

**SUBMISSION ON PRIVATE PLAN CHANGE REQUEST 4 TO TOWNSHIP VOLUME OF
SELWYN DISTRICT PLAN**

**REZONING OUTER PLAINS ZONE TO LIVING 1 (DEFERRED) ZONE
LIFFEY SPRINGS, LINCOLN**

Under Clause 6 to the First Schedule to the Resource Management Act 1991

To: Tim Harris, Planning Manager
Selwyn District Council
PO Box 90
Rolleston 7643
CHRISTCHURCH

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We wish to make a submission on Private Plan Change 4 (PC 4).

The specific parts of the Plan Change that our Submission relates to are:

The Plan Change in its entirety.

Our Submission is:

We oppose PC4 in its entirety for the reasons outlined below.

Background

We own two adjoining 4 ha blocks of land located directly to the west of the land the subject of PC4, legally described as Lots 120 and 121 DP 329124, as shown on the plan attached as Attachment A. The only access to our blocks is via a 6m wide formed right of way which runs along the western boundary of the Mostyn block. The access also serves 7 rural lifestyle blocks to the north, and connects with Allendale Lane, an existing residential cul de sac (also shown on the Attachment A plan).

We purchased our properties in 2003 with the intention of subdividing them into 1 ha lots, in accordance with the then Proposed Selwyn District Plan '1 km rule'. In 2007 we applied for a resource consent to subdivide our two properties into a total of 8 x 1 ha lots, each with a dwelling. Land immediately to the north had been subdivided into 4 x 1 ha lots and 2 x 2 ha lots in 2005. Prior to the hearing, we amended our proposal by reducing the number of proposed lots to 4 x 2 ha lots. Copies of the original and amended subdivision plans are attached as Attachment B.

Our 2007 consent was declined by Commissioner David Collins, principally on the grounds that he considered that two additional dwellings 'over and above' the permitted baseline of one dwelling per 4 ha would result in adverse effects on the amenity of adjoining rural lifestyle block owners to the north and local rural landscape character. In particular, he considered that the rural lifestyle block owners currently enjoy a rural outlook which would be

adversely affected, and that the current tranquil setting would be adversely affected by the additional traffic generated by two additional residential dwellings above the 'permitted baseline'. A copy of the Commissioner's decision is attached as Attachment C.

We granted an easement to Selwyn District Council in 2005 to use the right of way to obtain access to the Council sewerage treatment plant located on land immediately to the west of our properties. The easement was granted on the understanding that the trip generation would be very low, and only for service vehicles servicing the plant. However, what has transpired is that the right of way is also been used regularly by commercial operators disposal of effluent collected from septic tanks throughout the District.

At this stage neither of our two blocks has a dwelling, although one dwelling could be erected on each block as a permitted activity.

Our blocks are shown as part of a wetland system in the Lincoln Structure Plan (see copy attached as Appendix D). The wetland system includes our blocks, the Council's sewerage treatment site and a substantial part of the Broadfield Estates block, the subject of PC4 and proposed as Living 1 Deferred under PC4. The current Lincoln wastewater plant is unlikely to be needed for sewerage treatment and disposal in the future (other than possibly on a small scale to provide some holding capacity in an adverse event e.g. plant failure). The proposal is for all of Lincoln wastewater to be pumped to the proposed upgraded Rolleston Pines Wastewater Plant in its raw state.

We understand that the proposed wetland areas are intended to mitigate the effects of stormwater runoff from new proposed residential growth areas, in particular the large 'Dairy' block to the west, proposed for a mix of 'standard' and medium density residential activity. This block is lowlying and stormwater drainage is difficult. We consider that the 'Dairy' block should mitigate the effects of its development 'on site' rather than use our land for this purpose, or compensate us for this at residential market land value for use of our land. In any case, our land is higher than the Broadfield Estates Ltd and is unlikely to be suitable as a wetland area. We understand that the wetland areas shown in the Lincoln Structure Plan are indicative only and that detailed investigate work e.g. levels have not been taken which would establish the feasibility or otherwise of using our land for the purposes of wetland.

We also note by way of background that our land is excluded from the Metropolitan Urban Limits (MUL) in Plan Change 1 to the Canterbury Regional Policy Statement; all of the Broadfield Estates Ltd land is shown as within the MUL; and that the lifestyle blocks immediately to the north are also outside the MUL (see Appendix E). However, the same lifestyle blocks are shown as a Stage 2 conventional residential area (average 10 dwellings per ha) in the Lincoln Structure Plan (see Appendix D). We did not submit on PC1 because we were not aware of its existence. We understand individual landowners in Greater Christchurch (not even those such as ourselves who would be directly affected by the position of MUL) were not notified of PC1. We consider that the notification was deficient and contrary to the rules of natural justice.

Reverse Sensitivity

Farming our two properties is already very difficult and restrictive, due to the fact that the only access is via a residential subdivision, and we have rural lifestyle activity to the north. It is not possible to bring heavy farm machinery onto the property, and cropping activities are limited e.g. growing lucerne, because we cannot harvest at nighttime with heavy machinery and night lights due to reverse sensitivity effects with residential neighbours. These current difficulties will be substantially increased with the proposal for Living 1 zoning along virtually the full length of our respective eastern boundaries.

We note that in declining our 2007 resource consent, the Commissioner referred to the potential adverse reverse sensitivity effects between residential and rural activity. This was as a result of just two additional residential dwellings over and above the permitted baseline, in comparison to the PC4 proposal for 294 dwellings on the land immediately to the east of us (based on a residential density of 10.5 dwellings ha, and land area of 28 ha). The Commissioner stated:-

"..housing at this density increases the possibility reverse sensitivity effects in relation to both the sewerage treatment plant and farming activities in the Rural Outer Plains Zone on three sides.....additional houses in this locality could lead to reverse sensitivity effects such as conflict with farming activities such as effluent spreading and crop spraying."

The PC4 Section 32 analysis with respect to reverse sensitivity effects that will arise as a result of the proposed rezoning is inaccurate and understated:-

"The rural land adjacent to the site is primarily use for pasture/grazing purposes, and the nature of these uses is not anticipated to change in the short term. These areas are also areas where future residential growth has been indicated in the Lincoln Structure Plan and Proposed Change 1 to the Regional Policy Statement, As a result any potential reverse sensitivity issues are likely to be minor, and if they do occur, are likely to be of limited duration." (page 9)

"Neighbouring rural activities for this proposal are primarily pasture based, which do not generally give rise to 'reverse sensitivity' issues." (page 10)

Our land contains high quality versatile soils (Wakanui silt loams), is well drained and 'theoretically' suitable for a wide range of primary productive uses, both crop and animal based. The only practical farming options given the existing access arrangements is for grazing and hay and silage i.e. a mix of pasture and cropping. The creation of residential sites along our eastern boundaries will further limit the effective productive potential of our land by increasing the severity existing adverse reverse sensitivity effects, and create additional problems.

The rezoning will give rise to security concerns, with the proposal for the Rail Trail and esplanade reserve along the L1 Creek, with a walkway linkage to the south east corner of our blocks, and the potential for residential owners' dogs straying onto our land and scaring and damaging stock. Already we have neighbours cattle crossing L1 Creek onto our properties from time to time. The proposed riparian planting is for informal groups of trees and low planting, and will not provide a barrier to public or stock access across the Creek.

Rural Character

The Visual Assessment by Robert Watson included with PC4 is inaccurate and incorrect in terms of its assessment of visual impacts of the proposed rezoning. It describes the Landscape Quality of the site and wider context as possessing 'low naturalness' reflecting a great deal of modification to the landscape. This is not correct in relation to our immediately adjoining blocks which are retained in farming use and do not contain any built elements (currently there are no dwellings on the blocks). Our blocks are more accurately described as at the very least possessing 'moderate naturalness'.

The report describes the sensitivity of the site to change as 'low', due to the extent of exotic species, the nature of the land use and because of modifications that have taken place.

The assessment of the visual impact of the rezoning on the surrounding area is brief, inaccurate and incomplete. In assessing visual impacts on land to the west, the assessment only considers the Lincoln Dale residential subdivision, which is the northwestern neighbour.

There is no assessment of impacts on the rural land to the west, including our two blocks, which make up more than 50% of the western boundary of the PC4 land. The visual impact for this rural land will be significantly adverse, with the change from a rural character to a residential subdivision. The 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 PC4 land which does not bound L1 Creek.

Again, we refer to the Commissioner's decision on our 2007 resource consent which found that two additional dwellings over and above the 'permitted baseline', each on a 2 ha rural lifestyle blocks would have a significant adverse effect on existing rural character. If this is so, then having a 294 lot residential subdivision as a 'neighbour' will have a very major adverse effect on rural landscape character.

Section 85 – land incapable of reasonable use

The effects of the changes to land uses in the vicinity of our properties proposed under PC1 and PC4 and the Lincoln Structure Plan is that they render our land 'unuseable'. Our land is to retain its Rural Zoning but will be surrounded by conventional residential activity to the north and east, with the only access via a residential subdivision.

Our land is not suitable for wetlands as it is elevated, and above the level of the Broadfield Estates land the subject of PC4. In any case, it is not reasonable for our land to be taken for the purposes of mitigating the adverse effects of stormwater disposal arising from residential subdivision elsewhere in Lincoln i.e. the Dairy block. Our land is more suitable for residential development than the Dairy block.

We consider that PC4 renders our land incapable of reasonable use, and that Section 85 of the Resource Management Act 1991 applies. Section 85 provides for any person having an interest in land to which a provision of proposed plan change applies, and who considers that the provision will render that interest in land incapable of reasonable use, to challenge that provision on those grounds.

Selwyn District Plan

PC4 is contrary to a number of the Selwyn District Plan objectives and policies, in particular, but not limited to the following relating to Growth of Townships:-

Town Form:

Policy B4.3.3

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

Policy B4.3.5

Encourage townships to expand in a compact shape where practical

Whilst our blocks will be left with residential development on two not three sides, the reasons for avoiding this situation (namely in cases potential for 'reverse sensitivity' issues equally apply in our case. The proposed PC4 L1 Deferred Zone will create a long 'peninsula' of residential zoning with Rural Zoning on either side. This is contrary to the policy of creating a compact town shape, and increases the length of the zoning boundary with rural properties, and hence the potential for adverse reverse sensitivity effects, and the number of rural properties affected by loss of adjoining rural character, and the distinction between the rural area and townships. The Explanation states recognises that in some circumstances it may not always be practical to create a compact shape due to constraints such as mountains, waterbodies and transport routes. No such constraints apply in this case.

Preferred Growth Options for Lincoln:

The Section 32 analysis states that PC4 meets the policy requirements for new residential development to have motor vehicle access from an alternative collector or arterial road than Gerald Street (Policy B4.3.51), ensure stormwater disposal from residential development will not exacerbate potential flooding downstream of, or the water quality of, the L1 and L11 waterbodies (Policy B4.3.52); encourage integration with provision for utilities, community facilities, and areas of business development (Policy B4.3.53), and does not impact on the 'rural-urban' landscape contrast with Christchurch City (Policy B4.3.55). Rezoning of our land to Living 1 would equally be consistent with these policies.

The analysis above established that PC4 will result in adverse reverse sensitivity effects, contrary to Policy B4.3.54 which seeks to ensure that rezoning any land for new residential development does not create or exacerbate potential 'reverse sensitivity' effects in respect of activities in the surrounding Rural Zone.

Resource Management Act:

PC4 does not meet the purpose and requirements of the Resource Management Act 1991, including for, but not limited to, the following reasons:

- Does not promote the sustainable management of physical resources, including our land;
- Does not protect physical resources in a way or at a rate which enables people and communities to provide for their economic wellbeing;
- Does not sustain the potential of the physical resource to meet the reasonably foreseeable needs of future generations;
- Is and inefficient use and development of physical resources;
- Will result in adverse effects on the environment, including our land which cannot be adequately avoided, remedied or mitigated;
- Will not maintain or enhance amenity values or the quality of the environment, including in relation to our land;
- Renders our land incapable of reasonable use in terms of s 85;
- Section 31 makes it clear that integrated management relates to both the management of effects at the site level and the integrated management of a district's natural and physical resources at a wider strategic level. Whilst the Lincoln Structure Plan has considered future growth of Lincoln at a strategic 'township' level, the investigative work which formed the basis for decisions on the MUL and detailed land uses was preliminary only and incomplete for example in relation to stormwater drainage and areas identified for wetlands, including our land. The proposed land uses in the Structure Plan are indicative only. Our land is not suitable for wetlands, is incapable of use for farming purposes due to the exacerbated reverse sensitivity issues arising as a result of PC4, and should be included within the MUL as a new residential area; and
- The Section 32 Assessment included with PC4 is incorrect, inadequate and incomplete and does not meet the requirements of the Act. In particular, given that PC4 is contrary to certain District Plan objectives and policies (see discussion above under 'Selwyn District Plan') it is not the most appropriate way of achieving the purpose of the Act, and having regard to their efficiency and effectiveness, the proposed rules and other methods are not the most appropriate for achieving the

objectives. Other methods have not been considered, including incorporating our land, and potentially the rural lifestyle blocks to the north (shown as a conventional residential area in the Lincoln Structure Plan) as part of PC4; or retaining the status quo until such time as adequate investigations and consideration is given to comprehensive urban growth planning for the southern Lincoln area, including potentially our land, the Dairy Block, PC4 land and land to the east, so that integrated servicing issues, reverse sensitivity and sustainable land use can be properly considered, and the MUL for the area determined accordingly.

Long term sustainable use

Clearly, our two 4 ha blocks are not sustainable either in the short or long term for primary productive use. The only viable alternative long sustainable uses are residential or rural residential living. Given the limited provision for rural residential development in PC1 (total 200 households for each ten year planning period to 2045) and the fact that Lincoln is to be a Key Activity Centre, and the location of a major new growth in the District, we consider that our land should be rezoned for conventional residential subdivision (density 10 dwellings per ha). Our land is more suitable for residential development than the Dairy block which is subject to major stormwater drainage constraints. The Lincoln Structure Plan proposes to utilise our land for wetlands to mitigate 'off site' the drainage effects of developing the Dairy Block for residential purpose. It is more equitable, and appropriate, including in terms of sustainable management under the Act, for some of the residential allocation for the Dairy Block to be re-allocated to our land (and potentially other rural lifestyle land to the north of our land, already shown as conventional residential in the Lincoln Structure Plan) and for the Dairy Block to mitigate adverse stormwater effects 'on site'.

We note that Lincoln Structure Plan proposes a new 'boundary road' south of Lincoln which bypasses the town centre. This will link Ellesmere Road to Springs Road south of the University with connections into the Dairy Block. Moirs Lane (currently unformed) which terminates as the south eastern corner of our two blocks) will be extended and will form part of this proposed road. This could provide alternative road access to our blocks, when formed.

We consider that our land should also be Deferred Living 1, with the option for road access from the proposed 'southern boundary road' when this is formed, in addition to access from the existing residential area to the north. The proposed treatment plant to the east will be de-commissioned once wastewater is pumped to Rolleston Pines Plant for treatment (expected to be within the next 2-3 years), so reverse sensitivity effects with respect to the plant will no longer be an issue (there is also plenty of evidence from the operation of other treatment plants which establishes that no reverse sensitivity effects are likely in any case). The 'southern boundary road' forms a logical southern limit to the extent of the future residential area at Lincoln.

We seek the following decision from Council:

Our preferred relief is:-

- That Plan Change P4 is declined in its entirety unless provision is made as part of the Plan Change for rezoning our land (and potentially the rural lifestyle blocks to the north, located between the current Living 1 Zone and our land) to Living 1 Deferred, subject to the same standards and terms as the PC4 area (where applicable).
- Our less preferred relief is that in the event that it is determined that the above relief is beyond scope, that Plan Change P4 is declined in its entirety and a new plan change is prepared and notified which includes our land (and potentially the rural lifestyle blocks to the north, located between the current Living 1 Zone and our land) to Living 1 Deferred, subject to the same standards and terms as the PC4 area (where applicable);

- Our least preferred relief is that consideration of PC4 is deferred until such time as consent is granted, at no cost to us (either by way of plan change or resource consent) for development of our land for rural lifestyle purposes, with an average density per net site area of 3000m²; and/or
- Such other relief as the Council considers will give effect to intent of our submission.

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We do desire to be heard in support of our submission

If others are making a submission, we would consider presenting a joint case with them at a hearing

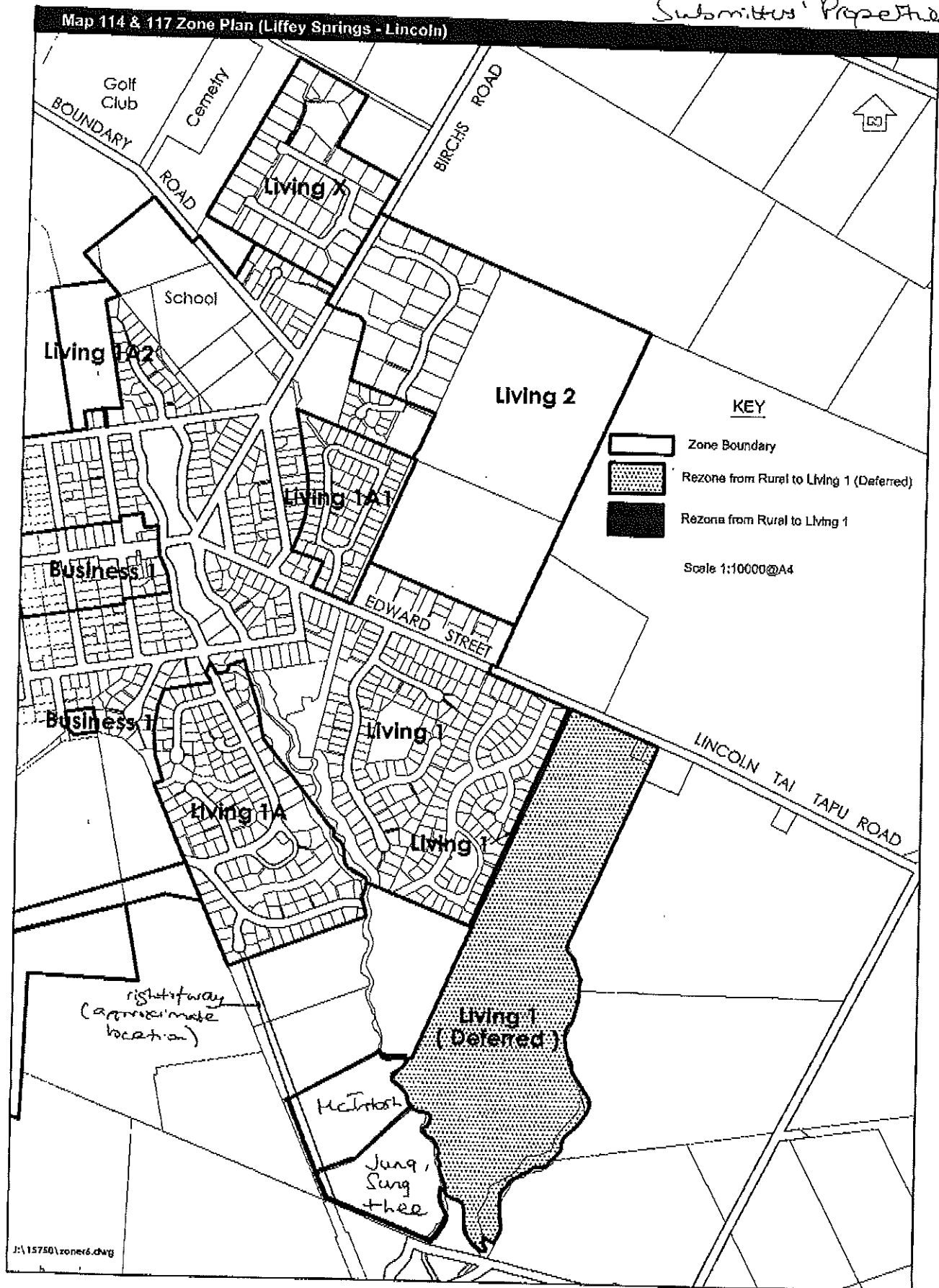
Signed

Date:

27th March 2007

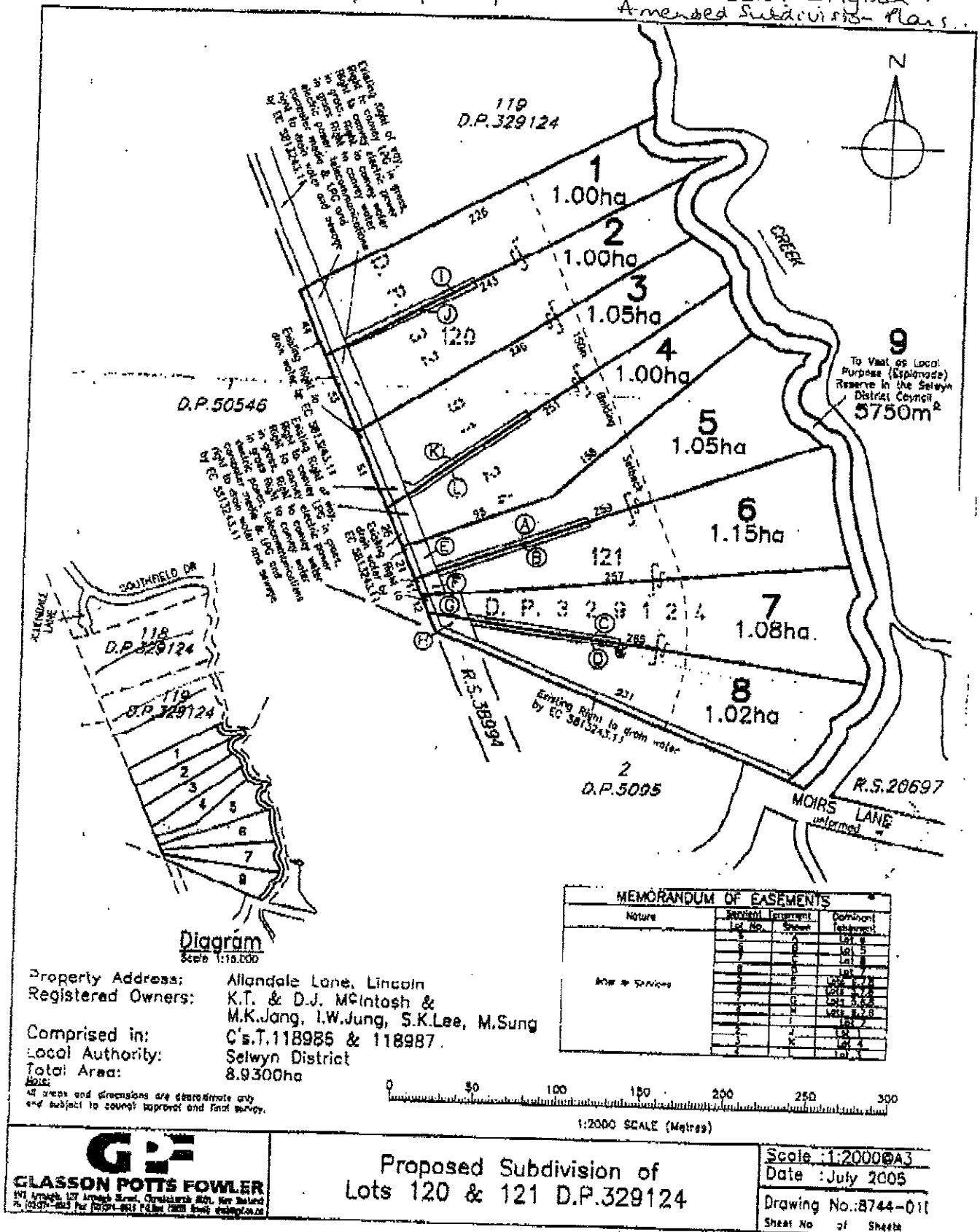
for KTD McIntosh, W + M. L. Sung, M. Sung + Sk. Lee

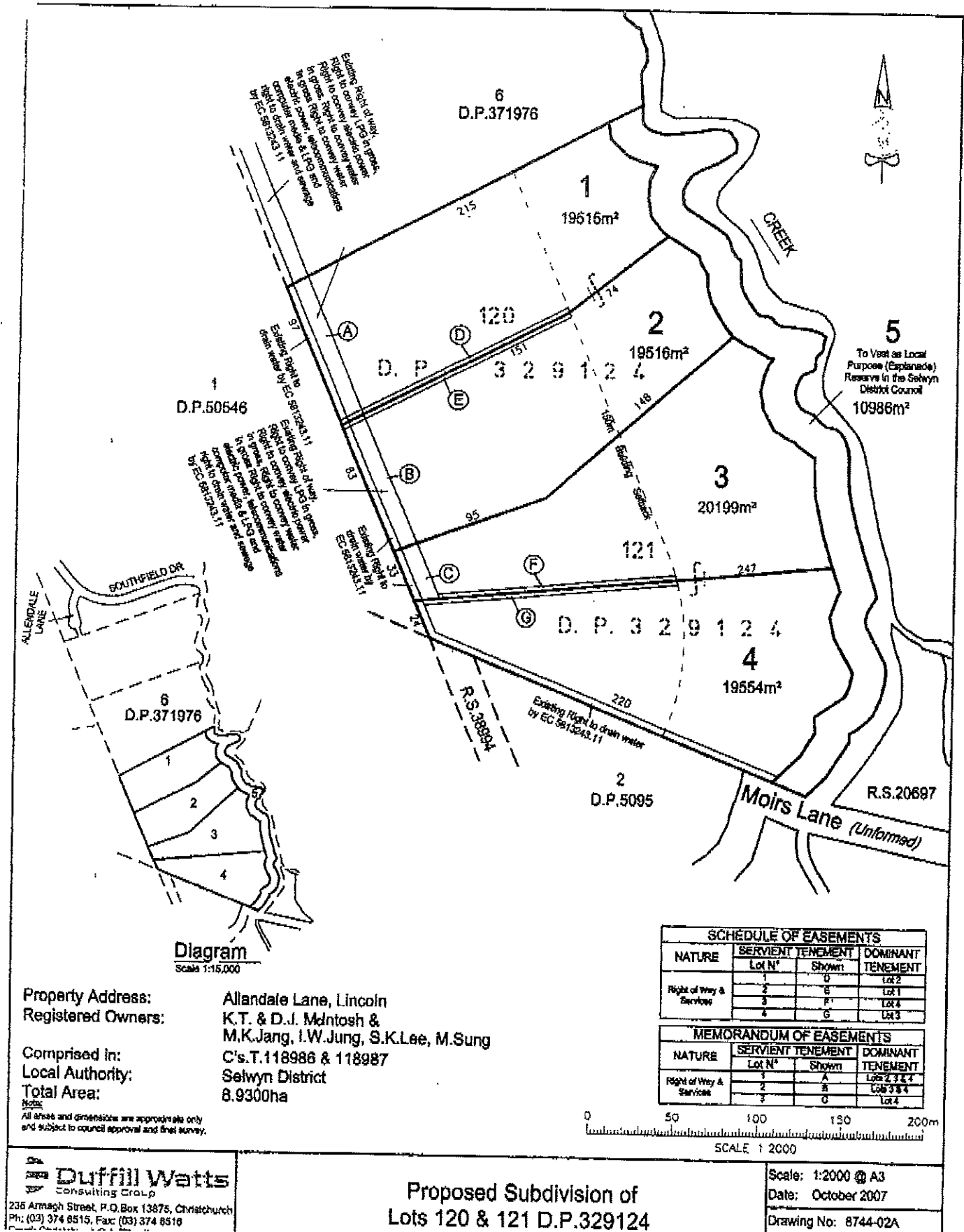
Appendix A: Location of
Submitter's Properties



Appendix B:

McIntosh, Jung, Sung & Lee 2007 Consents: Original + Amended Subdivision Plans.





Appendix C

Under the Resource Management Act 1991

IN THE MATTER OF an application by KT & DJ McIntosh, MK Jang, IW Jung, SK Lee and M Sung to the Selwyn District Council for consent to subdivide 8.93 hectares at Allendale Lane, Lincoln, into 8 lots and an application for land use consent to erect a dwelling on each lot.

Council Files: 065306 (Subdivision) and
065307 (Land Use)

**DECISION OF DAVID W COLLINS, A HEARINGS COMMISSIONER
APPOINTED PURSUANT TO SECTION 34A OF THE ACT**

The Proposal

1. These applications seek consent to sub-divide rural land on the south edge of Lincoln and to erect dwellings. The application sites are accessed off the end of Allendale Lane, a residential cul-de-sac at the south edge of Lincoln. The right-of-way access from Allendale Lane currently serves ten properties: one residential property at the head of the Allendale Lane cul-de-sac, four lots of about one hectare each and two lots of about 2 hectares each created by two sub-division consents in 2005, the two properties making up the application site (8.93 hectares in total), and the Council's sewage treatment ponds on adjacent land to the west. The eastern side of the application sites is bounded by L1 Creek, also known as the Liffey Stream.
2. Although the application sites and the lots between these and the Lincoln urban area boundary are zoned are Inner Plains, the land across the L1 Creek, the land to the south, and the land to the west including the sewage treatment ponds land is zoned Outer Plains.

3. The applications were publicly notified and sought consent to sub-divide the two application site lots into eight long narrow lots running between the right-of-way and the L1 Creek. A 10 metre wide esplanade reserve along the L1 Creek was proposed. Just prior to the hearing the proposal was modified to seek only four lots of about 2 hectares each and to make provision for a 20 metre wide esplanade reserve. These amendments are clearly within the scope of the application as notified.
4. Consent is sought to erect a house on each lot, presumably in accordance with various rules in the District Plan such as the minimum 150 metre building setback from the sewage treatment ponds.

Statutory Assessment Framework

5. As discussed below, both the subdivision and the land use applications have the status of non-complying activities. The applications have to be assessed under sections 104, 104B, and 104D of the Act. Section 104 requires me to have regard to effects on the environment and relevant provisions of statutory documents – in this case the Ellesmere Section of the Transitional District Plan, the Proposed District Plan, and the Regional Policy Statement. Consideration is “subject to” the purpose and principles of the Act set out in Part II of the Act. Relevant Part II matters in this case are the “sustainable management” of resources purpose of the Act set out in section 5, section 6(d) *“the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers”* (a matter of national importance), section 7(b) *“the efficient use and development of natural and physical resources”*, and section 7(c) *“the maintenance and enhancement of amenity values.”*
6. The non-complying status of both the subdivision and land use applications in this case mean that pursuant to section 104D, consent may be granted only if I am satisfied that either –
 - “(a) The adverse effects of the activity on the environment will be minor; or*
 - (b) The application is for an activity that will not be contrary to the objectives and policies of –*

.....

 - (iii) Both the relevant plan and the relevant proposed plan”*

Transitional District Plan

7. The applications site is zoned Rural B under the Ellesmere section of the Transitional District Plan. The minimum lot size in the Rural B zone is 20 hectares so the proposed subdivision is a non-complying activity. The zone provides for dwellings on lots of less than 4 hectares but greater than 0.5 hectares as a discretionary activity.

Proposed District Plan

8. As already noted, the applications site is zoned Inner Plains under the Proposed District Plan. The proposal fails to meet two subdivision rules. Rule 1.1.6 requires any right-of-way to be designed and formed to comply with Rule IV, which in turn requires accessways to comply with Appendix 10 of the Plan. Appendix 10 limits the number of sites accessed from a right-of-way to ten. The modified proposal would increase the number of lots served by the existing right-of-way from ten to twelve.
9. Rule 1.1.7 sets a minimum lot size of 4 hectares. Failure to meet these two standards leads to non-complying status for the subdivision.
10. The minimum area for dwellings in the Inner Plains Zone is four hectares, and again there is no provision for smaller lots as a discretionary activity so the proposal has the status of a non-complying activity.

The Hearing

11. Public notification of the applications drew 10 submissions, nine in opposition and one in support. The submission in support was received after the closing date and no application under section 37 was made for validation.
12. The submissions in opposition raised concerns about safety and amenity issues from increased traffic using the right-of-way, more letter boxes and rubbish bags at the head of the Allendale Lane cul-de-sac, the width of the proposed esplanade reserve (now proposed to be 20 metres to meet this concern), the density of development proposed, and potential reverse sensitivity issues arising from proximity to the Lincoln sewage treatment plant. The submission in support advocates that the application should be treated in the same manner

as the applications that created the 1 hectare and 2 hectare lots between the applications site and the Lincoln urban boundary already described.

13. A hearing to consider the applications was convened on the 5th October at Leeston. I had the benefit of a comprehensive planning report prepared by a council planning officer, Ms Rosie Jowett, which had been pre-circulated to the parties. Ms Jowett attended the hearing and following the presentations by the parties but prior to the applicant's reply she provided some further comment on the application as modified and the issues raised during the hearing. Following the hearing I visited the applications site and surrounding area.
14. The case for the applicants was presented Mr Graham Fowler, a very experienced surveyor. Mr Fowler's evidence traversed a wide range of matters relevant to the planning context of the application and the potential effects of what is now a proposal for two additional lots and dwellings. Some points of relevance to the crucial question of whether the adverse effects would be more than minor (one of the alternative "threshold tests" for non-complying activities under section 104D) were his discussion of the space available for dwellings after allowing for the minimum 150 separation from the boundary of the sewage treatment utility reserve and allowing for the 20 metre esplanade reserve, the use of the access way by sewage collection contractors, a volunteered proposal to construct a speed restriction threshold at the entrance to the right-of-way, and information about servicing of the lots.
15. Mr Alan Belcher read a submission he had filed and also spoke on behalf of Ms Justine Davidson and Mrs Jude Belcher. The Belchers own the first lot on the right-of-way adjoining the Lincoln township boundary. The 10 metre wide right-of-way cuts through their property leaving an area the size of a normal residential section on the western side separated from the main part of their property where they are currently building a new home. Mr Belcher expressed opposition to any further subdivision accessed from the right-of-way because of the effects of additional traffic.
16. Mr Jim Connelly spoke on behalf of the Lincoln Community Committee, of which he is a committee member. The committee's submission sought a 20 metre esplanade reserve (now proposed) and a maximum of 10 lots off the

right-of-way. The latter appears to be a matter of principle. Mr Connelly also referred to a point in the committee's submission expressing concern about the possibility of tree planting on those lots that could reduce wind across the treatment pond and so reduce treatment efficiency. There appears to be no control on tree planting near the treatment plant at present, but it is something that could be proposed by way of conditions of consent.

17. Mr Mark Allan, a qualified planner, gave evidence on behalf of a submitter – Kajens Trading and Development Limited. His evidence had been prepared before the amendments to the application and he acknowledged that these amendments go some way towards meeting his client's concerns. In his opinion however the applications still fall both of the alternative "threshold tests" in section 104D of the Act. He suggested that the proposal could be improved by identifying building platforms so as to ensure separation between future houses and provision of a landscape plan requiring amenity and screen planting.
18. I have given some thought to these suggestions because the effects of applications have to be assessed assuming reasonable mitigation measures are employed. Although the application does not volunteer the identification of building platforms or propose any landscaping, those could be imposed by conditions. Mr Allan also raised a concern about consistency in the width of the esplanade reserve proposed along the L1 Creek. His clients created only a 10 metre wide esplanade reserve and Mr Allan suggested that a 20 metre reserve as now proposed by the applicant would create confusion. I am not persuaded that this would really create any difficulty for owners of properties adjoining the 10 metre esplanade reserve. Any future walkway would obviously be within the esplanade reserve and the owners of properties adjoining reserves are always entitled to fence the boundary if they find that members of the public are intruding on their properties.
19. Mr Terrence Hopkins expanded on his submission in opposition. He is an owner/occupier of 10 Allendale Lane, one of the two properties at the turning head of the cul-de-sac. His property also has a right to use the right-of-way and he has developed his property with vehicle access from the right-of-way. His concerns relate to the effects of additional traffic using the right-of-way and the

prospect of additional letter boxes and rubbish bins at his frontage if, as appears likely, that will be the collection point. Mr Hopkins also expressed concern about the adequacy of the water supply to serve additional lots without loss of pressure for properties such as his.

Relevant Issues

20. These applications raise a range of matters that will be relevant if the applications can pass the section 104D "threshold test". These include:
- The relative weight to be given to the Transitional and Proposed District Plans and Variation 23.
 - The weight to be given to the proposed Lincoln Structure Plan and the Proposed Change 1 to the Regional Policy Statement.
 - Understandings about and legality of the use of the right-of-way by a Council effluent collection contractor.
 - A possibility of reverse sensitivity effects in relation to the treatment plant.
 - The feasibility of alternative access through the formation of a paper road – Moirs Lane.
 - The benefits of creating legal public access along the L1 Creek.
 - Cumulative effects and precedent effects.
 - Equity, in regard to the two consents granted in the immediate area to Kajens Trading and Development Limited.
21. After considering all the information and visiting the site I have come to the view however that neither application can meet the "threshold test" in section 104D and therefore my conclusions on matters such as those above are irrelevant. I will therefore focus simply on the two alternative "threshold test" matters.

Adverse Effects on the Environment

22. It is well established law that in assessing whether adverse effects on the environment would be minor for the purpose of section 104D, there is to be no balancing of positive and negative effects. There have been numerous cases where the Environment Court has considered what can be deemed to be "minor" in particular contexts.
23. The main potential adverse effects in this case would arise from the increased traffic generated by two additional houses. Households typically generate

about eight trips (four round trips) per day. Sixteen additional trips would not be of any great consequence in many contexts but the particular circumstances here are a narrow formed right-of-way serving rural-residential properties. Part of the rural amenity that will be enjoyed by the future occupiers of these properties derives from a quiet environment. There is open farmland on three sides and although the nearest two lots in the residential zone would experience some noise from Southfield Drive and the normal activities of a residential area, the lots beyond this are in a particularly tranquil setting. In my assessment the addition of even about sixteen vehicle trips per day would adversely affect this environment in a way that is more than minor.

24. There was some discussion at the hearing about the safety of the right-of-way for young children. I accept that is also a factor although the character of the use of the right-of-way will change when the lots are built on. In particular the right-of-way will become less attractive for casual unauthorised use by certain members of the public.
25. There is a particular characteristic of this right-of-way already mentioned that increases the adverse effect of additional traffic; that is the fact that it runs through rather than along the edge of lots 1, 2, 5 and 6 DP 371976. In the case of lot 1, owned by submitters Mr & Mrs Belcher, the right-of-way separates a substantial area of land, which they have developed as garden.
26. The second adverse effect on the environment flowing from this proposal for additional houses would be the effect on rural landscape character. This is a more abstract consideration because the effect depends partly on the development that could be expected on the two present 4 hectare lots compared to the development that could be expected on the four proposed 2 hectare lots. Under both scenarios it can reasonably be anticipated that there would be a substantial dwelling on each lot, possibly with outbuildings, certainly with extensive gardens and probably small paddocks.
27. The 4 hectare minimum used in this zone and many others in this and other districts is generally regarded as being the minimum at which rural-residential development can be carried out in a flat landscape while maintaining a reasonably "rural" landscape character. As Mr Fowler pointed out, there is the

possibility that urban development will extend into the land on the other side of the L1 Creek in the foreseeable future. I am not sure that that would diminish the significance of the effect of two additional houses in this locality on the landscape. On the one hand if the land across the creek was developed for housing that part of the wider landscape would be dramatically altered, but on the other hand the value of maintaining a rural landscape on the applications site would increase if it became the outlook for a new residential area. In my assessment the two additional houses proposed would affect rural landscape character in a more than minor way.

28. I am less convinced of the significance of the other adverse effects identified by submitters. There would certainly be more mailboxes and rubbish bins on collection days outside Mr Hopkins' property, but I am not sure that the difference between boxes and bags for eight households and ten households would be readily noticeable. There should be room within the 10 metre wide accessway to provide a tidy and possibly even a screened area for rubbish bags and recycling bins at the beginning of the right-of-way.
29. Similarly, it could be that the additional two proposed houses would affect water supply pressure more than the permitted eight houses served by the right-of-way, but I accept Mr Fowler's point that there are engineering methods such as flow restricting valves to minimise such effects if it proved that the water supply pressure is at a threshold.
30. As noted earlier, the concern raised about the planting of trees that could reduce the air flow across the sewage treatment pond would actually be dealt with more effectively by granting consent because that could be controlled by conditions, whereas at present there appears to be no control on planting that could affect the efficiency of the plant.
31. Overall I accept the submitters perspective that the adverse effects on the environment would be more than minor.

Objectives and Policies

32. It is well-established law that in assessing whether a proposal is "contrary to" objectives and policies in a district plan for the purposes of section 104D of the

Act, an overall view is to be taken. That is, the objectives and policies are not to be seen as a series of hurdles, each of which must be cleared. Any support for a proposal in the objectives and policies is to be balanced against conflict with other objectives and policies. Section 104D requires that a proposal is not "contrary to" the objectives and policies in both the Transitional District Plan, taken as a whole, and the objectives and policies in the Proposed District Plan, again taken as a whole.

33. The objectives and policies in the Transitional District Plan focus on protecting and facilitating farming activities in the rural zones. There is very little that could be said to provide support to these applications. I have not examined them in much detail because I have come to the view that the applications are clearly contrary to the objectives and policies in the Proposed District Plan. The applications are probably contrary to the objectives and policies in the Transitional District Plan as well, but if it is assumed that the existing 4 hectare lots mean that the land is already effectively lost to farming, some of the key policies may not be relevant.

34. Turning to the Proposed District Plan, the most relevant objectives and policies are as follows:

Objectives and policies for Amenity Values, Quality of the Environment and Reverse Sensitivity Effects (section 3.4 of Part II of the Plan)

"Objectives

1. *The District's rural area is a pleasant place to live and work in.*
2. *A variety of activities are provided for in the rural area, while maintaining rural character and avoiding reverse sensitivity effects.*

Policy 1

Recognise the Rural Zone as an area where a variety of activities occur and maintain environmental standards that allow for primary production and other business activities to operate.

Policy 6

Maintain low levels of building density in the Rural Zone and the predominance of vegetation cover.

Policy 19

Protect existing lawfully established activities in the Rural Zone from potential for reverse sensitivity effects with other activities which propose to establish in close proximity."

35. Objectives 1 and 2 provide for a variety of activities in the rural area while maintaining rural character and avoiding reverse sensitivity effects. The explanation for these objectives states that:

"...the rural area has a character which is distinct from townships and people value this distinction – the rural outlook."

36. The additional houses proposed would not support objective 1, but is not in direct conflict with the objective. In my assessment the proposal would however, be in direct conflict with the second part of objective 2. As discussed above rural character (of the landscape) would be undermined by housing at this density, and housing at this density increases the possibility of reverse sensitivity effects in relation to both the sewerage treatment plant and farming activities on the Rural Outer Plains Zone on three sides.

37. Housing at the density proposed would be in direct conflict with Policy 6 and Policy 19 because the building density proposed could not be regarded as low and as just noted, additional houses in this locality could lead to reverse sensitivity effects such as conflict with farming activities such as effluent spreading and crop spraying.

38. The other key objectives and policies in the Proposed District Plan come under the heading "Residential Density and Sub-division in the Rural Area" in section 4.1 of Part II of the Plan. These are:

"Objective 1

The provision of a variety of section sizes in the rural area while maintaining low overall residential density.

Objective 2

Residential density is low enough to maintain the character of the rural area and to avoid adverse effects on natural and physical resources or reverse sensitivity effects.

Policy 1

Discourage residential density greater than those shown below where these are outside the areas identified in policies 3 to 6.

(Followed by a table indicating that the maximum density for the Inner Plains Zone is one dwelling per 4 hectares.)

Policy 4

Recognise Existing Development Areas and Tourist Resort Areas within the Rural Zone, but encourage new residential development at densities higher than those provided for in Policy 1, to occur in and around townships."

39. These objectives and policies seem to have similar intent to the objectives and policies for amenity values already discussed. In the context of the rural zones I do not consider that what is proposed would maintain "low overall residential density" or a residential density low enough to "maintain the character of the rural area" or avoid reverse sensitivity effects. In my assessment the applications are directly contrary to these two objectives.
40. There is also direct conflict with Policy 1 because twice this minimum density is proposed.
41. Policy 4 is somewhat curious but it cannot be interpreted as intended to directly contradict the rules in the District Plan. It can only be intended to mean that higher densities are to be encouraged where that is provided for under the Plan, presumably as a discretionary or restricted discretionary activity or where it is provided for through Variations or Plan Changes. Policy 4 cannot be seen as providing any support for the applications in present circumstances.
42. There are a number of other objectives and policies that are marginally relevant to these applications but none provide any support for the proposals; certainly insufficient support to counter the direct conflict with the objectives and policies discussed above.
43. Overall, I am not satisfied that these applications can meet either of the alternative "threshold tests" in section 104D of the Act and therefore I have no jurisdiction to grant consents.

DECISION

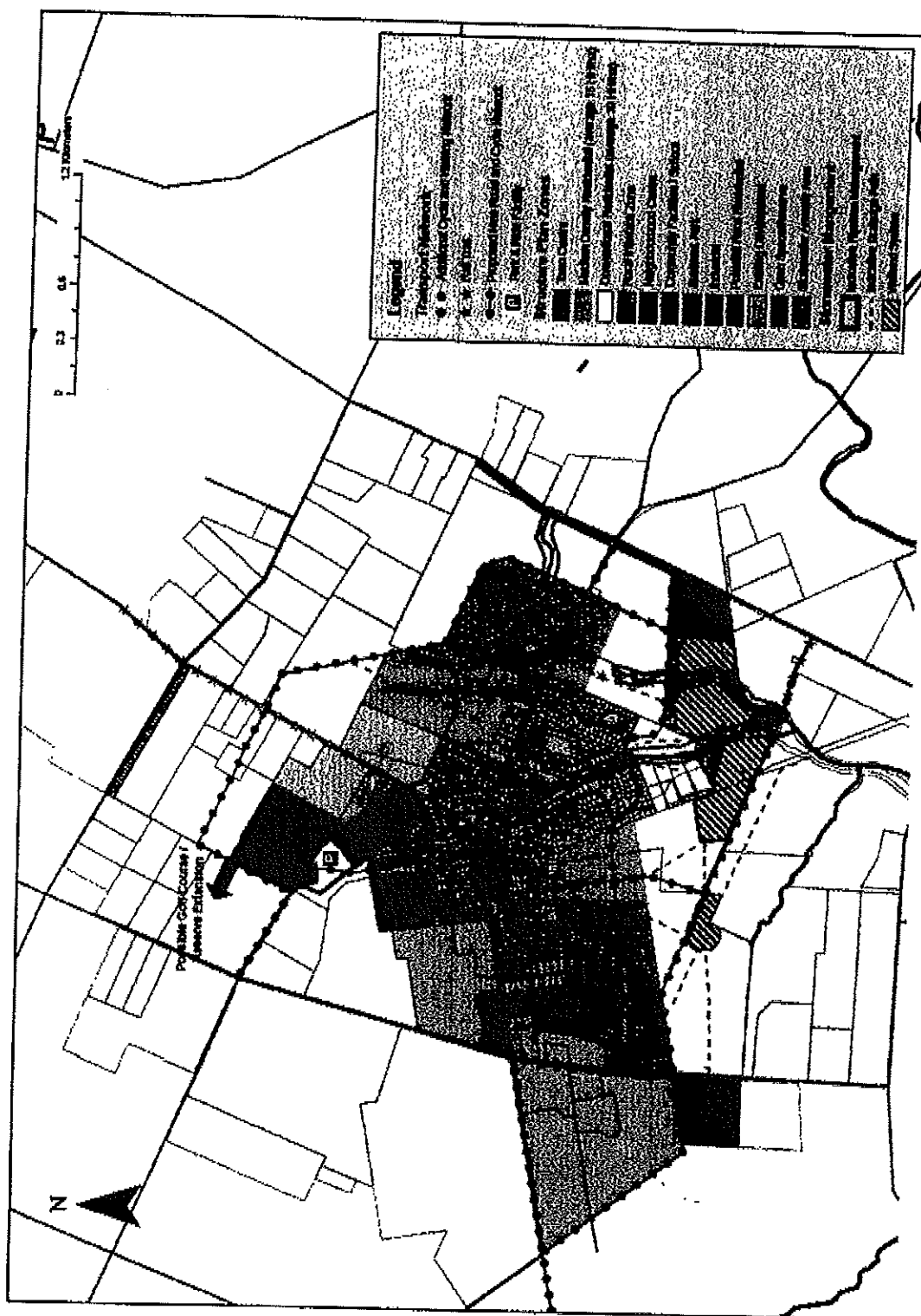
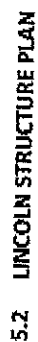
For the reasons discussed above, I have no jurisdiction to grant these consents and consents must be declined.

David W Collins
Hearings Commissioner
12th October 2007

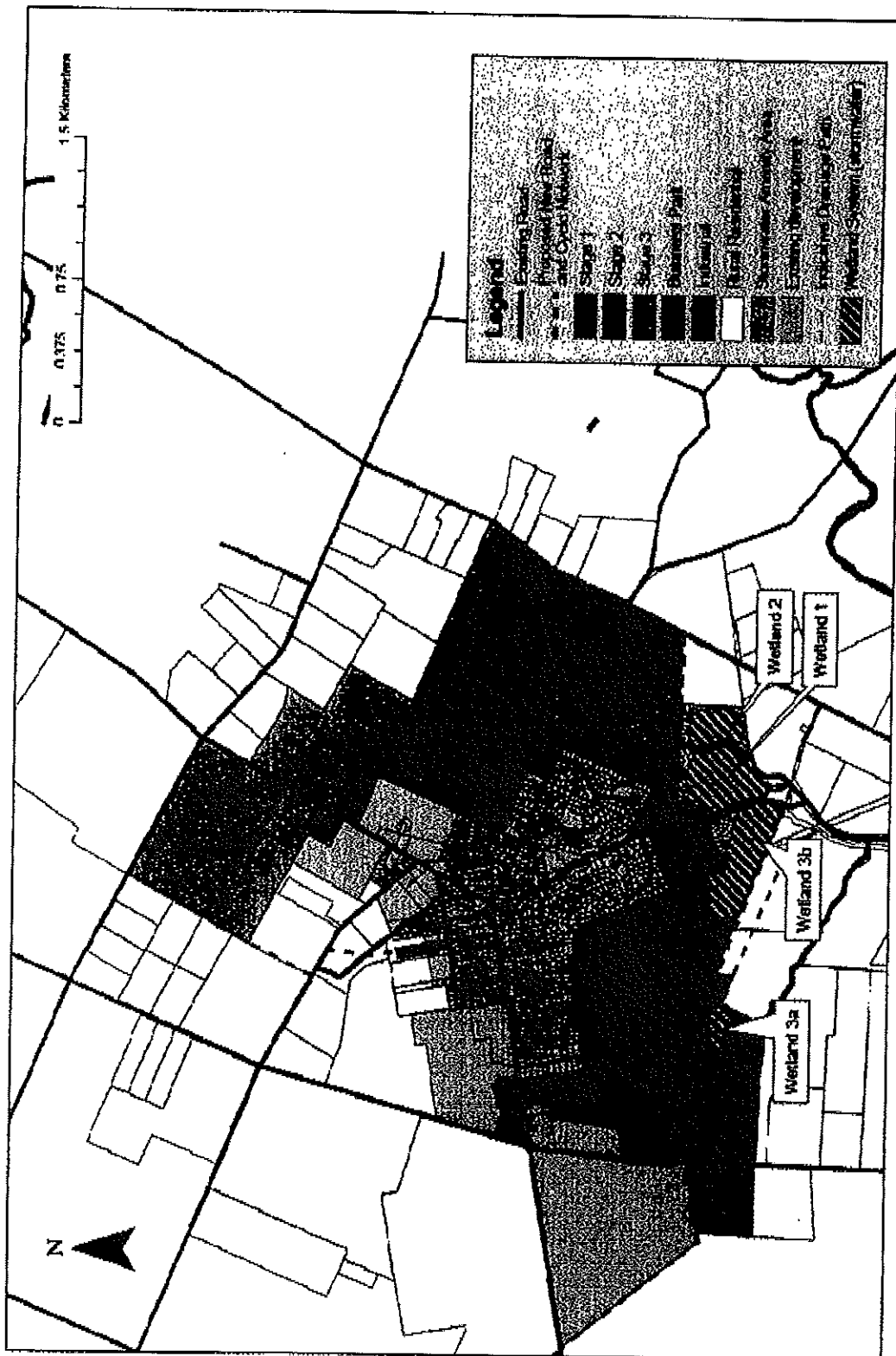
Appendix D :

Lincoln Structure Plan + Residential Staging

LINCOLN STRUCTURE PLAN PAGE 14



6.4 RESIDENTIAL STAGING PLAN



Appendix E: Plan 1 to
Canterbury Regional Policy Statement

