

# Proposed Change 54 to the Selwyn District Plan

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Report and Recommendations of Hearings  
Commissioner David Mountfort to the  
Selwyn District Council

7 November 2018

## Recommendation to the Selwyn District Council

My recommendation to the Selwyn District Council is that pursuant to Clause 10 of the First Schedule to the Resource Management Act:

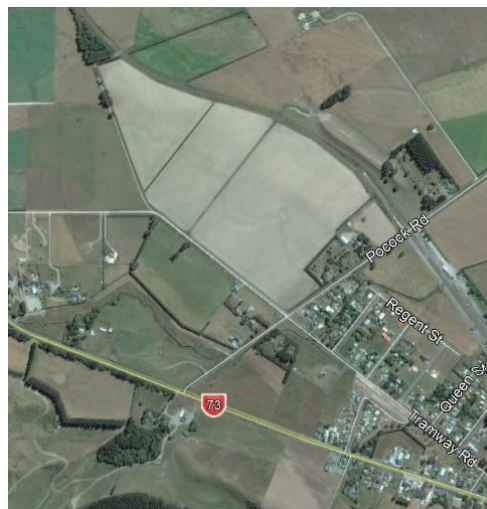
1. Proposed Change 54 to the Selwyn District Plan be allowed, subject to the amendments set out in Appendix 1 and below.
2. That the submissions opposing Plan Change 54 be rejected except to the extent set out in the changes to the requested plan change set in Appendices 1 and 2.

### Introduction

1. Plan Change 54 to the Selwyn District Plan is the result of a request to change the Selwyn District Plan under Part 2 of the First Schedule to the Resource Management Act. The party requesting the plan change is Ballymena Holdings Ltd. Although strictly speaking this is a “request” rather than an “application”, for the sake of plain language I will refer to it in this report as an application and Ballymena Holdings Ltd as the applicant. I have been appointed by the Council to hear and make a recommendation on this plan change request to the Council.
2. In preparing this decision report I have drawn extensively on Mr Clease's report for the factual situation, and for the statutory and district plan framework. I acknowledge that assistance.

### The Site and Surrounding Environment

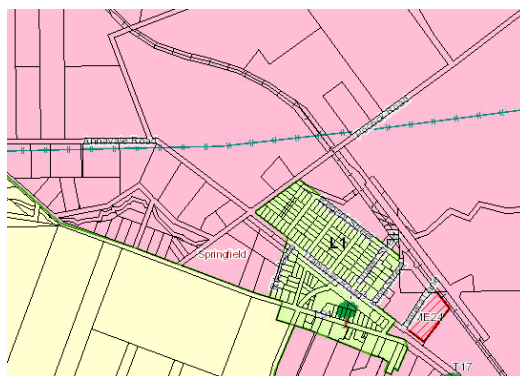
3. The site is located on the western edge of Springfield Township, with the property bordered by Pocock Road to the east, Annavale Road to the south, rural farmland to the west and north, with the Midland rail corridor to the West Coast running along the site's northern boundary (refer to Figure 1 below).
4. The application site currently has a Rural Outer Plains zoning, which provides for rural farming activities and requires a minimum site density of 20ha per dwelling. This plan change request seeks to rezone the site to a Living 2 Zone with associated rules that limit the total number of lots (and future dwellings) to 15 new lots, plus the retention of the existing 1 ha lot to give 16 dwellings in total. The lots are to have an average size of 2ha, with no individual lot to be less than 1 ha in area.
5. Lot 1 (1 ha) contains the only dwelling and associated amenity plantings and accessory buildings. This lot is in the ownership of a third party that the applicant has advised is supportive of the rezoning proposal. The owner of this lot has not submitted on the plan change.



**Figure 1: Site Location**

6. The outcomes anticipated in the Rural Outer Plains Zone are that of an extensive working farming environment with low levels of subdivision and development.
7. The outcomes anticipated in the Living 2 zone are described as follows:

*“As for the Living 1 zone, but with lower building density and development reflective of the rural character expected of low density living environments. Whilst generally adjoining existing living zones, in some circumstances, low density Living 2 zones can be located on the edge of townships. Larger sections, more space between dwellings, panoramic views and rural outlook are characteristic of this zone”.*
8. In essence this process seeks to determine which of the two outcomes, as reflected through zoning, better achieves the District Plan’s wider objective and policy framework.
9. The rule framework being sought by the applicant relies largely on the existing Living 2 Zone provisions, with amendments limited to several site-specific matters. No amendments are sought to the Plan’s objectives and policies beyond the inclusion of a site-specific reference in a single policy B4.1.7 regarding site coverage. The application is accompanied by an Outline Development Plan (‘ODP’) that gives guidance as to the general size and location of lots, associated vehicle access routes and key features such as a proposed 80m setback for dwellings from the boundary with the Midland rail corridor to manage amenity outcomes.
10. Beyond the site, the property is surrounded by Rural Outer Plains zoned pastoral farmland on three sides, with the eastern edge of the site opposite a Living 1 zoned suburban area that in turn forms part of Springfield township. The suburban area on the eastern side of Pocock Road is generally comprised of standalone single storey dwellings set within landscaped quarter acre sections. Pocock Road is sealed, while Annavale Road is formed as metal chip, with the formed width of the carriageway reducing west of the dogleg and visually taking the form of a rural driveway or track.
11. The rural land to the south of the site and located between Annavale Road and State Highway 73 has a Rural Outer Plains zoning but visually displays more of an Inner Plains rural character as there has historically been more intensive subdivision in this area with a number of dwellings located on lots around 2ha in size. A honey processing facility is established in this area at 94-106 Annavale Rd and is operating under resource consent (RC165220).
12. More broadly, Springfield township is typical of smaller rural service towns and includes residential areas, a primary school, a range of community facilities, with shops and trade suppliers concentrated along the State Highway servicing both the local community and passing travellers. The township is surrounded by pastoral farming activities, with views to the foothills and Southern Alps available to the south and west.



**Figure 2: Zoning Map** - The Rural Outer Plains zone is pink, the Living 1 zone is green, the Malvern Hills Zone is beige and the blue dashed line is the route of a 'possible' fault line

### Submissions

13. A total of 8 submissions were received (including one late submission), along with further submissions from 4 parties (including 1 late further submission).
14. Submissions and further submissions are set out in the below table. The matters raised by submitters are considered in detail below.

**Table 1 -Submitters**

Submitter	Support or Oppose	Further Submissions
Mark Harden	Support, subject to conditions	
Catherine & Les Barnett	Support	
Zoe & Davis Morey	Oppose	Tara & Grant Keogh - Support Louise Davies - Support
Phillipa Saunders & Mitchell Limbe	Oppose	Tara & Grant Keogh - Support
Nicky Snoyink	Oppose	Caroline Hawkins – Support Tara & Grant Keogh - Support Louise Davies – Support
Dr Bruce Smith	Oppose	
Rodger Radcliffe	Oppose	

15. A late submission was received from Roger Radcliffe. This submission was received two days late (1st June). The letter was dated 25th May and was sent via the postal service which may have been the cause of its delay in being received by Council. A further submission made by Tara & Grant Keogh was likewise received two days late (5th July).
16. Neither of these submissions have unduly delayed the process. As such I do not consider any party to have been adversely affected by the late service of these submissions. Accepting the late submissions is consistent with the public participatory approach of the Act, and ensured I was able to consider the views of the community in assessing the application. At the hearing Mr Cook agreed on behalf of the applicant that the late submissions should be accepted. I therefore accepted the late submission and further submission.

## The Hearing

17. A hearing was held on 11 October 2018. In attendance were

### **Applicant**

John Cook, Consultant Planner

Robert Logan, Director of applicant company

Dawn Davidson

### **Submitters**

Bruce Smith

Mark Harndon

Louise Davies

Caroline Hawkins

### **Council**

Jonathan Clease, consultant planner

## Assessment of Effects

18. The key issues raised by the application, submitters and Mr Clease for the Council include the following.

- Effects on the township form, character, and amenity of Springfield;
- Infrastructure servicing (water supply, sewer, and stormwater);
- Transport safety and efficiency;
- Land stability and geotechnical risk;
- Soil contamination risk;
- Potential adverse reverse sensitivity effects
- Preservation of soils for the production of food.

19. I discuss each of these in turn

### **Township form and character**

20. This was dealt with by the applicant through the evidence of Mr Cook, and the Council through the evidence of Mr Clease. These witnesses agreed that the proposed rules and Outline Development Plan would preserve a satisfactory level of rural character and amenity, as perceived from within the blocks but also from outside looking in.

21. The Plan Change's potential effects on visual and landscape values have been assessed in the application. The applicant's assessment identifies that there are no outstanding or notable landscape features on the site that warrant protection or that would preclude rezoning to rural residential densities. This conclusion aligns with my observations of the site which consists simply of flat rural paddocks. The site is not identified in the District Plan as being located within an Outstanding Natural Landscape area or any other landscape overlays or notations.

22. Whilst the site itself does not contain any notable natural features, several submitters have raised concerns about the loss of wider rural views and outlook from the township across the site to the mountains, especially the Torlesse Range. I agree that the proposed plan change will result in an inherent change in character from the existing overtly rural open landscape to one that contains more urbanised elements including dwellings, garages and accessory buildings, driveways, and amenity planting. With lots an average of 2 ha in size it is also reasonable to anticipate that individual lots will retain rural elements such as small paddocks with the potential for limited livestock grazing.

23. With regard to views of the mountains, I accept that the open and spectacular view of the Torlesse Range that exists at present at the corner of Annavale and Pocock Roads would become less open and the foreground would contain buildings and plantings that might reduce this view. The view would not be eliminated, and the fully open view could still be gained a short distance along Annavale Rd at the end of the new zone.
24. The Living 2 rule package that will apply to the site has been designed to maintain a semi-rural character and draws on both the existing Living 2 and Living 3 zone provisions. In summary, this rule package includes the following requirements:
- Any fencing is to be no higher than 1.2m, at least 50% open, and is to be post and rail or post and wire construction (amended rule 4.2.3);
  - Site coverage of buildings per lot is to be less than 500m<sup>2</sup> (amended rule 4.7.1/ Table C4.1);
  - Building height is limited to 8m (operative rule 4.8.1);
  - Buildings are proposed to be set back a minimum of 20m from road boundaries and 6m from internal boundaries (new rule 4.9.45);
  - Dwelling density is to be low with an average lot size of 2 ha, a minimum lot size of 1 ha, and a maximum of 16 lots in total (amendment to Rule 12.1.3/ Table C12.1).
25. The Living 2 rule package means that a high quality visual outcome should result, i.e. that whilst site character will change from rural to rural-residential, the end outcome should still display high levels of amenity. Or to put it another way, the views will change, but those views should still be in keeping with an acceptable level of outlook and amenity anticipated around the edges of a rural township.
26. The notified plan change seeks a 10m setback for dwellings and accessory buildings from road boundaries. This is less than the 20m requirement that typically applies to rural residential zones in the District. There is limited discussion in the application as to why a 10m setback is sought. Given the large size of the proposed lots, a 20m setback would not unduly constrain site layout or development options and will assist in maintaining a degree of openness, and possibly help to provide a viewshaft along Annavale Rd to the mountains. Mr Cleese considered this setback should be increased to 20m. In response to this and to the submissions, at the hearing the applicant agreed to this change.
27. Some of the submitters were concerned about the possibility of rural industrial activities being established on new allotments on the site. A honey packing business is currently being established in Annavale Rd. I note that the potential for such activities is actually significantly greater in the Rural Zone, which gives some recognition to rural industries. However the Living 2 zone only provides for very limited such activities on a home occupation basis. The honey business was granted resource consent under the Rural zoning provisions.
28. Submitters were also concerned about the potential for rural residential properties to become unkempt and unsightly. In fact, this can also occur with small farming blocks adjacent to townships. My impression is that generally owners of rural residential properties take pride in them and provide a high standard of visual appearance. I do not consider this to be a valid reason for preferring a rural zoning.
29. With the changes to the setback requirements already noted, I accept and adopt the planners' conclusions and find that any adverse effects on rural character and amenity would be less than minor.
30. I note that the future development of this land has previously been examined by the Selwyn District Council under the Malvern Area Plan process. This was a strategic planning exercise under the Local Government Act. The site was identified in the Area Plan for rural residential development, as a relatively well-contained site, between the State Highway and railway line, close to the township and adjacent to existing rural residential development. It was thus considered suitable to provide modest urban growth at Springfield for this form of living. The Area Plan is not binding on the RMA process, but as it essentially dealt with many of the same issues as the RMA does, I am able to take it into account. I note that this Area Plan went through a public consultation process.

### **Infrastructure servicing**

31. The main issue of concern here is with water supply. Springfield has a reticulated water supply from the Kowhai River, but has occasional water shortages, due I was told to inadequate reservoir capacity. I was told that the Council holds resource consents to draw additional water from the river and that it would be prepared to extend the supply to this proposed development. This would be a restricted supply of 2 cubic metres per household per day, and residents would be expected to install on-site storage to make best use of this. With that in place, it seems to me that these new residents would be in a better position than some existing Springfield residents at times of short supply, at least until the Council upgrades the existing system. In any case, new residents would have adequate water without exacerbating the situation for existing residents.
32. Sewage disposal in Springfield is by on-site systems to land. Environment Canterbury, which has the primary responsibility for discharges to land, in its correspondence with the Council raised no issues about this. I conclude this is not an effect I should be concerned with, and it can be left to later stages of the development such as the building consent process. Similarly, stormwater disposal would be to land and I was not informed of any particular issues about this. Again, I believe it can be left to the subdivision or building consent stages.
33. I therefore conclude that infrastructure is not a reason why this proposal should not proceed.

### **Transport Effects**

34. The Assessment of Environmental Effects submitted with the application concluded that there would be no adverse effects on the safety and efficiency of the surrounding road network. The Council, through Mr Cleese's report confirmed this. The 2 frontage roads are straight, with excellent visibility, and all access points into the site would be far enough from their intersection. The applicant accepted that Annavale Road would be required to be sealed from Pocock Rd to all the proposed lots. Several submitters requested that if approved the plan change should require this road to be sealed through to its intersection with State Highway 73 to reduce dust nuisance. The submitters considered that inevitably some residents would find it convenient to drive along Annavale Rd to the west, rather than back towards the village and Pocock [RdSt](#). I think this would be likely only in the case of the lots closest to this end of Annavale Rd, at least unless residents were heading inland via SH73, which would be occasional. In any case, numbers would be small enough to make this a minor effect. I am happy to leave the extent of sealing to the discretion of Council at the subdivision stage.

### **Land stability and geotechnical risk;**

35. Mr Cook said in evidence that the 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.
36. Mr Cleese in his report wrote that in summary, the possible fault line is inferred only and has been found to present a low risk, which combined with the low density of proposed buildings and their less sensitive Building Importance Category, means that the overall risk is insufficient to justify declining the plan change based on Ministry for the Environment guidance. The Council geotechnical report notes that there may be merit in any future concrete-floored dwellings having their foundations enhanced to TC2 levels, however this is a matter that can be appropriately addressed at later subdivision or Building Consent stages.

37. In this context, and particularly because of the MfE guidance for such situations, I conclude that any concerns over the potential and effects of a significant earthquake event occurring cannot be supported.

***Soil contamination risk;***

38. Mr Clease reported that the site is not currently listed on the Canterbury Regional Council's Listed Land Use Register that records locations where potentially contaminating activities have occurred in the past. The applicant has commissioned a Preliminary Site Investigation ('PSI') from Tasman Environmental Management in 2013. The PSI has also not identified any hazardous activities as having occurred on the site. There is an existing workshop and several machinery storage sheds located in the northeast corner of the site, with an above ground fuel tank having historically been located adjacent to these buildings. The PSI has concluded that no activities that may cause significant soil contamination have been identified and that therefore the application site represents a typical greenfield site and should, from a contamination perspective, be suitable for the intended rural residential use.
39. At the hearing Mr Cook said that a former owner of the site had occasionally used the herbicide Reglone as part of a potato growing operation conducted as part of a cropping rotation cycle. This may have been as rarely as once every 10 years, occurring no more than 3 times and on different parts of the site. He concluded that when taking all the above matters into account (including the PSI) 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. I agree.

***Potential adverse reverse sensitivity effects***

40. The submitters Phillipa Saunders & Mitchell Limbe have a dairy farm on the western side of the proposed zone. They were concerned about the potential for new residents to be affected by and complain about effects that might arise from ordinary farming activities on a dairy farm, and for their business to be restricted because of this. Examples mentioned noise from pumping, odours from effluent spreading, and effects on neighbours of night harvesting operations. In response to this, the applicant offered to restrict development on the western side of the site closest to the submitters' boundary to a single large lot of 6.1 ha with only a single dwelling on it. Together with the 20m setback, I was advised that this would satisfy the concerns of these submitters, and they did not appear at the hearing. This change has led to a rearrangement of the remaining lots shown on the ODP to still achieve the original proposal of 15 new lots and the existing dwelling.

***Preservation of soils for the production of food***

41. Several submitters considered that the land should remain rural, because of its potential for the production of food, which they felt would be increasingly required in future. I have some sympathy for this proposition but note that in fact it can be difficult to farm intensively close to urban areas because of adverse effects, including noise, odour, dust, spray drift, dogs worrying stock and similar problems, and that in fact rural residential developments can be a good buffer between urban areas and agricultural activities. I also consider that the size of this site compared to all the rural land in Canterbury and beyond means that this would be a very small loss indeed.

***Statutory Framework***

42. The matters that must be considered in preparing a change to the District Plan are set out in section 74 of the RMA. Amongst other things, section 74 requires the local authority to:
- comply with its functions under section 31<sup>1</sup>;
  - consider alternatives, benefits and costs under section 32;

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<sup>1</sup> Which broadly are the management and control of the effects of the development and use of land



- ensure the necessary matters are stated in the contents of the district plan under section 75; and
  - have regard to the overall purpose and principles set out in Part 2, including the Matters of National Importance (section 6), the Other Matters (section 7) that require particular regard to be had in achieving the purpose, and the Treaty of Waitangi (section 8)
43. It is noted that in a general sense, the purpose of the 'Act' is already reflected in the operative District Plan's objectives and policies as they have already been through the above statutory tests and are now unchallenged. Mr Clease made a careful evaluation of the proposal in relation to the objectives and policies of the Selwyn District Plan and found that the proposed change is consistent with them. I accept and adopt those conclusions. Furthermore, PC54 does not seek to amend these objectives and only one site specific amendment is sought to a single policy.
44. When preparing a plan or considering a plan change the Council:
- must give effect to the operative Canterbury Regional Policy Statement (section 75(3)(c));
  - any management plans and strategies prepared under other Acts (section 74(2)(b)(i));
  - must not take into account trade competition (section 74(3));
  - must take account of the Mahaanui Iwi Management Plan 2013 (section 74(2A)); and
  - shall have regard to the extent to which the plan is consistent with the plans of adjacent territorial authorities (section 74(2)(c)).
45. In his report Mr Clease made a full analysis of the requirements of sections 31 and 74-75 of the RMA, and also the provisions of the Canterbury Regional Policy Statement, the Regional Land and Water Plan and the Mahaanui Iwi Management Plan. I accept and adopt his conclusions that the proposed plan change would be consistent with these higher level planning documents. He also made a full analysis of the objectives and policies of the Selwyn District Plan and considered that the proposal would be consistent with these.

#### Part 2 of the Resource Management Act

46. Part 2 of the RMA contains the well-known purposes and principles of the Act. Mr Clease reported that in a general sense, the purpose of the 'Act' is reflected in the current District Plan objectives and policies as they have already been through the statutory tests and are now unchallenged. The operative provisions can likewise be deemed to be 'giving effect to' the higher order objectives and policies sought in the CRPS. There is therefore no need to make a separate analysis of the proposal under Part 2. I note that the proposal is consistent with the provisions in the CRPS, these provisions set out a coherent policy framework for managing urban growth, and that there is therefore little need to undertake a specific assessment against Part 2 of Act.

#### Consideration of alternatives, benefits and costs - s32 assessment

47. Because the proposal was consistent with the objectives and policies of the district plan, as does the existing Rural zoning, the exercise under section 32 comes down to deciding which of the two alternative zonings under the district plan, the existing Rural Zone or the proposed Living 2 zoning is more appropriate. For the reasons already given, I consider the proposed zoning to be the more appropriate. In summary, it will provide for a modest amount of urban growth in Springfield in an appropriate location, which is a positive effect, and any adverse effects will be less than minor. The land is not particularly required for rural purposes and its contribution to the overall rural economy would be very minor.

48.

## Recommendations

49. My formal recommendations to the Selwyn District Council have been set out at the commencement of this report, but briefly I have recommended the plan change be approved with amendments and the submissions are allowed or disallowed accordingly.
50. The full text of the recommended amendments to the text of the district plan is set out in Appendix 1. The amended Outline Development Plan is set out in Appendix 2. Some amendments have been made to the plan change, and ODP to reflect the matters discussed and agreed by the Council and applicant at the hearing at the hearing.

A handwritten signature in blue ink that reads "D-L Mountfort".

David L Mountfort

Accredited Hearings Commissioner

7 November 2018

## **APPENDIX 1**

### **Schedule of Proposed Amendments - Plan Change 54 — Springfield**

## APPENDIX 2 –Outline Development Plan

