

Before the Hearing Commissioner: Selwyn District Council

IN THE MATTER

of Schedule 1 (*Preparation, change, and review of policy statements and plans*) of the Resource Management Act 1991.

AND

IN THE MATTER

of Private Plan Change #54 to the Selwyn District Plan; the requester being Ballymena Holdings Ltd.

AND

THE SUBJECT LAND

being Lots 1 and 2 DP 400509 located on the NW corner of the intersection of Annavale Road and Pocock Road, Springfield, Selwyn District.

STATEMENT OF PLANNING EVIDENCE OF JOHN COOK



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1. INTRODUCTION

- 1.1 My full name is John Edward Cook. I have a Bachelor of Planning (BPlan) from the University of Auckland having graduated in 1988. I am a full member of the New Zealand Planning Institute. I am the sole director and principal of the resource management and planning consultancy Planning Solutions Ltd that I established in 2002. I have 30 years of resource management / planning experience in both the private and public sectors.
- 1.2 I also have the qualification of NZCD (Arch), being the New Zealand Certificate in Architectural Draughting. I was also for many years an Architectural Designer but am no longer licensed in the context of the Building Act 2004 requirements.
- 1.3 This statement of evidence is in support of the private Plan Change 54 to the Selwyn District Plan as requested by Ballymena Holdings Ltd. The subject properties are Lots 1 and 2 DP 400509 located on the northern corner of the intersection of Annavale Road and Pocock Road, Springfield township.
- 1.4 I have over the past few years visited the subject land a number of different times as part of this Plan Change request. On this basis I have a good appreciation of the subject property and its immediate surroundings.
- 1.5 I have read the Selwyn District Council's Section 42A Planning Report prepared by Mr Jonathon Cleese. My evidence does not seek to repeat the information already submitted as part of this Private Plan Change request, and nor the findings in Mr Cleese's report where I am in support of them except to add further emphasis on the more salient points. My evidence otherwise deals with matters raised in the various submissions being opposed to this Plan Change request.
- 1.6 While noting this is a Selwyn District Council ('Council') initiated hearing, I acknowledge that I have read the Environment Court Expert Witness Code of Conduct and I agree to comply with it as if this was an Environment Court hearing.

2. CHANGES TO THE PLAN CHANGE PROPOSAL

- 2.1 Having had the opportunity to assess the Council's Section 42A Planning report and the various matters raised in the submissions received, there have been a number of amendments being sought to the application as originally notified by the Council. Those amendments are as follows:
 - a. There to be only a single dwelling established on the western most extremity of the subject property. This is the approximate 6.1 ha area to the west of the existing shelterbelt/fenceline.*
 - b. For establishing new dwellings, the minimum setback from a road frontage boundary be increased from the previous 10 metres to 20 metres.* In respect of other buildings such as accessory buildings, it is sought to retain the existing 10 metre minimum road frontage setback.

* - these amendments are highlighted on the revised Outline Development Plan ('ODP') that is attached as Appendix 'A'.

3. SECTION 42A PLANNING REPORT

- 3.1 The only comments I wish to make in respect of the Section 42A report prepared by Mr Jonathon Clease are as follows:

Late Submission & Further Submission.

- 3.2 It is noted that the original submission lodged by Mr Roger Radcliffe, and the further submission by Tara and Grant Keogh, were received by the Council out of time. On the basis that there are other similar submissions and further submissions having been received in respect of this plan change request; I can advise that the applicant company has no objection to both the late submission and further submission being accepted as if they had been received by the Council prior to the submission cut-off date.

Increased Building Road Frontage Setback

- 3.3 In paragraph 6.8 (pages 11 & 12) the issue of the road setback distances for new buildings is discussed. Mr Clease is of the view that a 20 metre minimum setback should apply to new buildings. I am generally in support with him on this matter, but insofar that it should apply only in respect to dwellings. This is on the basis I believe that in a rural / rural-residential setting it is the establishing of the dwelling that tends to give rise to a range of visual and amenity effects that tend to reduce a property's 'sense of ruralness', even if such dwellings were being established as a permitted activity in the context of the District Plan provisions.
- 3.4 But I am also of the view that the same observation cannot be so readily applied to accessory buildings such as sheds and the like. They tend to be more 'static' over time in terms of not being subject to the same degree of human activity associated with them when compared with a dwelling. On this basis I am of the opinion that accessory buildings should continue to have the ability to be established up to 10 metres from a road frontage boundary.
- 3.5 I used the word 'continue' on the basis that the Selwyn District Plan ('District Plan') currently for the Rural Outer Plains zone (as per Rule 3.13.1.1 (Table C3.2)) specifies a 10 metre minimum road frontage setback for 'garage or accessory buildings' where the road is a neither an Arterial Road nor a Strategic Road. This therefore applies to 'Local Roads' that apply in this case. On this basis any of the existing properties along Annavale Road, the unnamed road, and the rural portions of Pocock Road could have farming accessory buildings established within a 10 metre minimum setback from their respective road frontage boundaries.
- 3.6 In this context it is therefore considered more appropriate that this 'Building Position' matter be incorporated within the District Plan (Townships Volume) in the following way:
- Insert the new Rule 4.9.45 (*Buildings and Building Position*) following the existing Rule 4.9.44, and the subsequent renumbering thereafter as follows.

Springfield

3.9.45 In the Living 2 Zone identified in Appendix 49 at Springfield, the following minimum setback distances shall apply:

i. For any dwelling:

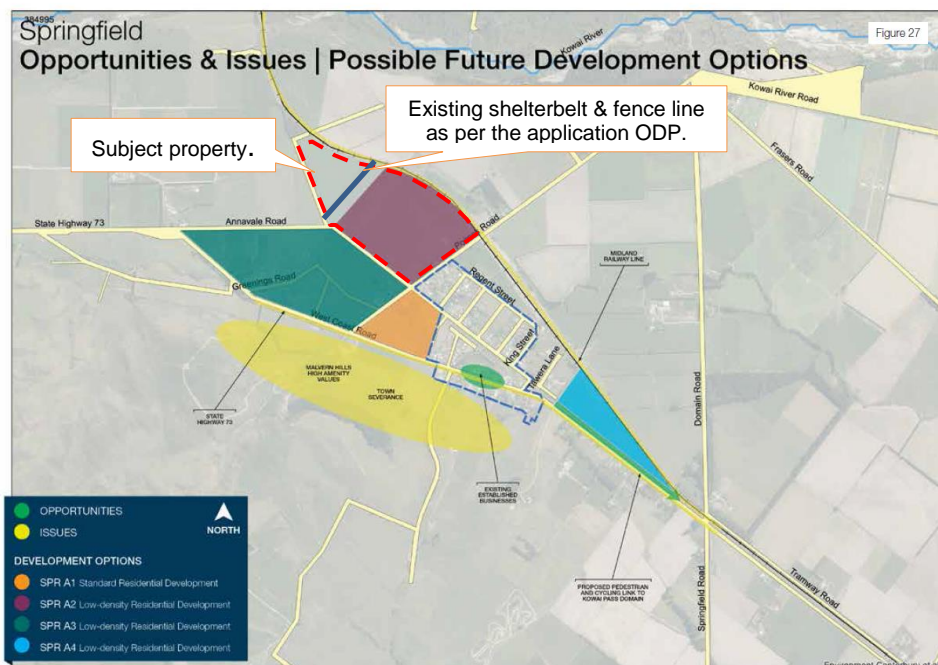
- a. From any road boundary: 20 metres.**
- b. From any internal property boundary including any accessway / right of way boundary: 6 metres.**
- c. From the boundary shared with the Midland Railway Line: 80 metres.**

ii. For any other building.

- d. From any road boundary: 10 metres.**
- e. From any internal property boundary including any accessway / right of way boundary: 6 metres.**

Malvern Area Plan 2013

- 3.7 Mr Clease makes an extensive assessment of the Malvern Area Plan 2013 ('Area Plan') in the context of this plan change request. This 'Area Plan' was prepared by the Council as part of a non-statutory process, but it does inform subsequent Resource Management Act 1991 processes and also those under other statutes (e.g. Local Government Act 2002).
- 3.8 By way of the background to the Springfield situation, the draft version of the Area Plan showed only a portion of the subject property being identified as being suitable for a 'Low-density Residential Development'. This is highlighted below in following Springfield plan from that draft Area Plan. The salient issue is that it was only the more eastern portion of the subject property that was originally proposed to be identified as being included.



- 3.9 As a result of the public consultation/submission period, the entire subject property was fully included within this 'future development' notation. There were two submissions received in support of this and there being no other submissions received in respect of the subject land.
- 3.10 The submission in support made on behalf of the applicant company at that time sought to include the entire subject property within this notation area and focussed on the potential of the subject property otherwise having a 'split notation/future zoning' and the inherent problems this would introduce. Whereas the majority of the subject property was likely at some time in the future to have some form of a living zoning, this would have resulted in a relative small balance area of land to the west still remaining in the Rural Zone (Outer Plains). This limited area of land in not having this development notation would otherwise require any proposal to establish a future dwelling on it would in all likelihood be required to be assessed as a non-complying activity. Accordingly, it was never the intention of the applicant company to develop this western area of land at the same potential dwelling density as per the remainder of the overall property, but rather to have the ability to install up to a maximum of two dwellings on it in recognition that it is more remote from the existing Springfield township. As already noted, the plan change proposal has been amended as per the revised ODP so to restrict the establishing of only a single dwelling on this approximate 6.1 ha area of land.
- 3.11 The effect of allowing only the single dwellings on this significant area of land will result in a slightly higher dwelling density on the balance eastern portion of the subject property (being closer to the existing Springfield urban area) in order to maintain an overall average maximum dwelling density of 1 per 2 ha over the entire property.

Dwelling Demand vrs Availability of Choice

- 3.12 Mr Cleese in paragraph 6.18 outlines the issues associated with the growth of the Springfield township and how this could best be dealt with. I agree with the view being expressed by him that this plan change is not deemed totally necessary to cater for the anticipate medium/long term growth of the Springfield urban population. There appears to be adequate amounts of vacant land still existing within the existing urban boundary.
- 3.13 Notwithstanding this, the Area Plan process as undertaken by the Council highlights the desirability to provide an element of choice availability for people wishing to reside in Springfield. At present there are essentially only two options for people wishing to establish a new house in the immediate Springfield locality. They are as follows:
- i. Develop an existing vacant section in the Springfield Living 1 Zone that tends to an area in the order of 1,000 m² (akin to the standard ¼ acre); and
 - ii. Develop an existing vacant rural zone property having a minimum area of 20 ha.
- 3.14 The ability for people to purchase a rural-residential sized property in the order of 1-2 ha will provide a further lifestyle option. The provision of dwelling choice is a fundamental residential matter contained in the District Plan objectives and policies. This is evident with the following:

Objective B4.1.1

A range of living environments is provided for in townships, while maintaining the overall 'spacious' character of Living zones, except within Medium Density areas

- 3.15 The current plan change request is seen as being in accord with this fundamental objective. This objective anticipates that people should be presented with a range of differing lifestyle options within the Selwyn District townships. This is highlighted by Mr Cleese where he has included in paragraph 6.15 (page 14) a list of eight other townships within the Selwyn District that include a Living 2 zone in some form. This confirms that throughout the District there are various townships that already have the benefit of providing for a rural-residential lifestyle for its residents.

Infrastructure Servicing – Water Supply.

- 3.16 A fundamental matter up to relatively recently that prevented this plan change request from progressing further was a lack of a suitable and sustainable water supply as provided by the Council's Springfield reticulated scheme. In essence during the dry summer periods, the potential existed for the township having water supply shortages and therefore the inability for the Council to provide any further connections to new developments.
- 3.17 However in recent times, this situation has been alleviated by the Council securing an additional long term water supply. In support of this, the establishing of any new dwelling on the subject land will need to have its water supply limited to a 'restricted' one. This limits the delivery of water at a rate of 2,000 litres/dwelling/day. This amount of water tends to be typical for rural dwellings who rely on Council/public water supply schemes for their domestic purposes. In being reliant upon such a low-pressure water supply scheme, each dwelling will need to have installed a minimum volume of on-site storage. Such storage is to provide a buffer between periods of low water use (typically in the winter) and other periods of high usage (typically in the summer) and also for emergency purposes. The minimum on-site domestic water storage requirements as I understand are specified in a Council bylaw that is administrated as part of the building consent process. In order to advise future residents of these water-related restrictions, it has been proposed as part of this plan change request that a new Rule 4.4.3 be included in the existing District Plan (Townships Volume) advising of this.

Upgrading of Annavale Road

- 3.18 It is noted in paragraph 6.28 that Mr Andrew Mazey (Council's Asset Manager: Transportation) advises that Annavale Road will require upgrading to a sealed standard and having a formed width of 6 metres. This is to be expected given the increased volume of vehicles expected to use this road due to the increase in dwelling density beyond what currently exists.
- 3.19 The giving of effect for this roading matter will only arise as part of any subdivision consent application proposing the creation of additional allotments being reliant upon Annavale Road for access.
- 3.20 In this context it is of interest to note that the Council in May 2016 granted land use consent to *'Erect a shed and establish a honey packaging and distribution business'* at 94 & 106

Annavale Road. The proposed processing building will have an eventual floor area of approximately 2,100m² with a 30-space parking area to cater for the anticipated same number of staff being on-site. The Council reference for this approval is RC165220. This property is on the south west side of Annavale Road on the inside of the bend opposite the subject property. This matter has also been raised by Mr Cleese in paragraph 6.46 to address the matter of 'Potential for industrial development' as raised by a number of submitters.

- 3.21 From the roading perspective, the RC165220 approval includes the following condition:

Transport

13. *Annavale Road shall be upgraded from Pocock Road to the second entranceway of the processing shed. This shall be done to a local Road standard as per the District Plan'.*

- 3.22 Interestingly, while the District Plan does specify minimum and maximum carriageway width formation the minimum formation/construction standards; there is nothing to indicate the surface whether it should be sealed or left unsealed. Admittedly Mr Andrew Mazey's comments contained in his memorandum prepared as part of this plan change request (being Appendix 2 in the Section 42A report) is more explicit in there being an expectation that Annavale Road would require sealing at least in the context of this plan change proposal.

4. Submissions / Further Submissions Received

- 4.1 Of the eight submissions received; 6 oppose the plan change request, one is in supported and one in support but subject to conditions.

The Conditional Submission (Mark Harnden)

- 4.2 The submission received from Mark Harnden is in support but subject to conditions. His property at 40 Annavale Road is located near the western end of it close to where it joins onto SH73. Mr Harnden's primary matter of concern is in respect of Annavale Road and the increasing number of vehicle movements travelling along it. To this extent he is seeking that the entire length of Annavale Road be sealed from Pocock Road through to SH73 as part of any residential development arising from this plan change request.
- 4.3 I note that the professional traffic advice having been provided by Mr Andrew Mazey shows that the majority of the traffic movements that will arise from the rezoning and subsequent development of the subject land will travel southwards along Annavale Road in the direction of the Springfield township; and not in the other direction along Annavale Road as suggested by Mr Harnden. On this basis I believe that the Annavale Road upgrading solution as being presented by Mr Harnden cannot be supported or justified.

Submissions in Opposition

- 4.4 Mr Clease has noted in paragraph 6.2 the eight salient points raised in the submissions in opposition. An assessment of each is as follows:

Effects on the Township Form, Character, and Amenity of Springfield.

- 4.5 The fundamental matters of township form, character and amenity are important issues that arise from this plan change request. However due to the restrictions being imposed on such matters as limiting the overall number of dwellings able to be established on this 30 ha property to a maximum of 15 (therefore restricting the overall density of dwellings) and maintaining for dwellings a minimum road frontage setback of 20 metres; in combination these two matters of control will ensure that the overall character and amenity of the immediate area and beyond will not be significantly compromised. Yes, it needs to be acknowledged that the establishing a new rural residential area will impact on the overall form of the existing township as it currently exists. But when taking the above restrictions into account I believe that the overall 'sense' of character and amenity associated with the existing township will largely be retained.
- 4.6 Why there were no opposing submissions received as part of the Council's 'Area Plan' process back in 2016 to the low-density residential development areas being proposed, I do not know. At that time I understand that the Council undertook an extensive public consultation process for residents and the like to become involved. The end result was the adopting by the Council of the 'Area Plan' as it currently exists with the subject land having been deemed suitable as being a 'Potential Development Option for a low-density residential development'.

Infrastructure Servicing

- 4.7 As already noted, there were previous water supply issues in the Springfield area as serviced by the Council's reticulated water scheme. Those previous issues have in recent times been overcome by the Council in terms of gaining access to increased volumes of water by way of new/additional water consents having been granted by Environment Canterbury. Furthermore, any new dwelling to be established on the subject land will be restricted to a maximum of 2,000 litres per day. This restriction requirement will in itself ensure that those residents will become aware of the need for self-imposed water use restrictions. It is understood in comparison that the remainder of the Springfield urban area has an unrestricted high-pressure water supply.

Land Stability and geotechnical Risk

- 4.8 The District Planning map shows a faultline traversing across the subject property, and indeed a host of other properties extending westwards to the Malvern Hills and eastwards to the District boundary at the Waimakariri River. Both the geotechnical investigation undertaken by Eliot Sinclair & Partners Ltd (on behalf of the applicant company) on this matter, and the peer review by Geotech Consulting (on behalf of the Council) show that the probability of an earthquake event occurring along this faultline is extremely remote. Furthermore, the ground conditions comprising the subject property are such that no special foundation design requirements need to be taken account of.
- 4.9 In this context it can be concluded that any concerns over the potential of a significant earthquake event occurring and the ground conditions that exist cannot be supported.

Soil Contamination Risk.

- 4.10 This is a matter raised by Environment Canterbury in their 'advisory notice for information purposes' rather than being a formal submission as such. The two matters raised deal with the former above ground fuel tank and the use of Reglone. The assessment of each is as follows:

Former Above Ground Fuel Storage Tank

- 4.11 In respect of the former above-ground fuel storage tank, the Preliminary Site Investigation ('PSI') notes that it was removed some 6 years ago (with this PSI prepared back in 2013). When still in use, it was located in close proximity to accessory farming buildings. However, the PSI noted that as part of the site inspection undertaken in 2013 there was no evidence of any past fuel spillages whether from the former fuel storage tank or from the adjoining workshop. On this matter the PSI concluded with:

'There is no evidence of petroleum hydrocarbon contamination at these locations' (Page 9)

- 4.12 I am therefore of the view that the proposed rezoning of the subject land should not be affected by this particular matter.

Past Use of Reglone

- 4.13 Reglone is used to desiccate potato plants prior to harvest. This is so they lose their leaves so to enable the potatoes to be harvested. This agrichemical was only ever used on the subject land in terms of growing potatoes by its previous owner, Mr Robert (Bob) Yaxley. Having discussed this matter with Mr Yaxley only recently (a telephone conversation with him on Sunday 30 September 2018), he advised that he only ever had 3-4 crops of potatoes for all the years he owned the land. As part of a cropping/pasture rotation system, the growing of

potatoes on any piece of land only took place every approximately 10 years. This is confirmed in crop rotation data included as Appendix 1 to the PSI that shows the extensive array of differing crop types used in conjunction with pasture.

4.14 The crop rotation data appears to show in general terms the following potato growing years and the particular paddocks that were used for it:

- 1988 (Paddock 'E' or 'C')
- 2002 (Paddock 'J1')
- 2009 (Paddocks 'C2' & 'H1', 'H2', 'H3').

4.15 Mr Yaxley also advised that the subject land was part of a much larger farming activity that he undertook for many years. This aided the rotation cycles that he was able to implement. He also referred to the subject land being stonier when compared with much of the other farmland he owned, and this also discouraged the planting of potatoes on it.

4.16 When taking all the above matters into account (including the PSI), I am of the opinion that the sparse use of Reglone over many years would not render the subject land unsuitable for any future residential activities proposed to be established.

Potential Reverse Sensitivity effects

4.17 The giving rise of reverse sensitivity effects has also been addressed by Mr Cleese in his paragraphs 6.38-6.45. I concur with his assessment of this matter and accordingly I nothing further has to be added.

Potential for Industrial Development

4.18 This issue appears to have arisen from the recent establishing of the honey processing facility along Annavale Road as already referred to. As already noted this facility having a gross building floor area in the order of 2,100 m² was established via the land use consent process as it could not be established as a permitted activity.

4.19 In the context of the subject property and the requested plan change to a Living 2 Zoning; I believe that this will effectively ensure that such an activity, or anything similar to it; would be very difficult to establish on the subject land. The District Plan provisions that apply to Living Zones in respect of non-residential activities are more stringent to those that apply to the Rural Zones. An example of this is highlighted in respect of the following:

- i. Townships Volume (Living Zones: Rule 1.1.3.f). Any industrial activity is a non-complying activity.

- ii. Rural Volume (Non-Residential and Non-Rural Activities: Rule 9.4.1.1). Permitted if activity is less than 100m² and no more than 2 full-time staff.

4.20 Accordingly, it can be seen that a more permissive District Plan framework applies to Living Zones in terms of non-residential activities when assessed against comparable provisions for Rural Zones.

Cultural Values

4.21 Cultural values are not seen as being compromised in any way with the subject land being rezoned to Living 2. There are no nearby sites of Waahi Tapu or Waahi Taonga, and nor any silent file. On the matter of the treatment and disposal of domestic wastewater, as with the entire Springfield urban area; this will need to be undertaken on-site. To ensure that environmental standards will in no way be compromised by the undertaking of this activity; there is a double approval system that has to be undertaken in terms of establishing a new dwelling on any of the new allotments arising from the rezoning of the subject land being approval. This is in respect of the following:

- i. The building consent process for any dwelling. This process is administered by the Council in the context of the Building Act 2004 / NZ Building Code. The installation of any on-site wastewater system is required to be in accordance with the New Zealand Standard AS/NZS 1547:2012 – *On-site Domestic Wastewater Management*; and
- ii. The need to obtain a discharge consent from Environment Canterbury. This is on the basis that the resultant allotments will be less than the 4 ha minimum as stipulated in the Land & Water Regional Plan.

4.22 Accordingly, when taking all of the above matters into account, I believe that it can be assured that there will not be any adverse impacts arising on any cultural values that may be attributed to the subject land at this time.

5. Aston Consultants – Letter to the Commissioner

5.1 I refer to the letter addressed to 'Mr D Mountford' dated 27 September prepared by Ms Liz Stewart from Aston Consultants. While this appears to be a 'personal letter' I have taken liberty to provide comment on it due to it being in direct connection with the submission and further submission by Phillipa Saunders & Mitchell Limbe who are represented in this matter by Aston Consultants.

5.2 The matters contained in this letter represents the outcome of recent discussions and email correspondence with Ms Stewart in order to address the matters she had raised in the submission and further submission prepared on behalf of Phillipa Saunders & Mitchell Limbe. In this respect I should note at this time that the applicant company for this plan change

request is appreciative of the approach having been made on behalf of Ms Saunders and Mr Limbe in order to discuss further the outstanding matters in their submission.

Amendments to the ODP

- 5.3 As already noted in the earlier paragraph 2.1, the ODP for the subject land has been amended so to ensure that only a single dwelling can be established on the westernmost portion of the overall property. This represents one of the outcomes that has been agreed to between the parties.
- 5.4 A further amendment was changing the previous 10 metre dwelling setback from the road frontage boundaries to 20 metres. While their concerns focused on the 'unnamed' legal road opposite which is their dairy farm, for District Plan consistency and simplicity this 20 metre building setback amendment was also done for Annavale Road and Pocock Road.

Non- Complying Activity Status

- 5.5 The issue of the non-complying activity status as raised in this letter by Aston Consultants pertains to any future dwelling to be established within 20 metres of the road frontage boundary along the unnamed road. As noted above, it is opposite this road from the subject property that the Saunders & Limbe dairy farm is located.
- 5.6 On the matter whether any such application status should be deemed either a non-complying activity as being proposed by Ms Stewart, or a discretionary activity as per the plan change request and as supported by Mr Cleese; I do not have any firm view on this matter.
- 5.7 I believe that there is a somewhat blurred distinction between the statutory tests that apply in respect of a discretionary activity (Section 104B) and that of a non-complying activity (Section 104D) for such a matter as a boundary setback for establishing a new rural dwelling.
- 5.8 Notwithstanding this, I do suspect however that given the nature of how the various provisions in the District Plan are currently 'framed', that the discretionary activity status would probably be more appropriate.
- 5.9 This is in the context, ODP provisions contained in the District Plan tend to be used in conjunction with the undertaking of subdivision, and not in respect of 'building position' as part of any land use consent application. While as part of any 'building position' scenario, there are rules in the District Plan that refer to an ODP. It appears to me that this is more to serve as a reference to any given locality rather than to provide a rule per se'.
- 5.10 As already noted, for any land use consent application arising due to a 'building position' non-compliance (including a road frontage boundary); the use of the discretionary activity status largely applies. In comparison there are only 3 District Plan 'building position' situations that apply as a restricted discretionary activity; one being in terms of a specific recession plane protrusion situation, and the other two situations in terms of siting a garage in a specific medium density zone.

- 5.11 A similar situation also applies with non-complying activities in the District Plan in respect of 'building position'; those that pertain to *'temporary activities'*, and the establishing of new dwellings in the context of existing *'Countryside Area or the 'Odour Constrained Area'*.
- 5.12 Therefore, the balance of all the other 'building position' application situations are a discretionary activity. Accordingly, should an alternate activity status be approved in this case; it would effectively be creating an entire new rule for this single situation. This would be in respect of this unnamed legal road along which only the single future dwelling could be established. It will have a length in the order of 350 metres that is unaffected by the 80 metre railway boundary setback. Furthermore, the overall area of this western portion of the subject property is in the order of 6.1 ha, albeit also including the 80 metre railway boundary setback. This is a significant land area and road frontage length upon which a new dwelling could be established without having to resort to a reduced road frontage setback.
- 5.13 So while acknowledging what Aston Consultancy is attempting to achieve by the use of the non-complying activity status in respect of this 'building position' matter, it appears to me that there is no practical means of achieving this.
- 5.14 In order to remove any potential confusion or ambiguity over the ODP and what it is intending to achieve; perhaps a greater sense of clarity within the District Plan could be achieved by deleting the denoted 20 metre dwelling setback references on the ODP and instead rely solely on the proposed provisions as part of the new Rule 4.9.45 (*Buildings and Building Position*).

That concludes my evidence in support of this plan change request #54.



John Cook

BPlan NZCD (Arch) MNZPI

2 October 2018