

Selwyn District Council

Proposed Plan Change 4.

**Rezoning of approximately 28 hectares of land at 86
Edwards Street, Lincoln from Rural (Outer Plains) to Living
1 (Deferred).**

**Report and recommendation of Sean Elvines acting as
Commissioner appointed by the Selwyn District Council
pursuant to Section 34A of the Resource Management Act
1991.**

23rd November 2009

Introduction

1. I was appointed by the Council to hear submissions to, consider and make recommendations on Proposed Plan Change 4 (Plan Change), a privately requested plan change sought by Broadfield Estates Limited (the Applicant). The Plan Change seeks to change the current Rural (Outer Plains) zoning of a large block of land, located to the south west of Lincoln, to a form of deferred residential (Living 1 (Deferred)). The effect of the Plan Change is to enable residential activity to establish once adequate capacity is available in the Selwyn District Council (the Council) operated reticulated sewage treatment facility.
2. As the Commissioner, my role is limited to that of conducting the hearing and, having considered all relevant material in respect of the Plan Change, including evidence presented at the hearing, make recommendations to the Council on the Plan Change and the associated submissions. These recommendations are to relate to whether the Plan Change should be accepted, modified in accordance with the scope provided by the Plan Change and submissions made on it, or rejected. The final decision on whether or not the Plan Change is adopted as the responsibility of the Council.

Plan Change - Outline

3. The Plan Change was publicly notified on 28th February 2009. Submissions closed on 27th March 2009. A summary of submissions was subsequently publicly notified, with the period for further submissions ending on 15th June 2009. A total of three submissions and 1 further submission were received on the Plan Change. All three submissions oppose the Plan Change in its entirety and sought that, in the first instance, the Plan Change be declined. All submitters were represented at the hearing.
4. The area of land subject to the Plan Change request is approximately 28 hectares. The LII River generally forms the site's eastern boundary. The LI Creek forms the site's south and south-western boundary. To the west, the site is bounded by a combination of land zoned Living 1 and Rural (Outer Plains). The site has road frontage along Edward Street/Lincoln Tai Tapu Road to which it will attain vehicular access.
5. The site is generally flat and exhibits a generally narrow, rectangular shape.
6. In essence, the Plan Change seeks to rezone 28 hectares of land zoned Rural (Outer Plains) zoned to Living 1 (Deferred) subject to site specific rules being:
 - a deferral of development until such time as there is capacity within the Lincoln sewage system;
 - a density of 10.5 households per hectare to be achieved over the whole site;
 - development to be undertaken in accordance with the proposed Outline Development Plan (ODP) which is to be included in the District Plan;
 - landscaping of the esplanade and recreational reserves is to occur in general accordance with the proposed concept plans which are to be included in the District Plan; and
 - a minor amendment to the Living 1 zone boundary along the eastern edge of the Lincolndale development to the west of the application site.

7. Development will be subject to existing Living 1 Zone controls found within the District Plan. The Plan Change does not propose to amend any existing objectives and policies or introduce any new objectives and policies to the District Plan.
8. At the hearing, the Applicant introduced an amended ODP and an amended Landscape concept plans. Ms Comfort, Planning witness for the Applicant, explained that the amended ODP reflected changes following issues raised in Council's officer's s42A report and through the consultation process currently being undertaken by Council as part of Draft Proposed Plan Change 7. The differences between the ODP as notified and the proposed amended ODP are:
 - The east-west road link is moved northwards to more effectively connect to land to the east and west of the site;
 - A new link road is proposed towards the southwest of the site, adjoining the proposed esplanade/recreation reserve along L1 Creek, providing a further road link to land to the Zeestraten Block to the west;
 - Provision of the road links into the land east and west of the site and reflecting the linkages proposed as part of draft Plan Change 7;
 - Removal of an indicative storm water drainage path from the Zeestraten Block, as the new link road adjoining the proposed esplanade/recreation reserve along L1 Creek will provide for a similar drainage path; and
 - The inclusion of a pedestrian access along the eastern side of proposed esplanade reserve to ensure access on both the east and west banks of the L11 River.
9. With regards to amendments to the Landscape concept plans, Ms Comfort identified that two minor reserves located on the Landscape concept plans as notified are removed. She explained that as a final subdivision layout has yet to be finalised, the location of smaller reserves is yet to be determined. In her opinion, the amended Landscape concept plan is required to avoid confusion should reserves be in those locations.
10. In my view, the above amendments are of a minor nature and do not alter, in any meaningful way, the substance, scale or intent of the Plan Change. As such, I find that the amended ODP and Landscape concept plan fall within the scope of the Plan Change and forms part of my overall consideration.
11. I record the amended ODP and Landscape concept plan presented at the hearing were carefully examined by submitters and Council staff. The amendments proposed by the applicant were agreeable and acceptable to all parties as being within the context of this hearing process.

Background

12. The Council officer's s42A report sets out a detailed history and background to the Plan Change and the necessary statutory considerations. I adopt these sections accordingly and summarise the relevant matters for the purpose of establishing context to the Plan Change and to the forming of my views with regards to this recommendation.

Resource Consent

13. In November 2007, applications for the subdivision of the subject site for residential purposes and the discharge of stormwater were lodged with Selwyn District Council and Environment Canterbury respectively. The applications were publicly notified in May 2007 comprising 178 lots with stormwater treatment to be catered for at the southern end of

the site. In August 2007, the subdivision consent was deferred under s91 of the Act pending the hearing of the stormwater discharge consent by Environment Canterbury.

Draft Proposed Plan Change 7 to the Selwyn District Plan

14. Council is in the process of preparing a draft plan change to provide for strategic urban growth around townships with particular emphasis on Lincoln Township. The Council has undertaken an extensive consultation process with landowners and this appears to be ongoing. While substantial progress has been made on the finalisation of the draft plan change, it is yet to be publicly notified for submissions in accordance with the First Schedule of the Act.
15. Draft Proposed Plan Change 7 seeks to provide for strategic urban growth around townships and introduce new subdivision and urban design provisions. It also proposes changes to give effect to the Lincoln Structure Plan and Stormwater Plan (Integrated Catchment Management Plan) for Lincoln Township. The primary method of facilitating urban development will be the preparation of area wide outline development plans which, in turn, are to be identified on the District Plan Planning Maps.
16. For Draft Proposed Plan Change 7, the land subject to the Plan Change forms part of Outline Development Plan Area 2 (ODP Area 2). As was made apparent at the hearing, Council is currently engaged in a consultation process with landowners in the ODP Area 2 to investigate whether an agreed outline development plan can be prepared for inclusion into Plan Change 7 for notification. During the hearing Mr Mactier advised me there was a strong likelihood that an agreed outline development plan for Area 2 will be achieved. This was supported by Mr Peter Glasson, acting on behalf of Lincoln Estates Limited and BR & AS Moir. The relationship between the Plan Change and Draft Proposed Plan Change 7 lies at the heart of the submissions by Lincoln Estates Limited and BR & AS Moir and I discuss these later in this decision.
17. However, despite the above, I am mindful that Draft Proposed Plan Change 7 is effectively just that – a draft document that has yet to be notified. It cannot be afforded any weight at this point in time.

Lincoln Structure Plan and Integrated Stormwater Management Plan

18. The Lincoln Structure Plan (LSP) and associated Integrated Stormwater Management Plan (ISMP) were adopted by Council in May 2008. Their purpose is to detail and outline an integrated and co-ordinated urban design framework and associated infrastructure for the future urban development of Lincoln Township. These plans are non-statutory, non-binding documents. Their role is to provide guidance and direction for appropriate urban growth and provision of infrastructure.

Plan Change 1 to the Regional Policy Statement (RPS)

19. Canterbury Regional Council notified Plan Change 1 to the RPS which seeks to implement the outcomes of the Greater Christchurch Area Urban Development Strategy and provide strategic guidance on where and to what extent urban development is to occur. Key methods of implementation include the identification of urban limits around existing settlements, the use of greenfield outline development plans for urban development and a net minimum residential density requirement.

20. I am mindful that decisions of the Regional Council have yet to be publicly notified and as such limited weight can be afforded to the consideration of Plan Change 1.

Statutory Assessment Framework

21. Section 74 of the Act sets out matters to be considered in preparing a change to a District Plan. Among other things, section 74 requires a local authority to fulfil its functions under section 31 and its duties under section 32, to comply with the required content of district plans under section 75, and to promote the purpose of the Act set out in Part II of the Act.
22. Section 31(1)(a) provides for "*the establishment, implementation and review of objectives, policies and methods to achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources of the district.*" The Plan Change proposes amendments to the District Plan zoning and provisions applying to this land. The question I must consider is whether this would "*...achieve integrated management*" of the effects of resource use in this area.
23. Section 32 of the act requires consideration of alternatives and the costs and benefits of a proposed change to a district plan.
24. Section 74(2)(a) requires that I "*have regard to*" any proposed regional policy statement (namely Proposed Change 1 to the RPS) and Section 74(2A) requires that I "*must take into account*" any relevant planning document recognized by any iwi authority (namely the Te Taumutu Runanga Natural Resources Management Plan).
25. Section 75 requires that a district plan must "*give effect to*" the operative Regional Policy Statement. For the purpose of this consideration, I note Objective 1 and Policies 1 and 2 in Chapter 12 Settlement and the Built Environment section of the operative Regional Policy Statement to be relevant.
26. Part II of the Act sets out the purpose and principles of the Act. Section 5 defines the "*sustainable management of resources*" purpose of the Act is generally enabling but that it is subject to the proviso in section 5(2(c)) of "*avoiding, remedying or mitigating any adverse effects on the environment*".
27. Other matters in Part II of the Act relevant to the consideration of the Plan Change are:
- Section 6(a) – "*the preservation of the natural character of... rivers and their margins, and the protection of them from inappropriate subdivision, use and development.*"
 - Section 6(c) – "*the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.*"
 - Section 6(d) – "*the maintenance and enhancement of public access to and along ...rivers.*"
 - Section 7(b) – "*the efficient use and development of natural and physical resources.*"
 - Section 7(c) – "*the maintenance and enhancement of amenity values.*"
 - Section 7(f) – "*maintenance and enhancement of the quality of the environment.*"
28. I am mindful that proposed amendments to a district plan must not create inconsistencies within that plan. For this plan change, there are no changes to objectives and policies. This being the case, I must ensure that the proposed provisions are entirely consistent

with and do not introduce anything that would compromise or will offend the existing objectives and policies.

29. A matter I have kept in mind is that the range of decisions on submissions is limited by the scope of those submissions. Submissions must be clearly related to the Plan Change to provide jurisdiction for the Council to amend the Plan Change. Some of the submissions are not strictly "on" the Plan Change and I discuss this later in this decision.

The Hearing

30. The hearing was held in Rolleston on 19th October 2009. Appearances were as follows:

For the Applicant

- Tom Evatt, Solicitor, White Fox and Jones
- Julie Comfort, Consultant Resource Management Planner employed by Davie Lovell-Smith Ltd
- Andrew Hall, Consultant Engineer employed by Davie Lovell-Smith Ltd
- David Hobbs, Landowner, present to answer questions.

For the Submitters

- Fiona Aston, Consultant Resource Management Planner on behalf of K and D McIntosh, W Jung, and S K Lee (joint submission). Mr McIntosh was present to answer any questions
- Peter Glasson, Consultant Project Manager and Resource Management Planner on behalf of Lincoln Estates Limited and B & A Moir.

For the Selwyn District Council

- Andrew Mactier, Council Policy Planner
- Jeff Owen, Consultant Traffic Engineer
- Andrew Craig, Consultant Landscape Architect
- Hugh Blake-Manson, Council Asset Manager – Water.

Evaluation

31. While the relief requested by submitters appear to have an element of commonality (that the Plan Change be declined in its entirety), the submitters have expressed quite different concerns. In addition to general issues of a procedural nature, submitters have raised particular issues with regards to the nature and extent of the Plan Change as it impacts on their land. I, therefore, propose to address the general issues of a procedural matter first, address the specific concerns raised by the individual submitters second and finally undertake an overall statutory analysis.

General Issues

Scope of Plan Change

32. Some submitters (McIntosh et al) seek a change of zoning to their land that is located outside the area of land subject to the Plan Change. Submitters seek their land, located to the south west of the Plan Change, be rezoned as either Rural Residential or Living 1(Deferred). Alternatively, if it is determined that this relief is beyond the scope, the submitters seek that:
- the Plan Change is declined and a new plan change prepared and notified which includes the submitters land; or alternatively

- the consideration of the Plan Change is deferred until such time as a consent for rural lifestyle purposes is granted by way of either plan change or resource consent; or alternatively
 - the 'Dairy' block (land not subject to the Plan Change, located to the west of the Plan Change area and identified as Lots 2, 4, 5, 6, 8 and 9 DP 37433) should mitigate the effects of its development 'on-site' rather than use their land, or provide compensation; or alternatively
 - if Plan Change is adopted, their land (land not subject to the Plan Change, located immediately to the south west and south of the Plan Change area and identified as Lots 120 and 121 DP 329124) be rezoned to Living 1(Deferred) with associated road access from the proposed 'southern boundary road' when formed.
33. In terms of the above, the Council Planner brought to my attention the relevant decision of the Environment Court on the matter of scope, namely the case of *Halswater Holdings Ltd v Selwyn District Council (C036/99)*. When considering this decision, he is of the view that such submissions seeking the rezoning of their land fall outside the scope of the Plan Change as they are not "on" the Plan Change. I note I have viewed the abovementioned decision.
34. In the matter of confirming the relevancy or otherwise of decision of the Environment Court to this issue, Mr Evatt, Solicitor for the Applicant, confirmed that the decision of the Environment Court cited by Mr Mactier was relevant and Mr Mactier's assessment regarding the question of scope, in his view, is correct.
35. At the hearing, Ms Aston¹ on the half of McIntosh et al, accepted that the relief sought by her client for the rezoning their land for residential purposes was 'outside the scope' of the Plan Change. This being the case, and having read the abovementioned Environment Court decision, I accept, as a matter of law, the evidence of the Council Planner and find that the submissions by McIntosh et al generally seeking that their land be rezoned for residential activities are outside the scope of the Plan Change. While there may possibly be some planning merit for rezoning the land, this cannot be confirmed without undertaking a further assessment to fully understand the many potential adverse effects (traffic, landscape, character and amenity, natural environment, reverse sensitivity) on the immediate and wider area. This is well beyond the parameters of the Plan Change which is concerned with a specific and confined area. Further, it is highly unlikely that changes in zoning to areas outside the Plan Change area could have been reasonably foreseen by other potentially affected parties. I consider any such further changes in zoning would need to be subject to future plan changes.
36. For the above reasons, I recommend the submission from McIntosh et al seeking the Plan Change be declined unless the submitters land is rezoning of land to either Rural Residential or Living 1(Deferred) be rejected. I recommend that the submission from McIntosh et al seeking that if the Plan Change is adopted, the submitters' land be rezoned of either Rural Residential or Living 1(Deferred) be rejected.
37. With regard to deferring or declining the Plan Change pending a future resource consent or plan change enabling the establishment of residential activity on the submitters' land, I do not accept this to be a valid reason or having sufficient merit to accept such a request. The options of initiating a private plan change or applying for resource consent to

¹ Ms Fiona Aston Evidence, paragraph 23.

undertake residential activities are currently available to the submitters, irrespective of this Plan Change process. Because the applicant is 'first off the blocks', in my view, is not a valid resource management reason to defer the Plan Change or decline the Plan Change in its entirety. Therefore, I recommend that submissions from McIntosh et al seeking the deferral of the Plan Change be rejected.

38. The question of whether the 'Dairy' block should mitigate the effects of its development 'on-site' rather than use the submitters land, or provide compensation is clearly a matter outside this Plan Change process and one that I cannot consider or address. Therefore, I recommend that submissions by McIntosh et al regarding the use or otherwise of the 'Dairy' block land be rejected.

Section 32 Report

39. Submitters (McIntosh et al) expressed concern over the adequacy of the section 32 report prepared prior to notification of the Plan Change on the basis that the Plan Change is contrary to certain objectives and policies in the District Plan, is not considered the most appropriate way of achieving the purpose of the Act, and having regard to efficiency and effectiveness, the proposed rules and other methods are not the most appropriate for achieving the objectives. The submitters consider that other methods including incorporating their land into a new plan change, or retaining the status quo, have not been adequately considered.
40. Section 32A(1) of the Act permits the challenge of the section 32 process by way of submission. Having reviewed the submission by McIntosh et al I accept their submission does challenge the section 32 process.
41. When considering this issue, my starting point is section 32 itself which sets out a process for councils to test the appropriateness of proposed provisions to be adopted into district plans. I note the application of section 32 applies throughout plan/provision preparation to time of decision. Consequently, the section 32 process does not end at time of plan change notification but continues through to a council's decision making on submission stage.
42. For the purpose of this consideration, Section 32 requires that an evaluation determine whether, having regard to the efficiency and effectiveness, policies, rules or other methods are the most appropriate for achieving the objectives of the District Plan. I have reviewed the section 32 documentation accompanying the Plan Change and am satisfied that the necessary evaluation has been clearly and properly undertaken. I am satisfied that the Plan Change has been properly notified, submissions received and considered through this hearing process. I am satisfied that the hearing has been held in a fair, open and inclusive manner.

Specific Issues

K and D McIntosh, W Jung, and S K Lee (McIntosh et al)

43. The submitters are of the view that it is not sound planning practice to consider the rezoning of the subject land in isolation to their land. In their view, the land cannot be sustainably managed for farming purposes and therefore it should be either rezoned to rural/residential or Living 1 (Deferred) or the Plan Change be declined in its entirety. In

support of this position, the submitters identify a number of concerns and issues. I now consider the concerns and issues specifically raised in turn.

Reverse Sensitivity

44. The principal point, as I understand it, is the assertion that the Plan Change will further exacerbate existing reverse sensitivity problems between farming and residential activity causing a curtailment of the farming activities. Current farming activities on the submitters land comprise of animal grazing and the growing and harvesting of silage. In her evidence, Ms Aston² identifies that the primary farming activities likely to lead to the reverse sensitivity effect are:
- bringing heavy farm machinery onto the rural property via existing residential subdivision;
 - noise and night lights from night-time harvesting of silage.
45. I sought clarification from Mr McIntosh, present at the hearing, as to the nature and scale of rural activities currently occurring from his land. Mr McIntosh confirmed the land was not suitable for intensive farming purposes and it could be primarily used for animal grazing and growing of silage and the like. With regard to the harvesting time for silage currently occurring from the site, he confirmed this would be approximately 1 day to complete. He further confirmed that to date he had not received any complaints from existing residential properties currently within close proximity to his property. When questioned how the Plan Change would restrict his ability to access his property and continue current farming practices on his property, Mr McIntosh agreed that it would not do so but would bring people and property closer to his land thereby increasing problems associated with people entering his land such as leaving gates open or worrying of stock from dogs.
46. While I accept the Plan Change will bring people and property closer to the submitter's property, I do not consider current (and future) farming activities to be of a nature, scale or intensity resulting in the potential for significant adverse effects. In this case, the nature of farming activity is limited to a small number of relatively benign uses over a small area, having temporary and short term effects on the receiving environment. Further, the provision of esplanade and recreation reserves along the boundaries with L1 Creek, and the creek itself, provides a significant and purposeful barrier and separation to future residential activity.
47. For the above reasons, I find that the Plan Change will not result in significant effects in this regard. I recommend that submissions raising this issue are rejected.

Landscape, character and amenity

48. Submitters are of the view that the visual assessment prepared by the Applicant is inaccurate and incorrect in terms of the assessment of visual impacts of the proposed rezoning. In their view, the visual impact of future urban development on their rural land will be significant with a change from a rural character to a residential subdivision. They consider riparian planting proposed along the L1 Creek will not adequately mitigate this effect and does not address effects on that part of the western boundary of the Plan Change land which does not bound L1 Creek.

²Ms Fiona Aston Evidence, paragraph 6.

49. At the hearing, Ms Aston³ accepted that the esplanade reserve and recreation reserves along the L1 Creek would provide a visual and physical buffer/barrier between the residential sections and submitters land. However, in her view, the esplanade and recreation reserves buffer would not adequately mitigate all adverse effects. When clarification was sought regarding what adverse effects not adequately mitigated by the esplanade and recreation reserves, Ms Aston identified a concern with people walking their dogs along future walkways and the nuisance effect this will have on the submitters land. Ms Aston⁴ further suggested if the Plan Change is to be approved, an additional rule could be added to ensure that landscaping is completed in a timely manner and landscaping is to be maintained, and diseased plants replaced at all times.
50. Mr Andrew Craig, Consultant Landscape Architect for the Council, reviewed the landscape assessment by Robert Watson Landscape Architects Ltd, prepared on behalf of the Applicant, and was present at the hearing. In response to concerns raised by the submitter regarding rural character and amenity, Mr Craig reiterated that all urban areas have a rural/residential boundary therefore there will always be a relationship between one type of environment and another. In his view, it cannot be said that one environment will necessarily adversely affect the other in terms of landscape character because the characteristics of each environment are completely different. Therefore, in the event of urban growth, the only substantive change concerning the urban/rural boundary will involve a shift in the boundary - the relationship of the urban to rural reminds unchanged. I accept this.
51. With regards to mitigating the accepted change in outlook from neighbouring rural land, Mr Craig considers no additional mitigation measures are required. He considers significant mitigation measures arise from the proposed substantial landscape buffer created by the esplanade reserve and recreation reserves along the L1 Creek that lies between the submitters land and that subject to the Plan Change. In addition, he considers the extensive planting that is proposed to be undertaken will create a 'softer' visual boundary with associated high amenity values thereby resulting in positive amenity effects on the receiving environment. During the hearing, Mr Craig provided a Powerpoint presentation demonstrating examples of amenity planting anticipated to be established within the Plan Change reserve areas which reinforced his views.
52. I am satisfied that the significant landscape planting proposed for reserve areas will adequately mitigate the anticipated change in outlook from neighbouring rural land. I agree with Mr Craig that proposed landscaping of reserve areas provide a substantial visual barrier/buffer and will create areas of high amenity thereby having a positive effect on the receiving environment. In my view, the presence of significant landscaped reserve areas along existing waterways provides an aesthetically pleasing and sympathetic urban/rural boundary. With regards to the need for a new landscaping rule, I am not convinced that such a rule is necessary. Conditions on subdivision consent can be imposed where landscaping of this magnitude is proposed. Further, as a future council reserve, I have a high degree of confidence that it will be properly and consistently maintained once in place.

³ Ms Fiona Aston Evidence, paragraph 34.

⁴ Ms Fiona Aston Evidence, paragraph 35.

53. For the reasons above, I find Plan Change will not result in adverse rural character and amenity effects and further landscaping rules as suggested by the submitter are not necessary or required. I recommend that submissions raising this issue be rejected.

S85 – Reasonable Use

54. In her evidence⁵, Ms Aston identifies that the submitter's are attempting to make an acceptable economic return from utilising their land for farming purposes. The Plan Change will further hinder their ability to farm the land in a manner that will achieve an acceptable economic return. In her view, the Plan Change, in combination with other proposed rezoning will render the submitters land incapable of reasonable use under s85 of the Act.
55. With regards to this section of the Act, the general thrust is to enable persons to make use of the land in a reasonable manner. It is my understanding that this does not extend to ensuring a reasonable economic return on land is ensured. Where a person considers that a provision would render an interest in land incapable of reasonable use, provisions can be challenged on this basis.
56. When considering the question of reasonable use, it is important to keep any burden on the private landowner in proportion to the public benefit to be gained from restrictions imposed and ensure that any restriction is not so great as to preclude reasonable use of land affected. To my mind, this is a different consideration to that suggested by Ms Aston which centres on the apparent need to achieve an *'acceptable economic return'*.
57. As already discussed in paragraphs 45-46 above, the Plan Change will not physically restrict or limit the continuation of current farming activities on the submitters land. In his right of reply, Mr Evatt, Counsel for the Applicant, drew to my attention the submitters' ability to erect a dwelling on each respective parcel of land. Given existing farming activities could continue unimpeded on the submitters land and the ability to establish residential activity thereon was available, he was of the view that the Plan Change did not render the submitters land incapable of reasonable use.
58. I agree with Mr Evatt and find that the Plan Change will not render the submitters land incapable of reasonable use. In addition, Mr Evatt considers⁶ that section 85 is not available to submitters as the proposed rezoning does not apply to the submitters land. He notes that Section 85 is available to *"... any person having an interest in the land to which any provision or proposed provision of a plan or proposed plan applies..."*. When I consider this wording of section 85 closely, I find I agree with Mr Evatt. I therefore find, in the first instance, that the Plan Change will not render the submitters land incapable of reasonable use and, in the second instance, that section 85 is not available to the submitters as the zoning and rules in respect of the submitters land remains unchanged.
59. For the above reasons, I recommend submissions raising the issue that Plan Change will render land incapable of reasonable use under s85 of the Act are rejected.

⁵ Ms Fiona Aston Evidence, paragraph 38-39.

⁶ Mr Tom Evatt, Legal Submission, paragraph 43.

Contrary to Objectives and Policies of the Selwyn District Plan

60. Ms Aston⁷ is of the view that the Plan Change is contrary to a number of objectives and policies in the District Plan and, in particular, citing Policy B4.3.3⁸ and Policy B4.3.5⁹ being of particular significance. When asked which additional objectives and policies she considered the Plan Change was contrary to, Ms Aston reiterated her view that Policy B4.3.3 and Policy B4.3.5 were the key policies in this regard. In her view, the Plan Change will:
- result in her client's land being left with residential development on two and potentially three sides;
 - create a long 'peninsula' of residentially zoned land surrounded by Rural land;
 - not result in creating a compact township; and
 - does not result in a logical long-term defensible southern boundary for Lincoln Township.
61. Mr Mactier, section 42A reporting officer for Council, also assessed the Plan Change against the objectives and policies of the District Plan. I note his assessment goes somewhat wider than Policy B4.3.3 and B4.3.5. He is of the view that, overall, the Plan Change is consistent with the relevant objectives and policies of the District Plan.
62. Having reviewed the relevant objectives and policies of the District Plan, I prefer the evidence of Mr Mactier. The Plan Change will not result in rural land being unreasonably surrounded by land zoned business or living. While I accept the Plan Change will 'jut out' into rurally zoned land, I do not agree it will result in a 'long, peninsula' effect, as suggested by Ms Aston. In my view, the extent to which esplanade reserves, recreation reserves and stormwater management areas shape and frame the southern and eastern portions of the Plan Change land will go to reduce the physical impact of built form on the adjoining rurally zoned land. I do not agree with Ms Aston's suggestion that the Plan Change will result in the submitters' land being unreasonably surrounded by residential development. Land will remain free of residential development on a number of property boundaries. I am satisfied the Plan Change will result in a compact shape particularly given it adjoins and integrates, in a meaningful manner, existing Living 1 zoned land.
63. When I consider the Plan Change against the relevant objectives and policies as a whole, and in particular those identified by the submitter, I find it to be consistent with them. I recommend submissions identifying the Plan Change to be inconsistent or contrary to the objectives and policies of the District Plan be rejected.

Contrary to sound Resource Management Principles and Purpose – Part II

64. Ms Aston¹⁰ considers the Plan Change 'in isolation' is contrary to Part II of the Act. In his s42A report, Mr Mactier¹¹, Council's Policy Planner, also considers Part II of the Act and concludes that the Plan Change will achieve the purpose of the Act and, in his opinion, better achieves the purpose of the Act than current District Plan revisions.
65. In this regard, I prefer the evidence of Mr Mactier. In my view, the Plan Change:

⁷ Ms Fiona Aston Evidence, paragraph 40.

⁸ Policy B4.3.3 Avoid zoning patterns that leave land zoned Rural surrounded on three or more boundaries with land zoned Living or Business.

⁹ Policy B4.3.5 Encourage townships to expand in a compact shape where practical.

¹⁰ Ms Fiona Aston Evidence, paragraph 45

¹¹ Mr Andrew Mactier s42a report, paragraphs 6.12 – 6.18

- promotes the sustainable management of natural and physical resources through having a high degree of consistency with the LSP, ISMP and objectives and policies of the District Plan;
- will enable the use, development, and protection of natural and physical resources, at a rate that enables people and communities to provide for their social and economic wellbeing and their health and safety by permitting development at such a time that services are available;
- will meet the reasonable foreseeable urban needs of future generations as identified through the Christchurch Urban Development Strategy and Plan Change 1 to the RPS;
- will safeguard the life supporting capacity of air, water, soil, and ecosystems by vesting to Council important areas for recreation and esplanade reserve and adoption of a comprehensive landscape concept plan;
- will avoid, remedy or mitigate any actual or potential adverse effects of activities on the receiving environment by vesting to Council important areas of recreation and esplanade reserve and adoption of a comprehensive landscape concept plan;
- recognise and provide for section 6 values through the provision of public access, the vesting to Council important areas of recreation and esplanade reserve and adoption of a comprehensive landscape concept plan;
- has regard to section 7 values by ensuring development occurs in a manner consistent with an outline development plan and ensuring amenity values and quality of environment are maintained and enhanced through a comprehensive landscape concept plan.

66. Therefore, for the above reasons, I recommend submissions raising concerns the Plan Change is contrary to Part II of the Act be rejected.

Lincoln Estates Limited and B and A Moir

67. The submitters are of the view that the Plan Change:

- fails to provide certainty that adequate connectivity for roads, cycle ways, waterways, reserves and services is made with adjoining properties;
- fails to adopt an integrated approach for land on the eastern extent of Lincoln instead considers the subject land in isolation; and
- is contrary to sound resource management planning principles and practice.

68. The submitters seek that the Plan Change be declined or it be amended to take into account:

- general urban design principles;
- the Lincoln Structure Plan;
- future development of land to the east for residential purposes;
- the Integrated Catchment Management Plan for Lincoln; and
- any other matters relevant to the submitter.

69. At the hearing, Mr Peter Glasson¹², on the half of Lincoln Estates Limited and BR & AS Moir, summarised their concerns as being:

- the timing of the Plan Change;

¹² Mr Peter Glasson submission, paragraph 7.

- connectivity with land to the east of the Plan Change – ensuring alignment with Draft Proposed Plan Change 7;
- proposed landscaping along the Plan Change eastern boundary relating specifically to the open reserve area along the Liffey Springs/Lincoln Estate Limited boundary.

Timing of Plan Change

70. To put simply, it is the submitters view that Plan Change should not have been publicly notified before Draft Proposed Plan Change 7. In their view, the hearing process today is “putting the cart before the house”¹³. That said, Mr Glasson¹⁴ agreed the Plan Change area is suitable for residential development and the land should be rezoned and development proceed. I take this to mean on the proviso that further changes are made to improve overall connectivity with adjoining land and changes to the landscape concept plan. On the basis of recommended amendments and amended ODP made to the Plan Change, I find that the concerns of the submitter will be generally satisfied. Amendments to the Plan Change will result in a higher degree of connectivity and integration with the submitters land. On this basis, there is no valid reason to delay or postpone the further consideration of the Plan Change.

Connectivity with land to the east of the Plan Change – Ensuring alignment with draft Plan Change 7

71. At the hearing, Mr Peter Glasson, expressed frustration with delays associated with the notification of Draft Proposed Plan Change 7. Considerable time and effort by a number of landowners, including the submitter, has gone into the preparation of an agreed plan for Outline Development Plan Area 2, which Mr Glasson drew my attention to through Appendix 1 of his submission. Mr Glasson¹⁵ identified that Plan Change ODP did not exactly align with the current plans for Outline Development Plan Area 2. The submitter also seeks that additional infrastructure and network information relating to their land to the east of the Plan Change area is included in the Plan Change ODP for the purpose of certainty.
72. As noted in paragraph 8 above, the Applicant produced an amended ODP. In my view, the amended ODP goes to addressing a number of concerns expressed by the submitter. In particular, I understand the proposed amendments are driven by recent discussions had with landowners regarding draft Proposed Plan Change 7.
73. When I compare the Applicant’s amended ODP and the Outline Development Plan Area 2 plans attached to Appendix 1 of Mr Glasson’s submission, I find there to be a high level of alignment between them. When asked to compare the respective plans, Mr Glasson agreed there was a high level of alignment between them and was generally supportive of amended ODP. On this basis, I find submissions seeking a high degree of connectivity with land to the east of the Plan Change area have merit and recommend they be accepted in part to the extent of changes made to the ODP as amended to this decision.
74. With regards to including additional infrastructural and network information, as it relates to the submitters land, to the Plan Change ODP, I find there is no necessity or benefit to do so. I understand the submitters are seeking certainty. However, as it currently stands, the Plan Change does not impose any constraints of this nature on them.

¹³ Mr Peter Glasson submission, paragraph 14.

¹⁴ Mr Peter Glasson submission, paragraph 13.

¹⁵ Mr Peter Glasson submission, paragraph 13.

Currently, the submitter continues to retain full control over the design and location of development within their site as their land remains outside the Plan Change area. To my mind, the inclusion of this additional information could possibly act as a constraint to possible future development if the submitters chose to develop their site in a different form and given the final form of Draft Proposed Plan Change 7 is not 100% finalised. Provided the submitters' land is adequately connected to the Plan Change land and the ability to integrate effectively with that land is retained, I do not see adding this additional information as deriving any resource management value or benefit to the current ODP or Plan Change per se. On this basis, I recommend submissions requesting additional infrastructure and network information be included on the ODP seeking a high degree of connectivity with land to the east of the Plan Change area be rejected.

Amendments to the Landscape concept plans.

75. The submitter identifies two concerns primarily with the Sheet 3 to the landscape concept plan.
- There is no detailed planting plans for the proposed esplanade reserve land alongside the LII River; and
 - Presence of a har-har fence.
76. The submitters concerns would be satisfied if the har-har fence is deleted and landscaping is designed and undertaken in a way as to not prevent pedestrian access and views of the LII River by way of amending the relevant landscaping rule.
77. I understand Mr Glasson's concern to be if planting is to occur in general accordance with the landscape concept plan, the result will be a continuous, unbroken wall of trees running the property boundary. Mr Glasson does not support this outcome. In light of the examples of esplanade reserve plantings anticipated to occur for this area, as identified in Mr Craig's Powerpoint presentation, I find I have some sympathy with Mr Glasson's point of view. I took from Mr Craig's Powerpoint presentation that reserve planting will, amongst other things, have an element of openness and transparency. I understand for amenity, safety and passive surveillance reasons, a degree of openness and transparency associated with reserve planting, particularly where walkways and trails are concerned, is a desirable design element to incorporate.
78. If I look at the landscape planting denoted as '3' on Sheet 3 of the landscape concept plan, I am of the view that it does suggest a continuous, unbroken strip of significant landscape planting. While the purpose of the District Plan is not to protect the views of individual landowners, I have some sympathy for the point raised by Mr Glasson. I do not believe a continuous, unbroken strip of landscape planting to be an amenity outcome envisaged for the future esplanade reserve. Yet, this is, as I note above, what the landscaping concept plan suggests. For the above reasons, I recommend that submissions seeking amendment to the landscaping rule are accepted to the extent of changes made to Rule 12.1.3.24 as attached in Appendix 2 to this decision.
79. With regards to the har-har fence, I find that there are a number of fencing options available that can equally serve the purposes of demarcating public/private land as well as achieving privacy and screening, if desired. This can usually be resolved amicably between landowners or, in extreme cases, through the Fencing Act. In my view, this information is not necessary to inform the landscape component of the landscape concept plan and should be removed.

80. For the above reasons, I recommend submissions seeking changes to the Landscape concept plans are accepted to the extent of changes made to Rule 12.1.3.24 as attached in Appendix 2 to this decision.

Statutory Assessment

81. My consideration of the Plan Change against the statutory requirements of the Act are based on the adoption of recommendations for amendments and reasons for them as outlined above.
82. I find the Plan Change will be consistent with the Council achieving its functions under section 31 of the Act as it sets in place methods and rules whereby the integrated management of the effects of urban development of the site are achieved while protecting associated natural and physical resources. I recommend submissions challenging the Plan Change in terms of fulfilling the requirements of section 31 be rejected.
83. With regards to section 32, I have reviewed the section 32 documentation accompanying the Plan Change. As noted above, I find that the necessary earlier evaluation has been clearly and properly undertaken. I find that the Plan Change has been properly notified, submissions received and considered through a fair, open and inclusive hearing process go to satisfying all section 32 obligations. I recommend that submissions challenging the adequacy of the section 32 analysis be rejected
84. Having regard to Proposed Change 1 to the RPS, I find the Plan Change will give effect to it in terms of managing urban growth and promotion urban design principles.
85. Having regard to the relevant objectives and policies settlement and building environment to the Operative Regional Policy Statement, I find the Plan Change will give effect to them by enabling urban development in a manner that avoids, remedies and mitigates adverse effects on the environment.
86. Turning to the Te Taumutu Runanga Natural Resources Management Plan, I find the Plan Change not to be in conflict with it.
87. With regards to Part II matters, I find the Plan Change will achieve the purpose of the Act as discussed in detail above. Further, I find the Plan Change will have a high degree of consistency and compatibility with the LSP and that stormwater management areas proposed by way of the Plan Change will not undermine the purpose of the ISMP. Finally, I find the Plan Change to be consistent with the objectives and policies of the District Plan and, as such, will have a high degree of efficiency and effectiveness in achieving the objectives of the District Plan particularly with regards to urban growth for Lincoln.
88. For the reasons above, I find the Plan Change satisfies the statutory assessment required by the Act and therefore I recommend submissions requesting that the Plan Change be declined in its entirety be rejected.

Overall Recommendation

89. For the reasons set out in the foregoing assessment, I recommend to Council that Proposed Plan Change 4 to the Selwyn District Plan be approved subject to amendments as set out in Attachments 2 and 3 to this report, and that the submissions and further submissions are accepted, accepted in part or rejected accordingly as set out in Attachment 1.



Sean Elvines
Commissioner
23rd November 2009

ATTACHMENT 1
PLAN CHANGE 4 – SUMMARY TABLE OF COMMISSIONERS RECOMMENDATION

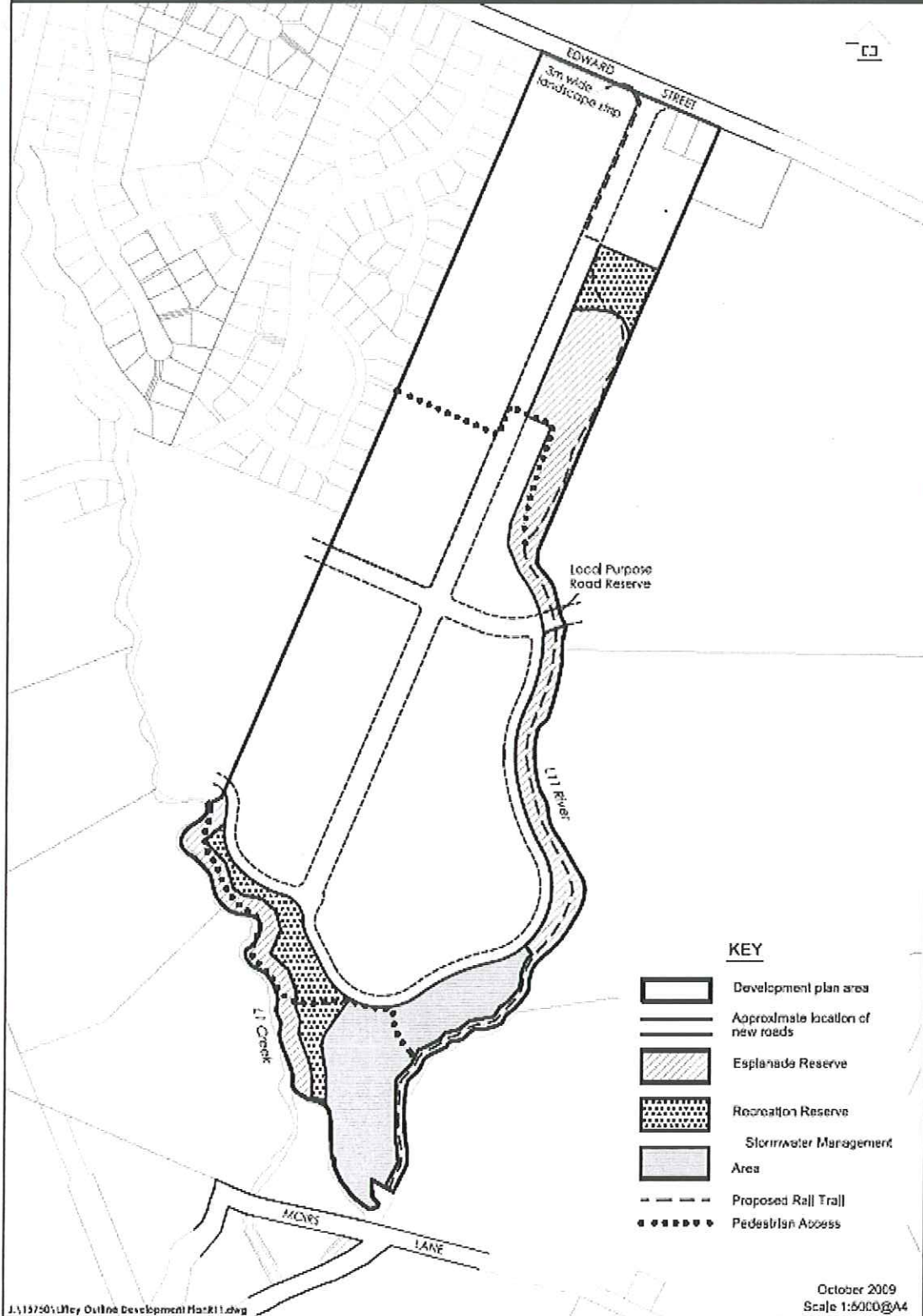
A.E.

SUBMITTER AND FURTHER SUBMITTER	SUBMISSION AND FURTHER SUBMISSION POINT	COMMISSIONER RECOMMENDATION
1299 K&D McIntosh, W&MK Jung, M Sung and SK Lee	1299.1	Reject
<i>Broadfield Estates Ltd</i>	<i>F1361</i>	Accept
	1299.2	Reject
<i>Broadfield Estates Ltd</i>	<i>F1361</i>	Accept
	1299.3	Reject
<i>Broadfield Estates Ltd</i>	<i>F1361</i>	Accept
	1299.4	Reject
<i>Broadfield Estates Ltd</i>	<i>F1361</i>	Accept
	1299.5	Reject
<i>Broadfield Estates Ltd</i>	<i>F1361</i>	Accept
1300 Lincoln Estates Limited	1300.1	Reject
<i>Broadfield Estates Ltd</i>	<i>F1361</i>	Accept
	1300.2	Accept in Part
<i>Broadfield Estates Ltd</i>	<i>F1361</i>	Accept in Part
1301 BR&AS Moir	1301.1	Reject
<i>Broadfield Estates Ltd</i>	<i>F1361</i>	Accept
	1301.2	Accept in Part
<i>Broadfield Estates Ltd</i>	<i>F1361</i>	Accept in Part

ATTACHMENT 2
RECOMMENDED OUTLINE DEVELOPMENT PLAN

A.E.

Outline Development Plan (Liffey Springs - Lincoln)



A.E.

ATTACHEMENT 3
RECOMMENDED AMENDMENTS TO RULES
(Amendments shown as underlined or ~~strike-through~~)

Proposed Amendments to Volume 1 – Township of the District Plan

- (1) Amended Part C, Living Zone Rules – Subdivision by adding the following standards and terms after clause 12.1.3.20:

12.1.3.21 For the Living 1 (Liffey Springs) Zone (Deferred) at Lincoln, as shown in Appendix XX, until the passing of a Council resolution that there is adequate capacity in a local authority operated reticulated sewage treatment facility to service that land for residential development, the rules of the Rural Zone (Outer Plains) shall apply to that land.

12.1.3.22 For the Living 1 (Liffey Springs) Zone (Deferred) at Lincoln as shown in Appendix XX, upon the passing of a Council resolution that there is adequate capacity in a local authority operated reticulated sewage treatment facility to service that land for residential development, the Living 1(Liffey Springs) Zone (Deferred) at Lincoln, as shown in Appendix XX, shall cease to be deferred and the rules of the Living 1 Zone will apply to that land, and the rules of the Rural Zone (Outer Plains) will cease to apply, without further formality.

12.1.3.23 The subdivision of land shown in Appendix XX (Liffey Springs) shall be in accordance with the Outline Development Plan as shown that appendix.

12.1.3.24 In the Living 1 (Liffey Springs) Zone (Deferred) at Lincoln, as shown in Appendix XX, 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 XX (Liffey Springs) except for: the provision of a Ha-Ha fence identified on Sheet 3 of the Landscape Concept Plans; and that area of landscaping denoted as '3' on Sheet 3 of the Landscape Concept Plans shall be designed and establish to retain elements of visual outlook and connectivity to LII River. ~~details of planting plans shall be submitted to the Council for their approval prior to planting being implemented.~~

12.1.3.25 The subdivision of the Living 1 (Liffey Springs) Zone (deferred) at Lincoln, as shown in Appendix XX, shall demonstrate the ability to achieve a minimum density of 10.5 lots/households per hectare over the whole of the Outline Development Plan area as shown in that appendix. Any subdivision not able to achieve that density shall be a non-complying activity.

- (2) Amended Part C, Living Zone Rules – Buildings, 4.4 Buildings and Water Supply by adding the following after clause 4.4.1

4.4.2 In the Living 1 (Liffey Springs) Zone (Deferred) at Lincoln, as shown in Appendix XX, rainwater storage tanks with a minimum capacity of 3000 litres shall be installed for each dwelling for non-potable uses, such as garden irrigation.

Building and Water - Discretionary Activity

4.4.3 *Any activity which does not comply with Rule 4.4.2 shall be a discretionary activity.*

- (3) Renumber rule 4.4.2 to 4.4.4.