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Resource Management & Planning

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6th June 2014

SELWYN 2031 - DRAFT DISTRICT DEVELOPMENT STRATEGY

Submitter: Brian Redfern
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I would like to be heard in support of this submission.

Introduction and Background

I own an existing 6 ha block adjoining Darfield township on the west side of Clintons Road, legally described as Lot 1 DP50891 (see location plan attached as **Appendix 1**) and zoned Rural Outer Plains. There is an existing developed Living 2A1 zone on the opposite side of Clintons Road (average lot sizes not less than 1 ha).

My property is one of two clusters of small lots adjoining Darfield township which were created under the previous Malvern District Plan rules as shown on the map attached as **Appendix 2**.

I recently applied for resource consent to subdivide by property into a 2 ha and 4 ha lot, consistent with the existing subdivision pattern for the existing cluster of small properties between my property and McLaughlins Road to the south. The Council decision acknowledged that this area does not have a rural character typical of the Outer Plains but was concerned that consent would set a precedent for further undersize subdivision around townships, contrary to the environmental outcomes intended for the Outer Plains (see copy of decision attached as **Appendix 3**).

I appealed the decision to the Environment Court but withdrew as a result of changes to District Plan policy under the Land Use Recovery Plan which made consent more difficult,

namely removal of the policy of encouraging higher density residential development around as well as within townships.¹

The existing Rural Outer Plains zoning for the existing clusters of small lots around Darfield township is inconsistent with the intent of the Outer Plains to provide for farming activity and an open space character consistent with a low dwelling density of no greater than one dwelling per 20 ha. It is a far more sustainable and efficient use of the land resource to allow further rural residential subdivision of these defined areas than retain the unrealistic Rural Outer Plains zoning. There will be de minimus if any adverse effect on rural character or amenity values given the proximity to the townships and because further permitted subdivision will be 'infill' in nature rather than expanding the clusters, thus not changing the current balance between open and more densely developed areas around the township.

Submission

In accordance with the above, I support identification of Darfield as a service centre in the 2031 Strategy, and development of an Area Plan for Darfield and environs, subject to the Area Plan recognising the existing clusters of small sized rural lifestyle lots on the west township boundary by appropriate zoning i.e. Living 2 zoning (average lot size not less than 1 ha) for the western cluster including my property and L2A1 zoning (average lot size not less than 2 ha) for the north west cluster. I also support the Action under Issue 57 'Impact of urban growth on the rural sector' of consolidation of urban and rural residential in and around townships. (my underlining).

Amendments to the 2031 Strategy

In accordance with the above, I seek the following amendment to the 2031 Strategy (additions in **bold and underlined** and deletions ~~strike through~~).

Table 1

Issue/Action	Amendment sought	Implementation
1 Provision of zoned land for Urban growth	Prepare an Area Plan for: <ul style="list-style-type: none"> • Darfield and the surrounding environs <u>including make provision for L2 zoning adjoining the existing western township boundary where the existing subdivision pattern is smaller lots of 6 ha or less.</u> 	Initiated by SDC in 2014/ 2016

¹ Policy B4.1.4 Rural Volume

Date: 06 June 2-14

Signed:  Principal, Fiona Aston Consultancy Ltd

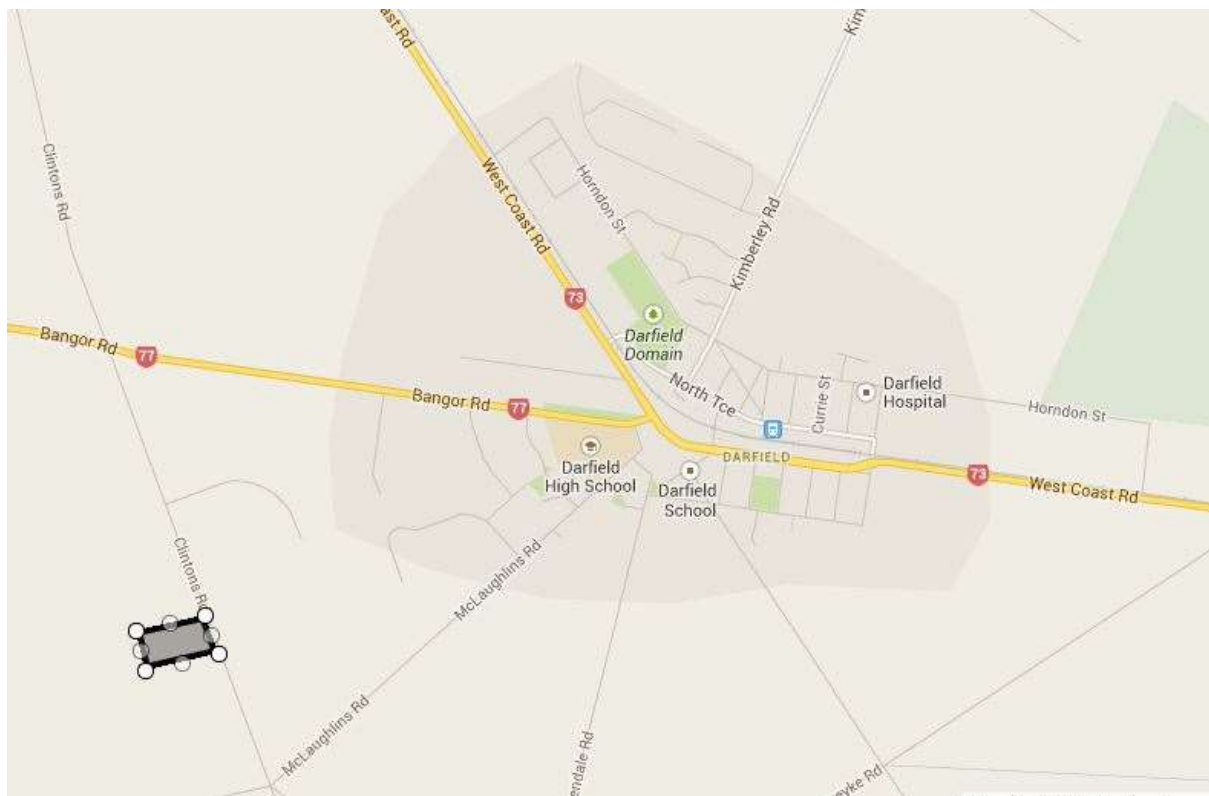
For: Brian Redfern

Appendix 1: Location Plan

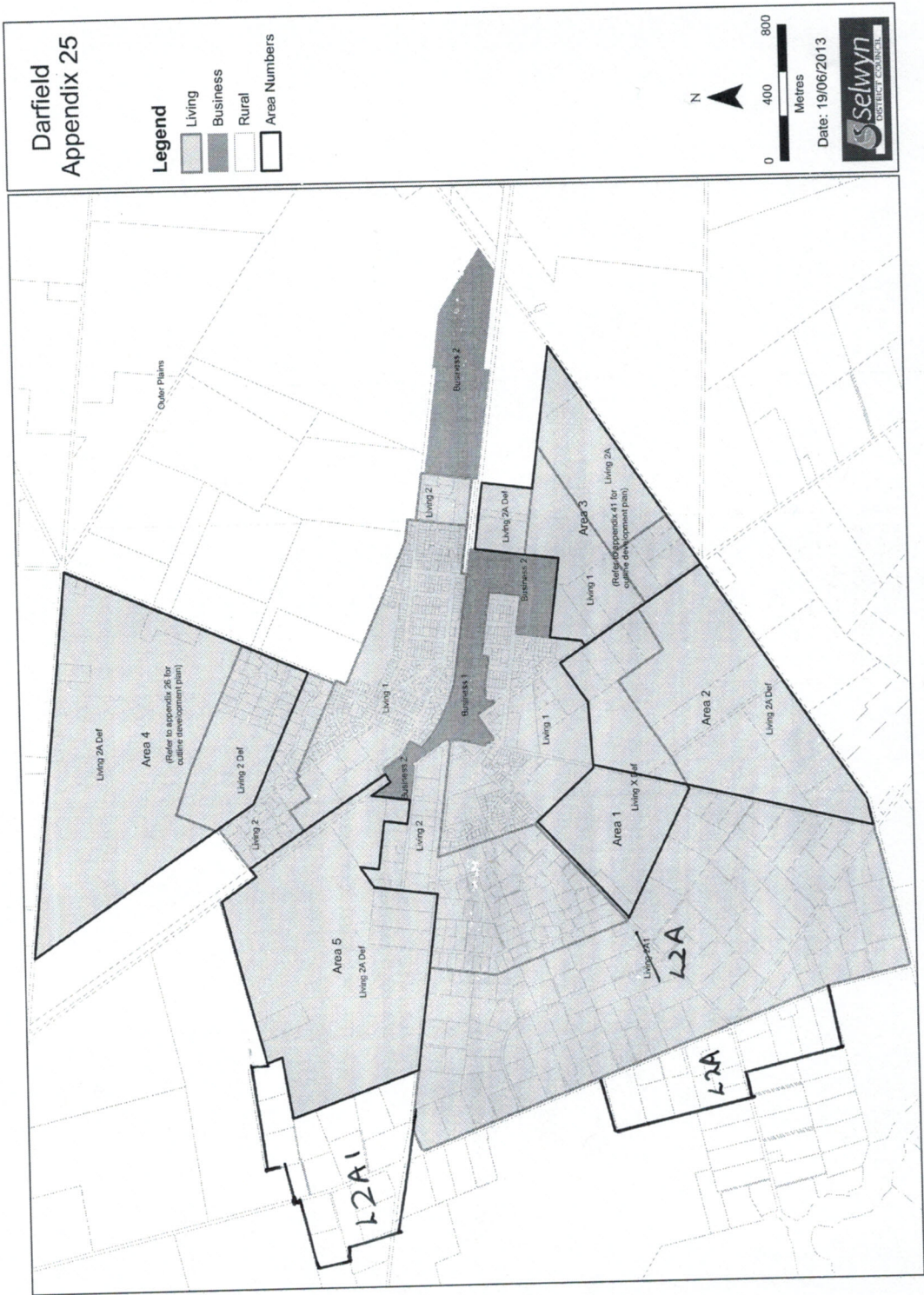
Appendix 2: Clusters of existing small lots adjoining western boundary of Darfield Township

Appendix 3: Council decision on RC 135099 and RC 135101 (1613 Clintons Road)

Appendix 1: Location Plan



OUTLINE DEVELOPMENT PLAN – AREAS 1-5, DARFIELD



Proposed Zoning

IN THE MATTER OF the Resource
Management Act 1991

AND

IN THE MATTER OF B Redfern

**DECISION OF THE SELWYN DISTRICT COUNCIL
RESOURCE CONSENT APPLICATION 135099 & 135101**

APPLICANT: B Redfern

PROPOSAL: To subdivide a 6 hectare allotment into 2 allotments
with Lot 1 being 2.017 hectares and Lot 2 being 4.0
hectares.
To erect a dwelling on each allotment created

ADDRESS: 1613 Clintons Road, Darfield

LEGAL DESCRIPTION: Lot 1 DP 50891 being 6.0170 ha in area more or
less, as contained in Certificate of Title CB29F/242

ZONING: Partially Operative District Plan – Rural Section –
Outer Plains

ACTIVITY STATUS: Non-complying

NOTIFICATION: The application was publicly notified on 21 May
2013. Submissions closed on 20 June 2013 with 2
submissions in opposition received (one being late).

DATE OF HEARING: The hearing commenced on 19th July 2013 at
Rolleston. Further information was requested by the
Panel on 07 August 2013 as a result of observations
from the site visit. A response to the further

information request was received 23rd August 2013.
The Panel closed the hearing on 28th August 2013.

DECISION: Declined

APPEARANCES: The hearing was attended by:
Brian Redfern – applicant
Fiona Aston – consultant planner for the applicant
Andrew Craig – landscape architect for the applicant
David Smith – Council planner presenting the s42A report

INTRODUCTION

1. The Council appointed Councillors D Hasson (Chair) and N Barnett to hear and decide on this application under Committee Delegation 103. This decision:
 - i. Briefly describes the proposal and the hearing;
 - ii. Outlines the matters assessed; and
 - iii. Records the Council decision.
2. The application seeks to subdivide Lot 1 DP 50891 (approximately 6 ha) into 2 respective lots of 2ha and 4ha and to erect a new dwelling on each lot.

THE HEARING

3. Prior to the opening of the hearing the procedural issue relating to the receipt of a late submission was discussed. Mr Smith was of the view that as the submission was only 4 days late it should be accepted. The applicant did not agree and Ms Aston stated that a late submission could only be accepted where the applicant agreed or there were special circumstances neither of which existed in this instance. In response to a query by Councillor Barnett as to why the applicant should be opposing the submission where the applicant requested that the application be publicly notified, Ms Aston replied that public notification was requested on the advice of Mr Smith so as to avoid additional costs in the writing of a Section 95 report. Councillor Hasson questioned whether the Runanga had been directly notified and whether the applicants had consulted with them. Ms Aston replied that no direct consultation had been undertaken however they had been directly notified. A decision was made to hear the

evidence and to defer a decision on the late submission until the evidence had been heard.

4. Councillor Hasson then opened the hearing and invited the applicants to present their evidence.
5. Mr Craig opened the presentation for the applicant. He considered that although a 2 hectare lot was not rural in nature, rural character was retained by both the surrounding rural land and a number of conditions which could be imposed to maximise open space. These included setting the dwelling back from the road by at least 50 metres, controlling reflectivity of the building, requiring similar hedging to that existing on other properties and requiring farm type fencing. He noted that the objectives and policies of the District Plan appeared to anticipate smaller lots than those specified by the subdivision rules as long as rural character was maintained.
6. Councillor Barnett then queried if a larger building setback such as 100 metres would provide a better sense of open space. Mr Craig replied that it may increase a sense of open space but may increase reverse sensitivity issues.
7. Councillor Barnett questioned whether the condition requiring hedging would negate rural open space especially given that the property adjoined open farmland with no such hedging. The applicant replied that they weren't concerned whether or not a shelterbelt condition was imposed but the reason for suggesting it was to try to blend with the existing rural character.
8. Councillor Hasson then questioned the uniqueness of the site and asked whether other applicants could use the same mitigation measures to address the objectives and policies. Mr Craig replied that yes they could when considered in combination with the individual characteristic of the site.
9. Councillor Hasson queried whether the reflectivity condition proposed would cover the existing corrugated iron shed and whether we could impose a condition to stop people putting a solid fence inside the farm style fence. Mr Craig replied yes to both questions.
10. Councillor Barnett then asked whether the applicant was intending to live on one of the allotments and Mr Redfern replied that yes they were intending to farm and then eventually build a dwelling on the 4 ha lot.
11. Fiona Aston then presented her evidence. She emphasised the fact that the site was already an exception to the Outer Plains density which was recognised by the 4 hectare "grandfather" clause of the District Plan. Ms Aston outlined the historic background to the site and the surrounding allotments which she considered assisted in giving the site its "uniqueness". She provided a map showing that there was only one other 6 hectare allotment in the rural area immediately surrounding the Darfield Township and she considered the characteristic of that site quite different from the subject site and so did not consider a precedent issue arose.
12. Councillor Barnett questioned where the water for the properties would come from and Mr Redfern replied that the existing allotment had a connection from the Darfield Rural B supply and it was intended that that new allotment would also obtain such a supply. Councillor Barnett queried whether the applicant was intending to share the existing water allocation or whether he had permission for

a second connection. Ms Aston replied that the applicant only became aware that water allocation may be an issue through reading the Section 42A report but the default position would be an onsite well.

13. Councillor Hasson queried whether the applicant had an Environment Canterbury approval for a septic tank and Ms Aston replied that it had been assessed against the Environment Canterbury rules and although no Certificate of Compliance had been applied for they did not consider that a resource consent was required.
14. Councillor Hasson then asked whether given that Mr Craig had said that the proposed conditions to preserve rural character could be used by others to mitigate effects, were there any other distinguishing features of the site which would reduce the precedent created. Ms Aston replied that the other 6 hectare allotment referred to was of a different shape and was a corner site with a different pattern of surrounding development. She considered this site was a "one off" being the only undivided 6 hectare allotment remaining within a historical block of 6 hectare allotments. Mr Redfern then commented that the Malvern County Council plan allowed subdivision to 6 hectares (predated the Rural A Malvern 4 hectare rule) and then later they were granted approval to subdivide 2 hectares from the 6 hectare lot to bring them into alignment with the 4 hectare cluster.
15. Councillor Hasson then queried whether this could create a precedent whereby a 4.5 hectare allotment could be subdivided into a 0.5 hectare lot and a 4 hectare lot and how would this fit in with the objectives and policies of the District Plan. Ms Aston replied that 0.5 hectares was quite a bit smaller than 2 hectares which could create an adverse cumulative effect and any such decision would have to take into account the surrounding environment.
16. Councillor Hasson questioned whether it was appropriate to ask adjoining properties to provide open space to compensate for a higher density on another site. Ms Aston replied that you can look at the open space on the adjoining lot as part of the existing environment but can not assume that it will remain as open space in the future.
17. Councillor Barnett expressed concern about the increase for reverse sensitivity effects given that there was a dairy conversion occurring on the adjoining land. Mr Redfern replied that the 2 hectare allotment did not adjoin the dairy farm conversion (it was the 4 hectare allotment which was adjoining) and in any case the dairy farm owner had provided written consent.
18. Councillor Hasson then raised the issue that even if the Panel decided not to accept the late submission from the Runanga, they were still required to consider Treaty issues in their decision.
19. Council Planner David Smith then took his Section 42A Report as read. Mr Smith accepted the landscape evidence presented by Mr Craig at the hearing and was therefore now less concerned about the effects of the proposal and considered that they could now be termed "minor".
20. Mr Smith reiterated that he was still concerned about how the proposal sat in terms of the District Plan. While he acknowledged that the area surrounding the subject site was not of typical Outer Plains character, this environment was created under previous planning rules which may have been acknowledged by

the “grandfather” clause in terms of erecting dwellings on undersized lots but did not extend to subdivisions.

21. Mr Smith was therefore of the opinion that the application could now pass one limb of the Section 104 threshold test and so the Panel were now able to consider whether the consent should be granted.
22. Mr Smith stated that he continued to be concerned with how the proposal sat in terms of the objectives and policies especially Policy B4.1.1. He also had concerns about the precedent that approval of this proposal would create and that the Mullholland land (land to the east) could also seek to use this decision to “fill in the gap” between these smaller lots and those further to the east. He considered that although the site may be unique in terms of its historic development patterns it was not unique in terms of its size.
23. Councillor Hasson then queried whether the creation of a precedent through approving this application could extend to Existing Development Areas (EDAs). Mr Smith replied that although this situation was relatively unique people could try to argue this. When questioned about his comment on the Mulholland land Mr Smith replied that his main concern related to sites adjacent to a township attempting to use this as a precedent to subdivide. He reiterated that he was still concerned about how the proposal sat in terms of the objectives and policies and his recommendation to decline still remained.
24. Councillor Hasson then asked whether Mr Smith had prepared any draft conditions. Mr Smith replied that he had not prepared any but he would do so and circulate them to the applicant.
25. The applicant then exercised their right of reply. They reemphasised that they considered this situation unique and therefore did not consider that it was “encouraging” further undersized subdivisions and so was not contrary to Policy B4.1.1. They also noted that the objectives and policies sought to “encourage higher densities than provided for in Policy B4.1.1 in and around townships”.
26. The applicant proposed a condition “that no planting exceeding 1 metre in height be located within 20 metres of the Clinton Road frontage”. This attempted to retain open space but to allow amenity planting. Councillor Barnett queried whether a 100 metre building setback would be acceptable and Mr Craig replied that a 50 metre minimum was required but 100 metres would be preferable.
27. Councillor Hasson then reiterated that the following further information would need to be supplied by Mr Smith being potential conditions of consent and clarification of water supply capacity and that this was to be circulated to both the applicant and the submitter (or submitters depending on whether the late submission was accepted).
28. The hearing was then adjourned pending a site visit.

Site Visit

29. A site visit was undertaken on 31 July 2013. The first thing that the Panel noted was the appearance of a dwelling on the property where the application had claimed that the site was bare land except for a garage and a shed. The building in the position described on the site plan as a “garage” was clearly being used as

a dwelling.

30. The Panel noted the existing shelterbelts along many of the properties fronting Clintons Road and then drove further east along Clintons Road to observe where the small allotments resumed.

Request for Further Information

31. As a result of observations during the site visit, the Panel requested further information on 7 August 2013 with regards to the occupied dwelling and how the water units were to be shared between the proposed dwellings given water restrictions within the locality. The response to this further information request was received 23rd August 2013.

Late Submission

32. Before closing the hearing the Panel considered the acceptance of the late submission lodged by Te Taumutu Runanga. The Panel noted that the applicant had not agreed to extend the timeframe and so the Panel could only extend the timeframe under Section 37(1) if they considered that special circumstances applied. In this instance the Panel did not consider that such circumstances existed. The reasoning given for the late submission was simply that the staff member who dealt with Selwyn District had recently left and the person with whom the draft submission had been left to finalise had forgotten to lodge it by the required date. This was not in the Panels view a "special circumstance" and so it did not grant the waiver for lodgement of a late submission under Section 37(4).

Close of Hearing

33. The Panel closed the hearing on 28th August.

DELIBERATION

Issues in contention

34. The Panel considers that the effects to be assessed relate to effects on rural character and amenity together with cumulative effects, precedent effects and the effects on the integrity of the District Plan. Also under consideration is where the proposal sits in relation to the Regional Policy Statement and the Resource Management Act.

Relevant statutory provisions

35. Given that the proposal is a non-complying activity the relevant statutory provisions are sections 104, 104B, 104D and 108 of the Resource Management Act 1991.

FINDINGS AND REASONS

Effects on the environment

Visual Effects

36. The Panel agreed that the rural character of the general area around the site had been somewhat diminished over time and was not typical of the rural character more commonly associated with the Outer Plains. The Panel was however very aware that this was due to the historic zoning requirements of the area and not because of recent subdivision approvals for undersized allotments. The Panel also noted that on the edge of a township there is always a somewhat diminished rural character due to the township zoned area generally being clearly visible from the adjoining rural zone. The Panel was very mindful of the fact that this clear distinction between township and rural is intended to be upheld and the existence of the smaller lots within a township should not provide justification for allowing undersized allotments within the adjacent rural zone where this would adversely affect rural character. The Panel also noted the alteration of the zoning of this area through the Proposed District Plan process which altered the subdivision rules from a minimum of 4 hectares to a minimum of 20 hectares. The Panel viewed this as an intentional attempt to preserve the remaining rural character of the area by not allowing the further fragmentation of rural land to lots less than 20 hectares. The Panel was therefore of the opinion that although further subdivision of this area would not be out of keeping with the existing environment, the cumulative effect of this would serve to further erode the rural character of the area from that anticipated in the Outer Plains zone.
37. The Panel then turned its mind to the mitigation measures proposed by the applicant and how this may assist in mitigating against a loss of rural character from an increase in residential density. Comparing the proposed building setback of 100 metres for both allotments against the permitted baseline which allowed a dwelling to be erected on the parent title 10 metres from the front boundary the Panel considered that this would assist in preserving open space along the front boundary. The Panel however noted that having two dwellings located in close vicinity to each other was not typical of the Outer Plains zone, and planting and setbacks would only partially mitigate against loss of rural character caused by this clustering of dwellings.
38. In terms of the retention of open space by a restriction on tree planting along the front boundary, the Panel noted that as open space was an important rural feature, this could have an overall benefit in terms of the retention of the remaining rural character.
39. Overall the Panel considered that the proposal had an adverse effect on the rural character anticipated in the rural Outer Plains zone. Although the existing area already exhibited a higher than typical residential density, further approval of undersized allotments would have an adverse cumulative effect on the remaining rural character.

Objectives and policies – Partially Operative District Plan

40. The Panel then turned its consideration to where the proposal sat in terms of the objectives and policies of the District Plan.
41. It was noted that Objective B3.4.2 seeks to allow a variety of activities in the rural area while maintaining rural character and avoiding reverse sensitivity. The Panel considered that the proposal did not maintain the rural character anticipated in the Outer Plains zone. Although the rural character in the area

surrounding the site was already somewhat diminished this proposal would further erode this character, creating a cumulative effect which could only be partially mitigated by the proposed conditions. The Panel was also concerned that allowing a subdivision to create an additional dwelling site in close vicinity to a large dairy conversion could potentially create reverse sensitivity issues. It was however noted that the dairy farm owner had provided written consent and so this matter could not be further scrutinised. The Panel were therefore of the opinion that the proposal was out of keeping with Objective B3.4.2.

42. The Panel also considered that the proposal was out of keeping with Policy B3.4.1 which seeks to recognise the rural zone as an area where a variety of activities occur while maintaining environmental standards that allows for primary production and other business activities to operate. The creation of a 2 hectare allotment effectively removes this land area from productive use and so did not "maintain environmental standards that allows for primary production ... to operate".
43. With regards to Policy B3.4.5 which seeks to maintain low levels of building density in the Rural Zone and the predominance of vegetation cover", the Panel noted that this policy wording referenced "building density" although the explanation refers to both "residential density" and site coverage provisions. The Panel noted that a higher residential density is often shadowed by a higher general building density as ancillary residential buildings are erected in association with residential buildings. The Panel were therefore of the opinion that the proposal did not sit comfortably with this policy despite the proposed mitigation measures.
44. The objectives relating to residential density and subdivision in the rural area seek to maintain low overall residential density and the rural character of the rural area. Policy B4.4.1 seeks to discourage residential densities higher than one dwelling per 20 hectares in the Outer Plains zone which the Panel considered gave a strong guidance as to what the objectives intend by their reference to "low overall density". The Panel carefully considered Policy B4.1.4 which encourages new residential development at higher densities than those provided for in Policy B4.4.1 to occur in and around townships. This policy seeks to avoid any further residential settlements from popping up in the rural area and instead guides these types of developments into or adjacent to townships. The Panel however did not consider this to be a stand alone policy which exempted consideration of the other objectives and policies. The Panel considered that this was the only plan provision which on first reading appeared to provide any support for the proposal. However when considered in light of the other objectives and policies it appeared as if the plan was contemplating that a higher density may be appropriate on the edge of a township where rural character was maintained and primary production was not adversely affected. The Panel did not consider that this was achieved and so did not consider that this policy should be given primacy in this instance.
45. On the basis of the above, on an overall basis the Panel therefore considered that the proposal was contrary to the overall intent of the objectives and policies of the District Plan.

Other Matters

46. Of great concern to the Panel was the precedent effect of approving a non-complying subdivision in the rural zone.

47. The Panel do not accept Ms Astons opinion that the precedent effect of approving the subject application would be very limited extending only to the subdivision of 6 hectares into a 2 and 4 hectare lot, adjacent to Darfield, where adjacent allotments had historically been able to achieve the same outcome under previous rules.
48. The Panel considered that characteristics of this site which appeared to separate it from a subdivision in a standard Outer Plains zoned area was its location both adjacent to a township boundary and adjoining a number of undersized allotments.
49. The location adjacent to a township boundary was certainly not a unique situation as all townships border onto rural land. In terms of the history of the subdivision of the adjacent land, the Panel did not consider that this had any bearing on the current application as this was undertaken under old rules which no longer applied. Of relevance to the precedent effect was the existing eroded rural character of the area, however the location of existing undersized allotments in areas surrounding townships is not unique. The Panel were also very aware that as noted by Mr Craig in his evidence that the mitigation measures proposed by the applicants could be applied to any application seeking to mitigate against loss of rural character which would otherwise result from the creation of undersized allotments.
50. The Panel were therefore of the opinion that approval of this subdivision could result in a precedent which allowed subdivision of undersized lots, adjacent to townships where the rural character typical of the rural zone had already been eroded with mitigation measures similar to those proposed by the applicant.
51. The Panel considered this to be a significant and very concerning precedent effect.

Regional Policy Statement

52. The Panel agreed with Mr Smiths comments in his Section 42A report in that the relevant chapter of the Regional Policy Statement was Chapter 5. That is that given that the proposal would result in the loss of amenity values and rural character and is not located within the "Urban Limit". Therefore the proposal is not in keeping with the Regional Policy Statement (1998), the Proposed RPS (2011) and Proposed Plan Change 1 to the RPS (1998).
53. The Panel considered that the key chapter of the CRPS relevant to this application is Chapter 5 Land Use and Infrastructure.
54. Objective 5.2.1: Development is located and designed so that it functions in a way that (1) achieves consolidated growth in and around existing urban areas as the primary focus for accommodating the region's growth...(e) enables rural activities that support the rural environment, including primary production.
55. Policy 5.3.1: Ensure that any limited rural residential development occurs in a form that concentrates, or is attached to, existing urban areas and promotes a coordinated pattern of development.
56. The Panel considered the proposal to be inconsistent with the above Objective and Policy. The RPS requires 'rural residential' development to be establish in relevant rural residential 'zones' and not through the ad-hoc subdivision of rural land. The Selwyn District Plan sets standards for subdivision of rural land, which this application falls well short of. The Selwyn District Plan has a Living 3 zone, which is the appropriate zone for rural residential type activities to establish

within.

The Recovery Strategy for Greater Christchurch

57. The Panel considered the Recovery Strategy for Greater Christchurch but did not believe it had any relevance with regards to the subject application.


Purposes and Principles (Part II)

58. The purpose of the Resource Management Act 1991 is to promote the sustainable management of natural and physical resources. In summary this means enabling people and communities to provide for their well-being while sustaining resources and addressing adverse effects on the environment.
59. For the reasons previously discussed the Panel did not consider that the proposal would maintain the quality of the environment (Section 7(c)) nor maintain and enhance amenity values (Section 7(f)) and did not consider the proposal to be consistent with the purpose and principles of the Resource Management Act 1991.

DECISION

- 60 After considering: the application; the evidence presented at the hearing; the Council Officer's report; the submission; and the observations made during the site visit, the Panel determined that the proposal would have a more than minor effect on the anticipated rural character of the Outer Plains zone, a cumulative effect on rural character in the immediate vicinity of the site and would be contrary to the overall intent of the objectives and policies of the Partially Operative District Plan. The Panel also considered the proposal to be out of keeping with the Regional Policy Statement and the Resource Management Act.
- 61 The Hearing Panel therefore declines Resource consent 135099 and 135101.

DATED THIS 25 DAY OF SEPTEMBER 2013



COUNCILLOR D HASSON
HEARING COMMITTEE CHAIR

ACTING UNDER COMMITTEE DELEGATION 103