the commissioning of detailed technical reports. The requirement to do this work is to help inform s.32[1] evaluation reports to demonstrate that the zoning has been well tested against the purpose of the RMA and that the anticipated benefits outweigh costs and risks. In short, the evaluation must examine whether the objectives of the proposal (new zoning) are the most appropriate way to achieve the purpose of the RMA.

To evaluate the efficiency and effectiveness of the proposal it may be necessary to identify, quantify and assess the benefits and costs and to assess the risk of acting or not acting. To inform such an evaluation, key technical assessments are likely to be required to support any change of zoning, including:

- Geotech
- Transport
- Landscape
- Planning
- Contamination
- Infrastructure
- Economic
- Urban design – ODP design

It is considered that some level of investigations will be necessary should the deferred zonings be uplifted. While the nature and variety of technical assessments that may have to be prepared are likely to be different for each township, it is possible that these investigations can be done on a township wide basis, rather than on a site by site consideration.

[1] Section 32 (s.32) is integral to ensuring transparent, robust decision-making in Resource Management Act (RMA) plans, plan changes and policy statements s.3
2 requires new proposals to be examined for their appropriateness in achieving the purpose of the RMA, and the policies and methods of those proposals to be examined for their efficiency, effectiveness and risk.

7.0 Darfield

At the time the District Plan was made partially operative in June 2008, it included approximately 645 hectares of land around the periphery of Darfield that was zoned as living, at varying densities, but deferred. Over time, a large portion of this area has had the deferred status lifted as a result of private plan changes. However, there are seven remaining areas that still have a deferred zoning. While these areas are dispersed about the township, they are either currently zoned Living X (Deferred), which provides for a range of allotment sizes, but not less than 650m^2 or Living 2 (Deferred) or Living 2A (Deferred), with allotment sizes of 5,000m^2 or 1ha respectively.

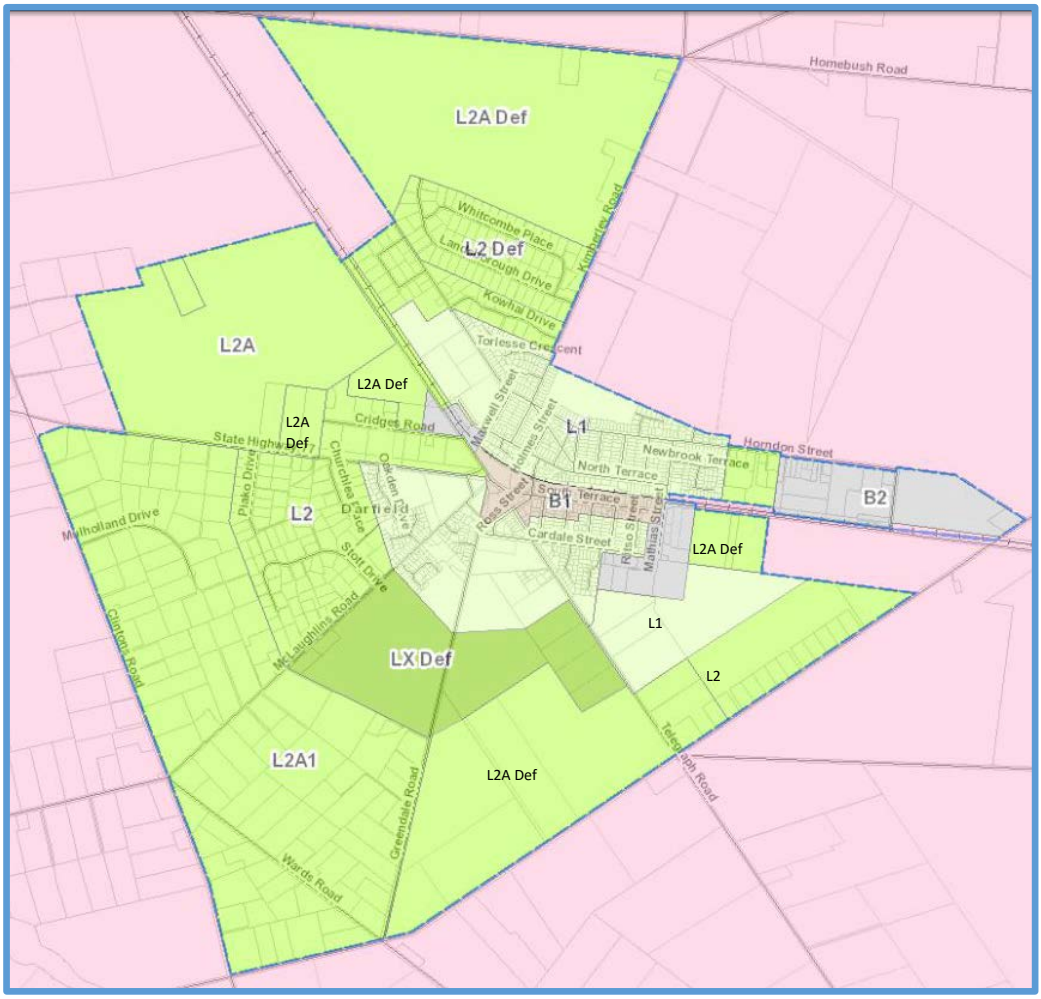


Figure 1: Darfield – Operative Zones

7.1. Background[2]

7.1.1. Living X (Deferred)

At the time the District Plan was notified, Council proposed rezoning this land from the Rural-Residential Zone (1 ha average allotment size) that was previously provided for under the Transitional District Plan (Malvern Section) to Living X, with an average lot size of not less than 650m^2. This rezoning was considered suitable by the Hearings Panel, in terms of the location and proximity of the land to the township.

[2] Recommendation 51.3 and 51.4 of Hearing Panel: Darfield Growth; 24, 26 & 29 March 2004

The proposed rezoning of the western part of this area from Rural-Residential to Living X did not attract any submissions, either in support of or opposition to the proposed change, while the land owner of the eastern portion of the area supported the proposed rezoning. The Panel concluded that the areas identified as Living X were suitable, in terms of location and proximity to the township, for more intensive subdivision.

7.1.2. Living 2 (Deferred) and Living 2A (Deferred)

These areas were previously zoned Rural A under the Transitional District Plan (Malvern Section). At the time that the Plan was notified, it provided for residential development on small allotments in rural areas around townships. In broad terms, the policy framework supported the development of a dwelling on a lot no less than 1 ha no more than a maximum distance of 1 km from a Living boundary, as a discretionary activity. This was known as the '1km/1ha' rule. The Hearings Panel considered a number of submissions both for and against this policy and determined that a zone, with a clearly defined boundary, was preferable to the '1km/1ha' rule.

7.1.3. Reasons for deferral

While the Panel concluded that having a generous supply of land available for residential development was not 'necessarily inappropriate', it did express concern about how such development would be undertaken. The Panel concluded that a deferred zoning was needed to provide for the addition of ODPs for all those areas with a Living 2A zoning and to ensure that the security of a future water supply could be assured, such as through consent being obtained by from the Regional Council and the necessary works being programmed. The Panel did note that the deferred zoning would require subsequent plan changes to allow for development, but did signal that the land concerned was acceptable in principle for urban development.

Other issues raised by the Panel which they considered needed to be addressed included reverse sensitivity issues and access to the State Highway, both of which could be addressed through the development of a suitable ODP.

In their recommendation, the Panel recommended that a map be included in the appendices of the Township Volume of the Plan showing those areas for which ODPs would be required. The Panel also recommended that an ODP for 'Area 4', being the area to the north of Kowhai Drive and bounded by Kimberley Road to the east, Homebush Road to the north and McHughs Forest Plantation to the west, that was provided during the hearing process, be included in the District Plan.

7.2. Operative District Plan Provisions

The Township Volume of the District Plan includes six specific policies in relation to the future growth of Darfield. These are set out in Appendix 1.

Policy B4.3.23 seeks to encourage infill in existing zones if appropriate, while Policy B4.3.24 seeks to encourage large residential allotments in the Living 2 zones.

Policy B4.3.28 seeks to provide for development around the township at a mix of densities, subject to all new allotments being able to be serviced with a reticulated potable water supply and ODPs being incorporated into the Plan for the coordinated development of identified areas of land to address roading, reserve, pedestrian/cycle linkages, and any reverse sensitivity issues.

Appendix 25 reflects the decisions of the Hearings Panel and shows the future growth areas for Darfield for which ODPs are required. Appendix 26 contains an ODP for Area 4, as shown in Appendix 25 and discussed above.

Rule 12.1.3.9 restricts the subdivision of the areas shown in Appendix 25 until such time as a potable water supply is available which is capable to serving the lots in the subdivisions and an ODP has been incorporated into the District Plan.

Rule 12.1.3.7 requires that any allotment created complies with the relevant allotment size requirements set out in Table C12.1. In this regard, Table C12.1 indicates that the Living X (Deferred) zone shall have an average allotment size not less than 650m^2. In the Living 2 (Deferred) zone, the average allotment size shall not be less than 5000m^2, while for the Living 2A (Deferred) zone this shall be 1 ha.

7.3. Future Growth and Infrastructure Provision

7.3.1. Area Plans and Selwyn Capacity for Growth Model

The Malvern Area Plan Mahere-ā-Rohe 2031 concluded that "*no new areas for residential … purposes are have been identified as being necessary to be proactively zoned by Council in response to projected growth within Darfield … . This is on the basis that there is currently sufficient zoned but undeveloped land available to accommodate projected population growth and demand for housing*" [3] . The Area Plan does acknowledged that there is currently an oversupply of undeveloped low-density Living 2 zoned land, which gives rise to a dispersed settlement pattern and presents issues in achieving integrated development and delivering efficient and cost effective infrastructure servicing.

The Selwyn Capacity for Growth Model (SCGM) forecasts that there is sufficient capacity for new residential development through both infill and greenfield opportunities to after 2033, not taking into account the deferred areas.

7.3.2. Infrastructure provision and programming

Development in Darfield was deferred until an adequate supply of water was secured.

In November 2011, the Darfield water supply was connected to a new deep ground water well. In 2013/14 Council installed an additional deep groundwater bore and constructed a new 1000m^3 reservoir and new booster pump station. These improvements have subsequently allowed for additional household growth and have allowed for the progression and approval of private plan changes to remove the deferred status in some areas.

While the current resource consents do not allow for additional capacity to extract water to service any future growth, the reservoir storage and improved pumping capacity has provided some ability to meet the peak hour flow rates for short durations.

The Long Term Plan 2018-2028 (LTP) indicated that water source improvements to provide increased capacity for Darfield, including the development of new wells, reservoirs and pump stations, are to be undertaken between 2018 and 2024, to respond to the growth of households in the township. The Water Supplies Activity Management Plan (Volume 2, 2018) also indicates that a number of existing mains are to be upgraded in this time frame.

Although all of the Darfield water supply is reticulated, some areas are provided with an 'on demand' supply while other areas are on a 'restricted' supply. The key difference between the two options relates to where water is stored. 'On demand' supply allows for peak pressure and flows as well as fire-fighting provision and are typically located within the Living 1 zones. As water is being stored in a central reservoir, large storage capacity and pipes are required to ensure that water is available, at a sufficient pressure, when a tap is turned on at the dwelling.

[3] Malvern Area Plan Mahere-ā-Rohe 2031 p. 30

Where development is outside of the area serviced 'on demand', a 'restricted' water supply is provided. This means that each property is required to provide on-site storage (e.g. a water tank) connected to the reticulated system. This allows Council still to provide a continuous supply to the dwelling, but at lower flow rates and utilising smaller diameter pipes, as water is being stored at the point of use. Currently on lots over 3000m^2, Council provides a restricted water supply and requires that a water tank with sufficient capacity to store 48 hours of normal gross supply be installed. Typically, lots on a restricted supply are located in the Living 2 zones.

7.3.3. Council Plan Change 31

In 2011 Council recognised that, with the intended sinking of a new well thereby addressing one of the deferral requirements, there were potential benefits in developing an overarching ODP framework for the deferred zones. This resulted in Council preparing the Darfield Integration Plan which included draft ODPs for the five areas identified in Appendix 25 of the Operative District Plan. These ODPs were consulted on with the landowners and other key stakeholders as well as the general public.

The draft ODPs specifically addressed the issues associated with providing strong roading connections, management of access for properties adjacent to state highways and providing cycle and pedestrian linkages.

Council prepared Plan Change 31, in order to give effect to the Darfield Integration Plan. This was publicly notified in December 2011. While submissions and further submissions were received in respect of this plan change, ultimately Plan Change 31 was withdrawn by Council following the progression of the Selwyn 2031 District Development Strategy.

7.3.4. Private Plan Changes

While Council's proposed Plan Change 31 did not proceed, a number of private plan changes have been proposed, and adopted, which have incorporated ODPs into the District Plan for a number of Living 2A (Deferred) areas. The ODPs that have been incorporated into the District Plan by way of plan changes are attached at Appendix 2.

Plan Change 24 was lodged with Council and made operative in June 2013. It resulted in the lifting of the deferred status and rezoning of approximately 77 ha of the land to a mix of Living 1 (31ha) and Living 2 (46ha) in the area bounded by Telegraph and Creyke Roads (excluding the corner block), and the land zoned Living 1 or Business 2 to the north. This plan change originally included the deferred land adjacent State Highway 73 but this was removed from application during hearing process. As such, approximately 12 hectares of deferred land remains in this location. This plan change inserted an ODP into the District Plan as Appendix 41.

Plan Change 46 was lodged with Council and made operative in May 2016. This plan change lifted the deferred status on approximately 130 hectares of land north of Bangor Road and west of West Coast Road. The Plan Change did not include all of deferred land in this location, as the balance of this area was in separate ownership and that owner was not party to the plan change application. This issue was the subject of much commentary on the part of the Hearings Commissioner who ultimately decided that, while the inclusion of all deferred land in the area would represent best planning practice, it was outside of the scope of the plan change. As such, two areas of deferred land remain to the northwest of the township; a 18 hectare parcel along Bangor Road and a separate 11 hectare parcel along West Coast Road, to the north of existing Business 2 zone. This plan change inserted an ODP into the District Plan as Appendix 47.

Plan Change 48 was lodged with Council and made operative in August 2017. This plan change lifted the deferred status over approximately 13 hectares of land on the corner of Telegraph and Creyke Roads. This plan change inserted an ODP into the District Plan as Appendix 41A.

7.4. Options

7.4.1. Option DAR 1 – Status quo

The 'do nothing' approach maintains the status quo. The requirement to have ODPs incorporated into the District Plan would have to be met by private landowners, as would the associated costs, which has been the case to date.

Although a number of ODPs have been incorporated into the District Plan, most of which have had regard to the Darfield Integration Plan prepared in support of Plan Change 31, there remains the potential that development could occur in a piecemeal fashion over the remaining deferred land which could lead to an undesirable development pattern. In particular there are risks that important strategic outcomes such as roading network and walking and cycling connections could be compromised, limiting the efficiency and function of the network and in turn reducing the amenity of the development. There is also the potential that infrastructure is only designed to meet the individual need at a point in time rather than considering the future options (e.g. future proofing for higher densities).

It is considered that this option will not achieve the desired outcomes of the Council, the District Plan or the CRPS in terms of providing guidance for the strategic and intergrated development of deferred land in Darfield.

Therefore, Option DAR 1 is not recommended.

7.4.2. Option DAR 2 – Uplift the deferred status

This option would involve Council removing the deferred status over the remaining areas by the incorporation of ODPs into the Proposed District Plan (PDP) through the DPR process. It is considered that this is an effective solution that would provide for the coherent and strategic development of the remaining deferred areas around the township. This would remove the requirement for future private plan changes.

It is considered that the requirement in the District Plan that all new allotments are able to be serviced with a reticulated potable water supply has been addressed by Council through recent improvements to the water supply system in Darfield, and additional improvements that have been signaled in the LTP. Therefore, only the need to provide ODPs and address any reverse sensitivity issues remain. Some additional investigations may be required in order to satisfactorily address s.32 requirements, such as geotechnical and contaminations as this work has not previously been undertaken.

A significant amount of work has been undertaken by Council in relation to the development of ODPs, in the form of the Darfield Integration Plan. It is considered that minimal work would be required to update the ODPs in this document to acknowledge and reflect the ODPs developed through the various private plan changes.

While this may incur some unbudgeted costs to the Council, it is unlikely that these would be substantial as the number and level of technical reports required would be significantly less than if the land were proposed to be rezoned from Rural to Living, as all the remaining deferred areas have clearly been foreshadowed as being suitable for urban development in the District Plan. Some additional work to address issues with reverse sensitivity may be required where the Living Zones would abut existing Business Zones, the State Highway and legally established activities that may give rise to reverse sensitivity activities (e.g. Darfield Gun Club).

This option does not propose that the underlying densities be changed. If any land owner wanted to increase the development potential of their land, this would necessitate a future plan change or submission on the proposed District Plan, at the expense of the landowner. This option only proposes to remove the deferred status from the existing zoning.

Therefore, Option DAR 2 is recommended to be progressed through the DPR process.

8.0 Dunsandel

There are two areas of land deferred for living in Dunsandel. The first is located to the south of Tramway Road and west of Leeston Dunsandel Road and is zoned Deferred Living (A). It is bounded by Living 1 land to the north-east, Business 2 land to the north-west and developed Living 2 to the south. This area is currently in the ownership of three parties, including the Dunsandel Rugby Football Club.

The second area, Deferred Living (B), is located on the eastern side of Leeston Dunsandel Road, and bounded by Living 1 land to the north and west and Rural (Outer Plains) land to the east and south. This area is currently in the ownership of three parties and a large portion of this area is part of a larger dairy farm to the north and east, being Hollybank Farm Ltd.

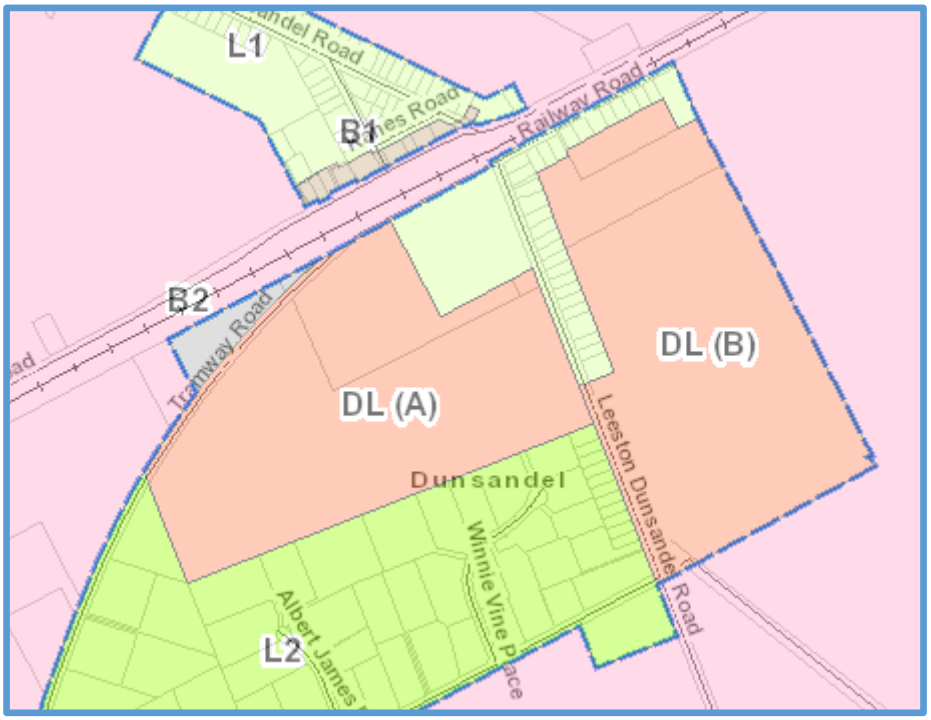


Figure 2: Dunsandel – Operative Zones

8.1. Background[4]

8.1.1. Deferred Living (A)

At the time the current District Plan was proposed, Council anticipated rezoning this land from Rural to Living X, with a minimum allotment size of 800m^2, on the basis that it promoted the better use of resources and retained the village feel of the town by consolidating development, thereby avoiding elongating the township along existing roads.

Submissions were received in support of and opposition to this zoning and the Hearings Panel concluded that, while the location of this land lent itself to residential development, it was not satisfied that sufficient

[4] Recommendation 53.4 of Hearing Panel: Doyleston, Dunsandel, Rakaia Huts, Southbridge and Springston; 20, 21 & 23 April 2004

investigations had been done to support the proposed Living X zoning, particularly in regards to the disposal of sewage, the provision of a potable water supply and adequate consideration of reverse sensitivity issues with the adjoining Business 2 land.

The Panel noted that the servicing of Dunsandel with a potable water supply was sufficient for the existing population in 2004, but any additional development, at any density, would require the installation of an additional well, reservoir and surface pumping.

In terms of sewage, the Panel noted that there was not a reticulated sewerage system for Dunsandel. Environment Canterbury (ECan) had advised in 1999 that it was unable to confirm whether reticulated sewage treatment and disposal would be required for future residential development in Dunsandel. In its submission, and at the hearing, ECan raised concerns regarding the potential that on-site effluent treatment and disposal might cause ground water contamination, but provided no evidence in support of this. Members of the Hearings Panel also stated that the Township Committee was considering the issue of sewage again, after previously having considering and rejecting a reticulated scheme in 1997, however no further information was presented in this regard.

8.1.2. Deferred Living (B)

The inclusion of this area in the Operative District Plan came by way of a submission to the proposed plan. The area, covering nearly 46ha, was zoned Rural and the submitter sought to have this changed to Living 1 or Living 2 or a mix thereof.

As with Area A above, the Hearings Panel concluded that this area lent itself to rezoning, as it was located close to the school and domain and would not result in development further along the State Highway. However, they held the same concerns with regard to servicing and reverse sensitivity, this time in respect of the adjacent rural land, as with Area A.

Transit New Zealand (now New Zealand Transport Agency) made a further submission in opposition to the request for the rezoning of Area B, on the basis that it may affect the safe and efficient operation of the intersection of Browns Road with State Highway 1. It considered that, prior to rezoning, assessment should be made of the impact on the intersection of Browns Road with the State Highway and should also take into account development on the land proposed as Living X (Area A above). (It should be noted that the agency did not oppose the proposed rezoning of Area (A) to Living X and seemed to accept this zone as existing).

8.1.3. Conclusion

In respect of both Area A and Area B, while the Panel supported a living zoning for the land, it recommended that a deferred living zone be placed on the land, subject to investigations being undertaken in terms of water and sewage and these issues being satisfactorily addressed.

8.2. Operative District Plan Provisions

The Township Volume of the District Plan includes five specific policies in relation to the future growth of Dunsandel. These are set out in Appendix 1.

Policies B4.3.34, B4.3.35, B4.3.37 and B4.3.39 encourage the compact and consolidated growth of the township, rather than the extension of the township along existing roads, including the State Highway.

Policy B4.3.36 requires that "*any land zoned for new residential … development … be supplied with reticulated sewerage if on-site effluent disposal may result in groundwater contamination*"[5]. Policy B4.3.38 seeks to ensure that any land rezoned for new residential or business development does not cause or

[5] It is noted that this policy was included in the consultation version of the Plan and was not the subject of submissions. As such the Panel considered it to be beyond challenge, and they relied on it to inform their subsequent deliberations.

exacerbate 'reverse sensitivity' issues in respect of activities in the existing Business 2 Zone, or the Main South Island Trunk Line.

Rules 12.1.3.17 and 12.1.3.18 restrict the subdivision of these areas until the issues of effluent disposal and water supply had been identified and satisfactorily addressed, ODPs have prepared addressing any reverse sensitivity issues with the relevant adjacent land and an appropriate level of density identified. Rule 12.1.3.18 also requires Area B to address the impact of subdivision on the intersection of Browns Road with State Highway 1.

Unlike other deferred zones within the district, Table C12.1 – Allotment Sizes in Chapter 12 – Subdivision does not indicate an appropriate density (i.e. the average allotment size) for these two areas. Rather this table indicates that the final density is still to be determined. The Hearings Panel did not resolved an appropriate density as it was considered that this was a function of how the land could be serviced for effluent disposal. If onsite sewage retention was possible, then a larger lot size may be required than that if the areas were to be provided with a reticulated sewerage system. It is assumed that this is the reasoning for these areas having a **Deferred Living** zoning as opposed to a **Living (Deferred)** zoning like the other areas considered in this report.

8.3. Future Growth and Infrastructure Provision

8.3.1. Area Plans and Selwyn Capacity for Growth Model

The Ellesmere Area Plan Mahere-ā-Rohe o Waihora 2031 concluded that "*no new areas for residential or business purposes are required to accommodate projected growth within Dunsandel … as there is currently sufficient land available to accommodate projected population growth*"[6]. The Area Plan also acknowledged that there are significant constraints that need to be addressed through the RMA process, including infrastructure constraints relating to integrated stormwater management, access to potable water and the on-site treatment and disposal of wastewater.

The SCGM forecasts that there is sufficient capacity for new residential development through both infill and greenfield opportunities to after 2028, not taking into account the deferred areas.

8.3.2. Infrastructure provision and programming

Dunsandel is currently serviced with on-site effluent disposal. The Wastewater Activity Management Plan (Volume 3, 2018) states that Dunsandel will continue its existing on-site disposal freeing up the additional capacity for Leeston, Doyleston and Southbridge. As such there is no funding allocation in the LTP to investigate or provide a reticulated sewerage system for the township. Council's Asset Manager – Water Services has advised that a reticulated sewerage system would cost upwards of $2 million.

The Water Supplies Activity Management Plan (Volume 2, 2018) states that Dunsandel Water Supply provides untreated groundwater to the township and the adjacent 40 lot rural residential subdivision on Irvines Road (Sherwood Estate). The scheme is designed as a medium pressure, unrestricted metered supply complying with NZ Fire Fighting Code of Practice. Data in the AMP indicates that there is some capacity within the annual volume of the consented take, however this capacity needs to be tempered by the fact that the current rate of abstraction (24.7 l/s) is almost equal with the consented flow rate (25 l/s). Two projects are identified in the Long Term Plan –an upgrade to the filtration system which is budgeted for in 2020/2021 and investigation of a suitable location for a second bore. However no budget has been allocated for the installation of an additional bore should a second water source be found. Discussions with Council's Asset Manager – Water Services indicate that costs associated with this could be in the order to

[6] Ellesmere Area Plan Mahere-ā-Rohe o Waihora 2031 p. 48

$600,000. Additional costs would be incurred in increasing the length of the piped network which, while unable to be determined at present due to the large number of variables, would likely be over $1million.

8.4. Options

8.4.1. Option DUN 1 – Status quo

This option would entail the current plan provisions being rolled over. As such, the land would continue with a deferred living zoning, allowing for the possibility of conversion once the matters identified in the District Plan have been addressed.

However, as noted in Section 5 above, if a deferred zoning is to be carried forward into the PDP, the Plan needs to be clear and transparent about what is permitted when the deferral is lifted and how the deferral is to be lifted (e.g. timing of infrastructure). A deferred status could be considered to be ultra vires where an additional plan change process would be required to justify the appropriateness of such a change and to resolve any uncertainty around permitted land uses. That work must have already been completed and tested at the time that the deferred status is conferred.

Presently, there is significant uncertainty around the future use of the deferred land in Dunsandel.

As noted above, the Hearings Panel was not satisfied that sufficient investigations had been done to support the proposed rezoning of this land, particularly in relation to the means of sewage disposal, the provision of a potable water supply and adequate consideration of reverse sensitivity issues. No work has been undertaken, either by Council or by the land owners, to address these matters since these areas were included in the Plan. Furthermore, no funding has been allocated in the LTP in relation to the disposal of sewage.

It is also uncertain about what would be permitted should the deferral be lifted. Unlike the other deferred areas discussed in this report, no density has been established for the deferred areas in Dunsandel. Again, the Hearings Panel noted that this would be dependent on the outcome of further investigations.

A variation of this option would be to retain the deferred status but clarify an appropriate density once all other issues have been addressed. In order to determine an appropriate density, it is considered that appropriate investigations be undertaken to satisfy s.32 of the RMA. However, even investigating and preparing appropriate levels of information to determine a suitable density for these areas would result in significant costs to Council. It could also be construed that Council is proactively rezoning this land ahead of any substantial land capacity requirement, as evidenced by the conclusions of the Area Plan and the SCGM.

Therefore, Option DUN 1 is not recommended as it does not address the uncertainty around the servicing and subsequent development of the deferred land in the township.

8.4.2. Option DUN 2 –Remove the deferred zoning and rezone to Living

This option would involve the Council undertaking the work to remove the deferral and rezone the land to Living and notify these areas as such through the DPR process.

While provisions in the Operative District Plan are clear on the issues that need to be addressed in order to the land to be rezoned, these matters arose through the hearing process on the district plan and no substantive s.32 analysis has been undertaken to assess and quantify the costs and benefits of doing so. No technical assessments have been prepared to address not only the matters identified by Rules 12.1.3.17 & 12.3.1.18, but also the matters identified in Section 6 above.

A rigorous and sound evidence approach to rezoning is particularly important for Dunsandel as the Operative District Plan does not establish a desired density for the deferred land in this township.

As well as taking on the evaluation costs and the costs of progressing the lifting of the deferral over this land through the DPR process, this option would also impose on Council the costs associated with the development/upgrade of servicing infrastructure. Although infrastructure provision is one of Councils core roles it is often provided in response to demand or a private plan change, where costs can be recouped with some confidence or met by a developer.

If Council is to lift the deferral in Dunsandel, then it will need to prudent in its assessment of the demand for development to ensure that the cost of improving or developing new infrastructure can be recouped. Currently, both the Area Plan and the SCGM indicate that there are no pressures for residential growth, or that there is likely to be any pressures within the next 10 years. There is also no indication in the LTP that Council is considering any significant upgrades to infrastructure in Dunsandel that would support the rezoning of this land.

Given that Option DUN 2 is inconsistent with the Ellesmere Area Plan and the SCGM, which both indicate that there is sufficient capacity to accommodate the projected residential growth without the need to remove the deferral over this land, it is considered that this option should not be progressed further through the DPR process.

8.4.3. Option DUN 3 – Remove the deferred zoning and rezone to Rural

This option would see the deferred zoning removed and the land reverting to the Rural (Outer Plains) Zone with all associated provisions applying.

This option would mean that an incongruous area of Rural (Outer Plains) zoned land would remain within the township boundary, particularly in respect that the Deferred Living (A) zone. This area would be wedged between existing Living 1, Living 2 and Business 2 zoned land. While this does not give rise to good urban form, this is no different from how the land is currently utilised and what is experienced on the ground now.

This option would have little effect on the underlying use of the land, given that Rule 1.2.1 provides that the rules of the Rural Zone apply within any deferred zone until such time as the deferred status is lifted. It is further considered that, given the uncertainty that exists with the deferred status, as discussed above, allowing this land to revert to a rural zoning is not removing any benefit that the present land owners may presume that they enjoy.

Given the issues that exist with progressing the options above, it is considered that Option DUN 3 is the option most consistent with the provisions of the Area Plan, the outcomes of the SCGM and the direction of the CRPS. Therefore, Option DUN 3 is recommended to be progressed through the DPR process.

9.0 Leeston

There are two deferred living zones in Leeston. Both areas are located on western edge of the township, within the current township boundary. The Living 1 (Deferred) zone is immediately to the west of the existing residential development, with the Living 2 (Deferred) zone further west again. The Living 1 (Deferred) zone is currently in the ownership of two parties, with the northern portion of this area being in the same ownership as all of that of the Living 2 (Deferred) zone. The southern portion of the zone is identified as being potentially contaminated.

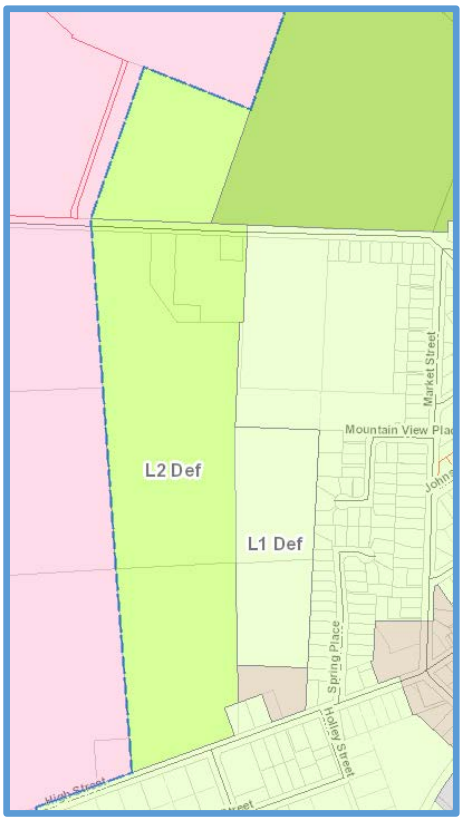


Figure 3: Leeston – Operative Zones

9.1. Background

9.1.1. Living 2 (Deferred)

The inclusion of this area as Living 2 (Deferred) came by way of submissions and consideration by the Hearings Panel. Originally proposed to be retained as Rural zoned land, the Hearings Panel found that there was little reason for the subject land to be zoned Rural and it provided a logical and effective approach to the expansions of Leeston to the west, creating a graduated progression from the more intensive Living 1 to the east. However, the Panel noted the propensity of this land to flood in times of heavy rain and that there was many ways in which an engineered solution could ameliorated this problem. Therefore a deferred zoning was indicated. The Panel concluded that, when the flooding issues had been resolved, it was appropriate that the deferral be removed through the mechanism of plan change[7].

9.1.2. Living 1 (Deferred)

The inclusion of this land also came by way of submissions, seeking either a Living 1, 2 or XA zoning. This land was also noted as being subject to surface flooding in times of heavy rain. Having previously considered this matter in relation to the land to the west (Living 2 (Deferred)), the Panel considered it appropriate that a deferred zoning be given to this land also[8].

9.2. Operative District Plan Provisions

The Township Volume of the District Plan includes five specific policies in relation to the future growth of Leeston. These are set out in Appendix 1.

[7] Recommendation 50.4 of Hearing Panel: Urban Growth Options – Leeston; 24 March 2004

[8] Recommendation 50.7 of Hearing Panel: Urban Growth Options – Leeston; 24 March 2004

Policy B4.3.54 requires that any land rezoned does not cause or exacerbate a flooding hazard by increasing the rate of stormwater runoff into the Leeston main drain, while Policy B4.3.55 seeks to ensure that any land zoned for residential development, but subject to surface flooding, is not developed until provision is made to ameliorate this issue.

Rule 12.1.3.7 requires that any allotment created complies with the relevant allotment size requirements set out in Table C12.1. In this regard, Table C12.1 indicates that both zones shall have an allotment size not less than 4ha until the deferral lifted. Once this is lifted, the Living 1 zone shall have an average allotment size not less than 650m^2. In the Living 2 zone, the average allotment size shall not be less than 5000m^2.

9.3. Future Growth and Infrastructure Provision

9.3.1. Area Plans and Selwyn Capacity for Growth Model

The Ellesmere Area Plan Mahere-ā-Rohe o Waihora 2031 concluded that "*no new areas for residential purposes are required to accommodate projected growth within Leeston … as there is currently sufficient residential … land available to accommodate projected population growth and demand for housing*"[9]. The Area Plan also acknowledged that there are significant constraints that need to be addressed through the RMA process, including infrastructure constraints relating to integrated stormwater management, access to potable water and the limited capacity of the Leeston wastewater treatment plant.

The SCGM forecasts that there is sufficient capacity for new residential development through both infill and greenfield opportunities to after 2028, not taking into account the deferred areas.

9.3.2. Infrastructure provision and programming

In response to a significant stormwater event in 2013, Council commenced investigations into options to divert flood waters from the surrounding land around the township to manage localised flooding. A number of options were discussed with the community, and funding has been budgeted since the 2014/15 financial year to implement the work necessary to address the flooding hazard.

The 5 Waters Activity Management Plan (Volume 1, 2018) indicates that construction has commended on the new flood diversion channel, with the final stage of work taking place between 2018 and 2020.

9.4. Options

9.4.1. Option LEE 1 – Status quo

This option would entail the current plan provisions being rolled over. As such, the land would continue with the deferred living zonings, allowing for the possibility of conversion once the flood issue has been resolved, by way of private plan changes.

However, as it is known that the necessary infrastructure will be in place by the time that the PDP is notified and that there is an overall desire not to carry deferred zones through into the PDP, Option LEE 1 is not recommended.

9.4.2. Option LEE 2 – Remove the deferred status

This option would involve the Council removing the deferred status through the DPR process.

While Policies B4.3.54 and B4.3.55 establish the reason for the deferral of this land, there are no provisions in the plan that establish how the deferral may be lifted once the flood issues has been resolved. In the absence of a clear and transparent trigger process in the District Plan, a plan change process would be required.

[9] Ellesmere Area Plan Mahere-ā-Rohe o Waihora 2031 p. 29

Given that it is known that the necessary infrastructure will be in place by the time that the PDP is notified, it is considered appropriate that the deferral be removed through the DPR process thereby removing the requirement for future private plan changes.

Although Policies B4.3.54 and B4.3.55 only highlight flooding as the only issue to be resolved prior to the uplifting of the deferral, it is considered that, as with Darfield, some additional investigations may be required in order to satisfactorily address s.32 requirements, such as geotechnical, contaminations and reverse sensitivity issues, as this work has not previously been undertaken.

While this may incur some unbudgeted costs to the Council, it is unlikely that these would be substantial as the number and level of technical reports required would be significantly less than if the land were proposed to be rezoned from Rural to Living, as all the remaining deferred areas have clearly been foreshadowed as being suitable for urban development in the District Plan.

It is noted that the southern portion of the existing Living 1 (Deferred) zone may potentially be contaminated. It is not considered necessary that this be investigated further through the DPR process as the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS) would ensure that is appropriately addressed at the time of any future application for subdivision of this land.

Therefore, Option LEE 2 is recommended to be progressed through the DPR process.

10.0 Rolleston

There is an area of land in Rolleston that has a Living Z Deferred zoning, located on the north east corner of Goulds and Dynes Road.

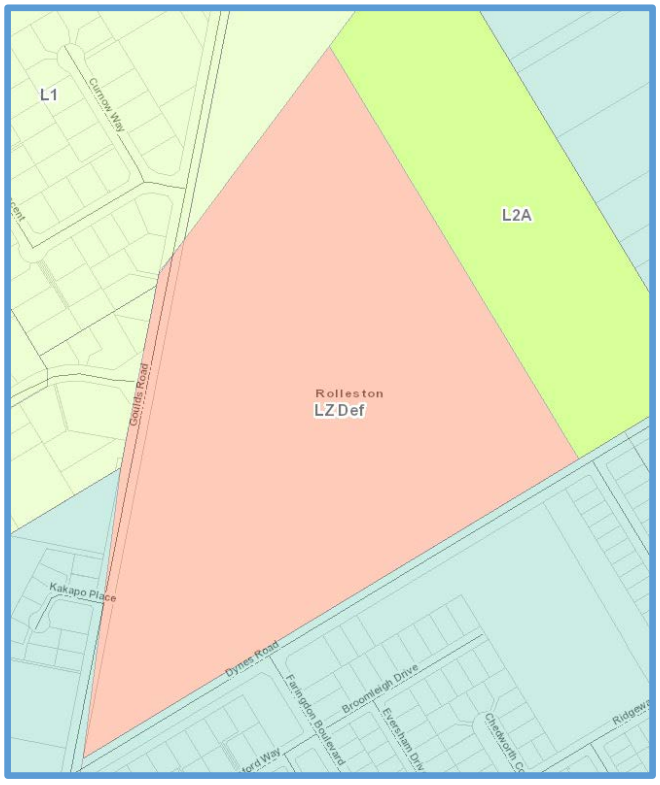


Figure 4: Rolleston – Operative Zones

This land is owned by Selwyn District Council and is designated (D417) as part of the Foster Recreation Park.

The designation that covers this zone, and the entirety Foster Park, is for the purpose of providing community and recreations facilities. The effect of the designation is that it overrides the underlying zoning. Council may do anything that is in accordance with the conditions of the designation, even if it would be inconsistent with the zone.

As there are separate scopes looking at Community and Recreation Facilities and Council Assets and Property, no further investigation has been undertaken within this scope.

However, if it is the overall approach of the Council is that no deferred zonings be carried forward into the PDP, the DPR process is an appropriate time to lift the deferred zoning on this land. This would have the effect of changing the underlying zoning of this land to Living Z but, as the designation is considered to override the provisions of the plan, this would not give rise to any change in the use of the land.

11.0 Recommendations

It is recommended that deferred zones not be carried forward into the Proposed District Plan but are resolved through the District Plan Review process by adopting and progressing the following options:

- DAR 2 – Removing the deferred status on land at Darfield by the incorporation of ODPs into the Proposed District Plan
- DUN 3 – Removing the deferred status on land at Dunsandel and letting the land revert to a rural zoning
- LEE 2 – Removing the deferred status on Leeston as the necessary infrastructure will be in place by the time that the Proposed District Plan is notified.

It is also recommended that the Living z (Deferred) zoning be lifted over the remaining area of land within Rolleston.

Appendix 1:

Operative District Plan Provisions

(As at 12 November 2018)

Darfield

Policies:

B4 Growth of Townships

Policy B4.3.23 Encourage new residential and business development on sites in existing Living and Business zones if such sites are available and appropriate for the proposed activity.

Policy B4.3.24 To encourage the provision of large residential allotments within the Living 2 Zones.

Policy B4.3.25 Discourage individual property access from new Living or Business zones to State Highway 73 or State Highway 77 (Bangor Road) and manage the number and location of any new subdivisional roads on to these routes.

Policy B4.3.26 Encourage any new Business zone to adjoin an existing Business zone of similar character if land for this purpose is available and appropriate

Policy B4.3.27 Ensure any land rezoned for new residential or business development does not create or exacerbate 'reverse sensitivity' issues in respect of activities in the existing Business 2 Zones or the Midland Railway.

Policy B4.3.28 To provide for mixed densities in the Living X Zone, and rural residential development around the township in the Living 2A (Deferred) Zone to a minimum average area of 1ha, and in the Living 2A1 Zone to a minimum average area of 2ha, subject to the following:

- That all new allotments are able to be serviced with a reticulated potable water supply:
- That outline development plans have been incorporated into the Plan for the coordinated development of four identified areas of land in the Living 2A Zone, the Living X Zone and part of the Living 2 Zone to address roading, reserve, and pedestrian/cycle linkages;
- Where applicable, provision has been made to address any reverse sensitivity issues.

Rules:

C12 LZ Subdivision

12.1.3.9 No subdivision of land in any of the areas labelled "Areas 1, 2, 4 and 5" as shown in Appendix 25, shall take place until:

(a) A potable water supply is available which is capable of serving the lots within the subdivision; and

(b) An Outline Development Plan addressing those matters identified in the explanation and reasons to Policy B4.3.23, Darfield Specific Policies has been incorporated into the District Plan for the area as identified in Appendix 25 within which the subdivision is proposed.

12.1.3.10 Where a potable water supply is available which is capable of serving the lots within the subdivision, and there is an Outline Development Plan which has been incorporated into the District Plan for the area identified in Appendix 25 within which the subdivision is proposed, the subdivision complies with the layout and contents of the Outline Development Plan for that area.

12.3.1.11 The subdivision of land shown in Appendix 27 (east of Clintons Road) is in accordance with the plan shown in that Appendix

12.1.3.12 Subdivision of land to which Appendix 41 Darfield Outline Development Plan applies shall be in general accordance with the layout (and other details) shown for that area

12.1.3.13 For the subdivision of Living 1 and Living 2A zoned land shown in Appendix 41 Darfield Outline Development Plan, any subdivision plans submitted to the Council shall be accompanied by a landscape plan and planting plan detailing plantings to be undertaken and reserve areas to be established. Landscaping and planting of reserve areas shall be established generally in accordance with the Landscape Concept Plans in Appendix 41.

12.1.3.14 Prior to the development of land for Living 1 purposes along the boundary with the Cardale Street Business 2 zone a 2.2m high acoustic fence shall be constructed along the southern boundary of 1 – 15 Cardale Street, with a 3m wide landscaping strip immediately to the south of the fence (to visually screen the acoustic fence). A cul-de-sac shall run adjacent to the landscaping strip.

12.1.3.15 Prior to the development of land for Living 1 purposes along the boundary with the Cardale Street Business 2 zone a 3m high acoustic fence along the eastern boundary of Darfield Collision Repair and Lovelady Racing Ltd with a 3m wide landscaping strip immediately to the east of the fence (to visually screen the acoustic fence)

12.1.3.16 Any subdivision of land within the area shown in Appendix 47 - Living 2A Darfield - Bangor Road Outline Development Plan, and within the area shown in Appendix 41A - Living 2 Darfield - Creyke Road Outline Development Plan, shall comply with the layout and contents of that Outline Development Plan and shall comply with any standards referred to in the Outline Development Plan.

Dunsandel

Policies:

B1 Natural Resources

Policy B1.2.6 Ensure any building erected in the townships of… Dunsandel … has a site large enough to accommodate the type of on– site effluent treatment and disposal system needed to treat effluent, adequately.

B4 Growth of Townships

Policy B4.3.34 Encourage new residential or business activities to use sites in the existing Living or Business zones, if such sites are available and appropriate for the proposed activity

Policy B4.3.35 Discourage rezoning of land for new residential or business development along SH1, west of the existing Business 1 Zone or east of the Hotel site

Policy B4.3.36 Require any land rezoned for new residential or business development to be supplied with reticulated sewerage if on-site effluent disposal may result in groundwater contamination.

Policy B4.3.37 Encourage any new Business zone to adjoin an existing Business zone of similar character if such sites are available and appropriate.

Policy B4.3.38 Ensure any land rezoned for new residential or business development does not cause or exacerbate 'reverse sensitivity' issues in respect of activities in the existing Business 2 Zone, or the Main South Island Trunk Line.

Policy B4.3.39 Promote rezoning of land for new residential activities on sites 'behind' existing Living zones fronting Railway Road, Highfield Avenue, Leeston/Dunsandel Road or Dunsandel/Hororata Road, if such sites are available and appropriate.

Rules:

C12 LZ Subdivision

12.1.3.17 In the deferred Living Zone (Area A) at Dunsandel, no subdivision of land shall take place until

(a) An acceptable effluent disposal system has been identified and/or established; and

(b) An appropriate level of density has been identified and a subsequent living zone incorporated into the Plan; and

(c) A potable water supply is available which is capable of serving the potential lots within the subdivision; and

(d) Investigations are undertaken into any reverse sensitivity issues with the adjoining Business 2 Zone; and

(e) An Outline Development Plan has been incorporated into the District Plan identifying; a buffer strip or some other form of mitigation between the new zone and the Business 2 Zone should any reverse sensitivity issues be identified as a result of (d) above, and indicative road layout and pedestrian access between the Living 2 Zone and the domain.

12.1.3.18 In the deferred Living Zone (Area B) at Dunsandel, no subdivision of land shall take place until:

(a) An acceptable effluent disposal system has been identified and/or established; and

(b) An appropriate level of density has been identified and a subsequent living zone incorporated into the Plan; and

(c) The impact of the subdivision on the intersection of the Browns Road extension with State Highway 1 has been assessed and considered to be acceptable; and

(d) A potable water supply is available which is capable of serving the potential lots within the subdivision; and

(e) Investigations are undertaken into any reverse sensitivity issues with the adjoining Rural zone; and

(f) An Outline Development Plan has been incorporated into the District Plan identifying; a buffer strip or some other form of mitigation between the new zone and the Rural zone should any reverse sensitivity issues be identified as a result of (e) above and an indicative road and pedestrian access layout.

12.1.3.19 Upon uplifting of the deferral of Area A or B any subdivision complies with the layout and contents of the Outline Development Plan for that area.

Leeston

Policies:

B4 Growth of Townships

Policy B4.3.51 Encourage any new Business zone to adjoin an existing Business zone of similar character, if such sites are available and appropriate.

Policy B4.3.52 Encourage future Business 2 zoning to develop in a southerly direction, adjoining the existing Business 2 zone along Station Street, where land is available and appropriate for the proposed activity.

Policy B4.3.53 Avoid new residential areas south of Station Street, and east of Leeston/Lake Road, unless any potential adverse effects resulting from:

- Reverse Sensitivity' between activities in the Business 2 Zone and any new residential area;
- Heavy traffic using the Station Street bypass; or
- The sewage treatment and disposal facilities along Beetham's Road, are avoided or mitigated.

Policy B4.3.54 Ensure any land rezoned for new residential or business development does not cause, or exacerbate, a natural hazard by increasing the rate of stormwater runoff into the Leeston main drain.

Policy B4.3.55 Ensure that land that is zoned for residential development but is presently subject to surface flooding is not developed for its zoned purpose until provision is made for the amelioration of that constraint.

Appendix 2:

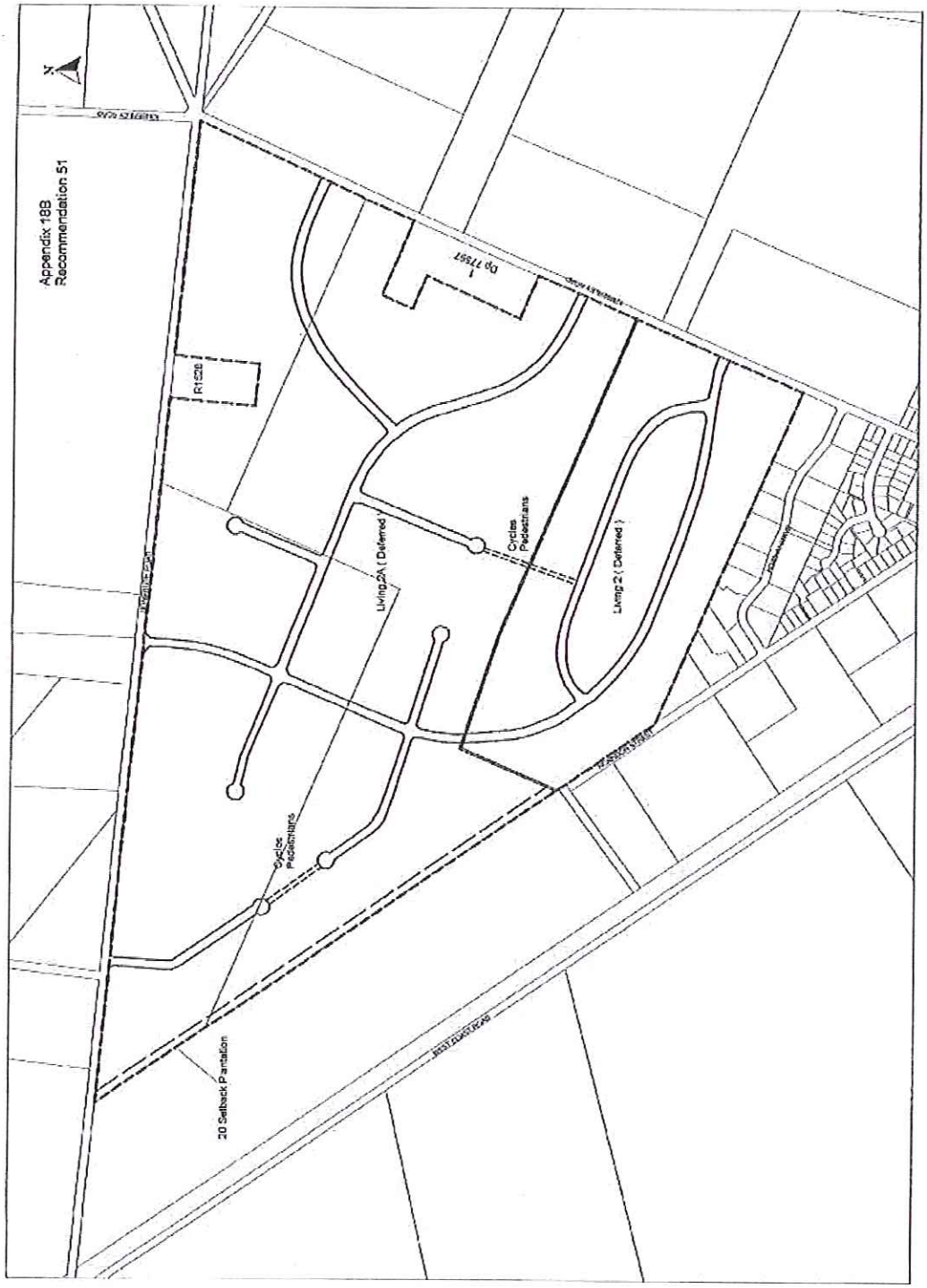
Outline Development Plans for Darfield incorporated into the Operative District Plan

(As at 12 November 2018)

PART E

APPENDIX 26

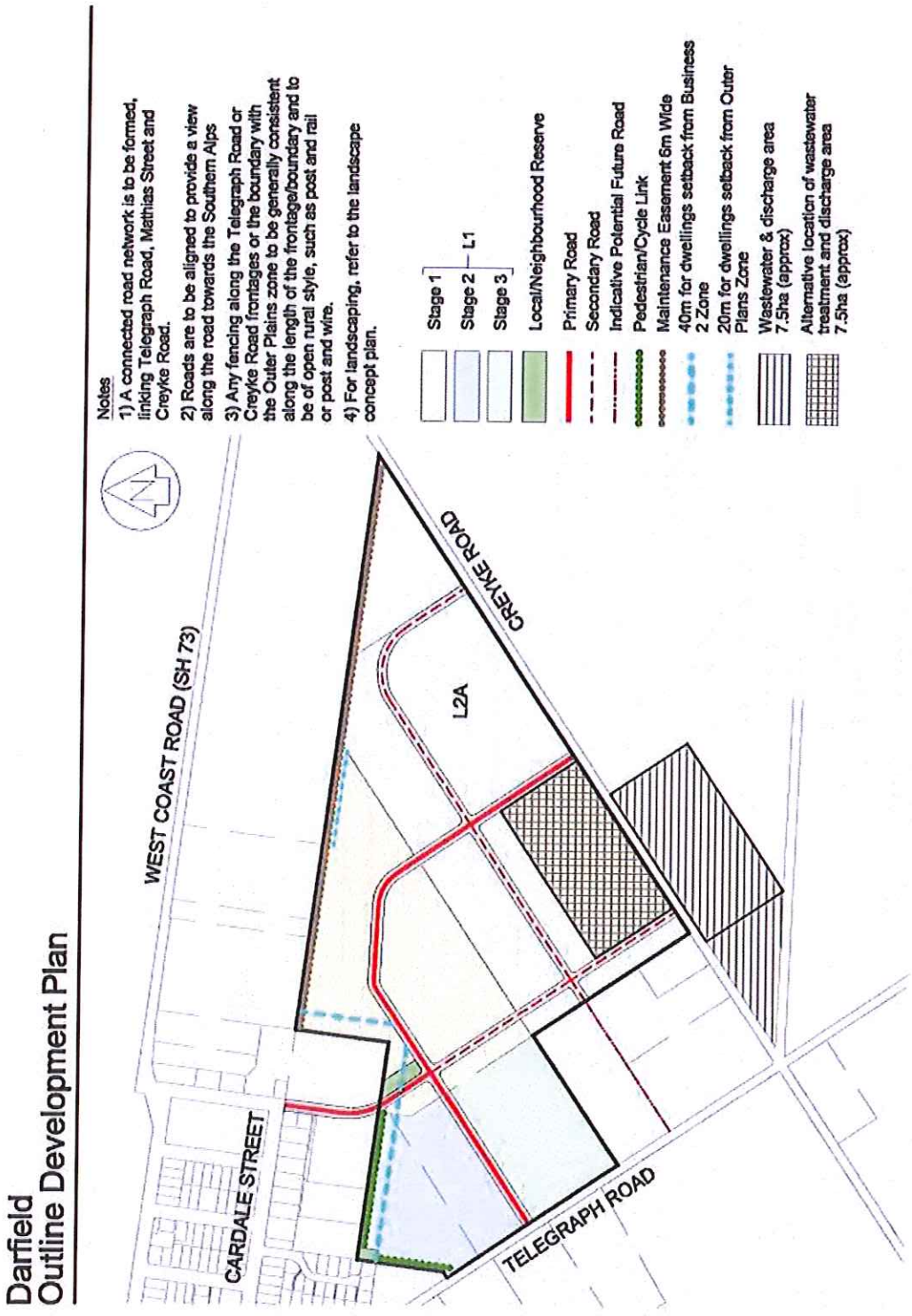
OUTLINE DEVELOPMENT PLAN — AREA 4, DARFIELD



PART E

APPENDIX 41

OUTLINE DEVELOPMENT PLAN — AREA 3, DARFIELD



WEST COAST ROAD (SH 73)
OUTER PLAINS
CARDALE STREET
Business 1
Business 2
LIVING 1
LIVING 1 / BUSINESS 2 BUFFER ZONE
TELEGRAPH ROAD
LIVING 1
LIVING 2A
LIVING 2A / RURAL BUFFER ZONE
CHEYNE ROAD
OUTER PLAINS
OUTER PLAINS
OUTER PLAINS
Refer to Sheet 3
3
Existing Pinus Radiata hedge to remain, keep trimmed to 4.2m maximum. Future replacement planting to be medium parklands trees.
Please note no building within the 5m buffer strip along Cheyne Road.
LIVING 1/ BUSINESS 2 BUFFER ZONE
Acoustic fence and 2.5m marginal planting to provide dense screen along boundary between the zones.
Refer to Sheet 2
LIVING 2A / RURAL BUFFER ZONE
5m wide landscape buffer between living and rural zone.
Existing Pinus radiata hedge to remain 4-6m high maximum.
If removed replace with deciduous medium sized parklands trees
Refer to Sheet 3
Refer to Sheet 2
2
KEY
Subject area
Local/Neighbourhood reserve
Local roads
Collector roads
Existing Roads
Indicative future road
Existing shelterbelt
Water race
COPYRIGHT
DARFIELD - ODP
Planting Concept Plan
Scale 1:10 000 @ A3
Page 1

Small to medium trees along southern boundary at landscape strip to form visual buffer to 2.5m

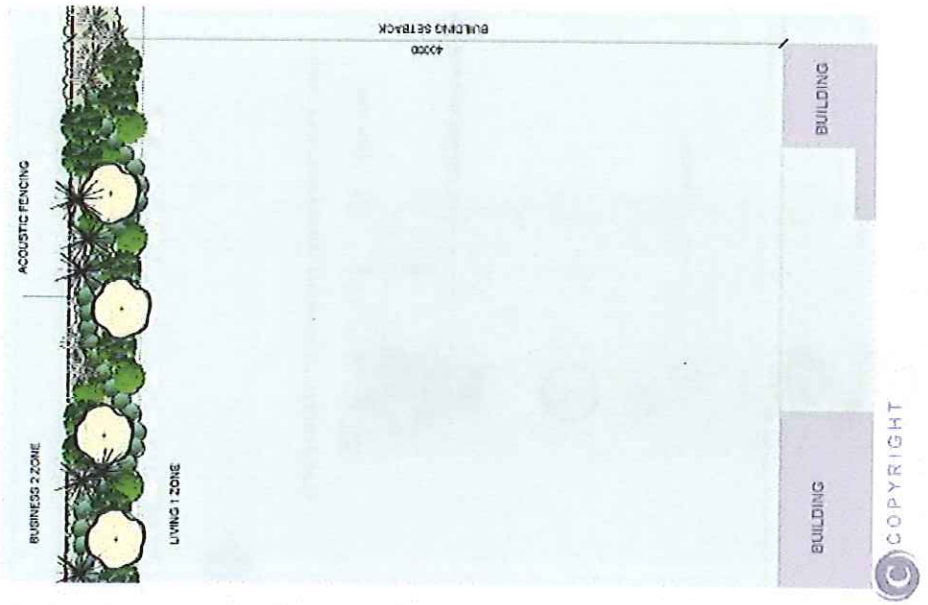
Botanical Name	Common Name	Height after 5 years	Mature height approx.
Cordyline australis	cabbage tree	4m	8 x 3m
Griselinia littoralis	broadleaf	3m	5m
Hoheria angustifolia	narrow leaved lacebark	2m	6m
Olearia paniculata	karivina	2m	10m
Phormium cookianum	mountain flax/wharariki	2m	6 x 3m
Pittosporum tenuifolium	kohuhu	3m	6 x 3m
Pseudopanax ferox	lancewood	2m	6 x 2m
Sophora microphylla	south island kowhai	3m	8 x 5m

DARFIELD - ODP

Scale 1:200 @ A3

Planting Concept Plan

Page 2



LIVING/ RURAL BUFFER ZONE

5m wide landscape buffer between living and rural zone.
Existing Pinus radiata hedge to remain 4-6m high maximum.
If removed replace with deciduous medium large sized trees. Grouped, interspersed and predominantly deciduous so as to create semi rural plantings feel. eg

Botanical Name	Common Name	Mature height approx
Prunus sp.	Cherry Blossom	4m+
Castanea sp.	Chestnut	5m+
Aesculus hippocastanum	Horsechestnut	15m+
Quercus varrius	Oaks	10m+
Sophora microphylla	south island kowhai	6 x 5m
	Grass	

PLAN SECTION - LIVING/ RURAL BUFFER ZONE SCALE 1:400 @A3

DARFIELD - ODP

Scale 1:400 @ A3

Planting Concept Plan

Page 3

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APPENDIX 41A

OUTLINE DEVELOPMENT PLAN - Living 2 Darfield - Creyke Road

The following Outline Development Plan (ODP) has been designed for approximately 13.5ha on the south eastern of Darfield Township adjoining the southwestern corner of the area identified in Appendix 41 of the Selwyn District plan. The ODP seeks to enable the development of the site to Living 2 densities and to provide for a low density residential style development.

The following matters form part of this ODP, and are required to be addressed at the time of subdivision.

No more than 20 allotments shall be provided for accross the whole of the Outline Development Plan area. Within this overall limit, and to ensure development of individual landholdings can be achieved, the ODP includes a maximum number of 8 Allotments for Area A and a maximum of 12 Allotments for Area B. Individual subdivision applications within an identified Area should clearly demonstrate that the maximum development potential of another Area is not compromised.

At the time of subdividing that part of the ODP area adjacent to the proposed new road identified, provision shall be made for land to be set aside for future roading connections to the adjoining site east of the site in a coordinated manner. This shall ensure the roading network identified for the ODP area are consistently aligned. **Until such time as the land located within ODP41A is developed to a Living 1 standard, the road located within ODP41A shall only be developed to a 16 metre road reserve with a six metre wide formed road.**

The Darfield Gun Club operates from land diagonally across the intersection of Creyke and Telegraph Roads from the ODP area. On an infrequent basis the Gun Club undertakes half or full day shoots, which generate loud sporadic noise in the area. The ODP shows a 60dB L_{AFmax} contour and a 55dB L_{AFmax} contour. These contours have been generated through testing noise generated during a shoot, and represent thresholds where noise generated from the gun club my impact on amenity values within the site.

At the time of subdivision of the ODP area, covenants, consents notices or other similar legal mechanisms will be placed on the resulting titles of newly created allotments to identify the following:

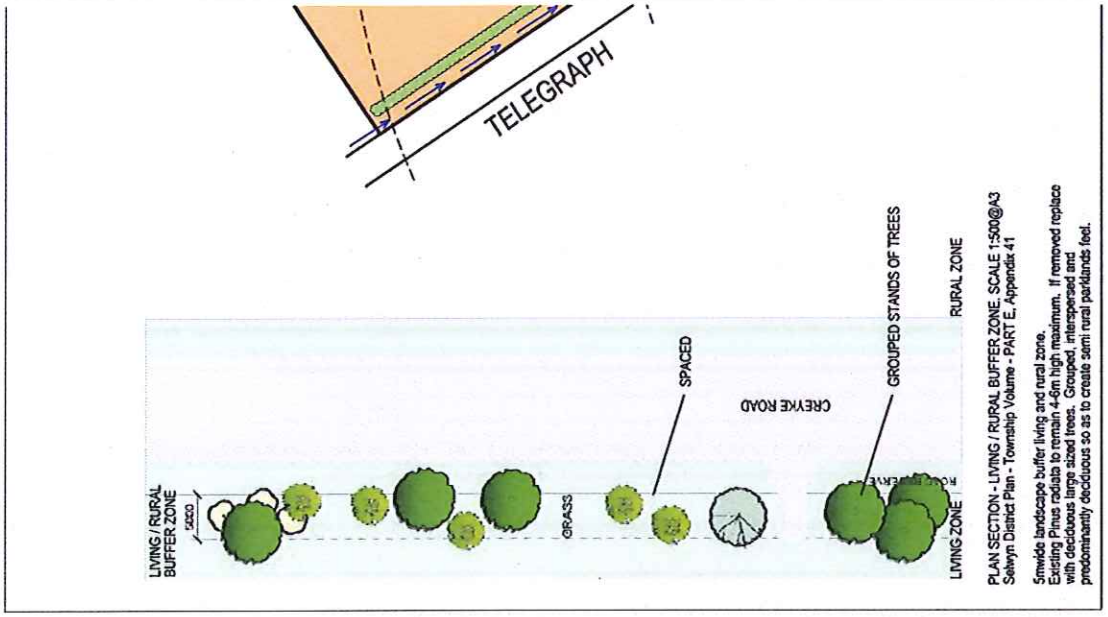
1. No additional dwellings are to be constructed within the extent of the 60 dB L_{AFmax} contour shown on the ODP as the 'no additional dwellings' area.
2. The primary outdoor living area associated with any new residential must be screened from the gun club noise to achieve a level not exceeding 50 dB L_{AFmax}.
3. Any new dwelling on the site must be designed, constructed and maintained to achieve a design noise level of 35 dB L_{AFmax} from the gun club noise inside all habitable spaces excluding bedrooms.

These legal mechanisms will also include a no complaints covenant to ensure that new owners are aware of, and cannot make complaints against the noise generated by the Gun Club.

The existing pine tree hedging along the boundary with Crekye Road is to be largely retained. Where it is removed (excluding for access reasons) it shall be replaced with a 5m wide landscape buffer containing grouped trees consistent with the adjoining Living 2A zone and in accordance with the provisions of the ODP.

The existing hedging along Telegraph Road is to be largely retained, except for where any new access onto Telegraph Road is necessary.

At the time of subdivision, provision for the retention of the water race adjacent to Telegraph Road will be required. Any new access onto Telegraph Road will be required to provide a bridge across the water race.


TELEGRAPH
LIVING / RURAL BUFFER ZONE
5000
GRASS
SPACED
CREYKE ROAD
GROUPED STANDS OF TREES
RURAL ZONE
LIVING ZONE
PLAN SECTION - LIVING / RURAL BUFFER ZONE. SCALE 1:500@A3
Selwyn District Plan - Township Volume - PART E, Appendix 41
5mwide landscape buffer living and rural zone.
Existing Pinus radiata to remain 4-6m high maximum. If removed replace with deciduous large sized trees. Grouped, interspersed and predominantly deciduous so as to create semi rural parklands feel.

PART E

APPENDIX 47

ODP - LIVING 2A - BANGOR ROAD, DARFIELD

The following Outline Development Plan (ODP) allows for approximately 130ha on the northwest edge of Darfield Township, to be developed to Living 2A densities which would provide for a low-density residential style of development.

The following matters form part of this ODP, and are required to be taken into consideration at the time of future development of the site.

CONNECTIVITY

The roading hierarchy within the site is intended to remain at the local road level, given the number of potential private allotments and the resulting traffic demand. The roading pattern shown on the ODP includes the primary roading only and it is anticipated that additional secondary and possibly tertiary roading will be required at subdivision design stage. When considering a subdivision layout, rear sections should be avoided where possible.

No direct access from allotments shall be made to State Highway 73, with all vehicle based traffic directed through either roading links to Bangor Road, or through a potential future roading connection on State Highway 73 to the south of the site. No direct access shall be made from the allotments to the west of the second access on State Highway 77 identified on the ODP for 1 hectare development with all vehicle based traffic being directed internally within the ODP roading network.

Off-road footpaths within low-density residential developments are not necessary due to low traffic volumes and the tendency for people to walk along the road verges. However consideration should be given to a dedicated off road pedestrian/cycleway path to connect from Bangor Road through to a non-vehicular link to SH73 approximately opposite Horndon Street, to provide a loop tracks for Darfield, as shown on the ODP plan.

INFRASTRUCTURE

Due to potential population growth, low-density residential areas often transition into higher density residential living over time. At time of subdivision to low-density residential, consideration needs to be made for future proofing infrastructure for higher densities. This might include consideration of the following features:

- The size and location of water supply pipework ensuring there is capacity for growth.
- The widths of road reserves to accommodate increased traffic volumes, and future formed footpaths and cycleways.
- Building platforms and property orientation to reduce the amount of future subdivision resulting in rear sections.
- Reserve areas set aside to meet current and future needs.

LANDSCAPE

Landscape work is a useful tool for retaining rural character within a low-density residential development. It is acknowledged that the development of the site will change the character of the area from open paddocks to a built environment, but the provision of appropriate landscape works within road and recreational reserve areas, as well as any consideration of planting with new allotments can potentially provide for a sense of rural character. Existing shelterbelts may be removed or modified to enable view shafts. Planting in the building setbacks from the State Highways may contain breaks to avoid a tunnel effect.

Subdivision plans will need to identify landscape provisions being provided as part of the development including road reserve landscape works. Particular regard shall be given to the retention and management of the existing water race into any landscape design.

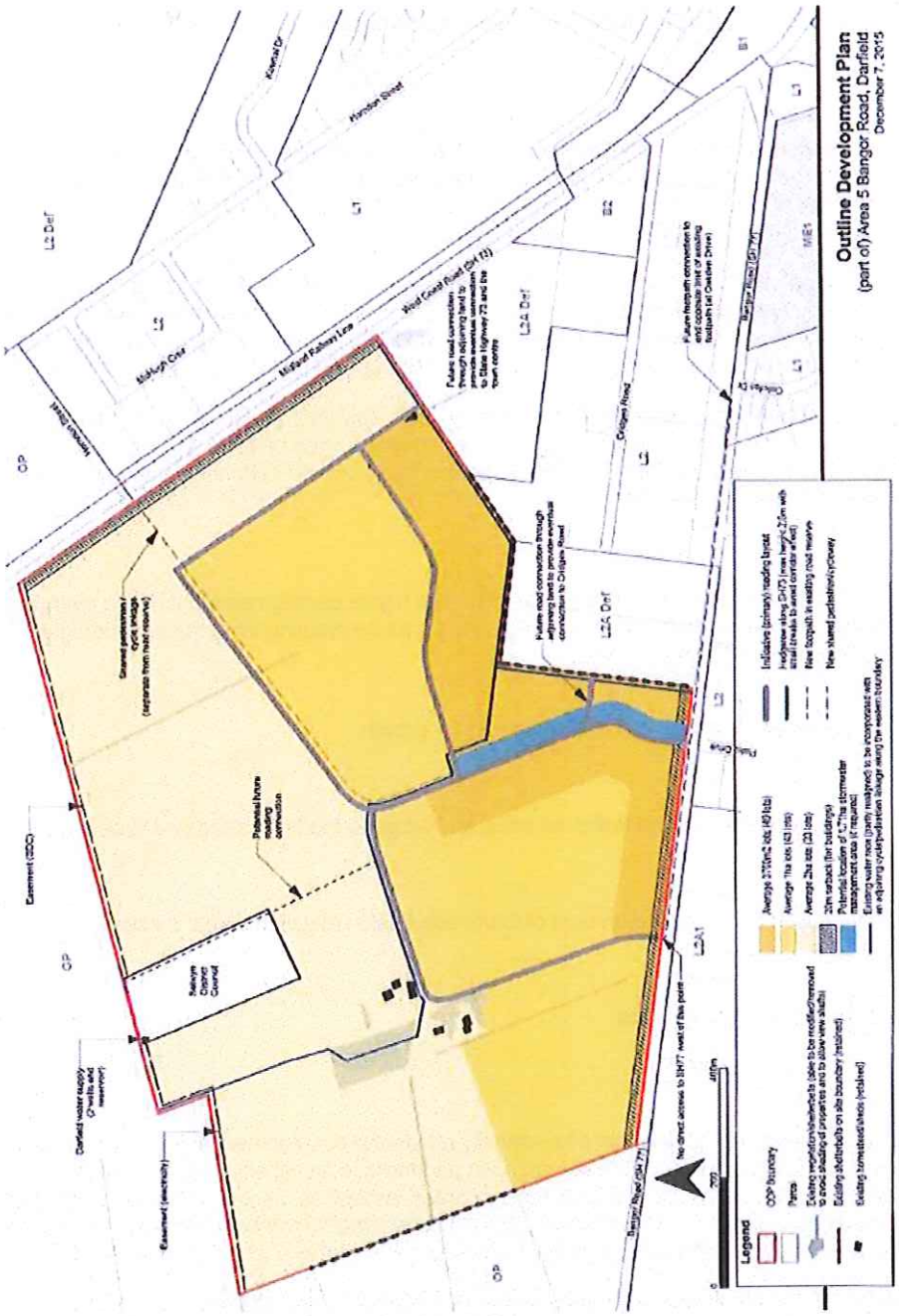
Subdivision plans should identify appropriate building setbacks from water races to maintain open space and amenity alongside these key site features.

FENCING

When considering an application to subdivide the area, the Council will take into consideration the mechanisms being provided to ensure that any fencing achieves a high level of transparency, with a preference for designs that express a rural vernacular and accord with the typologies in Appendix 44 of the Selwyn District Plan. Consideration will also be made of any legal mechanisms to alert future buyers of these properties, of this fencing requirement.

STAGING

As part of any subdivision of the site, a plan showing the overall anticipated development of the site should be provided, highlighting any potential staging of development and the intended provision of services.



Appendix 3:

Legality of using deferred zones

Provided by Buddle Findlay 20 March 2017

BUDDLE FINDLAY
NEW ZEALAND LAWYERS

20 March 2017

To
Ben Rhodes
Selwyn District Council
PO Box 90
Rolleston 7643

From
Cedric Carranceja

By Email
ben.rhodes@selwyn.govt.nz

Dear Ben

Legality of using deferred zones

1. You have asked us for our opinion on the following issues:

   (a) Are deferred zonings ultra vires?

   (b) If not, are there circumstances in which deferred zonings may be ultra vires?

   (c) If deferred zonings can be utilised, then what level of information is required to satisfy their use?

2. You have asked us to consider comments made in Commissioner John Milligan's decision of 19 February 2013 on Proposed Private Plan Change 24 to the Selwyn District Plan, in which he expressed concerns about the legality of a zone that was to be "*deferred until such time as a Council resolution is passed confirming the availability and capacity of a water supply for [the] site*". Specifically, Commissioner Milligan stated:

   > *"At an early stage in the hearing I expressed the view (with which Mr Prebble – and I think Mr Garland – agreed) that an approach of this kind was open to objection on the basis that it attempted to achieve by informal means that for which the legislature required a specified (and formal) process.*
   >
   > *If that view is right I must reject the provision in question – an unlawful provision (or an impractical one) can never be the "most appropriate" method for achieving anything. This issue was, however, not raised in any submission…*

3. By way of summary it is our opinion that:

   (a) The use of deferred zonings as a planning technique is not ultra vires in and of itself.

   (b) However, deferred zoning provisions could be invalid if they are unclear or uncertain. The provisions must not reserve, by express subjective formulation, the right to decide whether activities are permitted before or after a deferral is lifted, or whether the deferral itself can be lifted. In addition, the provisions must not be so vague that a plan user is unable to determine whether an activity may be carried out before or after a deferral is lifted, or when a trigger condition is satisfied.

(c) The information necessary to justify the use of deferred zonings will be that which is necessary to examine whether deferred zoning provisions are "most appropriate" having regard to the criteria specified in section 32 of the Resource Management Act 1991 ("**RMA**"). Amongst other things, information should identify the most appropriate zone for the present circumstances, the particular changed circumstances that would make the original zone no longer the most appropriate, the viability of those changed circumstances occurring (so as to avoid raising unmeetable expectations), and the most appropriate zone should the changed circumstances eventuate.

4. We set out the reasons for our opinion below.

Legality of deferred zonings

5. The use of deferred zonings as a planning technique is not illegal or ultra vires in and of itself. We have found no case law which rules out the use of deferred zonings as a matter of law. By contrast, there are several instances where the Environment Court has confirmed the insertion of deferred zonings into district plans without concerns about the legality of the technique.[1]

6. As noted at paragraph 2 above, Commissioner John Milligan has expressed a view that a zone that was to be deferred until such time as a Council resolution is passed confirming the availability and capacity of a water supply for a site, is unlawful on the basis that it is an attempt to achieve by informal means that for which the legislature required a specified and formal process, being a plan change. The Commissioner's decision does not refer to case law supporting that view.

7. However, the lifting of a deferral upon the passing of a Council resolution confirming the availability and capacity of infrastructure was specifically considered and approved by the Environment Court in *Akaroa Orchards Limited v Selwyn District Council*.[2] The Court was considering the appropriate zoning of land in Prebbleton at a time when development was constrained by the ability of the Christchurch City Council to deal with sewage in the Springs Road reticulation line to Christchurch, and also by the terms of an agreement between the City Council and Selwyn District Council over the annual volume to be piped to the city. The Court considered that there was a "*very real possibility*" that these constraints would be alleviated. As a solution, the parties to the appeal proposed a higher density living zone that would be deferred until such time as the Council resolves that there is adequate capacity to deal with the increased volume of sewage from higher density development. In accepting the parties' deferred zoning, the Court stated:

> *…we are satisfied that our infrastructural concerns in re-zoning the site are completely avoided by allowing for a deferred zoning. We conclude that the trigger mechanism of a council resolution that there is adequate capacity to service a particular area, is both certain and transparent. On that basis, parties will be aware at the time that resolution is passed that the deferred zoning is no longer effective and the zoning would then change from Living 1A2 to Living 1A5.*

8. In our opinion, there is no purported attempt to bypass the plan change process by informal means if the trigger mechanism for lifting a deferral is both certain and transparent on the face of the

[1] Examples include *Westbrooke v Tasman District Council* (W45/94); *Rutherford Family Trust v Christchurch City Council* (C26/2003) and (C173/2004); *Akaroa Orchards Limited v Selwyn District Council* (C85/2006); *Cracroft Residents Association Inc v Christchurch City Council* (C9/09).
[2] *Akaroa Orchards Limited v Selwyn District Council* (C85/2006).

provisions of the district plan which had already been through a public participatory district plan review process. The parties in *Akaroa Orchards*, as will any person reading the relevant provisions in the plan, will be aware that at the time a resolution is passed, the deferred zoning is no longer effective, and the zoning would change accordingly.

9. The Independent Hearings Panel ("**IHP**") considering the proposed Christchurch Replacement District Plan has recently observed that the deferred zoning technique is used reasonably extensively throughout New Zealand, and that there is nothing particularly unusual about it.[3] Deferred zonings are utilised in district plans throughout New Zealand, with examples including the Hastings District Plan, the Horowhenua District Plan, the Christchurch City Plan and the Selwyn District Plan.

10. Although deferred zonings are not illegal or ultra vires in and of themselves, they will not be valid or appropriate in every case. As we will discuss below, the validity of deferred zoning provisions will be dependent on the clarity and precision of those provisions, while the appropriateness of those provisions depends on all the circumstances surrounding its proposed use on any particular occasion, as informed by an examination under section 32 of the RMA.

Deferred zoning provisions must be certain and clear to be valid

11. Provisions of a plan, including any deferred zoning provisions, must be clear and precise on their face so that those who administer the plan or are affected by it should be able to identify without difficulty the provisions which apply, and apply them accordingly. If a rule is unclear, it may be void for uncertainty.[4] The IHP accepted that the use of a deferred zoning can be ruled out by uncertainty. Elements of deferred zoning provisions that need to be clear and precise include:

    (a) The identification of those activities which are permitted while the deferral remains in place.

    (b) The identification of those activities which are permitted after the deferral has lifted.

    (c) The condition(s) and/or criteria that need to be met in order to trigger the lifting of a deferral ("**the trigger conditions**").

12. The need for clarity and precision when identifying activities that are permitted was considered by the High Court in *A R and M C McLeod Holdings Limited v Countdown Properties Limited*, which established two distinct propositions:[5]

> *The first is that a council may not reserve, by express subjective formulation, the right itself to decide whether or not a use comes within the category of predominant use. Council cannot, for example, put forward an Ordinance which says A will be a predominant use "if the Council is satisfied situation B exists". Predominant uses fall for objective ascertainment. That much certainty always is required. The second is that predominant use rights must not be described, even in objective fashion, in terms so nebulous that the reader is unable to determine whether or not a use may be carried on in the zone. This second aspect does not involve any express subjective formula. It involves, simply, invalidity through inherent vagueness.*

[3] Decision 35 (Open Space – Stages 2 and 3) of the Independent Hearings Panel appointed to hear and decide on submissions to the Christchurch Replacement District Plan, dated 12 August 2016.
[4] *Murray v Tasman District Council* (W58/94). The Full Court in *Countdown Properties Limited v Dunedin City Council* (1994) NZRMA 145 confirmed that *McLeod* applies under the RMA.
[5] (1990) 14 NZTPA 362, at 372-373.

[Our underlining for emphasis]

13. Accordingly, the deferred zoning provisions must not reserve, by express subjective formulation, the right to decide whether activities are permitted before or after a deferral is lifted, or whether the deferral itself can be lifted. In addition, the provisions must not be so vague that a plan user is unable to determine whether an activity may be carried out before or after a deferral is lifted, or whether a trigger condition is satisfied.

14. The need for clarity and precision in trigger conditions was recognised in *Akaroa Orchards*,[6] where the Environment Court was satisfied that a trigger of a council resolution that there is adequate capacity to service a particular area was certain and transparent.

15. Examples of trigger conditions[7] which are certain include those which provide for deferrals to be lifted upon:

    (a) The transfer of specified land to the Council as reserve.

    (b) The payment of costs for providing particular infrastructure.

    (c) Obtaining all necessary resource consents to establish particular infrastructure.

    (d) The registration of restrictive covenants requiring the planting of particular species of native plants in a specified area.

16. By contrast, possible examples of trigger conditions that are prone to being declared void may include those which provide for deferrals to be lifted:

    (a) When the Council, in its absolute discretion, thinks fit.

    (b) When the population has grown to an "appropriate level" (i.e. where there is no specified level, and it is left to a vague judgment call as to when the level is appropriate).

17. Having a small degree of vagueness or discretion may not necessarily invalidate deferred zoning provisions, but it may nonetheless be considered undesirable or unsatisfactory by the Courts. In the context of permitted activity rules, the Court in *Foodstuffs (Otago Southland) Properties Limited v Dunedin City Council*[8] considered that a requirement for corner setbacks to provide "*enhanced pedestrian access*" lacked the certainty it preferred to find in district plan rules. However, the Court considered that it was not so vague that it could not be administered, because it is possible to determine whether a corner setback does in fact provide enhanced pedestrian access to an extent that is greater than negligible.

Information requirements to satisfy the use of deferred zonings

18. As with any other plan provision, the use of deferred zoning provisions can be ruled out as inappropriate as a consequence of an analysis under section 32 of the RMA. It is important that deferred zoning provisions are supported by sufficient information to establish that any objectives enabling the use of deferred zoning provisions are the most appropriate way to achieve the purpose

[6] *Akaroa Orchards Limited v Selwyn District Council* (C85/2006).
[7] Trigger conditions along similar lines as those listed were confirmed in the Environment Court's final decision in *Rutherford Family Trust v Christchurch City Council* (C173/2004).
[8] (W53/93)

of the RMA, and that the deferred zoning provisions themselves are the most appropriate way to achieve all relevant objectives. An examination of deferred zoning provisions will require (amongst other things) an assessment of the efficiency and effectiveness of the proposed deferral provisions to achieve the objectives of the plan, and the identification of other reasonably practicable options for achieving the objectives. The Council will need to collect sufficient information to enable it to undertake these assessments.

19. From a section 32 perspective, there appears to be two underlying assumptions of deferred zones:

    (a) That a particular set of zone provisions is assessed to be the "most appropriate" in the present circumstances.

    (b) However, if particular changes occur to those circumstances at some future time, then the original zone provisions will not be the "most appropriate", and instead, different zone provisions will be the "most appropriate".

20. Accordingly, information to satisfy the use of deferred zonings must be that which identifies, under section 32:

    (a) The most appropriate zone for the present circumstances.

    (b) The particular changed circumstances would make the original zone no longer the most appropriate. The changed circumstances must be able to be clearly defined so as to enable the drafting of valid trigger conditions, for the reasons given at paragraphs 11 to 16 above.

    (c) The most appropriate zone should the changed circumstances eventuate.

21. A section 32 assessment should consider whether the changed circumstances are viable, so as to avoid raising unmeetable expectations. The viability of a trigger occurring was a relevant consideration in *Foreworld Developments Limited v Napier City Council*,[9] where the Environment Court considered that a deferred zoning triggered by the provision of sewage infrastructure was inappropriate in circumstances where the Council was not prepared to commit to the provision of such infrastructure, and had no intention to do so within the life of the plan. The Court was concerned that providing a deferred zoning in such circumstances would raise "unmeetable expectations" and put the Council under pressure to spend money that it has decided to commit elsewhere. The *Foreworld* situation can be contrasted to that in *Akaroa Orchards*, where the Court was satisfied that deferred zoning provisions triggered by the provision of sewage infrastructure were appropriate in circumstances where there was a "very real possibility" that infrastructural constraints would be alleviated. More recently, in approving a deferred quarry zone triggered by (amongst other things) the grant of particular resource consents and the lifting of reserve status, the IHP considered that viability is to be assessed in the narrow sense of whether an outcome is possible, not whether the applications for resource consent and lifting reserve status will ultimately succeed.[10]

[9] (W8/2005)
[10] Decision 35 (Open Space – Stages 2 and 3) of the Independent Hearings Panel appointed to hear and decide on submissions to the Christchurch Replacement District Plan, dated 12 August 2016, at paragraph 311.

22. In order to identify the most appropriate zone should the changed circumstances eventuate (i.e. after the trigger conditions are met), the Council will need ensure that all other issues relevant to the appropriateness of the alternative zone are examined under section 32. Thus, and by way of example, if the sole trigger for rezoning land from rural to urban is the (future) provision and availability of sewer infrastructure, then all other issues relating to the appropriateness of an urban zone should have already been examined in the section 32 analysis. For instance, if issues relating to natural hazards, urban form, amenity and reverse sensitivity are relevant, then the Council will need sufficient information to examine whether an urban zoning will be "most appropriate" in light of those issues. It would be inappropriate to provide a deferred urban zone triggered by availability of infrastructure in circumstances where the land is assessed as otherwise unsuitable for urban development due to high hazard risks or reverse sensitivity issues that are unable to be satisfactorily addressed.

23. It is also important to have information which identifies other reasonably practicable options to using deferred zoning provisions. Other options may prove to be more appropriate than deferred zones, for example from an efficiency and effectiveness perspective. In *Save the Bay Limited v Christchurch City Council*,[11] the Council asked the Court to consider whether the zoning of the Taylors Mistake Bach zone should be deferred until the owners of the 14 baches to be removed or rebuilt in the zone have executed agreements relating to the occupation of baches in the zone, and the removal of baches from the foreshore. However, the Court concluded that a deferred zoning is not necessary under section 32 for this purpose, and instead confirmed a simpler zone rule that achieved the same aim in the following terms:

> *The construction or placement of a bach shall be prohibited unless a corresponding unscheduled bach is demolished or removed from the Conservation 1A zone.*

24. We hope our general observations assist you in assessing the appropriateness of utilising deferred zoning provisions as a planning technique in the next iteration of the Selwyn District Plan. We can provide more specific comments should you have any particular type of deferred zoning mechanism in mind.

25. Please do not hesitate to contact us should you have any queries arising.

Yours sincerely

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Special Counsel

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[11] (C40/2003)