

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 **Judith Pascoe** to lift the deferred zoning of 13.5ha at Darfield

Plan Change 48

Statement of evidence of Mary Clay on behalf of Judith Pascoe

Introduction

1. My name is Mary Katherine Clay. I am the Principal Planner at Avanzar Consulting Ltd, a local planning and resource management consultancy.

Qualifications and experience

2. I hold a Masters of Applied Science in Environmental Management from Lincoln University and a Bachelor of Science in Geography from the University of Canterbury. I am a Fellow of the Royal Geographical Society.
3. I have been employed as a planner for over 16 years within private consultancies and in local government both in New Zealand and overseas. I have been involved in numerous private plan change applications and am familiar with both issues relating to rural residential development and reverse sensitivity. In respect of development within Darfield, I have previously prepared a private plan change application (PC 24) for land directly adjacent to the current proposal.
4. I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note (dated 1 December 2014) and I agree to comply with it. I confirm that the issues addressed in this statement of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions I have expressed.

Background & Site Location

5. The plan change site is located at 193 Creyke Road (corner of Creyke Road and Telegraph Road), Darfield. The site has road frontage to both Creyke Road and Telegraph Road. The site is held in three certificate of titles and has a total area of approximately 13.5ha. The first title

(370020) with an area of 7.9436ha is owned by Judith Pascoe, the second title (CT33A/1134) with an area of 4.4786ha is owned by Mr Craig Dye and Ms Sandra Lyttle, and the third title (370019) with an area of 1.072ha is owned by Mr Benjamin and Mrs Emily Bloomfield. The subject site located on the southern fringe of the Darfield township, and is currently zoned Living 2A Deferred.

6. Each of the properties contains a dwelling and associated garden areas. The remainder of the site is made up of grazing paddocks, with numerous hedges within the site, and a hazelnut orchard which is located on Mr Dye and Mrs Lyttle's property. At present the road frontages have mature hedging framing the site, as well as a water race running along Telegraph Road.
7. The surrounding area is characterised by rural activities namely arable farming and stock grazing. However, given that the adjoining land to the north is zoned Living 1 (minimum allotment size 650m²) and to the east the land is zoned Living 2A (minimum allotment size 1ha), which it is reasonable to consider that over time the land use type on the perimeter of Darfield will shift towards residential and rural residential use, hence the proposal to allow development to a Living 2 level, which is slightly higher density than the deferred zoning would allow.
8. Darfield township is located to the north and north-west of the site, with the centre of the township approximately 1.5km from the subject site. The township has experienced a significant increase in the number of shops, cafes, and other community services in recent years as part of the record population growth in the Selwyn District since the 2010-2011 Canterbury earthquakes.
9. To the south of the proposed site on the southern extent of the Creyke Road/ Telegraph Road intersection, the Darfield Shot Gun Club (the Gun Club) is located. The frequency of shoots has been discussed in the application and further details have been attached as **Appendix 12** of the application. However, in summary, it is anticipated that the club meets approximately once a week typically for a whole day on a weekend, with the occasional weekday shoots by school children for approximately two to three hours. Mr Trevathan describes current and possible gun club activity in more detail in his evidence.
10. The site has been identified by the Council as part of the preferred growth option for Darfield which would assist in providing a compact township form, has appropriate connections to reticulated water supply, and avoids reverse sensitivity effects with adjoining lawfully established activities.

11. The site is contained in an area identified in the District Plan as Area 3. Plan Change 24 was lodged in 2010 for all of the land contained within Area 3, which was held in multiple ownership. Silver Stream Estates was the 'then' owner of the largest block of land contained within this area and was the driving entity behind the PC24. PC24 sought that land along Creyke Road be zoned Living 2A (essentially lifting the deferral status of this area) and that land closer to Darfield be zoned a mix of Living 1 and Business zones.
12. Through the submission and hearing process for PC 24, reverse sensitivity effects associated with the existing Gun Club activities on the south western corner of Creyke Road/ Telegraph Road intersection were identified. At that time the issues around mitigating the effects to enable the rezoning and subsequent development of this site were considered by the commissioner as outside the scope of the plan change. The result was to amend the Outline Development Plan for the site to exclude three properties located in this corner from being rezoned. PC 24 resulted in a mixture of zoning ranging from Living 1 zoning to Living 2A zoning. The proposed plan change reflects this zoning on the adjoining land, and recognises that now a higher Living 2 zoning is appropriate, given the form of development allowed on the adjoining land through PC24.
13. Since the decision on PC24 in 2013, the Applicant of the current proposed Plan Change has been working with neighbours, the Gun Club, noise experts and Selwyn District Council staff to provide a solution to the potential noise amenity effects impeding development of the properties excluded from the original PC24 ODP area. This Plan Change application is the result of this work.
14. The proposal seeks to lift the deferred zoning from the site and allow for the land to be developed under Living 2 rules. This will enable development to occur with an average allotment size of 5,000m², providing for approximately 20 separate lots. It is proposed to retain the hedging along Telegraph Road, and to either retain or replace the vegetation along the Creyke Road frontage to assist in the retention of rural amenity values, and reduce the potential for reverse sensitivity issues through the use of vegetation for sound mitigation. The lots and the locations of the properties on those lots are designed in a fashion to promote high quality on-site amenity and to also assist in avoiding potential reverse sensitivity. While the deferred zoning allowed for Living 2A zoning of the site, the applicant now proposes to develop to Living 2 standards, which allows for an average allotment size of 5000m². The site is appropriately located for this form of development, and any case, the ODP identifies locations for allotment sizes across the subject site, with higher density development closer to the township, and further out, and closer to the gun club, lower density development is proposed to be permitted. Further discussion on the rationale for the proposed Living 2 zoning is found in Ms Reeves Urban Design assessment that accompanied the original application.

15. For the deferred status of the area to be lifted then the site needs to have access to a potable water supply, have an outline development plan (ODP) inserted in the District Plan, and measures to avoid or mitigate reverse sensitivity effects need to be in place.
16. The Darfield water supply has recently been upgraded with the addition of a second bore to supply water along with the existing bore and surface water take from the Waimakariri River. This subsequent increase in the capacity of the system has opened up the potential for new residential development to occur within the area.
17. The proposal includes an ODP to be inserted into the District Plan which addresses reverse sensitivity issues through design measures.

Summary of evidence and response to Council Officer's Report

18. I generally concur with the comments made, and conclusions drawn by Mr Joll in his Section 42A Officer's Report. In particular I agree with Mr. Joll that the Plan Change incorporates appropriate provisions that ensure that future development of the site is appropriate and will result in a number of positive, social, economic and environmental outcomes. As such, it is appropriate to lift the deferred status of this land and to allow development in accordance with the proposed ODP, to a minimum lot size average of 5000m².
19. In reliance on Mr. Trevathan's Acoustic Assessment and associated evidence, I am of the view that the proposed ODP (as amended) and the proposed rules package adequately addresses potential reverse sensitivity effects associated with the Darfield Gun Club.
20. Issues raised in submissions on the Plan Change do not detract from my overall opinion. In particular, I agree with Mr. Joll's analysis and subsequent conclusion that the absence of a reticulated sewage system in Darfield should not be an impediment to development of the site.
21. In response to a suggestion by Mr. Joll, I have prepared a number of amendments to the suggested rules, which are included within **Appendix A** to my evidence.

Preliminary Matters – Suitability of the Site – Contaminated Land, Geotechnical, Servicing and Transport Effects

22. 1878 Telegraph Road is identified in Environment Canterbury's Listed Land Use Register as having an unconfirmed horticultural use on the site. This is the hazelnut orchard which was established on the site in the 1990's, well after any persistent chemicals had stopped being

typically used on orchards in Canterbury. A copy of the Preliminary Site Investigation included as Appendix 8 to the Plan Change application concluded:

Based on the readily available historical information, no HAIL activities have been identified as having occurred/be occurring at the site. As such, no further environmental investigations are considered to be necessary for the rezoning of the site. In addition, the NES is considered to not be applicable for any future subdivision of land, land use change or soil disturbance activities at the site.

23. The site was assessed under Plan Change 24 for suitability for development in terms of geotechnical concerns after the 2010 earthquake in Darfield. A geotechnical report for that Plan Change, dated 19 November 2010 outlined that the site was appropriate for residential development. The authors of the Report (Golder Associates) subsequently confirmed by letter dated 06 May 2016 that they were not aware of any reason that would warrant changing their assessment of the suitability of the site for residential development. A copy of this letter and the original 19 November 2010 Report is attached as **Appendix 9** to the Plan Change Application.
24. As noted in the original Application (**Appendix 7**) and confirmed within Mr Joll's evidence, the entirety of the subject site can be serviced to the level required by the Selwyn District Council for rural residential development.
25. Mr Joll has also considered traffic related issues in his report. I note that the traffic engineers involved in this proposal have not noted any concerns with regard to levels of traffic generated by this development. The issue of the location of the road intersecting the subject site is an issue raised by the submitters. I agree with Mr Joll's comments on this matter, and would note that any proposed subdivision that proposed development that was not in full accordance with the ODP would require a resource consent.

Proposed Amendments to District Plan.

26. The focus of the Plan Change is the introduction of a number of rules to manage potential reverse sensitivity effects associated with noise from the Darfield Gun Club. Development of these rules has been guided principally by the Acoustic Assessment contained in **Appendix 5** of the Plan Change Application, as well as ongoing discussions with Mr. Rachlin at the Council.
27. Mr Trevathan has canvassed the issues relating to noise from the Gun Club in his evidence. His evidence identifies the level at which noise from shooting events can be considered

annoying. The resulting rules that have been prepared seek to ensure that noise effects from the gun club will be able to be adequately mitigated. The proposed rules must be read in conjunction with the new Outline Development Plan 41A, which is also to be inserted into the District Plan.

28. The rules proposed cover both effects on internal and external components of any residential activity within certain areas within the ODP area, and require certification from an acoustic expert for ease of plan administration. Should compliance with these rules (4.9.43 and 4.9.44), not be able to be met, clauses 4.9.53 and 4.9.54 allow for the Council to consider this as a restricted discretionary activity. Criteria to consider in assessment an application has been included, and this gives the Council a clear framework by which to consider and address effects.
29. The proposed ODP also seeks to have lower density development near the corner of Creyke Road and Telegraph Road with higher densities as the development moves closer to Darfield. The latter will also provide for a gradual residential build up from the town fringe into the town centre.
30. All internal boundaries with the surrounding land have been zoned as Living Zones, therefore although the surrounding land to the east and north is currently in agricultural use, this use will change into residential in the future. Shelter belts on the external boundaries are either proposed to be retained, or where necessary be replaced. This will achieve two things, first of which will help screen the subject site from the public sphere, and to reduce noise from external sources such as the roads, and gun club.
31. In my view, the proposed rules meet the requirements of s74 of the RMA, in particular they enable the Council to appropriately manage reverse sensitivity effects in accordance with its duties under s 31 of the Act.
32. Mr Joll summarises clearly the way in which the proposed plan change gives effect to the operative Canterbury Regional Policy Statement and other Plans and notes that with the exception of the proposed amendment to Policy 4.3.2.8, PC48 does not seek changes to the settled objectives and policies of the District Plan.
33. As he correctly states, the chief requirement is therefore to consider whether the proposal changes to the Plan's rules and zoning pattern better achieve the District Plan's Objectives and thereby Part 2, than the current provisions.
34. An amendment to the proposed plan changes includes the removal of the proposed change to Policy B4.3.28. Mr. Joll is of the opinion that the proposed amendment to Policy B4.3.28 is unnecessary. This particular amendment was also subject to a comment by Mr. Rachlin in correspondence with Avanzar shortly after the application was lodged. Mr. Rachlin held a

similar view to Mr. Joll in the sense that he considered Policy B4.3.28 did not either promote or hinder the rezoning of land from Living 2A to Living 2. Policy B4.3.28, as currently worded, contemplates development to a specific density. Accordingly, the purpose behind this particular amendment to Policy B4.3.28 was to specifically recognise that a Living 2 Zone was being sought for the site, which enabled development in accordance with the ODP and to a higher density than the Living 2A Zone. So, while I do not necessarily disagree with Mr. Joll that the amendment is strictly speaking unnecessary, I nevertheless consider its inclusion in the Plan provides for internal consistency with ODP 41A with both providing a clear signal as to the anticipated density for the Plan Change site.

35. This proposed policy change was originally proposed to be inserted into the plan to provide additional policy guidance to support the proposed rules in the plan. I tend to agree with Mr Joll that the amendment is not strictly necessary and as such, I have removed the policy change from my updated rule package attached to this evidence.
36. Mr Joll notes that as **Rule 12.1.3.16** already exists in the District Plan, that the proposed rule should be renumbered as **Rule 12.1.3.17**. However, I consider that a more appropriate way of including the amendment into the District Plan would be to include a reference to Appendix 41A – Living 2 Darfield – Creyke Road Outline Development Plan, within the existing **Rule 12.1.3.16**. This version of the proposed amendment is attached in **Appendix A**.
37. Mr Joll in paragraph 6.4 of his report has recommended that as the proposed rule numbers conflict with rules that already exist, then these should be amended to prevent the conflict. I agree with Mr Joll's recommendation and have made amendments to the rules package in accordance with his suggestions. The updated rule package proposal is attached in **Appendix A** to this evidence.
38. Mr Joll has recommended in paragraph 6.5 of his report that to ensure greater consistency with the rest of the Plan then a new heading 'Darfield' should be included within section 4.9 'Buildings and Building Position'. I agree with this recommendation and the amendments are attached in **Appendix A**.
39. Given the proposal seeks to lift the deferred status of the site, albeit at a slightly higher density, rather than introduce a new area for development, it is my opinion that these proposed changes to the Selwyn District Plan are the most efficient manner in which to include the ODP to lift the deferral on the subject site.

Submissions

Canterbury District Health Board (CDHB)

40. The CDHB indicated that they oppose the proposed plan change due to concerns regarding the lack of a reticulated wastewater service in Darfield, and that by allowing further development the public's health may be compromised by the discharge of wastewater containing pathogens into the land.
41. It is my opinion, on consideration of the documentation relating to this in the original plan change, and also attachment D of Mr Joll's evidence, that any wastewater discharged from the proposed sites will have no effect on public health as a result of pathogen contamination and the CDHB's concerns are alleviated for the following reasons.
- a. Each property will be of an adequate size to allow for efficient treatment of wastewater through an on-site wastewater treatment plant, and the disposal of the treated wastewater via a land application system. Treatment systems are effective at reducing the pathogen concentration of wastewater, and any pathogens remaining in the discharged treated wastewater will be killed off as the wastewater percolates through the soils. Once pathogens are discharged into land they are either killed off through competition with naturally occurring bacteria in the soil, through other bacteria attacking the discharged pathogen, or the pathogen dies through desiccation from lack of moisture in the environment.
 - b. There is no risk to groundwater quality from pathogens contained in the treated wastewater discharge given the extreme depth to aquifers in this area. Moreover, the potential wastewater discharges will be located down gradient from the wells supplying Darfield with drinking water.
 - c. To date the Darfield water supply has not been compromised by onsite wastewater discharges even though the entire township of Darfield has discharged their wastewater into the land since it was established. The only historical drinking water quality issues have been as a result from contamination of surface water sources or plant failures.
 - d. I also note that any wastewater discharge into land from future dwellings located on the subject site will be subject to Regional Council consenting requirements, which will ensure any discharge is carried out in the appropriate method to avoid any adverse environment effects.

Craig Dye & Sandra Lyttle

42. Mr Dye & Ms Lyttle have indicated that their primary concerns with the proposed Plan Change are the following:

- a. The presence of an access road into the proposed sites straddling the boundary between 193 Creyke Road and 1878 Telegraph Road, which will be situated near their home.
- b. The removal of the belt of eucalyptus trees along the boundary between 193 Creyke Road and 1878 Telegraph Road which according to the submitter acts as both visual and acoustic screening.
- c. The preservation of their existing use rights, and the avoidance of any reverse sensitivity effects.

43. The applicant and I have met with Ms Lyttle prior to this hearing, and sought to address any concerns the submitter had.

44. In response to Mr Dye and Ms Lyttle's submission, I consider their concerns have been addressed through the following aspects:

- a. The current position of the road on the ODP is indicative at the present stage. The final position of the road would be confirmed at the subdivision stage.
- b. The road is shown to be within the submitters' property, and therefore if they did not wish to have a road located within that space then they can refuse permission for the use of their land.
- c. The eucalyptus trees are located within the submitters' land, and therefore their removal is entirely controlled by them. This will enable them to avoid any potential effects from the removal of the trees.
- d. When buying and building property on the fringe of a rural township, it should be expected that some of the surrounding land uses will be for agricultural purposes, at times this is a reason why people would move into a site such as this. It is then unlikely that any new residents moving into the subject site would object to a lawful activity that existed prior to them moving into the property.
- e. It is relevant to note that to the north of the submitter site, the land is zoned as Living 1, and to the east of their property the land is zoned as Living 2a. This means

that residential redevelopment in close proximity to their land has already been allowed for.

- f. This plan change application is not seeking to change the submitters' current water rights, and I do not foresee any effect on their water take situation.
45. In any case, the District Plan, in allowing the deferred zoning some years ago, has already indicated that rural residential use of the site is more appropriate than rural. This plan change merely seeks to provide an appropriate form for that development, and in this case, given the constraints of the location of the gun club and noise related issues, and the location of the site at the edge of the township, I consider that the graduated form of development shown on the ODP is the most appropriate way of rezoning the subject site.

Statutory Considerations

46. The relevant statutory provisions of the RMA have been set out in both the application and the Section 42A report. Likewise many of the provisions of the relevant district plan, policy statement, and other management plans and strategies prepared under the Local Government Act, have been well canvassed. It is not necessary to readdress these here.
47. Mr Joll has not raised any concerns regarding the consistency of the proposal with the objectives and policies of the relevant plan and policy statements. Given this, it is my opinion that the matters set out in the application and this evidence demonstrates that the proposal meets the objectives and policies of the Selwyn District Plan.

Conclusion

48. The proposal seeks to lift the deferred status of the zoning across the site. There are three criteria within the Selwyn District Plan to enable this to occur, namely, a secured water source, an ODP in the District Plan and design features to address reverse sensitivity. The plan change application and amended provisions attached to my evidence demonstrate that these criteria are met.
49. The Plan Change and amended ODP are in my opinion consistent with the objectives and policies of both the Canterbury Regional Policy Statement and Selwyn District Plan.
50. The proposed plan change has demonstrated that the site can be serviced, that the area is appropriate for development of this type and that consistency with the provisions of Part 2 of the RMA have been achieved. The rules proposed take into account the proximity of the site to the gun club, and provide an innovative solution to the potential noise issues. This plan change represents a sensible conclusion to the partially complete rezoning of this part of Darfield and will enable the land to be developed in a cohesive and sympathetic way.

51. In conclusion, it is my view, based on the information contained in the application, submissions, and evidence submitted, that the proposal to allow for development of the site to a Living 2 standard is the most appropriate way to develop the site, and is indeed a more sensible form than that which the deferral originally anticipated. Furthermore, the rules package accompanying this plan change will be sufficient to adequately mitigate against all effects of the proposal.

Mary Clay

Date: 14th February 2017

Appendix A

Sub-heading 'Darfield' to be included prior to Rule 4.9.43.

The following rules are to be added to the District Plan:

4.9.43 In the Living 2 zone identified in Appendix 41A at Darfield, no additional dwellings shall be erected within the 60dB noise contour area shown on the Outline Development Plan.

4.9.44 In the Living 2 zone identified in Appendix 41A at Darfield, the following shall apply:

- i. All habitable spaces excluding bedrooms, within the new dwellings erected outside the 60dB noise contour shown on the Outline Development Plan will be designed, constructed and maintained to achieve a design noise level of 35 dB LAFmax from noise generated by outdoor shooting activities at the Darfield Gun Club (located on the site legally described as RES 1511 BLK XI Hawkins SD).
- ii. Primary outdoor living areas associated with any new residential dwelling must be screened from the Darfield Gun Club noise to achieve a noise level not exceeding 50 dB LAFmax.
- iii. Prior to the construction of any dwelling, certification of compliance with 4.9.44(i) & (ii) shall be confirmed in writing to the Council's Planning Manager by a suitable qualified and experienced acoustic expert.

These rules shall only apply until such time as the Darfield Gun Club (located on the site legally described as RES 1511 BLK XI Hawkins SD) ceases to operate outdoor shooting activities at the corner of Creyke and Telegraph Roads.

Restricted Discretionary Activities

4.9.53 Any activity which does not comply with 4.9.44 shall be a restricted discretionary activity

4.9.54 Under Rule 4.9.53 the Council shall restrict the exercise of its discretion to the following:

- The extent to which the site is predicted to be affected by noise from outdoor shooting activities carried out at the Darfield Gun Club (located on the site legally described as RES 1511 BLK XI Hawkins SD).
- The extent to which any noise from outdoor shooting activities carried out at the Darfield Gun Club (located on the site legally described as RES 1511 BLK XI Hawkins SD) will have on all habitable spaces (excluding bedrooms), and primary outdoor living areas.
- The extent to which residential activities at the site will give rise to reverse sensitivity to the outdoor shooting activities at the Darfield Gun Club (located on the site legally described as RES 1511 BLK XI Hawkins SD).
- The extent of the environmental effects from any noise mitigation measures.

Applications under Rule 4.9.53 shall not be publicly notified, but may be limited notified on the Darfield Gun Club (located on the site legally described as RES 1511 BLK XI Hawkins SD).

This proposed rule is to be removed from the plan change application:

Discretionary Activities

4.9.56 Any activity which does not comply with rule 4.9.43 shall be a discretionary activity.

Existing Rule 4.9.51 to be amended to:

Any activity which does not comply with Rule 4.9.3 and Rule 4.9.35 to Rule 4.9.39 and Rule 4.9.42 and Rule 4.9.42(a) and Rule 4.9.43 shall be a discretionary activity

Existing Rule numbering amendments

4.9.43 is amended to **4.9.45**

4.9.44 is amended to **4.9.46**

4.9.45 is amended to **4.9.47**

4.9.46 is amended to **4.9.48**

4.9.47 is amended to **4.9.49**

4.9.48 is amended to **4.9.50**

4.9.49 is amended to **4.9.51**

4.9.50 is amended to **4.9.52**

4.9.51 is amended to **4.9.55**

4.9.52 is amended to **4.9.56**

4.9.53 is amended to **4.9.57**

Amendment to Rule 12.1.3.16

Any subdivision of land within the area shown in Appendix 47 - Living 2A Darfield - Bangor Road Outline Development Plan, **and within the area shown in Appendix 41A – Living 2 Darfield -Creyke Road Outline Development Plan**, shall comply with the layout and contents of that Outline Development Plan and shall comply with any standards referred to in the Outline Development Plan.

Amendment to Appendix 25 of the District Plan.

Area 3 – Refer to Appendix 41 **& 41A** for Outline Development Plans