

RESOURCE MANAGEMENT ACT 1991

SELWYN DISTRICT COUNCIL

PLAN CHANGE 6 TO THE SELWYN DISTRICT PLAN

Lower Port Hills and Summit Road Protection Areas

Report and Recommendation by Hearing Commissioner Dean Michael Chrystal

1.0 Introduction

- 1.1 Pursuant to instructions from the Selwyn District Council dated 29th April 2009, I was appointed as a Hearing Commissioner to hear and provide a recommendation to the Council on Plan Change 6 (PC 6) to the District Plan (the Plan). For that purpose I initially attended the Council Offices on the 22nd and 23rd July 2009 and conducted a hearing on the Plan Change. I conducted a general inspection of the area prior to the hearing and undertook further individual site visits subsequently.
- 1.2 Plan Change 6 was notified on the 29 November 2008 with the further submission period closing on the 3 April 2009. A total of 38 submissions and 9 further submissions were received.

Background

- 1.3 It is important at the outset that I outline in this recommendation the background to PC 6 as I understand it, because it was apparent to me during the hearing that there was a degree of dissatisfaction as to the merits and purpose of the plan change given previous consultation on the matters concerned, with a number of submitters questioning why the plan change had been promulgated at all.
- 1.4 As I understood it PC 6 arose in part out of decisions released on the Proposed District Plan (PDP) in 2004 relating to the Port Hills. In particular the recommendation from the Hearing Panel (in Report 48) that the Council "*Reconsider the subdivisional and residential unit allotment minima for that part of the Inner Plains Area between Tai Tapu and Motukarara that contains the lowest slopes of the Port Hills with a view to a Variation*". The Panel had earlier made the following statement:

"We take the point made in Ms Lucas's report – and emphasised by others – that the 'toe' of the hill is of particular importance (in a landscape sense) in the area between Tai Tapu and Motukarara. The rules provided for the Inner Plains Area, which contains these lowest slopes, contemplate building density and allotment minima of 4ha. We think that there is an argument for increasing those to 20ha so far as this strip is concerned."

- 1.5 The regime in the PDP for the Port Hills area (or Zone) as notified incorporated provisions relating to the Upper and Lower slopes. The Upper slopes being above 160m and the lower slopes being between 60m and 160m. Of some importance is the fact that the 60m contour did not coincide with what might be called the 'toe' of the hill, which was somewhat lower.
- 1.6 Having reviewed the decision and other documentation it appears to me that the 60m contour was adopted as the zone boundary a result of pre PDP notification consultation with a view that it would accommodate a number of factors including historic development, the upper limit of existing residential development and horticultural practices, and represented a line below which middle and long distance views of the lowest slopes were obscured to by existing vegetation. It appears that this contour was at least prior to the notification of the PDP seen as a base line for the start of the Port Hills Zone.
- 1.7 The Hearings Panel agreed that the Port Hills "as a whole" were an Outstanding Natural Landscape (ONL) of a kind to which section 6(b) of the Resource Management Act (RMA) applied and confirmed that this was acknowledged in the Policy framework. However, they did not adopt the revised zoning maps of Variation 10 which would have shown this ONL area, instead relying on another map (Map 29) whose sole purpose was to identify the Port Hills. That map (like the zoning maps in Variation 10) identified the Port Hills down to the 60m contour and has since been combined into the zoning maps. The Hearings Panel did not accept that the lowest (up to 60m) and lower (60 to 160m) slopes should be subject to the same management regime. Notwithstanding the Hearing Panel's reservations, referred to above, the lowest slopes (up to 60m) were included in the Inner Plains enabling subdivision as a controlled activity with a dwelling density of 1:4ha. The balance of the Port Hills was included in the Port Hills Zone where subdivision was a restricted discretionary activity with varying standards for dwelling density above the 160m contour (1:100ha) and below the 160m contour (1:40ha).
- 1.8 It appears that the Hearing Panel raised some questions (presumably through lack of scope) and left others unanswered (whether intentionally or not). Therefore following

the release of the decision, the Council engaged Peter Rough Landscape Architects Ltd (PRLA) to provide further advice on the following two issues:

- Is the 60m contour an appropriate outstanding natural landscape boundary between the Port Hills and rural plains?
- What degree of landscape management and intervention is required for the lowest slopes of the Port Hills?

1.9 The PRLA report recommended that the boundary line between the Port Hills and the plains should more logically follow the topographic boundary where the two features meet which was approximately at the 20m contour. In addition, the report recommended that the policies and rules that apply to the Port Hills below the 160m contour should apply to all the land down to the 20m contour. This report was presented to Council in June 2006 followed by consultation with the public and identified stakeholders.

Plan Change 6

1.10 The PRLA report provided a framework for the development of PC 6 which is specifically concerned with the landscape related provisions of the Plan in relation to the Port Hills. The plan change amended the zoning of the lowest slopes of the Port Hills i.e., the land between the 20m and 60m contours, by rezoning the majority of this area from Rural Inner Plains to Rural Port Hills, with the exception that parts of Early Valley Road, and subdivisions at Rocklands, Otahuna and Holmeswood Rise are excluded.

1.11 In addition, the plan change makes amendments to a number of provisions which are intended to either remove inconsistencies between policies, rules and the planning maps or to provide greater clarity of the intended management mechanisms for the Port Hills as follows:

- identifying the whole of the Port Hills as an Outstanding Landscape on Planning Maps 9 and 14, thereby achieving consistency with Policy B1.4.5;
- amending the wording of Policy B1.4.6 so that shelterbelts and amenity planting are avoided in the Summit Road Protection Area, in addition to exotic plantations which are already identified in the Policy;
- adding a new clause to Policy B1.4.9 to ensure that buildings avoid or mitigate adverse effects on openness, visual coherence and legibility of the landscape;

- the introduction of a rule to provide for dwellings as a controlled activity on sites between 4ha and 40ha which were created on land now proposed to be rezoned from Inner Plains to Port Hills Area (a Grandfather clause);
- clarifying the earthworks rule for the Port Hills is limited to 20m³ every five years within a site;
- the addition of new rules to clearly show that shelterbelts, amenity planting and plantations are not anticipated within the Summit Road Protection Area, achieving consistency with Policy B1.4.6;
- additional assessment matters for applications for forestry, subdivision and dwellings;
- to remove reference to forestry guidelines that have not been developed;
- to update text under the Reasons for Rules for buildings and utilities in the Rural Zone;
- to zone an area alongside Early Valley Road as Rural Port Hills and Rural Inner Plains which was previously unzoned on the Planning Maps.

Pre Hearing Procedures

1.12 Prior to the hearing I issued a minute (First Minute) regarding preliminary and procedural matters which included a request for the pre-provision of evidence. I issued a second minute prior to the hearing posing two questions of the reporting officers which stemmed from my reading of their reports which I considered required some investigation. These were:

- a) With reference to the interrogation of contour boundaries in para 62 of Nicola Rykers report, can an example be provided from the Council of this?*
- b) How many sites are affected by the 'grandfather' clause? Having established this could their eventual development compromise an area of the ONL and the 20m contour boundary by sheer weight of numbers?*

Section 42A Report

- 1.13 The initial Section 42A report was prepared by Consultant Planner Nicola Rykers with specialist input from landscape architect Andrew Craig.
- 1.14 Ms Rykers provided a summary explanation of the reasoning for the various components of PC 6. She said that the rezoning of the land between the 20m and 60m contours, from Rural Inner Plains to Rural Port Hills was proposed on the basis that the 60m contour was not a defensible landscape boundary. She noted that in her view the majority of the land between these contours was seen as part of the wider

Port Hills environment and part of an ONL and that by excluding this area from the Rural Port Hills Zone and ONL category the Council could be criticised for not fulfilling its statutory obligations under Section 6(b) of the RMA. She further said that omitting the ONL notation on the Planning Maps was inconsistent with the identification of other ONLs in the Plan.

- 1.15 Ms Rykers went on to indicate that the identification of the ONL down to the 20m contour would provide support for rules controlling dwelling density and subdivision that had previously only applied to the Lower Slopes of the Port Hills (i.e., land between 60m and 160m contours). She also noted that there may be landowners who had lawfully subdivided allotments down to 4ha in accordance with the Inner Plains rules but had not yet erected a dwelling. Therefore, PC 6 included a “grandfather” clause which enabled a dwelling to be erected as a controlled activity on these existing 4ha allotments created up until the date of notification of PC 6.
- 1.16 With respect to Early Valley Road Ms Rykers noted that the plan change remedied an error with respect to land not previously zoned.
- 1.17 In relation to earthworks Ms Rykers indicated that the current rule had resulted in differences in interpretation, noting that the Council had intended earthworks to be more restrictive in ONLs compared with other parts of the District in order to consider effects on landscape values.
- 1.18 In term of the Summit Road Protection Area (SRPA) Ms Rykers advised that the Plan did not impose any rules or restrictions on amenity planting, shelterbelts or plantations within that area, although there was a policy to avoid exotic plantations (Policy B1.4.6). She indicated that the Council considered all tree planting had the potential to adversely affect landscape values along this important scenic corridor and accordingly PC 6 proposes that policy and rules be aligned such that a consent process is triggered for all tree planting in the SRPA, regardless of intended use.
- 1.19 Ms Rykers noted that PC 6 included additional assessment matters to provide more certainty and guidance in consideration of the potential effects for plantations, subdivision and dwellings on the Port Hills. She also explained that wording was added to Policy B1.4.6 so that shelterbelt and amenity planting was avoided in the SRPA and also to Policy B1.4.9 relating to the potential effects of buildings and structures on the openness, visual coherence and legibility of the Port Hills landscape. These policy amendments were intended to provide a clear linkage or relationship between rules, assessment matters and the policies guiding landscape protection on the Port Hills.

1.20 Ms Rykers went on to address the submissions lodged on PC 6. I do not intend to go through her all comments in any detail because, as will become clearer below, Ms Rykers view in relation to some of the key components of PC 6, which were subject to submissions, was to change as a result of additional information provided through the hearing process. I have however summarised her key recommendations on the submissions points:

1. That the ONL boundary be retained at the 20m contour except on the Duff property in Early Valley Road.
2. That the Grandfather clause be amended so as to clarify its application to subdivision that has been consented but where titles are not yet issued, and that the Grandfather clause be recognised at the policy level.
3. That the earthworks rule be amended to provide for a maximum volume of 100m³ per site in any five year period with a maximum cut depth of 1m.
4. That assessment matters 3.2.5.2 and 3.2.5.3 for buildings be amended and a new assessment matter added as follows:
 - 3.2.5.2 *The appropriateness of the building site and its access having regard to geotechnical conditions and site stability.*
 - 3.2.5.3 *The visibility of the proposed building from land which is publicly owned and freely accessible by the public, including any area of curtilage if the building is a dwelling.*
 - 3.2.5.9 *Any positive effects to be created by the proposed building and its associated accessway.*
5. That orchards and vineyards be made permitted activities between the 20m and 60m contours and the words "or structure" be deleted from Policy B1.4.9.

1.21 Mr Craig's report made the following conclusions:

- In terms of the ONL boundary it is clearly evident that the 60m boundary cannot be justified and is consequently indefensible.
- The 20m contour is the logical boundary for the ONL as it coincides with a major change in topographic form.
- The lowering of the ONL boundary would not preclude future subdivision, use and development, provided it was appropriate – meaning that the outstanding natural character of the rural Port Hills is protected.
- Context is always going to be a key factor in considering development and the existing and proposed assessment matters provide this. Consequently

there is an expectation that development will be site sensitive, where contextual circumstances will inform appropriate outcomes. It is recognised that the Port Hills are not uniform in their natural character, where in general they have less capacity to absorb development in direct correlation to elevation. However, it was important to appreciate that while this is generally so, there are exceptions, particularly for that part of the lower hills south of Tai Tapu.

2 Hearing

2.1 During the course of the hearing I heard from the following parties:

Mr Vin Smith (Planner) on behalf of Environment Canterbury

Mr Ian Duff

Ms Jane Whyte (Planner) on behalf of Drinnan Investments Limited

Mr Greg Horgan

Mr Greg Dewe (Planner) on behalf of Greg Horgan

Ms Alanya Limmer legal Counsel for Dennis and Deborah Chapman

Mr Alastair Chapman on behalf of Dennis and Deborah Chapman

Mr Michael Steven (Landscape Architect) on behalf of Dennis and Deborah Chapman

Mr Mark Allan (Planner) on behalf of Dennis and Deborah Chapman

Mr D Florance

Mr Grant Whelan and Dr Helen Whelan

Mr Bill Woods on behalf of the Summit Road Protection Society

Mr Ray Watson (representing H Logan, R Watson, and the RW Watson Family Trust)

Mr Jim Macartney

Mr Peter Graham on behalf of Ahuriri Farms Limited

Mr John Ryan

Mr Derek Newman

Ms Anna MacKenzie (Planner) on behalf of Federated Farmers

2.2 I also received a letter from Ms Julie Comfort on behalf of Mr J Smith.

2.3 Given the relatively confined nature of this plan change and the degree of commonality amongst submitters I have chosen to summarise below the common points raised by the submitters:

- There were already a significant number of subdivisions and/or certificates of title below the proposed 20ha threshold in the area between the 20m and 60m contours. A number of submitters referred to titles or subdivisions they had approved on their land. Generally they sought the retention of the pre PC 6 subdivision (and zoning) provisions.
- The ONL should be set at the 60m contour.
- The landscape is not a natural pristine landscape, but is instead heavily modified.
- The 60m contour had been agreed upon by a previous Focus Group established by the Council as the boundary between the Port Hills and the Inner Plains. Mr Newman suggested this was because many houses in Early Valley and around Otahuna were at or around the 60m contour.
- There needs to be some trade off between protection of the upper slopes and development on the lower slopes and that development on the lower slopes is more sustainable than on the more fertile flats below.
- The earthworks provisions needed to be revised as they were highly restrictive and would limit virtually all earthworks.

2.4 There was however some dissenting views from some of the above points. Mr Duff considered the toe of the Port Hills was a more defenceable position for the ONL, referring me to case law. He did however comment that areas excluded from the proposed subdivision rules should be outside the ONL.

2.5 Further there were some more specific individual points raised and evidence and information provided which are summarised below:

- Mr Smith brought to my attention the Land and Vegetation Management Regional Plan, which contains a regime of earthworks and vegetation clearance controls across parts of the Port Hills. He suggested that a note be included to the effect that earthworks and vegetation clearance on the Port Hills may require consent from Environment Canterbury.
- Ms Whyte supported the 'Grandfather clause', but sought that it be applied to situations where subdivision consents had been approved not just where s224 (of the RMA) certificates had been issued. She also considered the status

of new dwellings could be permitted with conditions rather than controlled and that Policy B4.1.5 (d) required amendment.

- Ms Limmer submitted that the necessary level of analysis had not been undertaken to justify the intervention proposed. She was particularly concerned with the analysis undertaken in determining the Port Hills as an ONL. She also considered that the proposed 'Grandfather clause' needed to enable dwellings as permitted activities rather than being controlled activities in order for it to be in accordance with the true meaning of a grandfather clause, being that of an exception.
- Mr Steven considered that in terms of landscape significance, there was no evidence that supported the lowering of the ONL demarcation line from 60m to 20m particularly within that section north of Tai Tapu. He went on to say that if for reasons other than those supported by the evidence as to landscape significance at the level of outstanding, the Council was intent on lowering the ONL line to 20m, he would propose the following variations to the line:

The north-south demarcation line be changed to the position further south; and that north of this line the ONL boundary line remains at the 60m mark and south of this line the ONL boundary could be lowered to 20m.

- Mr Steven went on to say that it was not appropriate resource management practice to use the ONL provisions of section 6(b) of the RMA to protect aspects of the landscape that do not fall within the range of factors generally regarded as relating to landscape significance. He referred in particular to open space and openness or in simple terms, the absence of structures such as residential dwellings. He said that both of these aspects of landscape (open space and openness) may be valued, but neither are relevant to the assessment of landscape significance in terms of s6(b), and neither should be the basis for the identification of an ONL. He considered that openness and open space are ubiquitous characteristics of rural landscape generally, regardless of whatever other factors may contribute towards assessments of significance. He concluded by saying that if the desired outcome is the protection of open space and rural character, then in the absence of evidence of landscape significance at the highest level, the ONL provisions are unjustified.
- In response to a question I posed Mr Steven considered that the Banks Peninsula Environment Court case (*Briggs v Christchurch City Council*,

C45/2008) overturned other previous cases such as *Flanagan v Christchurch City Council* (C222/01), *Rutherford Family Trust v Christchurch City Council* (C026/03) and *PA Memon and others v Christchurch City Council* (C116/2003) with regards the extent of the ONL of the Port Hills.

- Mr Dewe suggested rewording of the 'Grandfather clause' to deal with situations where the Inner Plains area went beyond the 60m contour and that the earthworks controls align with those of ECan.
- Mr Woods said SRPS was concerned with maintaining the ONL of the Port Hills and considered that the whole of the Port Hills was an ONL, but noted that that may not be the same as defined by s6(b) of the RMA. He said that SRPS were still in favour of prominent ridgelines and unmodified areas being retained.
- Mr Ryan said that within the 630ha of the PC 6 area there were 103 separated surveyed allotments most of which had s224 certificates, totalling 454ha or 73% of the total area. Therefore the majority of the land concerned contained, or was eligible to contain, a dwelling. The residual was essentially in three ownerships.
- Ms MacKenzie sought that buildings associated with farming activities be given permitted activity status or more definitive assessment matters if consent were required. She also considered any restriction should be on a non-notified basis with no neighbours consent required and that the costs of such consents should be borne by the Council.

- 2.6 My questioning of submitters determined the number of titles each had or considered they had. It also revealed that some submitters consider controls on the design and placement of dwellings was appropriate while others did not.

Post Hearing Procedures

- 2.7 At the conclusion of the substantive hearing I adjourned it to enable consideration of information received and to seek answers to questions which arose during the hearing, in particular the actual makeup of the subdivision pattern stemming from question (b) of the second minute and the information provided by submitters. I sought from the Council a plan detailing the subdivision pattern between the 20m and 60m contour for the PC 6 area. A plan was provided and I issued a third minute on the 28th August 2009 the purpose of which was to ask the reporting officers whether the identification of the pattern of subdivision shown on the plan in anyway

changes their original opinions on Proposed PC 6. A response in writing to this minute was sought by the 15th September 2009.

- 2.8 The reporting officers responded that they were now of the opinion that there was potential to amend PC 6 and suggested some possible amendments. Having considered the potential amendments outlined I considered they should be looked at in more detail and put in place the following process (detailed in a fourth minute):

1. *The reporting officers are to prepare a supplementary report detailing the potential amendments to Plan Change 6 proposed in their response to my third minute. That report should include a commentary on the scope within submissions to undertake the proposed amendments and an indication as to how the amendments affect the various submissions as to whether they would now be accepted, accepted in part or rejected. The report is to be completed by the 16th October 2009.*
2. *The officer's supplementary report is to be circulated to all submitters for their comments. Any comments are to be in writing and sent to the Selwyn District Council by the 6th November 2009.*
3. *The Plan Change 6 hearing is to be reconvened on the 23rd November 2009 at 9.30am at the Selwyn District Council offices. At that hearing I will hear from the reporting officers in relation to the amendments proposed and any comments they may have, and from submitters in relation to their comments. I do not expect any parties to prepare further evidence for the reconvened hearing beyond the comments they might have made, although they may do so if they wish.*

- 2.9 In summary, in their first supplementary report the reporting officers recommended the following:

- amending the planning maps to change the "zoning" of the Ahuriri Valley and land north of Tai Tapu located between the 20m and 60m contour from Rural Port Hills to Rural Inner Plains and add a new Visual Amenity Landscape (VAL) overlay over this area;
- within the VAL require all dwellings to be a Controlled Activity and subdivision down to 4ha becomes a controlled and below 4ha a non-complying activity;
- with the exception of the Ahuriri Valley retain the land south of Tai Tapu as an Outstanding Natural Landscape to the toe of the Port Hills;
- Deletion of the Grandfather clause;

- The addition of a new policy describing the purpose of the VAL and providing a basis for the new rule.
- 2.10 The first supplementary report put forward a number of text changes to proposed PC 6 to give effect to these recommendations. These text changes are attached for the record as Appendix 2.
- 2.11 The first supplementary report was circulated to all interested parties and a number of the submitters provided written comments. In summary:
- Ms Whyte supported the amendments.
 - Mr Ryan queried the accuracy of the mapping in terms of title boundaries and considered a thin area was unusual for a zone.
 - Mr Graham considered the limited visibility of land within the Ahuriri Valley meant that it did not warrant ONL status and that PC 6 should be abandoned.
 - Mr Florance also considered that PC6 should be abandoned.
 - Mr Chapman did not support an ONL line below the 60m contour.
 - Mr Watson was comfortable with the VAL proposal but concerned about the level of control.
 - Mr Reid, Counsel for the Chapman's, said that the VAL introduced a level of control that was not justified. He said that Mr Steven considered the narrow 40 vertical metre band of VAL land could not be justified and that he could only support a VAL if it were extended much further up the Port Hills towards a higher ONL. If the VAL mechanism were to be upheld Mr Reid sought non-notification status without the need for written approval, amendments to new Policy 3.4.3 to delete the word 'any' in reference to "any adverse effects" and clarification of the reference "Port Hills Area". These latter two matters were also queried by Mr Dewe.
 - Mr Allan raised further concerns with regards the assessment criteria under the proposed new rule in that some of them were exactly the same as those for buildings within an ONL. He also raised whether a permitted activity could be established with standards.
 - Ms MacKenzie considered the plan change should still be declined, but that in the alternative the VAL cover the entire area between the 20m and 60m contours south of Tai Tapu. She remained concerned about the costs associated with an application under a controlled activity status. She also

indicated that there were now only three properties south of Tai Tapu not covered by the VAL.

- Mr Macartney supported the VAL concept but considered it should extend to cover the entire area between the 20m and 60m contours.
- Mr Whelan considered the VAL was a positive way forward.

2.12 Prior to the reconvened hearing I issued a fifth minute with an attached memorandum from the reporting officers clarifying issues raised by Mr Dewe with regards proposed new Policy B3.4.3 and references to the "Port Hills Area".

2.13 At the reconvened hearing on the 23rd November 2009 Ms Rykers outlined the key issues as she now saw them:

1. There was no explanation within the policies of the District Plan on the 60m contour as the demarcation for the ONL;
2. A map was needed showing the ONL and that this was an important outcome of PC 6;
3. PC 6 was focussed principally on the visual impact of dwellings;
4. The submission process had enabled a new option to be developed and that there could be further hybrids of this; and
5. In her view the minimum position was controlled activity status, with assessment criteria.

2.14 In response to the question posed by Mr Allan regarding whether a permitted activity status could be developed with standards, Ms Rykers said that such a rule would be a very blunt mechanism, could be inflexible and might not necessarily achieve the best outcome. Further she did not favour the non-notification or no written approvals provisions on the basis that the District Plan was not set up in that manner.

2.15 Mr Craig indicated that he now supported the VAL as an appropriate mechanism, partly because of the characteristics of the hills themselves in that some areas were highly visible where others were not so visible. He also felt that the controlled activity status would enable the contextual issues of a building to be considered.

2.16 Finally, there were again queries raised as to the accuracy of the certificates of title in the area south of Tai Tapu. As a result I sought from the reporting officers that this be looked into further with view to having this matter finally clarified.

2.17 A second supplementary report was issued by the reporting officers on the 20th February 2010 addressing matters raised regarding accurate certificates of title in the area south of Tai Tapu, which included discussions between the relevant land owners

and the reporting officers at which, as I understand it, agreement was verbally reached as to the correct pattern of certificates of title. The supplementary report also outlined four options for the area between the 20m and 60m contours south of Tai Tapu. Those options were:

- Option 1: Status Quo - reject proposed Plan Change 6 and leave all of the land below the 60m contour as part of the Rural Inner Plains.
- Option 2: Apply the VAL overlay to all of the land between the 20m and 60m contours south of Tai Tapu.
- Option 3: Apply the VAL overlay to some but not all of the land between the 20m and 60m contour south of Tai Tapu as suggested in the First Supplementary Report.
- Option 4: Apply the VAL overlay to an increased area of land between the 20m and 60m contours i.e. an area of land that is more than shown in the First Supplementary Report but excludes that area of land that is considered to have the highest landscape values.

2.18 I issued a sixth and final minute on the 26th February 2010 indicating that I now considered that all the relevant information required in regard to PC 6 was before me and that the hearing was therefore closed.

3.0 Statutory Test

3.1 The general approach for the consideration of changes to district plans was summarised in the Environment Court's decision in Long Bay¹, the relevant components of which I have set out in the following paragraphs.

3.2 A plan change should be designed in accordance with (section 74(1)):

- (a) the district council's functions under section 31;
- (b) the provisions of Part 2;
- (c) its duty under section 32; and
- (d) any regulations (section 74(1)).

3.3 When preparing a plan (change) a district council:

- (a) must give effect to any operative regional policy statement (section 75(3)(c));
and
- (b) shall have regard to management plans and strategies prepared under other Acts; and

¹ Long Bay – Okura Great Park Society Inc v North Shore City Council A 078/08

(c) shall have regard to the extent to which the plan needs to be consistent with the plans of adjacent territorial authorities.

3.4 A district plan, must state the objectives sought to be achieved, policies to implement the objectives and rules (if any) to implement the policies (s75(1)). It may also state the significant resource management issues, methods, other than rules for implementing the policies, reasons for adopting the policies and methods, and the environmental results expected (s75(2)).

3.5 The rules are to implement the policies (sections 75(1)(c) and 76(1)) and the proposed policy or method is to be examined, having regard to its efficiency and effectiveness as to whether it is the most appropriate method of achieving the objectives of the plan (section 32(3)(b)) taking into account (section 32(4)):

- the benefits and costs of the proposed policies and methods; and
- the risks of acting or not acting if there is uncertain or insufficient information.

3.6 Overall the s32 test is one of appropriateness (i.e. not necessity) and the requirement is to achieve the objectives of the plan.

3.7 In making a rule the territorial authority shall have regard to the actual or potential effect of activities on the environment (s76(3)).

4.0 Decision

4.1 I should firstly acknowledge that the position of the reporting officers, Ms Rykers and Mr Craig, has moved substantially from that of their original s42A report due to the information gathered during the hearing process and investigations undertaken. That process essentially showed that a significant proportion of the land between the 20m and 60m contours was already subdivided below the 40ha threshold originally proposed in PC 6 via the rezoning to Port Hills and supported by the reporting officers.

4.2 It is unfortunate that the correct information regarding the level of subdivision does not appear to have been available to the reporting officers from the outset as it appears now likely that PC 6 would have taken a very different form had it been available. To this extent I acknowledge the high level of concern from submitters and the input they have had on this particular issue and I am confident that a robust process has been gone through in identifying the existing level of subdivision below 20ha. As a result I consider that a key component of PC 6 that of the 40ha minimum subdivision threshold for a dwelling is longer tenable overall, a position I believe is now supported by the reporting officers.

4.3 There remains however a number of matters to be addressed from PC 6 and I have set these out below:

- Is the area between the 20m and 60m contour part of the ONL;
- What is the appropriate zoning for the land between the 20m and 60m contour;
- Is any form of intervention justified and if so how widely should it apply;
- Is intervention in the design of dwellings or undertaking of earthworks justified; and
- Is there sufficient scope to amend the PC 6 in the way now proposed by the reporting officers?

Scope

4.4 I have addressed the last matter first due to its importance in reaching an overall recommendation. I posed the question to Ms Rykers as to the scope afforded to me by PC 6 in terms of the various options now before me. She considered that there was scope within the submissions to implement any one of Options 2-4 now proposed as they were essentially all less restrictive than what had been originally proposed. She noted in her supplementary report that a number of submitters in opposition to PC 6 sought that the land between the 20m and 60m contours not be included in the ONL and should be retained in the Rural Inner Plains. The amendments now proposed address this relief in part by retaining the Rural Inner Plains zoning. She also said that the existing Rural Inner Plains subdivision standards would be retained as currently administered in the District Plan as would the standards for all buildings, except for dwellings. Ms Rykers considered that the proposed VAL overlay and Controlled Activity status for dwellings fell within the scope of submission S1284 from D and A Florance. In particular this is discussed on page 4 of the submission under the heading of "Port Hills Visual Amenity Zone" and is defined on page 6 of the submission as the secondary or less preferred relief sought. She also noted that Controlled Activity status was introduced in the form of the 'Grandfather Clause' and is therefore well within the scope of PC 6 and that no new land was proposed to be added to the VAL which has not previously been identified as subject to the provisions of PC 6.

4.5 Having reviewed PC 6 as originally notified and the comments provided by Ms Rykers I am satisfied that there is sufficient scope to consider the various options now put forward.

Where is the boundary of the Outstanding Natural Landscape?

4.6 The question of the location of the ONL was one of the more contentious issues associated with PC 6, and one which appears to have been clouded by the separate issue of the boundary between the Port Hills and Inner Plains rural zones.

- 4.7 Section 6(b) of the RMA requires the recognition and provision for, as a matter of national importance *"The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development"*. I do not think there is any dispute that the Port Hills are at least in part an outstanding natural landscape and contain outstanding natural features.

Case law

- 4.8 It is worth noting that a number of Environment Court decisions have addressed the location of the ONL in relation to the Port Hills, albeit within neighbouring Christchurch City. It is fair to say that while there appears to be some conflict in those decisions with regards the urbanised components of the Port Hills, the Flanagan², Memon³ and Rutherford⁴ decisions all seem to support the ONL as being at the base of the Port Hills within the rural area.

- 4.9 In the Flanagan case, which involved land in Early Valley Road across the boundary from Selwyn District, the Court said⁵:

"We find that the Port Hills is an outstanding natural feature and landscape; and although the part of the Flanagans' land the subject of this appeal is visible from only a few locations, it is part of the Port Hills feature and landscape. The other part of the Flanagans' land already zoned Rural 2, on the valley floor, is not".

- 4.10 While in Rutherford the Court accepted⁶ the evidence of Ms D J Lucas when she said:

"... I confirm that the rural Christchurch Port Hills are, in total, an outstanding natural feature and landscape".

- 4.11 Mr Stevens also referred me to the more recent Briggs⁷ decision on Banks Peninsula and suggested that this set a new bar in relation to the identification and location of ONL's which overrode or superseded those decisions referred to above. The decision considered issues of delineation for outstanding natural landscapes (ONL) and coastal natural character landscapes (CNCL) with the remainder of the rural area included within a rural amenity landscape (RAL).

- 4.12 Having reviewed the Briggs decision, I accept that the Environment Court was impressed with the level of methodology within the Landscape Study by Boffa Miskell which led to the development of the present provisions relating to the Banks Peninsula area when it said *"We have further concluded that it is the most*

² Flanagan, WR & VM v Christchurch City Council, C222/01

³ PA Memon and Others v Christchurch City Council, C116/2003

⁴ Rutherford Family Trust v Christchurch City Council, C026/03

⁵ Para 43

⁶ Para 23

⁷ Briggs, EM v Christchurch City Council (formerly Banks Peninsula District Council), C045/08

*comprehensive approach to a district landscape undertaken in New Zealand to date, ...*⁸. I am not however convinced that this decision in itself overrides those of Flanagan, Memon and Rutherford with regards the ONL status of the Port Hills for the following reasons:

- The context of the study referred to in the Briggs decision was at its time of conception for the whole (Banks Peninsula) district; and
- The northern side of the Port Hills (which includes that component within Selwyn District) is seen within a different context being that of Canterbury Plains.

4.13 Finally, I note that a more recent decision of the Environment Court, that of Akaroa Civic Trust⁹ has raised some questions over the Banks Peninsula situation. In a Postscript to the decision the Court stated (in paragraphs 114 and 115):

"More importantly, we draw attention to the fact that the PBPDP's Chapters 12 and 13 is based on the superseded premise that "Before a feature qualifies as outstanding it needs to be out of the ordinary within Bank Peninsula". Banks Peninsula was amalgamated with the district of Christchurch City on 6 March 2006 so the appropriate test is now against the landscapes of the whole of Christchurch City including that part (the urban area) which some inhabitants of Banks Peninsula like to call 'the swamp'. As things stand any party to any RMA proceedings about development on the peninsula can claim that, despite the PBPDP's provisions any or all of Banks Peninsula is now an outstanding natural landscape or feature in the context of the district as a whole, particularly since that issue has not been determined by the Council, let alone the Environment Court. We also observe that the definition in Part VII of the PBPDP of 'outstanding natural landscape' may be ultra vires in its references to (unspecified) "specific criteria" and (now) to "... within the context of Banks Peninsula ...". The Council will need to review all these parts of the PBPDP at some stage, within the context of the district as a whole.

The Council should also consider whether the PBPDP needs to be updated to " ... give effect to ..." the Regional Policy Statement and/or Coastal Plan which describes Banks Peninsula as a whole as an outstanding natural landscape."

4.14 My conclusion from all of the above case law is that the Rural Port Hills, within what was formerly Christchurch City, in their totality are seen as an ONL that is from the top of the hills to the toe.

⁸ Para 122

⁹ Akaroa Civic Trust v Christchurch City Council, C98/10

Objectives and Policies

- 4.15 The relevant objectives and policies section of the Plan, much of which is operative, provides further guidance on this matter. Under section 'B1.4 OUTSTANDING NATURAL FEATURES AND LANDSCAPES — ISSUE' and the heading 'Identifying Outstanding Landscapes and Appropriate Uses' the Plan describes the following;

Identifying outstanding landscapes involves making qualitative judgements about landforms. It can be subjective, because it relies on opinions about attractiveness. To identify any areas of outstanding natural features and landscapes within the Selwyn District, the District was divided into five geomorphic areas:

- Port Hills*
- Canterbury Plains*
- Te Waihora/Lake Ellesmere*
- Malvern Hills*
- High Country*

- 4.16 The Plan goes on to describe the approach adopted to establishing any areas or natural features which were considered to be outstanding in each of the above geomorphic area and concludes with the following:

Throughout this process the Canterbury Plains were identified as special, but did not meet the rigorous test that section 6(b) requires when determining landscapes are "outstanding".

- 4.17 By inference therefore the Port Hills were considered to be an outstanding natural landscape. The Plan then goes on to deal with the areas identified as ONL's the first of which is the Port Hills on page B1-035. The first sentence states:

Part of the Port Hills from Early Valley in the north, to Motukarara in the south and to the summit, is in the Selwyn District.

- 4.18 That sentence on its own indicates that when referring to the Port Hills the Plan is referring to them in their full context from their base (or toe) in Early Valley and Motukarara to their summit. This section then states that:

The Port Hills has long been appreciated for its landscape values, the views from the summit, and as an area for outdoor recreation in close proximity to Christchurch. The Port Hills are identified in the Canterbury Regional Landscape Study for their historical significance, the expressiveness of the formation, and distinctiveness.

- 4.19 The section goes on to describe the values of the Port Hills and concludes by stating:

Most land on the Port Hills in Selwyn District, has been used for pastoral farming since European settlement. Increasingly land uses are diversifying, including residential development, outdoor recreation and exotic plantations.

4.20 Nowhere in the above text to which I have referred is there any mention of parts of the Port Hills not being within the ONL.

4.21 Objective B1.4.1 requires that the Outstanding Natural Features and Landscapes of the District are recognised and protected from inappropriate use and development while still enabling people to provide for their economic and social well-being.

4.22 District wide Policy B1.4.1 provides '*for the mix of physical and natural elements that are often contained in Outstanding Natural Features and Landscapes to continue*'. The explanation and reasons associated with Policy B1.4.1 recognises that '*much of the land in the Areas of Outstanding Natural Features and Landscapes has been modified by human occupation or use. Consequently, these areas contain man-made or physical elements, for example, modified vegetation cover such as pasture or exotic trees, stock fences, roads and other utilities, dwellings and accessory buildings. Landscapes do not need to be naturally pristine to be outstanding. However, where a landscape is outstanding and contains man-made or physical elements, such elements may represent appropriate uses in these areas*'. [my emphasis]

4.23 I emphasised the above sentence to make the point that the Plan, contrary to the understanding of some submitters, does not require landscapes to be naturally pristine in order to be of an outstanding quality. I will return to this point again later.

4.24 There are then seven specific policies relating to the Port Hills. Of relevance in this discussion is the first of those Policy B1.4.5 which states:

Recognise the Port Hills as an Area of Outstanding Natural Landscape, and protect the following features:

(a) *The visibility of prominent landforms – ridges, spurs, rocky outcrops and volcanic dykes.*

(b) *The summit and its outcrops such as Gibraltar Rock, and Cooper's Knob, which form part of the 'Ring of Seven Ladies.'*[my emphasis]

4.25 The following explanation and reasons states that '*the Port Hills area within Selwyn District has been identified as an Area of Outstanding Landscape. This classification reflects a combination of the geomorphology of the Port Hills (its volcanic origins), its prominent position as a backdrop to the Plains and to Christchurch City, and the predominantly rural land uses on the Port Hills within Selwyn District. The rural land uses*

help maintain the visibility of geomorphic features such as ridges, spurs, dykes and outcrops, and help make the area popular for outdoor recreation. The Port Hills also has significant landscape values for tangata whenua, particularly the summit and rocky outcrops, ridges and spurs. Gibraltar Rock and Cooper's Knob form part of a ring of rocky outcrops known by local runanga as The Ring of Seven Ladies.

- 4.26 The explanation and reasons go on to once again emphasis that 'The Port Hills is not a pristine natural landscape. Maori and Europeans have occupied the area and vegetation cover has been modified for cultivation and pastoral farming. More recently, land uses have diversified to include residential developments with a rural lifestyle, outdoor recreation and exotic plantations'.
- 4.27 In my opinion it is clear from the current wording in the objective and policy framework of the Plan that the Port Hills in their totality are considered to be an outstanding natural landscape. There is no reference to that I can find to a cut off point at the 60m, or any other, contour. That is not something I can ignore nor can I change in terms of the scope afforded me by PC 6. This is a point that many involved in this process seem to have missed or misinterpreted. What is also clear is that the Plan does not expect the landscape to be in pristine condition with no built form or active use to enable it to be outstanding, which was also explained by Mr Craig in his Diagram 1 Naturalness Spectrum of the Landscape Assessment.
- 4.28 The District Plan Hearing Panel explored the concept of differing levels of 'outstanding natural' within a landscape when they said:
- "We think it plausible to suppose that the compound descriptor – "outstanding landscape ..." – denotes a quality that comes in degrees. Thus features and landscapes may be more or less natural (as to that see Wakatipu Environment Society v Queenstown-Lakes DC, C180/99) and, within rather narrower limits, more or less outstanding."*
- 4.29 Further to the above, the Environment Court in Memon appears to have supported this notion when it agreed that a particular part of the Port Hills was "a reduced Outstanding Natural Landscape"¹⁰.
- 4.30 The point here is that the identification of an ONL does not necessarily mean that all development should therefore be prevented, but rather that what is considered inappropriate (in terms of s6(b)) will vary depending on where on the spectrum that part of the landscape lies.

¹⁰ Para 38

Regional Policy Statement

- 4.31 Objective 2 and Policy 3 of Chapter 8 are the relevant provisions of the Regional Policy Statement (RPS) in relation to the ONL. In reviewing those provisions I can find nothing which would indicate that the existing objectives and policies of the District Plan are inconsistent with these provisions.

Conclusion on ONL

- 4.32 In terms of the extent of the Port Hills ONL I consider it is very clear from the Plan (and supported by case law) that it extends from the summit to the toe. This seems to me to be a logical position and I agree with Mr Craig that the 60m contour is an indefensible boundary. It is virtually indistinguishable in the context of the Port Hills, whereas the toe of the Port Hills, which is considered to be generally at the 20m contour mark, is very clear and distinctive, being the point or intersection where the Canterbury Plains hit the Port Hills. In the area south of Tai Tapu this clear intersection is further demarcated by lines of rock outcrops at the toe. Further, no one appeared to be arguing that the Port Hills do not begin at or around the 20m contour, where the toe of the hill meets the Canterbury Plains.
- 4.33 I do however agree with Mr Allan when he said that *"As far as I can tell, there is nothing in the District Plan to suggest that the ONL is the key determinant for the extent of the Rural Port Hills Zone"*. As I have said earlier there appeared to be a common misconception that the ONL and the Port Hills Rural Zone were one in the same.
- 4.34 Mr Graham referred me to the Summit Road Protection Act Amendment Bill process where he said consideration was given to the extent of the ONL on the Port Hills and that the notion of it being from the skyline to the toe of the Port Hills was rejected by the select committee. He urged me to *"follow the precedent set by Parliament ..."*. While I have no details on that process, I note that the Summit Road Protection Act is a different authority to the RMA and as far as I can tell the concept of ONL's is not enshrined in this Act as it is in the RMA pursuant to section 6(b), nor does it override the RMA. Further as I have already noted even if I was of a mind to reduce the extent of the ONL it would be beyond the scope afforded me in terms of PC 6 to do so.
- 4.35 A number of submitters referred me to the Bank Peninsula situation regarding the ONL and the applicable rules via Rural Amenity Landscapes (RALs) on the lower slopes. Essentially in the Banks Peninsula section of the Christchurch City Plan the ONL is restricted to the tops of the hills and RAL's are applied on the lower slopes. While I accept that that approach may well be appropriate to Selwyn District, and has now been put forward by the reporting officers as an option what most submitters failed to

realise is that the restrictions in the RAL's in the Bank Peninsula section of the Christchurch City Plan are more restrictive than those provisions in PC 6 as notified. In other words even without ONL status the RAL provisions in Banks Peninsula are set at a higher level than any of those proposed as part of PC 6.

- 4.36 Finally, I return to the issue of scope as it may be suggested that by extending the ONL on the Planning Maps down to the 20m contour, PC 6 afforded me scope to return it to the 60m contour and alter the relevant Issues, Objectives and Policies accordingly. That is a bottom up approach which would be totally inconsistent to the requirement of District Plan development (s75 of the Act). Rules, which include planning maps, are required to achieve the objectives and implement the policies not the other way around. In my opinion the fact that the District Plan did not show the ONL down to the base of the Port Hills prior to PC 6 can only be seen as an error.
- 4.37 I acknowledge that Ms Rykers and Mr Craig in the first supplementary report appear to have stepped back from their original position on the ONL location, however their words appear to have been carefully chosen when they say "*If the level of existing and consented development is accepted as creating an environment that does not pass the threshold for an Outstanding Natural Landscape ...*".[my emphasis] The reality however is that in my view the Objectives and Policies of the Plan would need to reflect an ONL at a higher elevation and they currently do not and cannot be amended by this process. Further, I'm not entirely convinced that the level of existing and consented development within the area concerned is at a threshold which would mean that it could not be considered part of the ONL. The majority of the subdivision is 4ha and above allowing openness to be retained to a certain level and there is certainly nothing in the landscape assessments or case law to suggest that a threshold is reached at this point. Rather it perhaps becomes what was described in Memon as "*a reduced Outstanding Natural Landscape*".
- 4.38 Notwithstanding the above, I also consider the scope afforded me is limited to showing the base of the ONL as per the planning maps in PC 6. In other words there are situations, particularly in the Rocklands, Otahuna Valley and Early Valley Road areas where the base of the Port Hills or the 20m contour is below the ONL line shown on the planning maps which formed part of PC 6. In the case of the Rocklands area I accept that given the extent of development this should not form part of the ONL in any event. In terms of the other areas, while a case could potentially be made for their inclusion within the ONL, I consider they should be excluded on the basis that land owners would be prejudiced by not having known their land might be included within the ONL and therefore potentially subject to related controls.

- 4.39 My recommendation is therefore that subject to the discussion below the Planning Maps be confirmed as originally proposed by PC6 to incorporate the ONL generally down to the 20m contour. This in my opinion is the only appropriate mechanism for implementing the established policies and achieving the Port Hills objective. All submissions relating to removing the ONL up to the 60m contour are therefore **rejected**.

Are there specific areas which should not be included within the ONL?

- 4.40 A number of submitters sought to exclude specific properties from the ONL. Ms Rykers considered, and I agree, that an exceptional circumstance would need to exist to enable boundary amendments to the ONL to avoid creating a precedent. Of course one such circumstance, the Rocklands development already exists and is excluded from the ONL as referred to above.
- 4.41 Having reviewed each of the submissions seeking exclusion from being within the ONL boundary there is only one, the Duff property at 60 Early Valley Road, where I consider a case has been made as an exceptional circumstance. This is because this site forms part of a cluster of dwellings and accessory buildings running along the road, a number of which are on very small titles. As described by Mr Craig, *"this cluster of buildings sufficiently derogates from the level of natural character that is considered necessary to maintain within an ONL"*. I therefore recommend that the submission by I Duff in relation to this ONL boundary adjustment be **accepted**. Those from Basapole Limited, T Stackwood and D & D Chapman in relation to this aspect are **rejected**.
- 4.42 I Duff also sought that the ONL boundary be defined along internal property boundaries, that reference be made to the specific contour heights on the planning maps and that they be referenced back to a clearly defined datum.
- 4.43 Dealing with the first matter, while I understand the concerns regarding the use of contours rather than property boundaries landscapes do not follow defined property boundaries. To use property boundaries could mean that areas of little landscape value were included within the ONL because the majority of the property was considered to be of significant landscape value or vice versa. In my opinion this would undermine the basis for defining the ONL.
- 4.44 In terms of the contour heights, with the amendments now proposed to PC 6, including the Planning Maps (as detailed in Appendix 1) the 60m contour is to be now referenced on the maps.

4.45 Finally, in relation to the issue of a datum, my understanding from Ms Rykers was that the Planning Maps were based on New Zealand Geodetic Datum 1949. I can see no reason to seek this being altered.

4.46 On the basis of the above I recommend the submission by I Duff on these aspects be **accepted in part**.

What is the appropriate zoning between the 20 and 60 metre contours?

4.47 PC 6 changed the zoning of the land generally between the 20 and 60 metre contours from Rural (Inner Plains) to Rural (Port Hills) with a key consequence of this being a 40ha threshold for the establishment of an allotment to form a dwelling. As already discussed I consider the 40ha threshold in this area is generally not an acceptable proposition or an effective mechanism given the subdivision which has already taken place. The options in terms of zoning therefore appear to be either to retain the Port Hills zoning and introduce a new subdivision threshold or return the area to the Inner Plains zoning. It seems to me that in the circumstances the latter is the most efficient and cost effective course of action. There is in my view no justification or sense in creating a new threshold layer of subdivision for the Port Hills, when the Inner Plains provides exactly the same threshold.

4.48 Notwithstanding the above there is one area within the 20 – 60 metre contours where it may well be appropriate to retain the Port Hills zoning. This area relates to a large spur close to State Highway 75 and referred to in the second supplementary report by the reporting officers as part of Option 4. In that report it states:

It will be the Commissioner's role to determine the necessity of assessing future development on this lower slope in relation to landscape values or whether that is unnecessary. This may require some assessment of the relative risk of any development happening on this slope. If there is not a high risk then it may not be necessary to impose the more stringent standard that comes with an ONL compared with a VAL.

4.49 This spur is not as closely subdivided as other areas within the 20 – 60 metre contours and I accept that it is quite visible, primarily due to its close proximity to the State Highway. Having said that there are other, albeit smaller, spurs which are also of some prominence and a large peninsula spur at the southern end of the district which is in my opinion of equal prominence, which have all been subdivided, but are as yet generally undeveloped. While I accept there is a question here of risk in terms of the potential development of this slope, there is also a question of fairness. It would in my opinion be hard to justify a higher threshold for subdivision as appropriate in these circumstances.

- 4.50 Overall, I am not convinced that it is appropriate to single out this spur for more stringent zoning just because it is less subdivided than other areas. The key issue to be addressed in relation to these spurs, given the level of subdivision now achieved, is to address the prominence of dwelling development rather than the level of subdivision. In my opinion given the level of subdivision that has occurred, imposing a higher level of subdivision restriction on this one particular spur is unlikely to achieve any significant amenity gains in landscape values terms in the context of the whole area. For those reasons I recommend that this particular spur also be included in the Inner Plains zone.
- 4.51 On the basis of the above, I recommend that the Inner Plains boundary be returned to the 60m contour, that those submissions seeking that the Inner Plains zone boundary be shown at the 60m contour be **accepted**, and that a consequential amendment to the subdivision section to reflect this be made in relation to subdivision in the ONL.

Is any form of intervention justified?

- 4.52 Having decided that the ONL should be shown down to or near the 20m contour and that the Inner Plains zoning should remain at the 60m contour the next question to be answered is therefore is any form of intervention justified? Many submitters considered intervention of any form was not necessary and that the plan change should be abandoned. Others considered some form of intervention, particularly in relation to dwelling locations, colour and landscaping, was appropriate. A number of those latter submitters referred to one particular dwelling south of Tai Tapu which they considered was inappropriate in terms of its colouration and positioning on a prominent spur.
- 4.53 In this regard the reporting officers now proposed a Visual Amenity Landscape (VAL) to enable some consideration of the effects of development on landscape values, with the overall aim to have dwellings fit harmoniously in the landscape without detracting from its amenity values. I note that the reporting officers considered that the VAL would provide a buffer and high amenity transition between the ONL and the rural plains, something I will address later in this recommendation.
- 4.54 Other specific areas of changed provisions contained in PC 6 related to earthworks, shelterbelts and plantations, the Grandfather clause, assessment matters and some miscellaneous provisions. The various changes now proposed and contained in the reporting officers supplementary reports are considered in turn below.

Visual Amenity Landscape

- 4.55 The new mechanism put forward in the first supplementary report to establish a VAL is designed to enable consideration, as a controlled activity (an activity which the consent authority cannot decline), the effects of development on landscape values through an assessment against a series of criteria. Those criteria include:
- The design of the building including height, size/scale, site coverage, materials, façade articulation, colour and reflectance value;
 - The appropriateness of the building site and its access having regard to geotechnical conditions and site stability;
 - The visibility of the building from land which is publicly owned and freely accessible by the public, including any area of curtilage if the building is a dwelling;
 - The design and siting of any access to the building, including the visibility of the access, any contrast with natural contours and the proposed re-vegetation and naturalistic re-contouring of any earthworks;
 - The siting of the building in relation to the natural landform, and in particular whether the building would break the skyline or the form of any ridges, hills or prominent slopes;
 - The visibility of any utilities required to service the building;
 - Landscape planting and earthwork that assists in mitigation of any adverse landscape effects.
- 4.56 The justification for any controls between the 20 and 60m contours must in my view stem from the ONL status and the objectives and policies, which I have referred to above, which support that. Without those I can see no justification for including any further controls within the Inner Plains zone. Whether such controls are then considered as being within a 'subzone' referred to as VAL is somewhat debatable as it might imply there is something more significant about this area than the remainder of the ONL which merely uses contours to differentiate between rules. At this point I wish to make it clear that my considerations on this matter do not extend above the 60m contour as this is in my opinion outside of the scope of PC 6.
- 4.57 The objective for the ONL, supported by policies, is essentially to protect it from inappropriate use and development while still enabling those who farm, live on it and use it to be able to do so, subject to achieving certain standards. The majority of these provisions are operative.

- 4.58 Upon reviewing the rules of the Inner Plains Zone I can find no existing provisions which would achieve the above objective and support the policies in relation to development in the ONL below the 60m contour to which that zone would now apply given my recommendation above. In other words rules that would enable an assessment of the impact for example of a dwelling development or earthworks on the landscape values of the ONL. It therefore follows that some form of rule intervention is appropriate if Objective B1.4.1 is to be achieved and the relevant Policies which follow are to be met.
- 4.59 I consider the rule proposed by the reporting officers of controlled activity status and associated criteria for any new dwelling, or additions, alterations or modification of any existing dwelling, is an appropriate mechanism and is at an appropriate scale in terms of activity status given the level of subdivision and low elevation of the area concerned balanced against its prominence in particular locations.
- 4.60 In respect to the particular assessment criteria proposed a memorandum on behalf of D & D Chapman in response to the first supplementary report considered them inappropriate in that they simply replicated those matters of control that were originally recommended in PC 6 as notified in respect to buildings within the ONL. The memorandum goes on to say that *"to recommend the same level of control be exercised for sites now in the Inner Plains Zone and affected by a second tier landscape (VAL) wrongly elevates the importance of the values of such sites"*. This statement in my view re-emphasises the importance of my comments above regarding the location of the ONL in that without it going to the base of the Port Hills there can be little justification for including any further controls within that part of the Inner Plains zone which I have recommended be included between the 20m and 60m contours.
- 4.61 In terms of the assessment criteria proposed I am generally satisfied, noting that they are less extensive and onerous than those for buildings higher up the Port Hills. I have recommended some amendments including removal of the site coverage from the first criteria, which I consider is unnecessary, and rewording of the fifth criteria to refer to integration with the natural landform.
- 4.62 Given my recommendation to retain the ONL to the base of the Port Hills the appropriate location for the new rule relating to dwelling development is within the Section 3.2 Buildings and Outstanding Landscape Areas rather than Section 3.4 Buildings and Rural Character as recommended by Ms Rykers.
- 4.63 Because of the narrowness of the area concerned I consider it is appropriate to provide some form of recognition on the planning maps. For want of a better term I

consider there is no harm in referring to the area as a VAL even if it is overlying the ONL and the Inner Plains Zone. The controls themselves will show that the area has not been elevated above the remainder of the ONL and are in fact less restrictive.

4.64 In the first supplementary report Ms Rykers recommended the introduction of a new policy in association with the VAL. As I understand it this was due to the fact that the VAL was outside the ONL area and therefore there was no policy framework associated with it. With the inclusion of the VAL within the ONL I consider such a policy is unnecessary.

4.65 On the basis of the above I recommend that a Visual Amenity Landscape area be introduced primarily between the 20m and 60m contours on the Port Hills, that the Planning Maps be amended accordingly, and that a rule and associated assessment criteria be introduced making any new dwelling, or additions, alterations or modification of any existing dwelling a controlled activity. The submission by D & A Florance in this regard is **accepted in part**.

Earthworks

4.66 The change to the earthworks rule was initially designed to clarify that the earthworks rule for the Port Hills was limited to 20m³ every five years within a site as there had been difficulties in interpreting the previous rule. As a result of submissions Ms Rykers recommended an amendment to the rule, so that it read:

Any other earthworks which shall not exceed 100m³ within a site and a maximum cut depth of 1m.

4.67 Mr Dewe suggested that the provision should align with Environment Canterbury's Land and Vegetation Management Regional Plan (LVMRP), Part II, Earthworks and Vegetation Clearance, Port Hills and read as follows:

"and other earthworks not exceeding 100m³ in any one hectare in any ten year period"

4.68 Mr Smith on the other hand acknowledged the differences in rules but considered that the recommendation was not inconsistent in terms s75(4) of the Act as the rationale for the rules was different. He did however suggest that a note be included highlighting that the LVMRP also controlled earthworks and vegetation clearance on the Port Hills. He suggested the following wording:

Any activity involving earthworks and vegetation clearance on the Port Hills may require resource consent from Environment Canterbury. Further enquiries should be made with Environment Canterbury.

- 4.69 Mr Whelan and Ms MacKenzie also commented on the earthworks provision, considering the 20m³ limit highly restrictive, indicating that a figure of 150m³ might be more appropriate. Mr Whelan did suggest that rules around good design, removal of spoil and landscaping could be beneficial.
- 4.70 In considering this matter I note that a submission from the Council itself sought to increase the level to 150m³ as this was the maximum permitted in other outstanding landscape areas.
- 4.71 It is acknowledged that there is a potential for earthworks to create adverse effects, particularly of a visual nature. In this regard I agree with the comments of Mr Craig that it is the depth and length of cuts which have the greatest potential to disrupt landforms. I note also that the earthworks provisions in the Plan do not apply to earthworks associated with digging post-holes, cultivation, tending or landscaping gardens, planting trees or removing dead or diseased trees, providing ducting for fibre optic cables, or drilling bores.
- 4.72 Having considered the various competing matters involved, I consider the most appropriate and efficient solution is to align the volume threshold with the LVMRP, that is 100m³, thus providing a degree of consistency in this area. While I acknowledge other ONL areas with the District have a larger threshold I accept Ms Rykers conclusion that they are much larger landscapes in locations more remote from larger population centres. I also accept that the note recommended by Mr Smith is useful in providing potential applicants with additional information and while it does not appear to be within the scope of the Environment Canterbury submission I consider it would fall with the scope of the submission by Mr Horgan.
- 4.73 On this basis all submissions on the earthworks provision are **accepted in part**.
- 4.74 The final question I must turn my mind to is whether this rule should apply to the VAL area which is now within the Inner Plains, but remains in the ONL. My recommendation to retain the ONL at the base of the Port Hills means that the above earthworks provision would apply within the VAL area unless a further change is made. If such a change were made and I were not to apply the revised earthworks rule to the VAL area then the relevant earthworks rule becomes 5000m² per project.
- 4.75 The changes recommended by the reporting officers would have meant the earthworks provision did not apply to the VAL area, it being their recommendation that the VAL sit outside the ONL. Of note in this regard is that in relation to dwellings, earthworks, including accesses, are assessment criteria under the proposed controlled activity.

- 4.76 On balance I consider that the earthworks rule is appropriate to the VAL area. To not include it could undermine the intent of the ONL provisions and provide a considerable degree of inconsistency between the Plan and the LVMRP.

Plantations and Shelterbelts

- 4.77 PC 6 proposes to amend the wording of Policy B1.4.6 so that shelterbelts and amenity planting are avoided in the Summit Road Protection Area, in addition to exotic plantations which are already identified in the Policy; add new rules to clearly show that shelterbelts, amenity planting and plantations are not anticipated within the Summit Road Protection Area, achieving consistency with Policy B1.4.6; add assessment matters and reasons for rules for applications for forestry; and remove reference to forestry guidelines that have not been developed.
- 4.78 Horticulture NZ expressed concerns that the revised provisions would now capture vineyards and orchards between the 20 and 60m contours because they were defined as plantations. Prior to PC 6 only vineyards and orchards above the 60m contour were subject to consent.
- 4.79 Horticulture NZ's solution to amend the definition of 'Plantation' was considered inappropriate by Ms Rykers as such an amendment would affect the whole of the Plan and in her view was beyond the scope of PC 6. However, Ms Rykers did except that these activities should be provided for and recommended an exemption to Rule 2.2.1.1 to read:

The plantation is not located in the areas shown on the Planning Maps as the Port Hills, Malvern Hills or the High Country, excluding vineyards and orchards located on land between the 20m and 60m contours on the Port Hills.

- 4.80 This is in my opinion an appropriate solution although I consider the wording should now be amended by referring to the VAL. I therefore recommend that the above change be made, subject to reference to the VAL, and that the remainder of the changes addressing Plantations and Shelterbelts be adopted. As a result the Horticulture NZ submission is **accepted in part**.

Grandfather Clause

- 4.81 The Grandfather clause was included to ensure that existing development rights in the form of consented, but not as yet built subdivisions and dwellings, were not lost.
- 4.82 The extent of change to PC 6 means that the Grandfather clause in my view is no longer necessary and should therefore be deleted. My recommendation in terms of the submissions on the Grandfather clause are that all submissions should be

accepted in part on the basis that changes i.e. the deletion of the provision, have been made to the benefit of all.

Assessment Matters and Reasons for Rules

4.83 In addition to those already described PC 6 added assessment matters for Rule 3.2.4 (Buildings in Outstanding Landscape Area), assessment matters and reasons for rules for Rule 5.6.2 (Utility Buildings in Outstanding Landscape Areas) and assessment matters for Rules 10.3.1 (Subdivision in Outstanding landscape Areas).

4.84 In relation to the assessment matters under 3.2.4 and 5.6.2 and the new controlled activity assessment matters, G Horgan sought that:

- (i) The assessment matter which enables Council to consider "the appropriateness of the building site having regard to geotechnical conditions and site stability" should be broadened to include access to the building site;
- (ii) That a definition of "public viewing point" be provided; and
- (iii) Positive effects be provided for.

4.85 In relation to (i) Ms Rykers supported, and I agree, that the addition of reference to access is appropriate. The particular assessment matter is therefore reworded across all three clauses as follows and the submission by G Horgan **accepted**:

The appropriateness of the building site and its access having regard to geotechnical conditions and site stability

4.86 In relation to (ii) Ms Rykers did not consider a definition necessary but suggested amending to the assessment matter as follows:

The visibility of the building from land which is publicly owned and freely accessible by the public, including any area of curtilage if the building is a dwelling

4.87 I am comfortable that the revised assessment matter provides greater clarity on this matter and recommend it be adopted and the submission by G Horgan be **accepted in part**.

4.88 Finally, in terms of (iii), Mr Rykers accepted that an assessment matter on positive effects was appropriate and I concur with that approach. It is therefore recommended that the submission by G Horgan on this aspect of PC 6 be **accepted** and the following assessment matter be included in relation to Rules 3.2.4 and 5.6.2:

Any positive effects to be created by the proposed building and its associated accessway.

- 4.89 Subject to the above changes, I recommend that the assessment matters for Rule 3.2.4 (a rule that will be renumbered), the assessment matters and reasons for rules for Rule 5.6.2 (Utility Buildings in Outstanding Landscape Areas) and the assessment matters for Rules 10.3.1 (Subdivision in Outstanding landscape Areas) be adopted, noting that some of those assessment matters also apply to the new controlled activity rule, which I have also taken into account in the above assessment.

Miscellaneous Amendments and Submissions

- 4.90 There were a number of other miscellaneous amendments contained within, and submission on, PC6. These related to the zoning an area alongside Early Valley Road as Rural Port Hills and Rural Inner Plains which was previously unzoned on the Planning Maps, the reference to structures in Policy B1.4.9 and the up-dating of the Reasons for Rules in Section 3.
- 4.91 I recommend the zoning of the unzoned land in Early Valley Road be adopted.
- 4.92 Horticulture NZ expressed concerns with the use of the terms "structures" within Policy B1.4.9. They considered that if the "structures" referred to are included a "buildings" then the word "structures" should be deleted. Ms Rykers agreed that, with reference to the definition of building that a structure was a building and therefore the term "structure" within the policy was redundant.
- 4.93 While I understand the concerns of Horticulture NZ and the reasoning provided by Ms Rykers the problem I have with the deletion of the term "structures" in this context is that it could lead to there being seen to be no policy for in particular utility structures (e.g. pylons, cell phone towers, etc) to support the rules for such structures. The way I interpret the wording of the policy is that the access, utilities and other infrastructure are to be associated with the building or structure. Removal of the word structure would mean that there was no policy context for the rules in section 5.5 Outstanding Landscape Areas – Utility Structures. I therefore recommend that the word "structure" be retained in Policy B1.4.9 and that the submission of Horticulture HZ be **rejected**.
- 4.94 In terms of the revised reasons for rules in section 3, the creation of the VAL and retention of the ONL necessitates further amendment to recognise the approach taken. I therefore recommend a further paragraph be added in addition to the two already proposed as part of PC 6 to read as follows:

The land generally between the 20m and 60m contour and excluding those areas referred to above has been identified as a Visual Amenity Landscape with controls over building design and access set at the lowest possible threshold. This area has been more closely subdivided than other areas of the Port Hills, nevertheless it

remains an important feature of the ONL and transition area between the Port Hills and the Rural Plains which is characterised by high amenity and aesthetic values. Due to the pressure for closer subdivision and residential development in this landscape it is appropriate that dwellings be subject to assessment in relation to matters concerning location, design and appearance.

- 4.95 I Duff sought that any reference to the “whole of the Port Hills” be replaced by Rural Port Hills Zone and that the Rural Inner Plains be clearly marked. Mr Dewe in a letter responding to the first supplementary report then raised concerns around the use of the term Port Hills Area which had been adopted in the revised provision accompanying that report.
- 4.96 Ms Rykers supported the use of the phrase “the Port Hills Area” on the basis that this was consistent with other parts of the Plan. While I accept that consistency within the Plan is generally appropriate, in this circumstance given my recommendations above which create a difference between the Port Hills Zone and the ONL the introduction of the word ‘Area’ at a policy level would create confusion and inconsistencies. I note that while some of the present rules refer to the Port Hills Area, the planning maps clearly refer to the Port Hills (and others) as a Zone. There is therefore an inconsistency existing within the Plan at present and it seems to me that the term “Zone” is the most appropriate term in the circumstances. I therefore recommend that no changes be made to introduce the word ‘Area’ at the policy level and that consequently the terms ‘Port Hills Area’ can be removed from the rules section where appropriate. I also note that the changes recommended in relation to the Port Hills and Inner Plains boundary will ensure these areas are clearly defined. The submission by I Duff is **accepted in part**.

Costs

- 4.97 A number of submitters raised the issue of costs associated with any consent application in the VAL area. As I understood it their contention was that because any application would be because of visual and landscape values (i.e. public good), the Council costs should be borne by the Council itself. Ms Rykers also acknowledged the consent process imposed costs and that the Council should consider addressing those costs through alternatives mechanisms and benefits such as reducing applications fees.
- 4.98 I have some sympathy in general for these sentiments because no dwelling would be permitted and I note that a criteria a Council must have regard when fixing charges under the Act (s36(4)(b)(i)) is that persons should only be required to pay a charge to the extent that the benefit of the local authority’s actions to which the charge relates

is obtained by those persons as distinct from the community of the local authority as a whole.

4.99 In this regard I have noted that there is already a Policy in the Plan (Policy B1.4.4) which enables the Council to use discretion to waive all or part of resource consent processing fees for activities in Areas of Outstanding Natural Features and Landscapes, where:

(a) The proposed activity would not otherwise require a resource consent; and

(b) The proposed activity will maintain or enhance the landscape values of the area.

4.100 The explanation and reasons note that the rules in Areas of Outstanding Landscape can impose private costs on landholders and occupiers, for a public or general benefit. Remitting resource consent fees is a way of reducing those private costs. The policy has two conditions. Firstly, the application must be for an activity which would not need a resource consent if the site was not in an Area of Outstanding Landscape. Secondly, the proposed activity must be one that will maintain or enhance the landscape values of the area.

4.101 This in my opinion should provide some comfort the submitters in terms of the provisions proposed.

Consequential Amendments

4.102 The recommendations made throughout this decision result in a number of consequential amendments being necessary. These have been included within the changes made within Appendix 1, and I note that the amendments overall will result in the necessity in some case for the renumbering of provisions.

5 Recommendation

5.1 My overall recommendation is that the changes shown in Appendix 1, including those on Maps 9, 14 and 134 be adopted and submissions and further submissions be accepted, accepted in part or rejected as shown in Appendix 3. While I have rejected all those submissions seeking PC 6 be deleted in its entirety a number of significant amendments have been made which may go some way towards addressing the concerns expressed by these submitters.

Dean Chrystal
Commissioner
19th August 2010

DISTRICT PLAN TEXT RECOMMENDATIONS

Text underlined and in italics is new text to be added to the District Plan, while text shown as strikethrough and in italics (including text from Plan Change 6 as notified) is to be deleted.

PART B ISSUES, OBJECTIVES AND POLICIES

PORT HILLS

Policy B1.4.6

Avoid locating any dwelling, any other large structure or building, or any exotic plantation, shelterbelt or amenity planting in the area from 30.46m vertically below the Summit Rd to the summit of the Port Hills unless it must be located in that area and cannot reasonably be located elsewhere.

Policy B1.4.9

Ensure any building or structure erected ~~in~~ on the Port Hills and any associated access, utilities or other infrastructure, is designed, sited, landscaped and finished in exterior materials which:

- Blend in with the surrounding landscape; and
- Maintain the visibility of prominent landforms listed in Policy B1.4.5, as viewed from any public road; and
- Avoid or mitigate any adverse effects on openness, visual coherence or legibility of the landscape.

PART C RULES

1.4 EARTHWORKS AND OUTSTANDING LANDSCAPE AREAS

Permitted Activities — Earthworks and Outstanding Landscape Areas

- 1.4.2 ~~On~~ Within the Port Hills ~~Area~~, the following earthworks shall be a permitted activity:
- 1.4.2.1 The maintenance and repair of existing fence lines;
 - 1.4.2.2 The maintenance and repair of existing farm vehicle roads and tracks;
 - 1.4.2.3 Digging offal pits;
 - 1.4.2.4 Forming stock water ponds, provided that no more than 30m³ of earth is disturbed, removed or deposited, and the pond is no more than 50m² in surface area; or
 - 1.4.2.5 Any other earthworks which shall not exceed 20100m³ in any five year period within a site and a maximum cut depth of 1m per project.

Note: Any activity involving earthworks and vegetation clearance on the Port Hills may require resource consent from Environment Canterbury. Further enquiries should be made with Environment Canterbury.

2.1 SHELTERBELTS AND AMENITY PLANTING

Permitted Activities — Shelterbelts & Amenity Planting

- 2.1.1 The planting of any trees for amenity planting, shelterbelts shall be a permitted activity if all of the following conditions are met:

.....

- 2.1.1.10 In the area shown on the Planning Maps as the Port Hills Zone, the tree(s) are not located within the Summit Road Protection Area as defined in Appendix 24.

Non-Complying Activities — Shelterbelts & Amenity Planting

- 2.1.12 Any activity which does not comply with Rule 2.1.1.6, 2.1.1.7, 2.1.1.10 or 2.1.10 shall be a non-complying activity.

2.2 PLANTATIONS

Permitted Activities — Plantations

- 2.2.1 The planting or harvesting of any plantation shall be a permitted activity if all of the following conditions are met:
- 2.2.1.1 The plantation is not located in the areas shown on the Planning Maps as the Port Hills, Malvern Hills, ~~or the~~ High Country or the Visual Amenity Landscape on the Port Hills, excluding vineyards and orchards located within the Visual Amenity Landscape;

Restricted Discretionary Activities — Plantations

- 2.2.2 The planting or harvesting of plantations in areas shown on the Planning Maps as the Port Hills (excluding the Summit Road Protection Areas), Malvern Hills, ~~or~~ High Country or the Visual Amenity Landscape on the Port Hills shall be a restricted discretionary activity if all of the following standards and terms are met:
- 2.2.2.1 The plantation is not located within any area shown on the Planning Maps as an Area of Outstanding Landscape, excluding the Port Hills, or a Forestry Exclusion Area in the High Country; and
- 2.2.3 Under Rule 2.2.2 the Council shall restrict its discretion to consideration of:
- 2.2.3.1 The design and siting of any plantation on the Port Hills to:
- (a) Maintain the uninterrupted skyline of the summit of the Port Hills as viewed from the Summit Road or any road on the Plains;
 - (b) Avoid screening views of existing landforms and natural features, including Gibraltar Rock and Cooper's Knob from the Summit Road or any road on the Plains;
 - (c) Avoid screening views from the Summit Road;
 - (d) Reflect and complement the landform patterns and shapes of the landscape and the avoidance of artificial or unnatural lines;

- (e) Maintain diversity in the vegetation cover on the Port Hills, by encouraging plantations to be interspersed with other land uses, where practical;
- (f) Avoid, remedy or mitigate the potential for scarring of the landscape from earthworks and harvesting activities;
- (g) Avoid or mitigate any potential effects on indigenous vegetation and waterways;
- (h) Provide for the re-vegetation of any earthworks;
- (i) Avoid, remedy or mitigate the scale and extent of the proposed plantation where there are effects on amenity values, including any cumulative effects taking into consideration existing or consented plantations on an adjoining site;
- (j) To avoid, remedy or mitigate the visibility of any tracks or roads required for the management or harvesting of the plantation, having regard to existing contours.

Non-Complying Activities — Plantations

- 2.2.12 Any plantation which does not comply with Rule 2.2.1.6 shall be a non-complying activity.
- 2.2.13 Any plantation which does not comply with Rule 2.2.1.7 shall be a non-complying activity.
- 2.2.14 Any plantation located within an area of Outstanding Landscape, excluding the Port Hills, or a Forestry Exclusion Area in the High Country which does not comply with Rule 2.2.10 shall be a non-complying activity.
- 2.2.15 Any plantation located within the Summit Road Protection Areas defined in Appendix 24 shall be a Non-Complying Activity.

Reasons for Rules

Rule 2 manages potential effects from amenity tree planting, shelterbelts, plantations and removal of heritage trees. The District Plan has rules to manage these effects because they have effects which occur on other property or on other parts of the environment. They are not usually direct costs to the person planting the trees.

The rules allow amenity tree planting, shelterbelts and visual screening as permitted activities (no resource consent needed) in most parts of the Rural Zone, subject to conditions. The conditions relate to: shading on roads and adjoining properties; ensuring that planting positions protect the natural character of the edge of waterbodies protecting Wahi Tapu and Mahinga Kai Sites, and Wahi Tapu Management and Silent File Areas; avoiding wilding tree spread, and protecting landscape values in the High Country. Council will waive the resource consent processing fees for applications for amenity planting or shelterbelts under rules 2.1.10 or 2.1.11. The waiver includes the deposit and all additional costs up until the release of the Council's decision.

The rules allow plantations as a permitted activity (no resource consent needed) on the Plains, subject to similar conditions as those for shelterbelts, amenity planting and visual screening. On hill and high country (including the Port Hills) plantations require a resource consent. The consent is non-notified and does not need the written approval of affected parties, provided the plantation complies with standards and terms, designed to avoid effects on other people's property such as shading and wilding spread. In those cases, there is no need for the resource consent to be notified because there are no effects on other people. The effects which are permissible on other parts of the environment (such as landscape values and waterbodies) are already specified in the Plan policies, which have

been through a public process. The Council and the resource consent applicant work together to address the effects which are listed as matters of discretion in Rule 2.2.3. These matters are specific to the individual sites, so are managed through a resource consent process, rather than as conditions by which activities are permitted.

With respect to the Summit Road Protection Area of the Port Hills, the rules do not encourage any tree planting, for amenity, shelter-belt or plantation purposes. This Protection Area is recognised for its high scenic values and views which may be lost through the planting of trees.

3.2 BUILDINGS AND OUTSTANDING LANDSCAPE AREAS

Controlled Activities — Buildings and Outstanding Landscape Areas

3.2.2 Any dwelling, or any additions or alterations to, or modification of any dwelling within the area shown on the Planning Maps as a Visual Amenity Landscape shall be a Controlled Activity

3.2.3 Under Rule 3.2.2 the Council shall restrict its consideration to:

3.2.3.1 The design of the building including height, size/scale, materials, façade articulation, colour and reflectance value;

3.2.3.2 The appropriateness of the building site and its access having regard to geotechnical conditions and site stability;

3.2.3.3 The visibility of the building from land which is publicly owned and freely accessible by the public, including any area of curtilage if the building is a dwelling;

3.2.3.4 The design and siting of any access to the building, including the visibility of the access, any contrast with natural contours and the proposed re-vegetation and naturalistic re-contouring of any earthworks;

3.2.3.5 The siting of the building in relation to the natural landform, and in particular whether the building would break the skyline or the form of any ridges, hills or prominent slopes and whether it integrates with the natural landform;

3.2.3.6 The visibility of any utilities required to service the building;

3.2.3.7 Landscape planting and earthwork that assists in mitigation of any adverse landscape effects.

Restricted Discretionary Activities — Buildings and Outstanding Landscape Areas

3.2.4 Any building which does not comply with Rule 3.2.1 shall be a restricted discretionary activity if all of the following standards and terms are met:

3.2.4.1 The building is within the Lower Slopes of the Port Hills Area (as identified in the Planning Maps) or

3.2.4.2 In the areas shown on the Planning Maps as areas of Outstanding Landscape in the Malvern Hills and the High Country:

- (a) The building is associated with an activity which is located within the area of Outstanding Landscape; and
- (b) The building cannot effectively serve that activity if it is located on a site outside the area of Outstanding Landscape.

3.2.5 Under Rule 3.2.4, the Council shall restrict its discretion to consideration of:

3.2.5.1 The design of the building including height, size/scale, external finish, colour and reflectance value;

3.2.5.2 The appropriateness of the building site and its access having regard to geotechnical conditions and site stability;

3.2.5.3 The visibility of the building from land which is publicly owned and freely accessible by the public, including any area of curtilage if the building is a dwelling;

3.2.5.4 The extent to which the building, and if a dwelling, any associated curtilage may:

(a) Dominate or detract from openness, visual coherence, legibility or integrity of the landscape;

(b) Include earthworks or new planting to assist in mitigation of any adverse landscape effects;

(c) Use topography or vegetation to assist in mitigation or containment of visual effects;

(d) Break the skyline or interrupt the form of any ridges, hills or prominent slopes;

(e) Be visually prominent in an area characterised by high natural values;

(f) Affect the amenity values of adjoining properties.

3.2.5.5 Whether the landscape has further capacity to absorb change having regard to existing and consented development on adjoining sites and in the locality, and any benefits that can be obtained from clustering buildings.

3.2.5.6 Whether the proposal creates opportunities to protect open space, indigenous vegetation or nature conservation values.

3.2.5.7 The design and siting of any access to the building, and the visibility of that access, including any contrast with natural contours and the proposed revegetation of any earthworks.

3.2.5.8 The siting of any utilities installed to serve the building, including whether any water storage tanks, cables or pipes are to be placed underground.

3.2.5.9 Any positive effects to be created by the proposed building and its associated accessway.

3.2.5.9 Any monitoring or review conditions.

~~Controlled Activities — Buildings and Residential Density~~

~~3.10.3 Any dwelling on a separately saleable allotment with a continuous area of not less than 4 hectares, located within the Lower Slopes of the Port Hills and created by subdivision prior to the (insert date at which this plan change is notified).~~

~~3.10.4 Under Rule 3.10.3 the Council shall restrict its consideration to:~~

~~3.10.4.1 The design of the dwelling including height, size/scale, external finish, colour and reflectance value;~~

~~3.10.4.2 The appropriateness of the building site having regard to geotechnical conditions and site stability;~~

~~3.10.4.3 The visibility of the dwelling and its curtilage from public viewing points;~~

~~3.10.4.4 The design and siting of any access to the dwelling, including the visibility of the access, any contrast with natural contours and the proposed revegetation of any earthworks;~~

~~3.10.4.5 The siting of the dwelling in relation to the natural landform, and in particular whether the dwelling would break the skyline or the form of any ridges, hills or prominent slopes;~~

~~3.10.4.6 The visibility of any utilities required to service the dwelling;~~

~~3.10.4.7 Landscape planting and earthworks that assist in mitigation of any adverse landscape effects.~~

Reasons for Rules

Rule 3 manages the effects of buildings on adjoining property and other parts of the environment. District Plan rules are necessary to address these effects because they are not addressed in other legislation, and do not usually affect the people who own or occupy the building. Therefore, they are not matters people tend to consider when buying or erecting a building.....

Rule 3.2 addresses buildings in the Areas of Outstanding Landscapes shown on the Planning Maps. These areas have been identified as having very special landscape values (see Part B Section 1.4). The landscapes they contain have been modified by human activities, particularly by the clearance of indigenous scrub or forest, but they remain mostly free of large structures or buildings. The rules allow very small structures or buildings, such as tramping huts or water tanks, as permitted activities, provided they are finished in materials with low reflectivity values. The Plan allows larger buildings to be erected in these areas if they need to be located there, for example, a ski field development. These buildings require a resource consent, and the Council maintains discretion over the location, siting and design of the building and associated infrastructure. Buildings which do not need to locate in an area of Outstanding Landscape, such as a house which could be located on a property outside the area of Outstanding Landscape, are non-complying activities and are discouraged from locating there.

~~The provisions are slightly different for the Port Hills. The Port Hills landscape has been subject to greater levels of residential development than the areas in the Malvern Hills and High Country. The Plan provisions allows for low level residential development on the Port Hills but controls the siting, design and density of houses and other buildings, to reduce potential visual effects. The Plan provisions protect the area located between the summit and a distance of 30.46m vertically below the Summit Road. This approach is similar to the existing protection given under the Summit Road (Canterbury) Protection Act 2001. The Plan policies recognise that there may be some sites within the Upper Slopes where a dwelling could be erected with only minor visual effects. However, most residential development is encouraged~~

to locate in the Lower Slopes. Erecting houses in the Upper Slopes is therefore a discretionary activity and may be publicly notified. Erecting houses within the Lower Slopes is a restricted discretionary activity, to manage design and siting, and resource consent applications are non-notified.

The provisions are slightly different for the Port Hills. The area defined as Outstanding Natural Landscape on the Port Hills excludes some areas at the base of the hills where existing and intensive built development has occurred. With the exception of these limited areas, any residential development on the Port Hills requires resource consent where density is reduced below 40ha on the Lower Slopes (below the 60m and 160m contours) and 100ha on the Upper Slopes (above the 160m contour). The purpose of establishing these relatively stringent thresholds for residential density is to trigger resource consents for the siting and design of houses to reduce potential adverse visual effects, whilst recognising that there may be some sites within the Port Hills where a dwelling could be erected with only minor visual effects. The more liberal density standard for the Lower Slopes is however intended to enable some development to locate in this area.

In addition a Visual Amenity Landscape has been identified on the very lowest slopes of the Port Hills, involving the land generally located between the 20m and 60m contours. While the area remains within the Outstanding Natural Landscape, due to the extent of existing and consented development, the density controls on this area are set at 4ha. This area is limited in extent, but is an important boundary between the plains and the Port Hills and is characterised by high amenity and aesthetic values. Due to the pressure for closer subdivision and residential development and the prominence of the landscape it is appropriate that dwellings be subject to assessment in relation to matters concerning location, design and appearance.

The Plan provisions aim to protect the area located between the summit and a distance of 30.46m vertically below the Summit Road. This approach is similar to the existing protection given under the Summit Road (Canterbury) Protection Act 2001.

4.1 ROADING AND OUTSTANDING NATURAL LANDSCAPE AND PORT HILLS AREAS

Permitted Activities — Roading and Outstanding Landscape ~~and Port Hills~~ Areas

4.1.1 The forming, installation, upgrading, maintenance or replacement of any road shall be a permitted activity if the following condition is met:

4.1.1.1 In any area shown on the Planning Maps as an Outstanding Landscape Area ~~or the Port Hills Area~~, the formation of any road, road bridge or vehicular accessway is limited to the maintenance of existing roads, road bridges or vehicular accessways.

Restricted Discretionary Activities — Roading and Outstanding Landscape ~~and Port Hills~~ Areas

4.1.2 Any activity which does not comply with Rule 4.1.1 shall be a restricted discretionary activity if all of the following standards and terms are met:

4.1.2.1 The road is located in an area shown on the Planning Maps as:

- (a) An Outstanding Landscape Area in the High Country or the Malvern Hills;
or
- (b) The Lower Slopes or Visual Amenity Landscape of the Port Hills; and
- (c) The road or utility structure has to be located within that area.

5.5 OUTSTANDING LANDSCAPE AREAS – UTILITY STRUCTURES

Permitted Activities — Outstanding Landscape Areas – Utility Structures

5.5.1 In any area shown on the Planning Maps as an Outstanding Landscape Area ~~or the Port Hills Area~~ any utility structure which complies with the following conditions shall be a permitted activity:

5.5.1.1 Any utility structure erected does not exceed:

- (a) A gross floor area of 40m²;
- (b) A height of 8m with the horizontal dimension not exceeding 600mm above a height of 4m; and
- (c) A reflectance value of 37% (excluding fittings).

Restricted Discretionary Activities — Outstanding Landscape Areas – Utility Structures

5.5.2 Any activity which does not comply with Rule 5.5.1 or 5.5.2 shall be a restricted discretionary activity if all of the following standards are met:

The utility structure is located in an area shown on the Planning Maps as:

- (a) An Area of Outstanding Natural Landscape in the High Country or the Malvern Hills; or
- (b) The Lower Slopes or Visual Amenity Landscape of the Port Hills; and
- (c) The road or utility structure has to be located within that area.

5.6 OUTSTANDING LANDSCAPE AREAS – UTILITY BUILDINGS

Permitted Activities — Outstanding Landscape Areas – Utility

Buildings

5.6.1 In the areas shown on the Planning Maps ~~as the Port Hills Area and~~ as Outstanding Landscape Areas in the Port Hills, Malvern Hills and the High

Country, any utility building which complies with the following conditions shall be a permitted activity:

5.6.1.1 A maximum gross floor area not exceeding 40m²;

5.6.1.2 A maximum height not exceeding 4m; and

5.6.1.3 A maximum reflectance not exceeding 37%.

Restricted Discretionary Activities — Outstanding Landscape Areas – Utility Buildings

5.6.2 Any building which does not comply with Rule 5.6.1 shall be a restricted discretionary activity if all of the following standards and terms are met:

5.6.2.1.1 The building is within the Lower Slopes or Visual Amenity Landscape ~~of on~~ the Port Hills Area ~~(as identified in the Planning Maps)~~;

5.6.2.1.2 In the areas shown on the Planning Maps as areas of Outstanding Landscape in the Malvern Hills and the High Country:

(a) The building is associated with an activity which is located within the area of Outstanding Landscape; and

(b) The building cannot effectively serve that activity if it is located on a site outside the area of Outstanding Landscape.

5.6.3 Under Rule 5.6.2, the Council shall restrict its discretion to consideration of:

5.6.3.1 The design of the building including height, size/scale, external finish, colour and reflectance value;

5.6.3.2 The appropriateness of the building site having regard to geotechnical conditions and site stability;

5.6.3.3 The visibility of the building from land which is publicly owned and freely accessible by the public, including any area of curtilage if the building is a dwelling

5.6.3.4 The extent to which the building or structure may:

(a) dominate or detract from openness, visual coherence, legibility or integrity of the landscape;

(b) include earthworks or new planting to assist in mitigation of any adverse landscape effects;

(c) use topography or vegetation to assist in mitigation or containment of visual effects;

(d) break the skyline or interrupt the form of any ridges, hills or prominent slopes;

(e) be visually prominent in an area characterised by high natural values;

(f) affect the amenity values of adjoining properties.

5.6.3.5 Whether the landscape has further capacity to absorb change having regard to existing and consented development on adjoining sites and in the locality, and any benefits that can be obtained from clustering buildings or structures;

5.6.3.6 Whether the proposal creates opportunities to protect open space, indigenous vegetation or nature conservation values;

5.6.3.7 The design and siting of any access to the building or structure, and the visibility of that access, including any contrast with natural contours and the proposed revegetation of any earthworks;

5.6.3.8 The siting of any utilities installed to serve the building, including whether any water storage tanks, cables or pipes are to be placed underground;

5.6.3.9 Any positive effects to be created by the proposed building and its associated accessway.

5.6.3.10 Any monitoring or review conditions.

Reasons for Rules

Rule 5 manages effects of establishing, maintaining, upgrading and replacing utilities on the environment. These rules should be read in conjunction with Rule 1 – Earthworks and Rule 3 – Buildings. Cross references to other relevant rules are provided at the beginning of Rule 5.

Many activities involving utilities are undertaken by requiring authorities, using designations. In these cases, the District Plan rules may not apply. However, it is still necessary to have rules in the Plan, because:

- (a) Not all utilities are managed by requiring authorities;
- (b) Often utilities are installed by private developers as part of subdivisions or land uses. Some utilities may vest in the Council. The Plan needs to have rules for the undertaking of these activities, so the Council can manage the standard of utilities which will vest in the Council;

- (c) If rules in the District Plan allow activities as permitted activities, it may reduce the need for network utility operators to designate land; and
- (d) It is consistent with Part II and section 32 of the Act to provide for activities which have only minor effects on the environment as permitted activities.

The Outstanding Landscapes of the Port Hills, Malvern Hills and High Country are equally managed with only very small buildings and utility structures provided for as a permitted activity. In relation to the Port Hills, utilities are a restricted discretionary activity in the Lower Slopes and Visual Amenity Landscape of the Port Hills and a non-complying activity in the Upper Slopes. This is consistent with the rule structure for dwellings, where the Plan provides for a more lenient housing density within the Lower Slopes and Visual Amenity Landscape to encourage development to this part of the Port Hills and to maintain relatively open Upper slopes.

6.2 OUTDOOR SIGNS AND OUTSTANDING NATURAL LANDSCAPE AND PORT HILLS AREAS

Permitted Activities — Outdoor Signs and Outstanding Natural Landscape ~~and Port Hills Areas~~

- 6.2.1 Erecting any outdoor sign shall be a permitted activity if all of the following conditions are met:
 - 6.2.1.1 Any outdoor sign in any area shown on the Planning Maps as an Area of Outstanding Landscape ~~or the Port Hills Area~~ is limited to:

10.3 SUBDIVISION IN OUTSTANDING LANDSCAPE AREAS

10.1 SUBDIVISION GENERAL

Controlled Activities — Subdivision General

- 10.1.1 Any subdivision of land shall be a controlled activity if all of the following standards and terms are met:
 - 10.1.1.1 Any allotment created is not located within any of the following areas:
 - (a) Any areas shown on the Planning Maps as the Waimakariri Flood Category A area;
 - (b) Any area shown on the Planning Maps as the Lower Plains or Lake Ellesmere/Te Waihora flood areas;

- (c) Seaward of the Coastal Hazard Line, as shown on the Planning Maps;
and
 - (d) Between any waterbody and any stopbank designed to contain
floodwater from that waterbody;
- 10.1.1.2 Any allotment created is not located within an area shown on the
Planning Maps as an Area of Outstanding Landscape, except the Visual
Amenity Landscape on the Port Hills;

Restricted Discretionary Activities — Subdivision in Outstanding Landscape Areas

- 10.3.1 Any subdivision of land which does not comply with Rule 10.1.1.2 shall be a restricted
discretionary activity.
- 10.3.2 Under Rule 10.3.1, the Council shall restrict its discretion to consideration of:
- 10.3.2.2 All the matters listed in Rule 10.1.2;
 - 10.3.2.2 The capacity of the landscape to absorb change having regard to
existing geomorphologic features, building development and the
landscape and amenity values in the locality.
 - 10.3.2.3 Any effects of the proposed subdivision on the landscape values of the
area, including (but not limited to) whether the proposed allotment
boundaries follow the physical boundaries of natural features or changes
in the landscape, where practical;
 - 10.3.2.4 Any positive effects which may offset any adverse effects; and
 - 10.3.2.5 Any condition on the subdivision consent requiring a consent notice or
other mechanism to be placed on the Certificate of Title for any allotment
created, to alert prospective purchasers that erecting any dwelling or
other principal building within an area of Outstanding Landscape is not
permitted activity.

PLANNING MAPS

Amend Planning Maps 9 and 14 as shown on in Appendix 1 by:

- (i) adjusting the zone boundary of the Port Hills Zone to the 60m contour and applying the
notation for Outstanding Natural Landscape over the whole of the Port Hills Area.
- (ii) add a new Visual Amenity Landscape as shown on Maps 9 and 14.

Make consequential amendments to Map 134.

Appendix 2

PLAN CHANGE 6 (PC 6)– SUMMARIES OF SUBMISSIONS AND FUTHER SUBMISSION Lower Port Hills and Summit Road Protection Area Note: The Position of further submitters is shown either in support or opposition to the primary submitter.					
Submission Number	Submitter/Further Submitter	Point	Position	Decision Requested	Recommendation
1259	Ogg Ralph Edwin	1259.1	Oppose	That the contour lines remain at 60 metres.	Accept in part
1259F	Ogg Ralph Edwin		Support		Accept in part
1264F	Basapole Limited		Support		Accept in part
1260	Rogers John F & Jill A	1260.1	Support	Approve the change.	Accept in part
1264F	Basapole Limited		Oppose		Accept in part
1270F	Ahuriri Farm Ltd		Oppose		Accept in part
1262	Young Roger & Kaye	1262.1	Support	Adopt the Plan Change.	Accept in part
1264F	Basapole Limited		Oppose		Accept in part
1270F	Ahuriri Farm Ltd		Oppose		Accept in part
		1262.2	Support	Rezone the lowest slopes.	Accept
1263	Watson RK Family Trust	1263.1	Oppose	Remove any references to "separately saleable allotment" or similar from grandfather clause. Amend proposed Rural Rule 3.10.3 to read "Any dwelling on an allotment with a continuous area of not less than 4 hectares..."	Accept in part
		1263.2	Oppose	Amend Rural Rule A3.10.3 to read: "The erection of a dwelling on an allotment with a continuous area of not less than 4 hectares..."	Reject
		1263.3	Oppose	Amend Rural Rule 1.4.2.5 to read: "Any other earthworks which shall not exceed 25m ³ per hectare or no more than 100m ³ per site (whichever is the lesser) in any five year period."	Accept in part
1264	Basapole Limited	1264.1	Oppose	Exempt the Ahuriri Valley from the provisions of Proposed Plan Change 6. Or Introduce a new rule and related policy guidance to provide for minimum lot sizes in the Ahuriri Valley between 20m and 60m contour levels of 4 hectares.	Reject Accept in part
1266F	Horgan Gerg		Support		Accept in part

1265	Smith John	1265.1	Oppose	To amend Planning Map 014 by moving the Inner Plains/Port Hills boundary to either follow the 60m contour or to follow the property boundary of Lot 1 DP 68416, being land located on Old Tai Tapu Road.	Accept in part
		1265.2	Oppose	All other appropriate, necessary and consequential amendments including those to issues, strategy, objectives, policies, methods, explanations and reasons, rules and planning maps to give full effect to this submission.	Accept in part
1266	Horgan Greg	1266.1	Oppose	That the proposed Plan Change 6 be deleted in its entirety.	Reject
1298F	Federated Farmers (North Canterbury)		Support		Reject
		1266.2	Oppose	Reject the proposed amendment to Earthworks Rule 1.4.2.5; amend rule 1.4.2.5 so that it is consistent with the maximum volumes of earthworks permitted as prescribed in the Land and Vegetation Management Regional Plan, Part II, Earthworks and Vegetation Clearance, Port Hills, so as to read: "any other earthworks not exceeding 100m ³ in any one hectare in any ten year period".	Accept in part
1298F	Federated Farmers (North Canterbury)		Support		Accept in part
		1266.3	Oppose	Incorporate 'access' into clauses 3.2.3.2 and 3.10.4.2 so as to read: "the appropriateness of the building site <u>and access</u> having regards to geotechnical conditions and site stability".	Accept
1298F	Federated Farmers (North Canterbury)		Support		Accept
		1266.4	Oppose	Incorporate within Proposed Plan Change a definition for 'public viewing point'.	Accept in part
		1266.5	Oppose	Incorporate an additional clause in 3.2.3 and 3.10.4 which allows for 'any positive effects of a proposed building or accessway' to be taken into account.	Accept
		1266.6	Oppose	The grandfather clause be amended to read: "any dwelling on a separately saleable allotment with a continuous area of not less than 4 hectares, located within the Lower Slopes of the Port Hills and created by subdivision prior to the 29 November 2008, or a subdivision consent has been granted to create the allotment within this timeframe and that	Accept in part

				subdivision consent".	
1298F	Federated Farmers (North Canterbury)		Support		Accept in part
1267	Selwyn District Council	1267.1	Support in part	<p>Amend Rural Rules - Buildings, 3.10 Buildings and Residential Density by amending the wording of 3.10.2 and adding a new clause so that it reads as follows:</p> <p>"3.10.2 Any dwelling on any allotment which does not comply with Rule 3.10.1 shall be a permitted activity if the allotment is a separately saleable allotment with a continuous area not less than 4 hectares; and</p> <p>3.10.2.1 The allotment has been bought, sold or created by subdivision within the ten years immediately preceding notification of the Rural Volume of the Proposed District Plan (that is on or after 12 September 1991 but before 12 September 2001) or a subdivision consent has been granted to create the allotment within this timeframe and that subdivision consent has not lapsed; or</p> <p>3.10.2.2 All of the following conditions are met:</p> <p>(a) the allotment is located within the Lower Slopes of the Port Hills; and</p> <p>(b) the existing ground level of the dwelling site is wholly located below 60m above mean sea level; and</p> <p>(c) the allotment is held in its own Certificate of Title which existed on or before 29 November 2008; or a subdivision consent has been granted to create the allotment on or before 29 November 2008 and that the subdivision consent has not lapsed.</p>	Accept in part
1266F	Horgan Greg		Oppose		Accept in part
1290F	Chapman Dennis & Deborah		Support in part		Accept in part

		1267.2	Support in part	<p>Amend 3.2 Buildings and Outstanding Landscape Areas by adding the following new rules as 3.2.2 and 3.2.3 and renumbering all others accordingly: "Controlled Activities - Building and Outstanding Landscape Areas</p> <p>3.2.2 Any building which does not comply with Rule 3.2.1 shall be a controlled activity if all of the following conditions are met:</p> <p>3.2.2.2 The existing ground level of the building site is wholly located below 60m above mean sea level. 3.2.3 Under Rule 3.2.2 the Council shall restrict its consideration to:</p> <p>3.2.3.1 The design of the building including height, size/scale, site coverage, materials, façade articulation, colour and reflectance value;</p> <p>3.2.3.2 The appropriateness of the building site having regard to geotechnical conditions and site stability;</p> <p>3.2.3.3 The visibility of the building and if a dwelling, its curtilage from public viewing points;</p> <p>3.2.3.4 The design and siting of any access to the building, including the visibility of the access, any contrast with natural contours and the proposed revegetation and naturalistic re-contouring of any earthworks;</p> <p>3.2.3.5 The siting of the building in relation to the natural landform, and in particular whether the building would break the skyline of the form of any ridges, hills or prominent slopes;</p> <p>3.2.3.6 The visibility of any utilities required to service the building;</p>	Accept in part
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				3.2.3.7 Landscape planning and earthworks that assists in mitigation of any adverse landscape effects.	
1266F	Horgan Greg		Oppose		Accept in part
1290F	Chapman Dennis & Deborah		Support in part		Accept in part
		1267.3	Support in part	Amend Restricted Discretionary Activities - Building and Outstanding Landscape Areas existing Rule 3.2.2 so that the first sentence reads as follows: "Any building which does not comply with Rule 3.2.1 or 3.2.2 shall be a restricted discretionary activity..." Along with any other consequential amendments to cross-references, reasons for rules or assessment matters that may be affected by the changed numbering and new provisions.	Reject
1266F	Horgan Greg		Oppose		Accept
		1267.4	Support in part	To increase the permitted volume of earthworks to a maximum that is greater than 20m ³ but does not exceed 150m ³ on any one site which is the maximum permitted in other Outstanding Landscapes in the District.	Accept in part
1266F	Horgan Greg		Oppose		Accept in part
1290F	Chapman Dennis & Deborah		Support in part		Accept in part
1268	Macartney Hugh James	1268.1	Oppose	That the Council reject the Plan Change 6 in its entirety.	Reject
1269	KH Macartney Trust	1269.1	Oppose	That the Council reject the Plan Change 6 in its entirety.	Reject
1298F	Federated Farmers (North Canterbury)		Support		Reject
1270	Ahuriri Farm Ltd	1270.1	Oppose	That the Council should remain with the current rules relating to subdivision and earthworks on the Port Hills Lower Slopes.	Accept in part
1264F	Basapole Limited		Support		Accept in part
		1270.2	Oppose	That the Council should remain with the current rules relating to subdivision and earthworks on the Port Hills Lower Slopes.	Accept in part
1271	Watson Raymond Keith	1271.1	Oppose	That the Proposed Plan Change 6 be in its entirety rejected.	Reject
1264F	Basapole Limited		Support		Reject

1298F	Federated Farmers (North Canterbury)		Support		Reject
1272	Logan Helen Elizabeth	1272.1	Oppose	That the Proposed Plan Change 6 be in its entirety rejected.	Reject
1264F	Basapole Limited		Support		Reject
1298F	Federated Farmers (North Canterbury)		Support		Reject
1273	Canterbury Regional Council	1273.1	Oppose	That clause 3.10.3 is amended to read as follows: <u>Controlled Activities - Buildings and Residential Density</u> 3.10.3 Any dwelling on a separately saleable allotment with a continuous area of not less than 4 hectares, located <u>between the 20m and 60m contours</u> within the Lower Slopes of the Port Hills and created by subdivision prior to the (insert date at which this Plan Change is notified). <u>Note: Prior to Plan Change 6 to the Selwyn District Plan the land between the 20m and 60m contour was zoned Inner Plains. Subdivision to 4ha in area was provided for as a controlled activity with the erection of a dwelling on the allotment being permitted. Clause 3.10.3 enables the development rights to erect a dwelling on any allotment not less than 4ha created prior to (insert date) to be given effect too.</u>	Accept in part
1266F	Horgan Greg		Oppose		Accept in part
1283F	Summit Road Society		Support		Accept in part
1290F	Chapman Dennis & Deborah		Support in part		Accept in part
1298F	Federated Farmers (North Canterbury)		Oppose		Accept in part
		1273.2	Support	That in all other matters, Proposed Plan Change 6 be approved.	Accept in part
1266F	Horgan Greg		Oppose		Accept in part
1269F	KH Macartney Family Trust		Oppose		Accept in part
1290F	Chapman Dennis & Deborah		Oppose		Accept in part
1270F	Ahuriri Farm Ltd		Oppose		Accept in part
1298F	Federated Farmers (North Canterbury)		Oppose		Accept in part

1274	Gillanders Jennifer	1274.1	Oppose	Please reject the Plan Change. I oppose proposed Plan Change 6 in its entirety including all policies, rules and assessment matters and reasons for rules.	Reject
1275	Gillanders Keith George	1275.1	Oppose	To reject Plan Change 6 in its entirety.	Reject
1276	Drinnan Investments	1276.1	Oppose	<p>The submitter states that: the policies and rules contained within PC6 fail to achieve the sustainable purpose of the RMA 1991 and do not fulfil the requirements of s6b. The proposed rules provide an inappropriate level of control for the lower Port Hills, and there has been inadequate consideration of alternatives, costs and benefits in a s32 analysis. PC6 ignores earlier consultation with affected parties on the 60m contour line where the line was determined based on historical development and horticultural practices.</p> <p>The Plan Change does not provide for those landowners to establish a dwelling as a controlled activity who have lawfully been granted resource consent to subdivide, or who have sought consent to subdivide, but have not created titles prior to the date of notification of the Plan Change. The justification for the 20m contour line appears to be for ease of plan administration purposes, and not for specific landscape protection reasons. Areas between the 20m-60m contour do not warrant the imposition of the restrictive controls proposed.</p>	Accept in part
1264F	Basapole Limited		Support		Accept in part
		1276.2	Oppose	<p>Provide for dwellings located within the Lower Slopes of the Port Hills, having continuous areas of not less than 4 hectares, on allotments approved by Council prior to 28 November 2008 as a permitted activity as follows: "3.10 Buildings and Residential Density</p> <p>Permitted Activities - Building and Residential Density <u>3.10.3 Any dwelling on an allotment located within the Lower Slopes of the Port Hills, with a continuous area of not less than 4 hectares where that allotment is associated with a subdivision consent granted by Council or where an</u></p>	Accept in part

				<p><u>approved subdivision consent has not lapsed prior the 29 November 2008, shall be a permitted activity if all of the following conditions are met: a) No building has a maximum reflectance exceeding 37%. Controlled activities - Buildings and Residential Density 3.10.4 Erecting any dwelling on an allotment which does not comply with the conditions in Rule 3.10.3 shall be a controlled activity.</u></p> <p><u>3.10.5 Under Rule 3.10.4 the Council shall restrict its consideration to:</u></p> <p><u>3.10.5.1 The design of dwelling including height, size/scale, external finish a reflectance value;</u></p> <p><u>3.10.5.4 The design and siting of any access to the dwelling, including the visibility of the access, any contrast with natural contours and the proposed re-vegetation of any earthworks;</u></p> <p><u>3.10.5.5 The siting of the dwelling in relation to the natural landfall, and in particular with the dwelling would break the skyline or the form of any ridges, hills or prominent slopes;"</u></p> <p>Amend the grandfather clause in 3.10 to provide for dwellings to be erected if there have been minor adjustments in lot boundaries and right of way locations relating to Lot 1-6 of subdivision R307290, being a subdivision consent to subdivide Lot 2 DP 336164 and Lot 3 DP 300940, Otahuna Road, Tai Tapu that do not result in additional lots or additional development potential to occur.</p>	
		1276.4	Oppose	<p>Amend the subdivision rules to provide for minor adjustments in lot boundaries and right of way locations relating to Lots 1-6 of subdivision R307290, being a subdivision consent to subdivide Lot 2 DP 336164 and Lot 3 DP 300940, Otahuna Road, Tai Tapu that does not result in additional lots or additional development potential occur. And any other consequential amendments necessary to give effect to the above.</p> <p>Or In The Alternative. Add the following to Rule 3.10.3 as</p>	Reject

				<p>follows: "3.10.3 Any dwelling on an allotment located within the Lower Slopes of the Port Hills, with a continuous area of not less than 4 hectares where that allotment is associated with a subdivision consent granted by Council or where an approved subdivision consent has not lapsed prior the 29 November 2008. <u>Any dwelling on proposed or approved Lots 1-6 of subdivision R307290, being a subdivision consent to subdivide Lot 2 DP 336164 and Lot 3 DP 300940, Otahuna Road, Tai Tapu is a permitted activity. This also provides for any minor adjustments in lot boundaries and right of way locations relating to Lots 1-6 of subdivision R307290, being a subdivision consent to subdivide Lot 2 DP 336164 and Lot 3 DP 300940, Otahuna Road, Tai Tapu that do not result in additional lots or additional development potential to occur.</u>"</p> <p>And any other consequential amendments necessary to give effect to the above.</p>	
		1276.4	Oppose	<p>Or In The Alternative. Retain the zoning of Lot 2 DP 336164 and Lot 3 DP 300940, Otahuna Road, Tai Tapu as Inner Plains.</p> <p>And any other consequential amendments necessary to give effect to the above.</p>	Accept
1277	Watson Robyn Joyce	1277.1	Oppose	That Proposed Plan Change 6 in its entirety be rejected.	Reject
1264F	Basapole Limited		Support		Reject
1298F	Federated Farmers (North Canterbury)		Support		Reject
1278	Stackwood Thora	1278.1	Oppose	That Mrs Stackwood's hill block be listed as exempt along with those on Early Valley Road and Holmeswood Rise.	Reject
1279	Ryan Grania Helen	1279.1	Oppose	That proposed Plan Change 6 in its entirety is rejected.	Reject
1264F	Basapole Limited		Support		Reject
1280	Ryan John Joseph	1280.1	Oppose	That proposed Plan Change 6 is revoked in all forms.	Reject
1298F	Federated Farmers (North Canterbury)		Support		Reject
1281	Parkinson Annette Eva	1281.1	Oppose	To leave this as the status quo.	Accept in part

1283	Summit Road Society (Inc)	1283.1	Support	That Plan Change 6 be adopted.	Accept in part
1264F	Basapole Limited		Oppose		Accept in part
1268F	Macartney Hugh James		Oppose		Accept in part
1270F	Ahuriri Farm Ltd		Oppose		Accept in part
1298F	Federated Farmers (North Canterbury)		Oppose		Accept in part
1284	Florence David & Andrew	1284.1	Oppose	<p>That those parts of Plan Change 6 relating to earthworks, buildings, subdivision and the zone boundary of the Port Hills and Inner Plains Zones and Outstanding Landscape notation on the planning maps be deleted in their entirety i.e the proposed amendments listed under 3, 12, 13, 14, 17 and 18 in the notified change document.</p> <p>Less preferred option: That those parts of Plan Change 6 relating to earthworks, buildings, subdivision and the zone boundary of the Port Hills and Inner Plains Zones be deleted. Rezone the land between the 20m and 60m contour in the Selwyn District as a Visual Amenity Port Hills Zone and amend the District Planning Maps to remove the Outstanding Landscape notation from this area. The following rules below shall apply to subdivision, dwellings and earthworks in the Visual Amenity Port Hills Zone. In all other respects the rules shall be as for the Lower Port Hills Zone:</p> <ul style="list-style-type: none"> • Subdivision is a controlled activity for allotments of 4ha or greater, and non-complying below 4ha; • Earthworks exceeding 100m³ in any one hectare area, are a controlled activity with respect to the visual effects of the earthworks • Dwellings are a controlled activity and the Council shall restrict its considerations to: <ul style="list-style-type: none"> – The design of the dwelling including height, size/scale, external finish, colour and reflectance value; 	Accept in part

			<ul style="list-style-type: none">- The appropriateness of the building site having regard to geotechnical conditions and site stability;- The visibility of the dwelling and its curtilage from public viewing points;- The design and siting of any access to the dwelling, including visibility of the access, any contrast with natural contours and the propose re-vegetation of any earthworks; <p>- The siting of the dwelling in relation to the natural landform and in particular whether the dwelling would break the skyline or the form of any ridges, hills or prominent slopes;</p> <p>- The visibility of any utilities required to serve the dwelling;</p> <p>- Landscape planting, earthworks and any other measures or features that assist in mitigation of any adverse landscape effects</p> <ul style="list-style-type: none">• The District Plan rules shall also be amended to state that any application for consent under the above subdivision, earthworks and land use rules i.e. for controlled activity subdivision or land use consent in the Visual Amenity Port Hills Zone shall not require the written consent of other persons and shall be non-notified• The above rules shall also apply to earthworks, dwellings and subdivision in the Port Hills Zone where it can be illustrated by survey that the actual location of the activity is below the 60m contour <p>Consequential amendments are sought as necessary to the District Plan objectives and policies to give effect to the above amendments e.g. Policy B1.4.5 should be amended to recognise that only the Port Hills above the 60m contour is outstanding landscape, additional explanation and Reasons for Rules may be necessary to explain the Visual Amenity Landscape provisions and new/amended rules.</p>	
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				Least preferred relief: As for the less preferred relief outlined above except that the Visual Amenity Port Hills Zone and deletion of the Outstanding Landscape notation on the District Planning maps shall only apply to land between the 20m and 60m contour located north of the southern edge of the North/South demarcation line shown on the map (Appendix 1 of the Peter Rough Landscape Architects 2006 report)	Accept in part
1266F	Horgan Greg		Support		Accept in part
1290F	Chapman Dennis & Deborah		Support		Accept in part
1298F	Federated Farmers (North Canterbury)		Support		Accept in part
1285	Duff Ian Hartley	1285.1	Support in part	Reword appendix 1, page 2, Explanation first bullet point to "identifying the whole of the <u>Rural Port Hills zone</u> as an Outstanding Landscape on the Planning Maps 9 and 14."	Accept in part
		1285.2	Oppose	The correction of Map 14 errors (both sheets) and the associated maps in Appendix 5 relating to our property at 60 Early Valley Road as detailed in the above text and broadly in accordance with my Map A. - Replace the green line on Map 14 indicating exclusion areas by a boundary that is definable along internal property boundaries and by reference to specified contour heights (e.g. 20 & 60 metres) where applicable. The same request is made in respect of the other 3 exclusion zones on Maps 9 & 14 and on the maps in Appendix 5 that these exclusion zones are clearly labelled as being zoned Rural Inner Plains. - Amend Planning Maps 9 & 14 by adjusting the zone boundary of the Port Hills as shown on the attached map (after correcting errors) and include the notation for Outstanding Natural Landscape over the whole of the Rural Port Hills. - That all contour heights be referred to in the District Plan are referenced back to a clearly defined datum zero. That datum zero could be either MSL, MHWS, a spheroid zero defined by LINZ, or a defined height below a specified benchmark. The key thing is that it needs to be specified in	Accept Accept in part

				the District Plan.	
		1285.3	Oppose	3.10.3 Substitute 29 November 2008 for the current last 9 words in 3.10.3. It would then read: "3.10.3 Any dwelling on a separately saleable allotment with a continuous area of not less than 4 hectares, located within the Lower Slopes of the Port Hills and created by subdivision prior to 28 November 2008."	Accept in part
		1285.4	Oppose	Change rule 1.4.2 to by adding the words Rural and Zone. "1.4.2 Within Rural Port Hills <u>Zone</u> , the following earthworks shall be a permitted activity;" Delete existing rule 1.4.2.5 and replace with: "1.4.2.5 Any other earthworks where the volume of earth disturbed, removed or deposited does not exceed 100m3 per project."	Accept in part
		1285.6	New	Add a new rule: "1.4.2.6 Any such excavation as in 1.4.2.5 shall have a cut height not exceeding one metre".	Accept
1286	Cameron Norma Rose	1286.1	Oppose	Rejection of Plan Change 6 in its entirety.	Reject
1264F	Basapole Limited		Support		Reject
1287	Cameron Brian Kennedy	1287.1	Oppose	Rejection of Plan Change 6 in its entirety.	Reject
1264F	Basapole Limited		Support		Reject
1288	Whelan Grant Andrew	1288.1	Oppose	I seek that this Plan is rejected in its entirety.	Reject
1264F	Basapole Limited		Support		Reject
1289	Whelan Helen Gwenda	1289.1	Oppose	I seek that this Plan is rejected in its entirety.	Reject
1264F	Basapole Limited		Support		Reject
1290	Chapman Dennis & Deborah	1290.1	Oppose	That PC6 be deleted in its entirety. That the submitter's land be excluded from the effect of PC6. Or, in the alternative, that the submitter's land be excluded from the effect of PC6; and in addition, that the construction of a new residential dwelling on the submitter's land be provided for as a permitted activity in recognition of the level of development currently surrounding the land.	Reject Reject
1264F	Basapole Limited		Support		Reject

1291	Mingard Hugh Francis	1291.1	Oppose	I would like the Council to reject all aspects of the proposed Plan Change relating to the Lower Port Hills slopes.	Reject
		1291.2	Oppose	The Council should honour all existing commitments to landowners (subdivision consents, building consents).	Accept
		1291.3	Oppose	If the Council feels greater controls are necessary on building activities on the Lower Slopes it should consider discretionary controls, not changes in minimum subdivision size.	Accept
1292	Mingard Susan	1292.1	Oppose	Reject Proposed Plan Change 6 where it relates to land between the 20m and 60m contour. Consider either Option 3 or retaining the status quo (option 1) with the addition of controls on the erection of dwellings.	Accept in part
		1292.2	Oppose	If option 2 is adopted then as a minimum: <ul style="list-style-type: none"> • Include landowners who have been legally granted consent to subdivide under the 'grandfather clause' even if they have not been granted separate titles. 	Accept in part
		1292.3	Oppose	If option 2 is adopted then as a minimum: Give more consideration to what constitutes sustainable land management, reasonable and economic use of land and appropriate/inappropriate use and development in this area.	Accept in part
1293	Macartney Jennifer Robyn	1293.1	Oppose	The Selwyn District Council should reject the Plan Change in its entirety.	Reject
1264F	Basapole Limited		Support		Reject
1294	Director General of Conservation	1294.1	Support	Accept the Plan Change in its entirety.	Accept in part
1264F	Basapole Limited		Oppose		Accept in part
1270F	Ahuriri Farm Ltd		Oppose		Accept in part
1298F	Federated Farmers (North Canterbury)		Oppose		Accept in part
1295	Horticulture New Zealand	1295.1	Oppose in part	Provide for planting of berry and orchard trees on the lower Port Hills (20-60 metres contour, by deleting orchard trees and vines from the definition of 'plantation' or providing for such plantings as a permitted activity within the 20-60 metre contour lines of the Port Hills).	Accept in part

1298F	Federated Farmers (North Canterbury)		Support		Accept in part
		1295.2	Oppose in part	Amend definition of 'plantation' by deleting 'orchard, vineyard'.	Accept in part
1298F	Federated Farmers (North Canterbury)		Support		Accept in part
		1295.3	Oppose in part	Either delete 'structure' from Policy B1.4.9 or add a definition to clarify that it is structures over 2 metres in height and ensure that structures associated with horticulture activities are provided for as a permitted activity.	Reject
1298F	Federated Farmers (North Canterbury)		Support		Reject
1296	Orsum Park Ltd	1296.1	Oppose	I believe you have not completed your obligations to consult with the community. Request that PC6 be revoked and further consultation with the community start immediately.	Reject
1296F	Basapole Limited		Support		Reject
1297	Ahuriri Farm Limited	1297.1	Oppose	Include an objective and policy statement to cater for the grandfather clause already proposed through Plan Change 6 which enables a dwelling to be erected as a controlled activity on existing 4 ha allotments created up until the date of notification of this Plan Change and which also allows a similar grandfather clause where subdivision consent has been granted but titles have not yet issued.	Accept in part
		1297.2	Oppose	i. Amend rule 3.10.3 so that the controlled activity status will also apply to lots where subdivision consent has been granted but Titles have not been issued: and further amend to make clearer how that rule fits with rule 3.10.2 by use of additional words to rule 3.10.3 or by adding notes or by use of alternative terminology. Alternative wording will be presented at the hearing on this matter for the Councils consideration. ii. Amend the reasons for rules as appropriate to giving effect to the proposed amendment above.	Accept in part

1298	Federated Farmers (North Canterbury)	1298.1	Oppose	Federated Farmers seeks that the Council reject the proposed Plan Change.	Reject
1295F	Horticulture New Zealand		Support		Reject