

## **Before the Selwyn District Council**

In the matter of                      the Resource Management Act 1991

and

In the matter of                      an application for a private plan change by **Gillian Logan**  
to lift the deferred zoning of 130ha at Darfield

### **Plan Change 46**

## **Submissions in reply on behalf of Gillian Logan**

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### **Introduction**

1. Most of the issues that arose during the hearing were anticipated and covered in the evidence presented on behalf of Gillian Logan (and in the Council reports). For this reason, the reply does not respond to most of the specific issues raised by submitters.
2. The matters of note addressed in the reply relate to:
  - 2.1. Consultation;
  - 2.2. The inclusion of "building" in the 20m setback for State Highways in the ODP;
  - 2.3. Scope regarding Area 5;
  - 2.4. Rule 12.1.3.16;
  - 2.5. Noise insulation;
  - 2.6. Connectivity – correction required; and
  - 2.7. The link strip proposal.
3. I will address each matter in turn.

### **Consultation**

4. The issue of consultation with all adjoining land owners was realised and complied with by the applicant. To the extent that this has been challenged by Mr Hatton, this assertion is rejected. Consultation was undertaken. Mr Hatton simply elected not to participate in the plan change process as an applicant. This is a matter completely beyond the control of

Mrs Logan. If Mr Hatton considers this to be an issue of significance, then his remedy is by way of an application for judicial review to the High Court.

5. Otherwise, it is maintained that the applicant has fully satisfied the consultation requirements of the Act.

### **“Building”**

6. In terms of the Gabi “comments” (as she was not a submitter), the applicant is willing to amend the ODP to include the word “building” in respect of the 20m setback from State Highway 73.

### **Scope**

7. An area of contention with the initial Officer Report and then the evidence of Mr Greg on behalf of Mr Hatton, was whether Area 5 should be included in any decision to approve the plan change application.
8. Mr Boyes accepted at the hearing that this extension would be beyond the scope of the application. As noted in the opening submissions, an application for a plan change (as with a resource consent) cannot provide for more than the application seeks. This is a fundamental principle of public law. Supporting case law can be provided if this would assist but it is submitted that as a fundamental principle of law, the territorial authority simply does not have jurisdiction to go further.

### **Rule 12.1.3.16**

9. Mr Boyes does not agree with the inclusion of the proposed rule 12.1.3.16. The purpose of this is to make it more transparent and clearer within the plan that there is a separate ODP for the application site.
10. Ultimately, this is a matter of drafting style for the Council to determine for reasons of consistency and so on. The applicant maintains that it is helpful but emphasises that the retention or removal of the proposed rule does not have any material impact on the basis for the plan change request.

### **Noise insulation**

11. An issue arose regarding the building setback and noise insulation rules for buildings close to the state highways and the applicant’s proposal to exclude the application site from rules B4.9.3 and B4.9.4 and to insert two new rules (B4.9.5 and B4.9.6). The proposed rules provide for a 20m maximum setback of buildings and that buildings within 80m of the state highway are required to be noise insulated, as opposed to the existing 40m setback and 100m noise insulation requirements.
12. A 40m setback as required by the existing Plan rule would not achieve Ms Wolfer’s opinion that the plan change should be structured to avoid any smaller sections along the state highways from “turning their back” from the roads. Whether or not the exclusion of the site from rule B4.9.4 and

proposed rule B4.9.6 is included will make little material difference. Therefore, it is accepted that to reduce the need for new rules, this change could be omitted.

### Connectivity

13. The applicant accepts the point made by Mr Boyes that the proposed text for the ODP contains a mistake. This should include a reference to access on the western side of the second access on Bangor Road:

#### *“Connectivity*

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

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

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

### Link strip proposal

14. The applicant provided the opportunity for Mr Hatton to agree to be part of the plan change proposal prior to the application but the situation is that he did not agree to be involved. The proposal has had to reflect and respect this as not all of the Living 2A (Deferred) Zone at issue is owned by Mrs Logan.
15. In this context, the applicant has committed to transport connections to the Hatton land. It is proposed that these be subject to “link strips” in the usual way. Mr Boyes has raised concerns about this on the basis that it could hold land owners “to ransom”.
16. This is not correct. The opposite is true. The purpose of a link strip is to enable a first in time subdivider who meets the costs of all internal transport links and services to be relied on by a neighbouring subdivider to contribute to the costs of these if a connection is required. This is a practice that has been in place for decades and has worked well under both the Town and Country Planning act and now the Resource Management Act.
17. Case law has long accepted that as a subdivision lot, a link strip is a “legal fiction” created for the sole purpose of enabling a contribution from a

subsequent landowner to servicing costs incurred by the neighbouring subdivider. However, the Courts have accepted the purpose and justification for this practice to enable an equitable division of servicing costs between adjoining subdividers.

18. It must be remembered that Mr Hatton has elected not to be part of the plan change proposal and therefore has not contributed to the costs of the process.
19. It is submitted that there is no legal basis to oppose a link strip and that Mr Hatton should be required to contribute towards the costs of services that he will benefit from if he now wishes to develop his land. The link strip process is an accepted practice to enable this to occur.

**A J Prebble**

Counsel for Gillian Logan

22 December 2015