THE RESOURCE MANAGEMENT ACT 1991

CHANGE PROPONENT:	**SILVER STREAM ESTATES LTD**
LOCAL AUTHORITY:	**SELWYN DISTRICT COUNCIL**
SUBJECT MATTER:	**PROPOSED PRIVATE PLAN CHANGE 24 – SELWYN DISTRICT PLAN**
SITE DESCRIPTION:	Part of the land bounded by Cardale Street, Telegraph Road and Creyke road, Darfield
HEARING DATE:	13th December 2012
FINAL SUBMISSIONS RECEIVED:	9th January 2013

Appearances:

- Aidan Prebble for **Silverstream Holdings Ltd**
- Katherine Forward for **Torlesse Travel Ltd**
- **Evan Frew**
- **Ross Saunders**
- **Judith Pascoe**

Jayne Whyte, Andrew Mazey, Murray England, Mark Rykers and Russell Malthus to present section 42A reports.

Recommendation: Approve in amended form

John Milligan
Commissioner
19th February 2013

RECOMMENDATION OF THE COMMISIONER

OVERVIEW

Silver Stream Estates Ltd (Silver Stream) owns much of the land bounded by Cardale Street, Telegraph Road and Creyke road in the town of Darfield. Most of the (now) relevant part of this area is currently within the Living 2A Deferred Zone of the District Plan. Some time ago, Silver Stream applied for subdivision and land use consents to enable it to develop part of its holdings within this area so as to allow for residential development to densities more akin to those permitted in the Living 1 Zone. Those applications were declined, essentially for the reason that the then-proposed scale and densities of development were, together with their attendant effects on the environment, thought to be such as could not be effected otherwise than by an alteration to the relevant provisions of the Plan.

Subsequent discussions with officers of the Selwyn District Council (and, I think, with some of those landowners likely to be affected) have led to the present proposal. As notified, Change 24 has an ambit beyond both that of the earlier application and of Silver Stream's holdings. In broad summary the notified proposal involved:

(a) The re-zoning of an area of Business 2 zoning to Living 1;

(b) The re-zoning of a block having frontage to State Highway 73 (presently Living 2A Deferred) as Business 2;

(c) The creation of areas of Living 1 (approx. 45ha) and Living 2 zoning approx. 46ha) encompassing the balance of the 'Change' area.

These alterations were proposed to be effected by amendments to the Planning Maps, together with one alteration to the Policy framework of the Plan and a range of alterations to the Rules, as well as the insertion (as a schedule to the Plan) of an outline development plan. According to the Change as proposed, development of the Living 1 and Living 2A areas 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" (my italics).

Notification of the Proposed Change in mid-2011 produced 27 original submissions. Further submissions were made by 4 individuals or groups.

Thereafter Silver Stream appears to have reconsidered its position, the upshot of which being its withdrawal of that part of its original proposal as had to do with the Business zoning – a decision which in turn produced a withdrawal by the Selwyn District Council of its submission in opposition to the change as a whole. Some further 'fine tuning' has occurred – in particular, that leading to the preparation of an amended outline development plan. The section 42A reports, circulated in December 2012, indicated the position that had then been reached and were prepared on that basis.

The process of 'fine tuning' continued at the hearing. At its conclusion Mr Prebble suggested that his closing submissions should be presented in writing, together with the version of the

Change finally proposed by his client. On the 9th January 2012 I received brief final submissions and a revised outline development plan.

I have been appointed by the Selwyn District Council as a hearings commissioner to consider the Change as proposed and the formal submissions made with regard to it (as amplified at the hearing) and to make a recommendation to that Council as to the manner in which those should be dealt with.[1] As will become apparent, I recommend that Change 24 be adopted in a form somewhat different from that in which it was originally notified. . In what follows I explain the reasons behind this recommendation. I record also that a draft version of this recommendation was sent to relevant officers of the Selwyn District Council on 30th January last, so that checks could be made as to whether Change 24 as modified by "the alterations that I [here] recommend can be fitted in to the Plan so that the whole is a coherent document." I am now informed that they can.

ALTERATIONS TO PRIVATELY PROPOSED CHANGES

Clause 10 of the Second Schedule to the Act requires that, following the hearing of submissions to a proposed change, the Council:

- Must give reasons in its decision for the acceptance or rejection of each submission, and
- May include in that decision "matters relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions".

These provisions, coupled with the participatory nature of what is in essence a legislative process, have led to the general rule that a proposed change may be altered (through the processes leading to a decision on submissions) only to the extent that each alteration comes fairly and reasonably within the scope of submissions made to the notified document. One exception to this general rule is to be found in Clause 16(2):

> A local authority may make an amendment … to its [a proposed Change] to alter any information, where such an alteration is of minor effect, or may correct any minor errors.

The cases indicate that an alteration or correction may qualify as 'minor' (for the purposes of this Clause) if it does not affect the rights of members of the public.[2] This exception aside, and as far as I am aware, no consideration has yet been given at an authoritative level to the question of whether the general rule referred to above is *exclusive* – that is, whether there may exist further exceptions to it that permit amendment as a proposed change moves from public notification to the point at which decisions are given on submissions.

This issue is of particular importance in the case of privately initiated changes which, because often 'project oriented', are sometimes seen as akin to applications for resource consent. Thus, as in the present case, the consideration of privately initiated changes sometimes proceeds as if they occupy an intermediary position – so that (e.g.) attempts are made, *within the change*

[1] See s34A(1)a, RMA '91

[2] What, in this context, counts as 'the rights of the public' seems as yet unclear; in particular, is the statute-conferred ability to participate in the planning process a 'right' for present purposes?

process, minutely to determine the final details of subdivision and development or to attach conditions of the kind appropriate to resource consents.

In my view approaches of this sort should be treated with caution. The Plan / Consent dichotomy maintained in the Act indicates that the two are intended for rather different purposes. A District Plan works by separating activities in to two great classes – those permitted as of right (provided they satisfy conditions contained in the Plan itself) and those for which consent (of one sort or another) is required.[3] At least in the case of these two classes, the (Plan enunciated) distinction between them must be in terms sufficiently certain that readers of the document can decide for themselves whether or not consent is required. At the stage of plan formation the fact that some examples of a particular category of activity may require individual consideration (perhaps leading to the imposition of particular conditions) may of itself be a reason to remove that category from the 'permitted' list.

What this indicates is that there are limited opportunities, within the processes of plan preparation and change, to craft the sort of detailed conditions that may be appropriate to resource consents. On the face of things, this seems to be because the precise nature, form and effects of development then foreshadowed may not be known at the time of plan preparation.

I believe that in considering a plan change (whether or not privately initiated) it is necessary clearly to focus on the functions of the Council as a land use planning authority and to distinguish between those and its functions as a consent authority. Even so, the question remains – what is to be done about an issue important to the success or otherwise of a (project oriented) plan change when the submissions contain no basis for significant alteration in this respect? – that is, how might someone in my position act so as to recognize the issues peculiar to a project-oriented change?

Firstly it is clear that, if a proposed change can be said to have 'parts', one or more of these parts may be withdrawn, either before approval of the change by the local authority or before the hearing of any appeal to the Environment Court has commenced.[4] Seemingly this is what enabled Silver Stream's removal, from the ambit of this Proposed Change, of the areas of existing and proposed Business zoning. Once this has occurred there remains no justiciable issue regarding the withdrawn 'part' (and, of course, the submissions relating to it).[5]

Secondly, I think that a privately initiated change (of the ;project oriented' kind) may be amended by its proponent – even after the hearing of submissions has commenced – in circumstances where that amendment is not of a kind that would make re-notification 'necessary' (in a rather weak sense of that word). Plainly (as with a submitter) a change proponent cannot extend the ambit of the change as notified. Conversely, reductions within that ambit seem to me to be permissible (as they are in the case of a submission) providing those reductions do not so alter the essential nature of the change as to convert in to something so different that, consistent with the scheme of the Act) further opportunities for public participation ought to be available. The paradigm case here may be an amendment through which the change proponent (and land

[3] I have not overlooked a third category of 'prohibited activity' – irrelevant here and rare in any event.
[4] *West Coast RC v Royal Forest & Bird Protection Soc of New Zealand* 8/09/06, Chisholm and Fogarty JJ, HC Christchurch CIV-2006-409-673; *Thompson v Marlborough DC* C155/07.
[5] Clause 8D, First Schedule; *Thompson v Marlborough DC* C155/07.

owner) accepts a constraint on the development opportunities that the change, as originally proposed, would have extended.

Permissible amendments of this kind might include the following:

(a) An adoption, within the amended proposal, of an alteration capable of being seen as meeting (at least in part) the substance of a submission, thus reducing the extent to which that issue needs debate;

(b) The provision of a different means of achieving something clearly foreshadowed by the change itself – possibly anticipating the exercise of a Clause 16 power or an alteration of the kind discussed below; and

(c) The inclusion of provisions better designed to avoid adverse effects on the environment.

I should make it clear that I am here referring to amendments sought by the change proponent – it would not be proper (I believe) to force upon such a party an alteration that it does not which to accept and, at least in the case of (b) and (c), for which there is no justifying submission

A third way permissibly to amend a proposed change may come from s32 of the Act, subsection 32 of which requires that, in the course of my present considerations, I must examine—

> (a) the extent to which each objective is the most appropriate way to achieve the purpose of [the] Act; and
>
> (b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.

The implication here is that, if a provision under examination cannot be said to be 'the most appropriate', it should be rejected in favour of something else that is – at least in comparative terms. But what if there is no alternative open in terms of either the prior provisions of the plan or the submissions? An example taken from proposed Change 24 is of this sort:

The 'deferment' provisions of the Operative Plan are intended to deal with a particular problem in Darfield – the availability of potable water in sufficient quantities for an expanding town. As things stand, the effective zoning of the 'deferred' lands is to remain rural until the deferment is lifted. Because deferment is itself a provision of the Plan, its uplifting requires the formalities of a plan change.

Change 24 proposes a different mechanism – the passing of a "Council resolution confirming the availability and capacity of a water supply for [the] site". 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, so that if I am limited to the realm that exists between the provisions of this Change, the submissions and the relevant provisions of the Operative Plan there seems nothing sensible that can be inserted in substitution. I am of the

view, however, that it is permissible to amend a (privately and project-oriented) proposed plan change where such an amendment (i) is justified by s32, (ii) achieves the purpose for which the original was intended and (iii) is not such as requires further opportunities for public participation.

At this point I should make two things clear. The first is that I do not present the views set out above as a developed argument for a power of amendment. They are, of necessity, views formed within the particular circumstances of this Change and in the absence of judicial authority on the particular question; even if correct, they will undoubtedly require further refinement.[6] Secondly, it is implicit in what has been suggested that I am not attracted by the view that a submission seeking rejection of a change as a whole is something that (of itself) warrants a revisionist approach to its approval. Clause 10 of the Second Schedule requires the acceptance or rejection of submissions, and I interpret those words as requiring a response to the concerns of each submitter – that is, it is the *substance* of those concerns that must be responded to, so that submitters may see how *their* concerns (to the extent that they can be ascertained) have succeeded or failed to bring about alterations of a kind to which those submissions were directed.

In this case, therefore, I proceed on the basis that the proponent of a private and project-oriented change may introduce amendments to the change as notified, and that I may recommend alterations to that proposal, *in each case within the limits discussed above*. These are to be understood as exceptions to the general rule, so that otherwise I may make no alterations to the document as notified (or as reduced by the withdrawal of part).

.....

By way of example, the present case involves the issue of sewerage reticulation, sewage treatment and disposal. Unusually for a town of its size, Darfield has no public sewerage system and relies (largely) on the use of individual septic tanks. This Change proceeded on the basis that a development-wide system was to be provided (initially, so it seems, by the developer), but the nature, site and process ultimately to be adopted were matters requiring further consideration.

Two possible sites for a treatment plant were identified – one within the 'Change' area (on land within Silver Stream's control[7]) and the other across the road from it (on land owned by the Council and designated for that purpose). The uncertainties thus generated led to suggestions (in the s42A reports, but not the submissions) that there be building line restrictions constraining development in the vicinity of wherever it was the plant (whatever it was) was ultimately determined to be.

Such an approach seems utterly impractical. As with the water supply issue, a better approach appears to be that of making the *existence* of infrastructure a determinate of subdivisional status – thus (e.g.); subdivision may be a controlled activity if appropriate infrastructure is available and non-complying if it is not. By that means – and at least in the case of sewage treatment and

[6] If this approach is fundamentally wrong, however, then the available options seem to be (i) the acceptance of a clearly defective , (ii) the rejection of a change which, despite its faults, has fundamental merit, or (iii) some sort of postponement pending the notification of a suitable variation. In the circumstances of the present project an adoption of any one of these would, I think, bring the private change process in to some disrepute.

[7] This site is in an area proposed to be zoned Living 2A. I am unclear as to the activity status of 'wastewater treatment and discharge' within this proposed zone.

disposal – the need for and extent of separation distances can be resolved *before* the issue of subdivision design is addressed.

Both questions have, I think, been dealt with through an amendment, by Silver Stream and in the course of the hearing, to relevant provisions of the proposed Change. In the light of the earlier discussions these amendments seem to me to be permissible and, in addition, to be of a kind that I could have made in any event via the 's32' route.

CHANGE 24 – AS FINALLY PROPOSED

With a couple of exceptions (to be discussed later) I have concluded that the various 'amendments' adopted by the Change proponent – both before and during the hearing – are appropriate. Accordingly, Proposed Change 24, insofar as it now calls for consideration, differs from the notified document in the following ways:

(a) The proposed re-zonings (i) Business 2 to Living 1 and (ii) Living 2A (Deferred) to Business 2 are deleted, with the consequential removal of proposed rules 12.1.3.15, 13.3, 16.1.5, the reference to (proposed) rule 16.1.5 in proposed rule 16.1.7, proposed rule 17.2.1.8 (and the proposed reference to it in rule 17.2.5), proposed rule 2.14 in its entirety, and proposed rules 24.1.3.22 and 23;

(b) The removal of proposed rule 1.4 (the unlawful deferment rule discussed earlier) and the insertion of a new subdivision rule 12.1.8 as follows:

> Non-complying activities – Subdivision – Darfield
>
> 12.1.8 The subdivision of land within the Living 1 and Living 2A zones within the Darfield Outline Development Plan within Appendix 41 shall be a non-complying activity until:
>
> (a) A potable water supply is available which is capable of serving the lots within the subdivision; and
>
> (b) A wastewater disposal system is available which is capable of serving the lots within the subdivision.

- with a consequential amendment to Rule 12.1.3.9 to replace 'areas 1 – 5" with "Areas 1, 2, 4, and 5"

(c) The addition of a new 'Traffic' rule, intended to meet the concerns of some submitters and those expressed in the s42A report of Mr Mazey. This rule (about which I will have something more to say later and which will need to be inserted at an appropriate place within the subdivisional rules of the Plan) goes further than might be justified by the submissions themselves. The rules as now proposed by Silver Stream – with a clarifying addition shown in square brackets – is as follows"

> Notwithstanding any other provisions in this Plan, subdivision of the Living 1 land within the Darfield Outline Development Plan [(Appendix …] in excess of 186 lots shall be a restricted discretionary activity if:

- the observed average delay for vehicles turning right out of Mathias Street onto State Highway 73 in the morning peak hour is more than 35 seconds per vehicle, or subdivision is expected to result in the average delay for vehicles turning right out of Mathias Street onto State Highway 73 in the morning peak hour becoming more than 35 seconds per vehicle; and
- there is no sealed road link formed between the site and Creyke Road; and
- Creyke Road is unsealed between the road link to the site and the State Highway 73 / Creyke Road intersection,

with Council's discretion restricted to considering the effects of traffic on the efficiency and safety of the State Highway 73 / Mathias Street intersection.

The "observed average delay" shall be determined through recording the amount of time that elapses for each right-turning vehicle between it either joining a queue of vehicles at the intersection or stopping at the intersection (whichever happens soonest) and it progressing beyond the limit line of the intersection. Measurements shall be made by a qualified traffic engineer over three consecutive days between 8am and 9am, and the average of all observations shall be taken.

(d) The insertion of an amended outline development plan (as an Appendix – now expanded to include a Planting Concept Plan, in three sheets).

The exceptions already referred to relate to this last. The (now) Proposed Outline Development Plan, as received on 9th January, appears to *exclude* from the ambit of that plan (and, inferentially, from the ambit of the Change) "land within 500 metres the Gun Club). This seems inaccurately to reflect a discussion that took place with Mrs Pascoe, a submitter in support of the Change as notified and owner of part of the land now under consideration. The idea of a 500m setback originated in the s42A report of Mr Malthus, and it has difficulties that will be discussed later. For the moment, however, I will treat that land as remaining *within* the ambit of the Change as amended.

MY CONSIDERATION OF SUBMISSIONS

In her s42A report Ms Whyte groups the submissions made to Change 24 under a series of subject headings. I take a similar approach, endeavouring to adapt the submissions made to the 're-formed' Change debated at the hearing. Part of that reformation is, of course, a consequence of the withdrawal of the 'Business' elements of the Change, a step that renders irrelevant some of the matters raised in submissions.[8] In what follows I consider only the 'live' issues.

Submissions supporting or opposing the Change as a whole

The primary concerns here were the 'need' for further Living 1 provision at Darfield and the manner in which development of the 'Change' land might impact upon the development of Darfield as a whole. Several factors are of significance:

[8] See note 5, p4, and the paragraph to which it relates.

(a) The land proposed to be zoned as Living 1 is already indicated within the Plan as appropriate for residential use, albeit at a lower density;

(b) Apart from passages in the formal submissions themselves, I was given no information that would enable me to say that, in the (post-earthquake) circumstances of Darfield, the provision of further Living 1 land *within* the wider residential areas of the town was an exercise in supererogation (see also the discussion under 'Statutory Criteria at pp 13 – 14);

(c) The particular circumstances of Darfield (so far as water reticulation and sewage disposal are concerned) suggest quite strongly suggest that a 'private enterprise' approach to these questions may well help in the development of a 'public' solution;

(d) At least in a traffic sense, the information available to me suggests that such problems as might arise from a rezoning of this land were likely to occur *wherever* additional Living 1 provision was made (but, of course, in somewhat different parts of the town); and in addition

(e) The new Traffic rule proposed provides a means by which those concerns might be addressed as development occurs.

In my view, therefore, and at this level of generality, the balance tilts towards approval of the Change.

Reverse sensitivity

Two issues are of significance; the first relating to the Darfield Gun Club. The argument here was that, as a long-standing user of land to the south of the Telegraph Road and Creyke Road intersection, it was (or might be) vulnerable to complaint from residential uses of Living 2A land to the north. However:

(a) The relevant area is already zoned Living 2A (deferred), with removal of that deferment dependent upon the availability of a supply of potable water (and the successful completion of a Plan-contemplated plan change). It is an open question as to whether, were a change to be proposed to remove that deferment, the Gun Club issue of reverse sensitivity would be within scope. The answer to this question may turn on the way in which the then-proposed change was drafted;

(b) Very little information was made available to me as to the extent to which this might be a matter of real concern (assuming full development of the area for Living 2 purposes);

(c) None of the submissions raising this issue attempted to specify what might count as appropriate protection for the club against 'reverse sensitivity' concerns; and

(d) It is thus difficult to see how a remedial provision could now be inserted.

Mr Malthus (the author of a s42A report on Environmental Health matters dated 4 December 2012) recommended that a

> … requirement for a 500m setback from the Darfield Shooting centre for notional boundaries at new dwelling sites should be included in the ODP for Plan Change 24. Alternatively, acoustic barriers could be incorporated in any subdivision design …

The first of these was adopted by Silver Stream and (as already noted) has been incorporated in the latest version of its Outline Development Plan. However that company does not control the affected land. Mrs Pascoe, who owns part of it, said that the first that she heard of this proposal was when she received the s42A reports a few days before the hearing.

Whether the activities of the Gun Club ought to be protected on a 'reverse sensitivity' basis remains, I think, an open question – one which cannot now be closed either by the allowance of an existing submission or through an 'amendment' of the Change by its proponent (see the second category of permissible amendment, discussed at pp 4-5). In the present circumstances I think the best way of 'parking' the issue is to decline to recommend approval of the Change to the extent that it affects land to the north of the Telegraph / Creyke Roads intersection *not* owned by the Change Proponent. Effectively this leaves that land in its existing Living 2A (deferred) zone (and removes any suggestion of a 500m 'setback' arising from approval of this Change).

The second 'reverse sensitivity' issue has to do with the Business / Living 1 zone boundary and arises from a submission by Torlesse Travel Ltd, a bus company operating from premises in Cardale Street. In that submission the company:

(a) Supported Change 24 as notified "subject to the Council approving the entire plan change as notified …", but

(b) Made clear its position that it would not "support the plan change if the Council sees fit to only re-zone rezone Living 2A to Living 1 and retain the status quo for the existing Business 2 zone. In this scenario we would be required to rely on existing use rights and it is likely that reverse sensitivity issues would arise given the nature, character and intensity of our business."

I do not understand the 'existing use' point – particularly as the submission asserts that the company's operations are a permitted activity on the site that it presently occupies in the Business 2 zone, the zoning of which remains unaltered (and presently unalterable) following Silver Stream's withdrawal of that part of its proposal.

In support of the 'reverse sensitivity' point Ms Forward drew attention to Policies B3.4.37 and 38 of the Operative Plan. The first she described (accurately, I think) as requiring the Council to "ensure that any *new* activity occurring along a [Living / Business zone boundary] include measures to mitigate potential reverse sensitivity effects on *existing* activities". The second, she said, "states that the Council ought to avoid residential development *adjoining or next to existing activities* which are likely to be incompatible with residential activities unless potential reverse sensitivity effects will be avoided, remedied or mitigated" (my italics in each case). As can be seen, these policies are directed towards providing a measure of protection to existing activities against the 'reverse sensitivity' consequences of new development on adjoining land.

The land occupied by Torlesse does not adjoin the area presently zoned Living 2A (deferred), and now proposed to be re-zoned Living 1. As I understand the position there is something in excess of 100 metres of un-developed Business 2 land intervening – part of which, it was suggested, may well be developed as a pre-school. On that basis the applicability of either Policy seems doubtful. Further, it is not at all clear that, given the distance involved, the activities that Ms Forward said *might* give rise to complaints from future L1 residents had any real likelihood of doing so. Finally, some mitigatory elements have been inserted within the amended outline development plan – a building line restriction of 40m and an intervening pedestrian/cycle link. All in all, I consider this submission to lack sufficient support.

Traffic issues

One of the features of the Proposed Change is the proposed) insertion, as an Appendix to the Plan, of an Outline Development Plan to which any subdivision is to be "in general accord". In origin, this indicated the position of future internal roads, a roading hierarchy, the possible location of wastewater and discharge areas, and the location of a pedestrian / cycle link. The roading pattern features three access points to Creyke Road, two to Telegraph Road and one via an indicated Mathias Street extension to State Highway 73 and Cardale Street. Importantly, one of the links to Telegraph Road and the northern part of the Mathias Street extension each traverse land not within the control of the Change proponent. Neither of these, therefore, can come in to being merely as part of the subdivision of the Change land.

The traffic implications of the original layout prompted some comment in the submissions, but little in the nature of concrete proposals. All that survives the withdrawal of the Business 2 aspects of the Change is a submission by Silver Stream itself – introducing a varied ODP in which the Business 2 roading link is maintained – that for the first time proposes a 'staging' element to the intended development.

Mr Mazey's s42A report goes significantly beyond the ambit of the available submissions. Prepared after Silver Stream had indicated the nature of amendments that it intended to make, its primary concerns were:

(a) The timing, form and hierarchal function of any link to Mathias Street; and

(b) The absence of detail about any pedestrian / cycle link connecting the intended development with (particularly) the existing primary and secondary schools.

The second of these has, I think, adequately been met in the most recent Outline Development Plan – presumably the pedestrian / cycle link there shown can form part of the contributions required on subdivision approval. As already remarked, Mr Prebble proposes (in his final submissions) to address the first by way of a volunteered (and new) subdivision rule. For reasons already given I think that this is acceptable *only* on the basis that it is an amendment put forward by the Change proponent.

When this is seen in the light of the ODP (in its now-amended form) some difficulties emerge. The intention of the ODP is to guide subdivision of the land to which the Change applies – see proposed Rules 12.1.3.11 and 24.1.3.22, which in terms relate only to land within the original

'Change' area. Withdrawal of the 'Business' elements of the proposed Change took with it the latter provision, leaving (as affected by the original ODP) only that part of Area 3 as is presently subject to a 'deferred' zoning). Additionally, and so far as the northern part of the Mathias Street extension is concerned, a vital part of the land required for that is not controlled by the Change proponent.

The view expressed above – that land to the north of the Telegraph / Creyke Roads *not* within Silver Stream's control should be excluded from the Change – has the corollary that this land also should no longer be subject to the now-proposed Outline Development Plan. To do otherwise would, I think, unjustifiably constrain the options available to owners of that land.

From what has been said so far, it will be obvious that the provision of a Mathias Street extension cannot be achieved merely by way of the processes leading to subdivision (and further development) of the remaining Change land. The new traffic rule – considered as an amendment by Silver Stream to its proposed Change 24 – will be of significance *only after* that link has come in to existence, its function being to preserve the level of service at the Mathias Street / State Highway 73 intersection. On the face of things, therefore, it is entirely possible that the remaining Change land will develop (at least in its early years) with reliance only on one link to Telegraph Road and three to Creyke Road.

I can see no way in which I could alter this position; even if the original submission by the Selwyn District Council had been capable of justifying a remedy of the kind contemplated by Mr Mazey (and I do not think that it was), the possibility has closed as the result of the withdrawal of that submission. For completeness I should say that, on the information available to me, such traffic related problems as there may be do not justify a recommendation to reject the Change (in the form that it now has) as a whole. Notwithstanding the view of some submitters to the contrary, it seems clear to me that a link to the Cardale / Mathias Street intersection (and thus via Mathias Street to SH 73) is a desirable element in any future development of the Change land for the purposes now proposed. Further, and again on the basis of the information provided by Messrs Mazey and Carr (a Transport Engineer called for Silver Stream), such a link is unlikely to be problematic so long as appropriate levels of service at the SH 73 intersection can be maintained. The 'new traffic rule will assist in the second, and other mechanisms exist to enable both.

STATUTORY CRITERIA

The explanatory material provided with the Change (in its original form), the Evidence of Mr Garland and the S43A report of Ms Whyte all contain discussions of the various matters of statutory relevance. In general, I adopt what is there said and confine myself to something of a summary treatment.

Section 74 Matters

Section 74 is (relevantly) as follows:

(1) …

(2) In addition to the requirements of section 75(3) and (4), when preparing or changing a district plan, a territorial authority shall have regard to—

[(a) Any—

(i) Proposed regional policy statement; or

(ii) Proposed regional plan of its region in regard to any matter of regional significance or for which the regional council has primary responsibility under Part 4; and

(b) Any—

(i) Management plans and strategies prepared under other Acts; and

(ii) [Repealed]

(iia) Relevant entry in the Historic Places Register; and

(iii) Regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mataitai, or other non-commercial Maori customary fishing),—

to the extent that their content has a bearing on resource management issues of the district; and

(c) The extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities.

[(2A) A territorial authority, when preparing or changing a district plan, must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district.

In turn, sections 75(3) and (4) state:

(3) A district plan must give effect to—

(a) any national policy statement; and

(b) any New Zealand coastal policy statement; and

(c) any regional policy statement.

(4) A district plan must not be inconsistent with—

(a) a water conservation order; or

(b) a regional plan for any matter specified in section 30(1).

No issues arise in relation to any of these matters.

Section 76(3) says that "[i]n making a rule, the territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect". So far as this is concerned, the primary 'environment' of relevance is one that has already been identified in the District Plan as appropriate for comparatively low-density development and use for residential purposes. For reasons already discussed I am of the view that the increases in density proposed by the Change as it now stands will have a minimal effect on that environment, and that the rules proposed to be incorporates will ensure that result.

With one exception, I do not regard Change 24 as now proposed to be inconsistent in any way with the Objectives and Policies of the Operative Plan. That exception has to do with the proposed alteration, within Policy 4.3.22, so as to result in a reference to "four identified areas of land in the Living 2A zone …" At one level this is merely descriptive of the effect of the Change (if approved). At another level, however, it raises a s32 issue. Relevantly, that section

requires that, before making a recommendation in this matter, I must evaluate "the extent to which each objective is the most appropriate way to achieve the purpose of [the] Act."

Some of the matters relevant to s5 (as supplemented by the rest of Part 2) have already been dealt with. There remains only the question of whether the change of zoning now under consideration will (better) enable (relevant) "people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety …" This question can be tied to submissions asserting that the re-zoning of further Living 1 land is 'unnecessary'.

As Ms Whyte points out, 'need' is a problematic concept in this context, where the relevant 'people and communities' are (largely) the present and future inhabitants of Darfield. There is no evidence to suggest that any part of this group will be *dis*enabled in a relevant respect. By itself, however, this is not enough – in my view a positive conclusion is required that the group will be *better* enabled as a result of an approval of the change than it would be were the Change rejected.

On the information available to me, the question of whether there is likely to be a pool of prospective purchasers who would for themselves consider the extension of housing options arising from the provision of further Living 1 land at Darfield to be something enabling of their wellbeing, must remain largely a matter of speculation. I think, however, that in the particular circumstances of Darfield, a positive answer is justified.

The reason for this turns on a matter already discussed – the absence of a supply of potable water to support residential expansion in Darfield, and the absence of reticulated sewerage, together with the absence of a 'public' facility for sewage treatment and disposal. Because the Plan Proponent has taken on itself the obligation to provide these – as a condition of its proposed development – the provision of further Living 1 land *possessed of these facilities* will, in my view, be 'enabling' in relevant and important respects – at least so far as future residents are concerned. Following development there will be a supply of *serviced* sections, and thus an element of choice not presently available.

RECOMMENDATION

For the foregoing reasons I *recommend* that the Selwyn District Council:

1. **Approve Change 24 as notified, amended in the following respects:**

   (a) The deletion of:

   - **The proposed re-zonings (i) Business 2 to Living 1 and (ii) Living 2A (Deferred) to Business 2 are deleted, with the consequential removal of proposed rules 12.1.3.15, 13.3, 16.1.5, the reference to (proposed) rule 16.1.5 in proposed rule 16.1.7, proposed rule 17.2.1.8 (and the proposed reference to it in rule 17.2.5), proposed rule 2.14 in its entirety, and proposed rules 24.1.3.22 and 23.**[9]

   - **Proposed rule 1.4;**[10]

   (b) The removal, from the ambit of the proposed change, of that land lying to the north of the Telegraph Road / Creyke Road intersection as in not presently within Silver Stream's control.[11]

   (c) The insertion of:

   - **A new subdivision rule 12.1.8 as follows**:[12]

     Non-complying activities – Subdivision – Darfield

     12.1.8 The subdivision of land within the Living 1 and Living 2A zones within the Darfield Outline Development Plan within Appendix 41 shall be a non-complying activity until:

     (a) A potable water supply is available which is capable of serving the lots within the subdivision; and
     (b) A wastewater disposal system is available which is capable of serving the lots within the subdivision.

   - **A new 'traffic rule' within the subdivision rules of the Plan, as follows**:[13]

     Notwithstanding any other provisions in this Plan, subdivision of the Living 1 land within the Darfield Outline Development Plan [(Appendix …] in excess of 186 lots shall be a restricted discretionary activity if:

     - the observed average delay for vehicles turning right out of Mathias Street onto State Highway 73 in the morning peak hour is more than 35 seconds per vehicle, or subdivision is expected to result in the average delay for vehicles

[9] Consequent upon Silver Stream's withdrawal of part of its proposed Change
[10] Section 32
[11] Decision on submissions
[12] Section 32
[13] Amendment by Silver Stream

turning right out of Mathias Street onto State Highway 73 in the morning peak hour becoming more than 35 seconds per vehicle; and

- there is no sealed road link formed between the site and Creyke Road; and

- Creyke Road is unsealed between the road link to the site and the State Highway 73/Creyke Road intersection,

with Council's discretion restricted to considering the effects of traffic on the efficiency and safety of the State Highway 73 / Mathias Street intersection.

The "observed average delay" shall be determined through recording the amount of time that elapses for each right-turning vehicle between it either joining a queue of vehicles at the intersection or stopping at the intersection (whichever happens soonest) and it progressing beyond the limit line of the intersection. Measurements shall be made by a qualified traffic engineer over three consecutive days between 8am and 9am, and the average of all observations shall be taken.

- **A new 'Staging' rule (within the subdivision rules) to read:**

  1. Any residential development of the Living 1 zone at Darfield shall commence with Stage 1 as identified in Appendix … Stage 1 shall commence with the development of not more than 100 lots (the first release). The balance of Stage 1 shall not commence until 80% of the first release has been developed and sold.

  2. Development of the land show within Stage 2 (Appendix …) shall only occur at such time that 80% of the residential allotments within the Stage 1 area have been developed and sold. Development of the land shown within Stage 3 (Appendix …) shall only occur at such time that 80% of the residential allotments within the Stage 2 area has been developed and sold.

- **An amended Outline Development Plan (as Appendix …) in the amended form presented by Mr Prebble in his closing submissions, but**

  (i) With the schedule expanded to include the 'Planting Concept Plans' attached to Mr Prebble's closing submissions,

  (ii) Containing the 'staging' elements shown in the most recent documents,

  (iii) Excluding, from within the (retained) Business 2 area, any indication of a 'Living 1 / Business buffer zone within the Business area,

  (iv) Clearly excluding, from within the 'Change' area, that land lying to the north of the Telegraph Road / Creyke Road intersection as in not presently within Silver Stream's control, together with the removal of any indication of a '500m setback', and

(v) Showing such of the 'roading' elements as are within areas no longer part of the 'Change' land (including the indications of road hierarchy) in a manner indicating that, in respect of those areas, the indications are of future possibilities.[14]

(d) The amendment of:

- **Rule 12,1.3.11, so that it reads:**

  Subdivision of land to which Appendix … apples shall be in general accordance with the layout (and other details) shown for that area.[15]

- **Rule 12.1.3.5 to replace "Areas 1 – 5" with 'Areas 1, 2, 4 and 5'.[16]**

2. Deal with the submissions and further submissions made in respect of that Change by:

(a) Accepting the following submissions:

S02	**RG Beith and MG Reid**
S05	**P & MJ Higgins**
S25	**S Stevenson**

(b) Accepting the following submissions in part:

S01	**Darfield Gun Club**
S04	**M van Leewen - Darfield Shooting Centre**
S06	**E Miles & M D Frew**
S07	**P McKay**
S08	**Maxim Projects Ltd**
S09	**Foodstuffs (South Island) Properties Ltd**
S10	**Kelvin Taege**
S12	**M Ireland**
S13	**Darfield Township Committee**
S14	**V Perrin**
S15	**Silver Stream Estates Ltd**
S18	**Judith Pascoe**
S20	**RC & ED Glassey**
S21	**J& J Snoyink**
S22	**R Saunders**
S23	**R Valpy**
S27	**K Curtis**

Further submissions by
Judith Pascoe

[14] A combination of decision on submissions, Silver Stream amendment, Clause 16(2) correction and s32 alteration.
[15] A consequential amendment – clause 10 (2)(b), First Schedule.
[16] A consequential amendment – clause 10 (2)(b), First Schedule

Darfield Township Committee
R Valpy

(c) Rejecting the following submissions.

S11	**Torlesse Travel Ltd**
S16	**T Wood**
S17	**Frews Transport Ltd**
S19	**RF Knowles & D Cullen**
S24	**Darfield Pre-School and Nursery Board of Trustees**
S 26	**D L Chambers**

NOTE: The following submission was withdrawn:

S03 Selwyn District Council (which takes with it the further submission by Mahaanui Kurataiao Ltd, on behalf of Te Taumutu Runanga.

John Milligan
Commissioner
February 19, 2013