

**Selwyn District Council
Proposed Plan Change 6
Lower Port Hills and Summit Road Protection Area
Section 42A / Planning Report**

Introduction

1. This report is concerned with proposed Plan Change 6 (PC6) to the Selwyn District Plan. It has been commissioned by the Selwyn District Council in accordance with Section 42A of the Resource Management Act (RMA) to consider all submissions received following public notification of the Plan Change and to make recommendations.
2. The report has been prepared by Nicola Rykers. I am a Director and Senior Planner with the firm of Boffa Miskell Ltd, a planning, design and ecology consultancy, based in the company's Christchurch office. I hold a Batchelor of Regional Planning Degree with Honours from Massey University and I have 21 years experience working for both local government and in private consultancy throughout the South Island. I am a full Member of the New Zealand Planning Institute.
3. The purpose of this report is to bring to the attention of the Commissioner the relevant information and issues regarding this plan change, along with recommendations on the submissions and further submissions. It must be emphasised that the conclusions and recommendations made in this report are my own and are not binding upon the Commissioner. It should not therefore be assumed that the Commissioner would reach the same conclusion as the writer, having considered all the evidence to be presented at a hearing.
4. The Plan Change was notified on 29 November 2008 with submissions closing on 16 February 2009. Further submissions were notified on 7 March 2009 and closed on 3 April. A copy of the proposed Plan Change is attached as Appendix 2 to this report.
5. A total of 38 submissions were received to PC6 and 9 parties lodged further submissions. These submissions covered the full spectrum from support, to amendments to the provisions, through to withdrawal of the plan change.
6. This report is structured as follows:

Part I: Overview of Proposed Plan Change

Part II Background

Part III: Submissions

Part IV: Statutory Analysis

Part V: Recommendations

7. Appended to this report are the following:

Appendix 1: Landscape Report

Appendix 2: Proposed Plan Change 6 (with track changes to show Recommendations)

Appendix 3: Recommendations

Appendix 4: District Plan as amended by Recommendations

Appendix 5: Relevant statutory provisions from the Resource Management Act

Appendix 6: Relevant objectives and policies from the Selwyn District Plan

Appendix 7: Aerial Photos

PART I – OVERVIEW OF PROPOSED PLAN CHANGE

8. Proposed PC6 is specifically concerned with the landscape related provisions applying to the Port Hills. It amends 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. Exceptions are made to parts of Early Valley Road, and subdivisions at Rocklands, Otahuna and Holmeswood Rise. These exceptions reflect the nature and density of existing built development in these locations where the degree of modification diminishes the significance of landscape values from Outstanding.

9. 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. These amendments include:

- identifying of the whole of the Port Hills as an Outstanding Natural Landscape (ONL) on Planning Maps 9 and 14, and achieving consistency with Policy B1.4.5¹;

¹ See Appendix 6 to this report, which contains the objectives and policies relevant to PC6 from the Selwyn District Plan.

- 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;
- introducing 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;
- changing the earthworks rule for the Port Hills to 20m³ every five years within a site;
- adding 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;
- adding assessment matters for applications for forestry, subdivision and dwellings;
- removing reference to forestry guidelines that have not been developed;
- up-dating text under the Reasons for Rules for buildings and utilities in the Rural Zone;
- zoning an area alongside Early Valley Road as Rural Port Hills and Rural Inner Plains which was previously unzoned on the Planning Maps.

10. The Section 32 Report accompanying the Plan Change sets out the reasons for these proposed amendments and I shall summarise these as follows:

Rezoning

11. Rezoning the lowest slopes of the Port Hills i.e. land between the 20m and 60m contour, from Rural Inner Plains to Rural Port Hills is proposed on the basis that the 60m contour is not a defensible landscape boundary for the Port Hills. The majority of the land between the 20m and 60m contour is seen as part of the wider Port Hills environment and part of an ONL. By excluding this area from the Rural Port Hills Area and ONL category the Council could be criticised for not fulfilling its statutory obligations under Section 6(b) of the RMA.
12. In addition, omitting the ONL notation on the Planning Maps for the Port Hills is inconsistent with the identification of other ONLs in the DP. This also results in an

information gap on the maps, which many people use as a first point of reference when investigating the zoning and rules which may apply to a site.

Dwelling Density

13. The identification and mapping of the lowest slopes as ONL triggers rules that control dwelling density and subdivision that previously only applied to the Lower Slopes of the Port Hills (i.e., land between 60m and 160m contours). Development below the 60m contour now needs to comply with a dwelling density of 1:40ha and subdivision as a restricted discretionary activity.
14. In preparing PC6 Council was concerned that there may be landowners who had lawfully subdivided allotments down to 4ha in accordance with the Inner Plains rules but not yet erected a dwelling. Consequently, the Council wished to ensure that PC6 included a “grandfather” clause which enabled a dwelling to be erected as a controlled activity on existing 4ha allotments created up until the date of notification of this plan change.
15. With respect to land in Early Valley Road not previously zoned, the proposed Plan Change remedies this error and improves the accuracy of the District Plan.

Earthworks

16. The existing DP rule provides for earthworks up to 20m³ in any one hectare in any five year period. The Council found this rule difficult to interpret and administer with clarity. Some people have interpreted the rule as a cumulative volume e.g., a 5ha property could be allowed 100m³ of earthworks. I am not clear on how the existing rule was intended to be administered. I do understand that Council had intended earthworks to be more restrictive in ONLs compared with other parts of the District and it is the intention that there is a low threshold for earthworks in ONLs in order consider effects on landscape values.

Summit Road Protection Area

17. The DP does not impose any rules or restrictions on amenity planting, shelterbelts or plantations in the Summit Road Protection Area. There is however DP policy to avoid exotic plantations in this area². The Council is concerned that all tree planting has the potential to adversely affect the landscape values along this important scenic corridor and accordingly, has prepared PC6 which proposes that policy and rules are aligned such that a consent process is triggered for all tree planting in the Summit Road Protection Area, regardless of its intended use.

² Policy B1.4.6

Additional Assessment Matters

18. PC6 includes additional assessment matters to provide more certainty and guidance in consideration of the potential effects of plantations and dwellings on the Port Hills. An additional assessment matter is also proposed for subdivision.

Additional Wording in Policies

19. PC6 proposes additional wording to Policy B1.4.6 so that shelterbelt and amenity planting is avoided in the Summit Road Protection Area. Further wording is also added 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 are intended to provide a clear linkage or relationship between rules, assessment matters and the policies guiding landscape protection on the Port Hills.

PART II - BACKGROUND

20. I will now set out the background leading to preparation of PC6, which requires looking back to preparation of the Proposed District Plan (PDP).
21. To assist with identifying the outstanding landscapes of Selwyn District for the PDP, the Council engaged Lucas and Associates Ltd. I understand that this study was based on geomorphic characteristics of the landscape and then refined through a consultation-led process. The PDP as notified in September 2001 recognised the Port Hills as an Area of Outstanding Natural Landscape (ONL) but this recognition was limited to wording in a proposed policy. No notation was shown on any Planning Maps.
22. In November 2002, prior to the hearing of submissions concerned with the Port Hills and landscape issues, the Council decided a Variation was necessary to clarify and show the Port Hills as an ONL on the planning maps. This was prepared and involved an amendment to the relevant planning maps to show the Port Hills Area as an ONL. The boundaries of the ONL extended down from the summit ridge (at the District boundary) to the 60m contour. In addition to showing the notation for the ONL, the Variation distinguished between the upper and lower slopes of the Port Hills by marking a line along the 160m contour on the planning maps. Different rules for subdivision and land use activities were then proposed between the upper and lower slopes.
23. Lucas and Associates reported on the landscape issues identified in submissions for the PDP and the Port Hills Variation. This report was then peer-reviewed by Mr

Densem, a consulting landscape architect. I consider it is relevant to note that both the Technical Report writer and the peer reviewer³ agreed on the following matters:

- the Port Hills are an Outstanding Natural Landscape;
- that the Port Hills should be regarded as running right down to the plains, rather than terminating at the 60m contour;
- that the main ridgelines are best maintained as extensive landscapes e.g., those near Motukarara, south of Tai Tapu;
- that the upper parts of the Port Hills should remain in extensive land uses (100ha minimum allotments);
- 20ha lot sizes would be likely to erode outstanding natural landscape values.

24. The submissions on the PDP and the Variation were heard together in February 2004. I am unclear as to where the reference for the 60m contour originated from and this was not discussed in the Explanation to the Variation. The decision⁴ does however make reference to interested parties identifying the 60m contour as an appropriate boundary to the ONL, as it represents the upper extent of intensive horticultural practices and existing significant residential development. It was also thought to represent the line below which views of the lowest slopes were obscured to middle and long distance views by existing vegetation.

25. Matters from the Council's decision relevant to this plan change include the following:

- it was not accepted that the lowest (up to 60m) and lower (60 to 160m) slopes should be subject to the same management regime;
- the lowest slopes (up to 60m) were included in the Inner Plains Area 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 Area where subdivision is a restricted discretionary activity and there are varying standards for dwelling density above the 160m contour (1:100ha) and below the 160m contour (1:40ha);
- that part of the Variation seeking to show the notation for an Area of Outstanding Landscape on the Port Hills on the planning maps was not accepted;
- there is discussion in the text of the decision that an explanation could be added to Planning Map 29 (which at that time was a separate map showing the

³Pages 2 and 3, paragraphs 3.1, 4.1, 4.2, 6.1 and 6.3 - Peer Review of Technical Report, Densem, January 2004

⁴ Page 48 Recommendations of Hearing Panel, Natural Environment – Port Hills

boundaries of the “Port Hills Area”) to clarify that the Port Hills is a section 6(b) or outstanding natural landscape. It is noted that this map is no longer incorporated into the District Plan (DP);

- the rules have been worded to refer to outstanding natural landscapes and the “Port Hills Area”;
- the boundaries of the “Port Hills Area” is not described either on the planning maps or in the text of the District Plan. The 60m contour is not therefore an obvious boundary;
- that the Council reconsider the subdivision and residential density rules for the lowest parts of the Port Hills between Tai Tapu and Motukarara with a view to preparing a variation to increase the standards to greater than 4ha (the text of the recommendation made reference to a possible 20ha standard)⁵.

26. Following the release of this decision, the Council engaged Peter Rough Landscape Architects Ltd (PRLA) to provide further advice on the following two matters:

- 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?

27. The PRLA report was presented to Council in June 2006. It informs PC6 and is included as part of the Section 32 Report. It recommends that the boundary line between the Port Hills and the plains should more logically follow the topographic boundary where the two features meet. I understand this is generally represented by the 20m contour. In addition, the report recommends 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. Assessment matters are also recommended to be further developed to reduce ambiguity and provide more guidance in consideration of resource consents.

28. In summary, the identification and recognition of the Port Hills as an ONL within the Selwyn District has been subject to often unclear and inconsistent provision in the District Plan since it was first notified and has been subject to challenge.

⁵ Recommendations of Hearing Panel, page 12, the last paragraph and Recommendation 48.2(d)

Consultation – Summary

29. A number of submitters refer to a working party process with Council at the time of the preparation of the Proposed District Plan. I am not familiar with the detail of that process and this is a matter that submitters may wish to provide further information on at the hearing. The Council initiated consultation with the community prior to preparation of PC6. A report of that consultation is appended to the Section 32 report and I have noted some of the consultation outcomes as follows:
- of the landowners with property below the 60m contour approximately 33% would want to subdivide their land further and approximately 25% considered they may want to subdivide;
 - of those landowners who did want to subdivide, approximately 40% preferred to subdivide an area of less than 4ha, 45% 4ha and 15% more than 4ha.
30. The Council also identified that respondents to the survey were nearly equally split between those who valued their current 4ha subdivision rights and did not support landscape controls on new buildings compared with those who favoured additional landscape protection.
31. Respondents to the survey were also asked what values or features in the area they valued most highly. Between Early Valley Road and Tai Tapu respondents indicated that they valued “valuable housing sites for rural or rural residential dwellings” the most, followed by general rural amenity values, then (special outstanding) landscape and natural values. Between Tai Tapu and Motukarara, respondents similarly rated “valuable housing sites” as the highest priority, followed by (special outstanding) landscape and general rural amenity values.

PART III SUBMISSIONS

32. To avoid an overly complex report, I propose to group and discuss issues which are common to a number of submitters. Recommendations set out fully in Appendix 3 to this report.

Support the Plan Change

33. Four submissions support the entire plan change
- **S1260 JF and JA Rogers** (opposed by **Basapole F1264** and **Ahuriri Farm Ltd F1270**);
 - **S1262 R and K Young** (opposed by **Basapole F1264** and **Ahuriri Farm Ltd F1270**);

- **S1283 Summit Road Society (Inc)** (opposed by **Basapole F1264, Ahuriri Farm Ltd F1270 and HJ McCartney F1268**);
 - **S1294 Director General of Conservation** (opposed by **F1264 Basapole Limited** and **F1270 Ahuriri Farm Ltd**).
34. One submitter supports PC6 in part – **S1273 Canterbury Regional Council** (opposed by **F1266 G Horgan, F1269 KH Macartney Trust, F1270 Ahuriri Farm Ltd** and supported in part by **F1290 D & D Chapman**). Reasons provided in support of the Plan Change include protection of the Port Hills as an area of outstanding landscape which should be preserved as far as possible in their current state, with the main ridgelines and upper slopes maintained as extensive landscapes, consistency with the Regional Policy Statement and the benefits management of ONLs provides to future generations.

Oppose the Plan Change

35. Twenty three submissions oppose the whole of PC6 and seek it to be withdrawn in its entirety (in some cases alternative relief is requested and this is discussed separately in the relevant section of this report).
- **S1266 G Horgan** (supported by **F1298 Federated Farmers (North Canterbury)**)
 - **S1265.2 J Smith**
 - **S1268 HJ Macartney**
 - **S1269 KH Macartney Trust** (supported by **F1298 Federated Farmers (North Canterbury)**)
 - **S1271 RK Watson** (supported by **F1264 Basapole Limited**)
 - **S1272 HE Logan** (supported by **F1264 Basapole Limited**)
 - **S1274 J Gillanders**
 - **S1275 KG Gillanders**
 - **S1276 Drinnan Investments** (supported by **F1264 Basapole Limited**)
 - **S1277 RJ Watson** (supported by **F1264 Basapole Limited**)
 - **S1279 GH Ryan** (supported by **F1264 Basapole Limited**)
 - **S1280 JJ Ryan**
 - **S1284 D & A Florance** (supported by **F1266 G Horgan** and **F1290 D & D Chapman**)

- **S1286 NR Cameron** (Supported by **F1264 Basapole Limited**)
- **S1287 BK Cameron** (Supported by **F1264 Basapole Limited**)
- **S1288 GA Whelan** (Supported by **F1264 Basapole Limited**)
- **S1289 HG Whelan** (Supported by **F1264 Basapole Limited**)
- **S1290 D & D Chapman** (Supported by **F1264 Basapole Limited**)
- **S1291 HF Mingard**
- **S1292 S Mingard**
- **S1293 JR Macartney** (Supported by **F1264 Basapole Limited**)
- **S1296 Orsum Park Ltd**
- **S1298 Federated Farmers (North Canterbury)** (supported by **F1295 Horticulture New Zealand**)

36. In summary, the range of reasons for this opposition include:

- PC6 fail to achieve sustainable management by not providing for social, economic and cultural wellbeing;
- The rules provide an inappropriate level of control for the Lower Port Hills;
- Inadequate analysis of costs and benefits and justification of reasons in Section 32 Report;
- Ignores consultation over a long period of time with affected parties where the 60m contour was determined;
- The 20m contour line is not for specific landscape protection purposes and Council has failed to give reasons or define how the Lower Slopes can be called ONL or what an ONL is;
- PC6 does not consider the desire of people to live on the lower slopes of the Port Hills, which are of little production value and should be promoted for building, pushing housing onto more valuable flat land;
- Restricts the ability to provide for the future and adds costs to change farming practices;
- Ignores high level of existing land use and activity. The landscape is modified and not Natural;

- Is inconsistent with the Christchurch City Plan which allows for development past the 60m contour;
 - Continuing pastoral activities will maintain erosion.
37. It is relevant to note that the significant majority of submissions in opposition are concerned with the consequences of changing the ONL boundary from the 60m to 20m contour on subdivision, dwelling density and more intensive land uses such as horticulture. The other significant area of concern arising through submissions is the change to the earthworks provision. It is important to note however that there are no specific submissions opposing those parts of PC6 which seek to:
- amend policy and rules so that shelterbelts, amenity planting and plantations are not provided for within the Summit Road Protection Area;
 - remove a reference to forestry guidelines; and
 - zone land within Early Valley Road which has been “unzoned” in the District Plan.
38. Accordingly, I will not spend any time discussing these matters, but focus on those issues which have generated the most submissions, as follows:

Movement of the ONL Boundary from 60m to 20m

39. The movement of the ONL boundary from 60m to 20m is a significant element of PC6. The following submitters specifically discuss this matter:
- **S1259 RE Ogg** (supported by **F1264 Basapole Ltd**)
 - **S1268 HJ Macartney**
 - **S1281 AE Parkinson**
 - **S1270 Ahuriri Farm Ltd** (supported by **F1264 Basapole**)
40. The following submitters have indicated particular support of this aspect of the change:
- **S1262.2 R & K Young** (opposed by **Basapole F1264** and **Ahuriri Farm Ltd F1270**)
 - **S1260 JF & JA Rogers** (opposed by **Basapole F1264** and **Ahuriri Farm Ltd F1270**)
 - **S1294 Director General of Conservation** (opposed by **F1264 Basapole Limited** and **F1270 Ahuriri Farm Ltd**).

41. **S1259 RE Ogg** opposes the change on the basis that his own house in Holmes Road is at about the 50m contour and is not visible from the Main Akaroa Highway or the Old Tai Tapu Road. Mr Ogg notes that other houses in the locality are similarly out of view and is of the opinion that these houses do not create visual pollution. **S1268 HJ Macartney** echoes these sentiments, noting that in his opinion much of the land between the 20m and 60m contour is already in housing or cultivated, while **S1269 KH Macartney Trust** (supported by **F1298 Federated Farmers (North Canterbury)**) comments that the slopes are of little production value and should be promoted for building. **S1281 AE Parkinson** considers that there are over 50 houses already at this level and **S1279 GH Ryan** (supported by **F1264 Basapole**) considers further opportunity for housing should be made. **S1270 Ahuriri Farm Ltd** (supported by **F1264 Basapole**) seeks that the rules for the land between the 20m and 60m contour should remain unchanged.
42. I refer to the report of PRLA which details the landscape values of the Lower Slopes of the Port Hills. The Council has received consistent advice that the whole of the Port Hills are an ONL within the Selwyn District and it therefore has a statutory duty to protect this area from “inappropriate development”. Several submitters have questioned how the Lower Slopes can be called natural or queried the robustness of the landscape report commissioned by Council. In my opinion, having regard to the two landscape reports prepared (as described in Paragraphs 23 and 27) and caselaw relevant to the Port Hills, there is a strong case to support the lowest slopes being included as part of an ONL. If this is the case, then the next step is to determine what is “inappropriate” development.
43. The District Plan anticipates that the Lower Slopes will generally be used for a range of rural activities, along with subdivision and rural housing. Although traditional farming activities have strongly influenced and shaped the rural landscape of the Port Hills, changes in the economic viability of activities can lead to pressure to intensify land use, increase the scale of an activity or more closely subdivide the land.
44. Threats to landscape values arise where activities become larger in scale and consequently dominate or become a singular feature of the landscape e.g., large scale forestry. Buildings are a threat when sited in a manner that detracts from a sense of openness, intrude areas of natural character or contrast with an existing pattern of land use. Similarly, planting and/or structures can obscure or alter the outline of natural landforms; and earthworks may alter natural contours. Threats can also arise through cumulative change i.e., landscape change occurring over time from incremental development or “creep” where an existing modification in the landscape is used to justify further change.

45. The Section 32 Report accompanying PC6 identifies 4 issues associated with landscape protection of the Port Hills. These are:
- fulfilling statutory obligations to protect the Port Hills as an ONL;
 - identifying the effects of subdivision and housing on the Port Hills between the 20m and 60m contour;
 - the ability for landowners to make reasonable and economic use of land between the 20m and 60m contour; and
 - the administration of the DP as a clear and consistent document.
46. In my opinion, a permitted activity provides a high degree of certainty for a land owner. This is a benefit to the landowner for economic decision making and wellbeing. However, the cost of a permitted activity is the potential for adverse impacts on landscape features with no ability to assess site specific effects and require mitigation. At the other end of the scale, a non-complying activity provides Council with full control. It provides greater community certainty that landscape values will be protected and there is potential for groups with a landscape interest to be submitters and participate in the process. However, there is less certainty for the landowner who is required to consider more carefully the detail of the proposal and overall impact on landscape values. Potential submitters can also oppose a proposal in relation to any effect. The costs incurred by the individual in this process are therefore high.
47. The costs and benefits of controlled, restricted discretionary and discretionary activities therefore fall on a graduated scale between permitted and non-complying, with an increasing degree of certainty in respect of the landscape outcome but a relative decrease in land owner certainty.
48. Having regard to the findings and recommendations of the report prepared by Mr Craig, along with the statutory context of landscape protection in the RMA, I consider that some assessment of proposed development or land use change on the Port Hills is appropriate. With respect to the subdivision and dwellings between the 20m-60m contours PC6 proposes Controlled Activity status for dwellings on existing, consented subdivisions down to 4ha and new subdivisions and dwellings, depending on their final design and compliance with the District Plan, likely to be Restricted Discretionary Activities. These consent processes will impose a higher level of design and consideration for new buildings, however this is an outcome consistent with the protection of an ONL from inappropriate development. I note that PC6 proposes an activity status (i.e. Controlled or Restricted Discretionary) which provides the least onerous thresholds for consideration of land use activities. **S1280 JJ Ryan** suggests

that PC6 is “out of line and in fact draconian compared to the recent Environment Court decision on similar land usage provisions in the Banks Peninsula”. I note that this is incorrect. The Banks Peninsula decision introduced Non-Complying Activity status to ONLs with new dwellings actively encouraged to co-locate near existing building sites. Proposed PC6 does not prohibit any activities, nor is it stopping development, but it is requiring more consideration of development.

49. **S1291. 3 HF Mingard** suggests that Council should consider imposing discretionary controls on buildings rather than alter the minimum subdivision size. I note that DP rules can either list activities as discretionary or they can set standards, which when breached trigger a discretionary consent process. PC6 has adopted the latter approach, of altering the density standard to trigger a resource consent process.
50. Should PC6 not be rejected, **S1284 D & A Florance** (supported by **F1266 G Horgan** and **F1290 D & D Chapman**) seeks an alternative, and less preferred relief, to create a Visual Amenity Port Hills Zone. This would be a new Area to the Selwyn District Plan requiring new objectives, policies and rules etc. The submitter seeks that this zone be applied to the land between the 20m and 60m contour and would involve removing the notation for ONL notation from those areas north of Tai Tapu. The submitter seeks that development within this new zone would primarily be a Controlled Activity for subdivision 4ha and above, dwellings and earthworks up to 100m³. The concept of a Visual Amenity Port Hills Zone has been previously considered by Council but I understand was not preferred. It would involve a small land area relative to the wider Port Hills and the development of a new zoning framework. Such a concept could be developed and a new suite of rules created however this would, in my opinion, require a new Plan Change process and extend beyond the scope of PC6. I consider it would be difficult for the Council to ignore landscape advice and caselaw which strongly suggests that the whole of the Port Hills are an ONL and remove this notation. If the ONL status was retained, the rules for activities in an ONL are unlikely to provide for development beyond very restricted or limited thresholds. Ultimately, I understand that Council considered that there would be limited difference between the existing scenario that already applies to the Lower Slopes (i.e., between 60m and 160m) and a new Visual Amenity Landscape.

Recommendation

51. Having regard to the above discussion, those submission and further submission points opposing PC6 and the movement of the ONL boundary from 60m to 20m are recommended to be rejected; and the submission points supporting proposed PC6 are recommended to be accepted – as detailed in Appendix 3.

Reasons for Recommendation

- Consistent expert landscape advice and caselaw indicates that the ONL boundary extends to the toe of the Hills. The RMA imposes a legal duty upon the Council, as a matter of national importance, to ensure that this landscape is managed with respect to its landscape values;
- PC6 puts in place new thresholds for subdivision and dwellings which trigger a process of further consideration of development on landscape values. Below the 60m contour this would be as a Controlled or Restricted Discretionary Activity which, by comparison with other potential management mechanisms, do not impose a high statutory test or an unreasonable level of consideration for development in an ONL;
- The omission of the ONL notation from the Selwyn District Planning Maps is inconsistent with the identification and management of other ONLs in the District and reduces efficient administration of the DP as most people refer to the DP maps as the first step to understanding what provisions may apply to a piece of land.

Specific Amendments to the Boundary Line

52. A number of submitters have sought to exclude their properties from the new ONL boundary. In principle, an exceptional circumstance is required for boundary amendments to avoid the creation of a precedent. The purpose of the ONL boundary and its location must be defensible before a Court.
53. Zoning or lines on maps are effectively rules. Many planning rules are “blunt” with limited flexibility and it is not uncommon for submitters to suggest that a rule is inappropriate on the basis that it does not “fit” their property. Due to the variability created by topography, vegetation and cadastral boundaries there will always be examples of properties with the potential for development, however in my opinion, it is more appropriate to consider the detail of a specific proposal which may be designed in response to the specific character and features of a particular locality than to provide exceptions through zoning. On this basis I am not supportive of amending the ONL boundary away from the toe of the slope unless there are unique and compelling planning arguments for doing so.
54. The following submitters have sought changes to the Port Hills/ONL boundaries. Aerials relating to these properties are attached as Appendix 7:
55. **S1264 Basapole Limited Ahuriri Valley.** The submitter seeks to exempt Ahuriri Valley from the ONL having regard to its topographic situation, limited visibility from

major viewpoints and consented and modified appearance. Reference is made to a subdivision recently approved by Council for an 5 lots ranging from 5ha to 13ha. I have discussed these points with Mr Craig. I understand that although the head of the valley and the hills that define this are some distance from the highway, this does not provide a landscape-based justification for altering the ONL boundary. The topographic features of the Valley may offer some mitigating benefits which I understand Mr Craig considers would assist in any landscape assessment of a future development. Mr Craig has also considered the impact of the consented 5 lot subdivision. He notes that there are arguments supporting both the retention and exclusion of this consented subdivision from the ONL. Retaining some consideration of building design and appearance is however maintained as a preferable position to avoid adverse effects on elevated sites. Having regard to these matters I do not support excluding the Ahuriri Valley from the ONL.

56. **S1265 J Smith** – 319 Old Tai Tapu Road (Lot 1 DP 68416). The submitter is concerned that the boundary of the ONL effectively splits their property in half, being partly Inner Plains and partly Port Hills. The submission seeks that the boundary line for the Port Hills be lifted to the 60m contour or aligned with the cadastral boundary (I assume up-slope so that the whole of the property is Rural Plains, rather than down-slope including the property in the ONL). I acknowledge that split zoning will affect a number of properties and is a consequence of placing a boundary on a geomorphic feature rather than a road or artificial line such as a fence or survey line and is a common issue with respect to landscape and geologically important sites. From the aerial photo the ONL boundary has been pulled away from an existing dwelling. The information provided with the submission does not present sufficient information to establish that the boundary could be shifted without creating a precedent in relation to adjoining properties which are similarly affected and this is a matter that the submitter may wish to address further with the Commissioner.
57. **S1276 Drinnan Investments** – Lot 2 DP336164 and Lot 3 DP 300940, Otahuna Road. As an alternative to preferred relief the submitter seeks that the zoning of this site is retained as Rural Inner Plains. If the preferred submission points are rejected the submitter would need to consider providing further information to establish any unique or compelling features of the site, which would distinguish it from other properties. On the information provided with the submission I do not support excluding this area from the ONL.
58. **S1278 T Stackwood** – Old Tai Tapu Road. This property directly adjoins Holmeswood Rise and is partially covered by ONL status. The submission seeks that the ONL boundary is removed from the property to enable the potential of a preferred building platform to be preserved. I note that PC6 does not remove the potential for this preferred building platform to be developed, but will involve a more demanding

process where an applicant will need to demonstrate consideration of design and landscape interests. Similar to other submissions, further information would be required to establish any unique or compelling features of the site, which would distinguish it from other properties also adjoining localities with an Inner Plains or Rural Residential zoning.

59. **S1285 I Duff** – 60 Early Valley Road (Lot 1 DP6873 & pts RS 8096 & 27530). The submitter seeks that the ONL boundary is amended on Map 14 to exclude a dwelling, which has existed since 1922 and to align the boundary with identifiable features before rejoining the 20m contour line. Mr Craig comments on the appropriateness of this amendment in his report and agrees that the existing cluster of dwellings provides sufficient justification to re-align the boundary around these buildings and along a natural terrace. I accept the recommendation of Mr Craig on this matter.
60. **S1290 D & D Chapman** – Corner of Gerkins and Cossars Roads (Pt RS 2960). In the event that PC6 is not rejected, the submitter seeks, as an alternative, that this property is excluded from PC6 and that a new residential dwelling be provided for as a permitted activity. The submitter does not accept that the property qualifies as an ONL. I note that the PRLA landscape study has been undertaken at a “sub-district” level, which is less than a full district wide assessment but not down to considering the values of an individual site. The district plan anticipates that building sites will exist within ONLs and PC6 puts in place a process which encourages greater consideration of landscape values and site responsive design to these values. I acknowledge the submitter’s primary position is to reject PC6. Should PC6 be accepted the submitter would need to demonstrate that excluding the property from the ONL would not create a precedent and can be distinguished from other properties which adjoin the Rural Inner Plains.

Recommendation on Specific Amendments to the Boundary Line

61. Having regard to the above discussion, **S1285 I Duff** is recommended to be accepted and **S1290 D & D Chapman, S1278 T Stackwood, S1276 Drinnan Investments, S1265 J Smith and S1264 Basapole Limited Ahuriri Valley** are recommended to be rejected.

Reasons for Recommendation

- The recommended amendment to the alignment of the ONL boundary on the Duff property ensures that an existing house, which is part of an established cluster of buildings in Early Valley Road does not fall within the ONL.
- Submission points recommended to be rejected would require additional information demonstrating that an amendment to the ONL boundary was in

response to unique features that ensured that a precedent effect was not created elsewhere, whereby the rationale for the ONL is not diluted.

- A location adjoining an alternative zoning is not sufficient justification to remove an ONL boundary from a property. Planning mechanisms are by nature very blunt and if zone boundaries are not based and maintained on a defensible rationale cumulative effects can be created i.e., the boundary will creep outwards, whereby the existence of a development is used to justify further development.

Other Mapping Matters

62. **S1285.2 I Duff** also requests that Planning Maps 9 and 14 be reviewed to define the ONL boundary along internal property boundaries and that reference be made to specified contour heights where applicable. I do not have any issues with references being made on the planning maps to specified contour heights where that assists with understanding and administration. My understanding however, is that the scale of the planning maps is such that this level of detail may not be distinguishable and consequently the exercise of identifying variable contours may not be as useful as anticipated. Where a person wishes to further interrogate the boundaries and contours of a property I understand this can be assisted quite readily by Council. With respect to alignment of the ONL along property boundaries I understand that Mr Craig is concerned that such an approach undermines the landscape derived basis of the ONL line. It is appropriate that an ONL boundary is based on landscape values and not artificially created boundaries and should only be amended where natural character is precluded by existing development.
63. I Duff also seeks that all contour heights in the District Plan are referenced back to a clearly defined datum zero such as MSL, MHWS, a spheroid zero defined by LINZ or a defined height below a specified benchmark. I understand that all District Plan Maps are based on the New Zealand Geodetic Datum 1949 (NGD49) as defined by LINZ and that Council refers to metres above sea level when processing subdivision applications. I understand that the Council is reasonably satisfied with this information base and does not support additional datum being prescribed. Should the Commissioner wish to query this matter further then I would need to defer to a Council officer to reply on Council's behalf.
64. **S1285.1 I Duff** requests that any reference to the "whole of the Port Hills" be replaced by Rural Port Hills Zone to clearly acknowledge the ONL. In addition, that areas zoned Rural Inner Plains are labelled clearly. I agree with the submitter that clarity and consistency in reference to the Port Hills and the Rural Inner Plains is appropriate. I note however that the Selwyn District Plan does not adopt the word "Zone" to distinguish different parts of the Rural environment. These are described as

“Areas” e.g., Edendale, Yorktown, Port Hills, Outer Plains, High Country. Accordingly, I support consistency in reference to a “Port Hills Area”.

Recommendation on Other Mapping Matters

65. Having regard to the above discussion, the submission points **S1285.1 and 2 I Duff** are recommended to be accepted in part with respect to the consistent use of “the Port Hills Area” and the identification of the Rural Inner Plains. I do not however recommend realignment of the ONL boundary with internal property boundaries. On the basis of current Council advice further definition of a datum for contour heights is not supported.

Reasons for Recommendation

- Clear reference to “the Port Hills Area” and the Rural Inner Plains assists with consistent understanding and administration of the District Plan.
- The ONL boundary should be maintained on landscape principles and criteria and areas excluded only occur where natural character has been precluded.
- The Council is satisfied that existing reference data is sufficient in order to define contours.

Grandfather Clause

66. As described in paragraph 14 above, the Council recognised that in lowering the ONL boundary, new dwelling density and subdivision provisions would apply to land on these “lowest slopes”. To ensure that existing development rights in the form of consented, but not yet built, subdivisions and dwellings were not lost the Council proposed a rule to enable these activities to proceed. Such a rule already exists in the Rural provisions of the DP, and was carried over from the Transitional Plan. The basic premise was that dwellings on allotments of 4ha, created up until the date of notification of PC6 be a controlled activity i.e., Council may impose conditions on a consent in relation to design and appearance, but cannot decline the application.
67. Unfortunately, PC6 as notified was not sufficiently tested against working examples and the drafting of the PC did not achieve a Controlled Activity outcome. As a result, applications which have been lodged since notification have been Restricted Discretionary applications. The drafting faults were also picked up by a number of submitters who have sought amendments to the clause. To address this issue the District Council lodged its own submission with a revised set of amendments to the DP (see S1267 Selwyn District Council).
68. Specifically PC6 as notified added:

- a new clause making dwellings on a separately saleable allotment of not less than 4ha, created prior to notification of the Plan Change, on the Lower Slopes, a Controlled Activity; and
 - a new clause, mirroring the above under Residential Density.
69. In summary, the problems with PC6 is that it failed to remove another existing clause which defaulted any building over specific dimensions to become a Restricted Discretionary Activity (undermining and nullifying the intended benefit of the Grandfather clause) and duplicated the design and appearance rule at the point of subdivision. The Canterbury Regional Council (S1273) also opposed the change on the basis that the Controlled Activity clause was conferred upon all allotments under the 160m contour, not just the 60m contour. In addition, a number of submitters were concerned that the drafted text was uncertain as to whether the Grandfather clause required the subdivision to be both consented and developed or if it could also apply to consented subdivisions which have not yet lapsed.
70. The Council has taken a full review of the wording in PC6 and has suggested some changes to the how the Grandfather Clause is implemented. A copy of the actual DP text showing the new wording proposed by Council's submission is attached as Appendix 4. The effect of the Council submission clarifies the status of buildings in the area being rezoned from Rural Inner Plains to Port Hills as well as clarifying that the Grandfather clause applies to consented subdivisions, not just those for which title has been issued. It also addresses the concern of the Canterbury Regional Council that the exemption applies only to buildings below the 60m contour.
71. Submissions which are concerned with this clause include:
- **S1263 RK Watson Family Trust**
 - **S1266 G Horgan** (supported by **F1298 Federated Farmers (North Canterbury)**)
 - **S1271 RK Watson** (supported by **F1264 Basapole Limited**)
 - **S1272 HE Logan** (supported by **F1264 Basapole Limited**)
 - **S1277 RJ Watson** (supported by **F1264 Basapole Limited**)
 - **S1276 Drinnan Investments**
 - **S1292 HF Mingard**
 - **S1292 S Mingard**
 - **S1285.3 IH Duff**

- **S1286 NR Cameron and S1287 BK Cameron** (both supported by **F1264 Basapole Limited**)
- **S1288 GA Whelan and S1289 HG Whelan** (both supported by **F1264 Basapole Limited**)
- **S1297.2 Ahuriri Farm Limited**
- **S1273 Canterbury Regional Council** (opposed by **F1266 G Horgan**, supported in part by **D & D Chapman** and supported by **F1283 Summit Road Society (Inc)**)

72. Some submitters have sought specific changes to the PC6 wording. I would recommend that those submitters review the amended DP pages and assess if their concerns as to the intent and administration of the rule are addressed. The intent is to clearly state that the Controlled Activity status applies to consented subdivisions, which may not yet have title. Similarly, the amended wording has sought to address the concerns of **S1273 the Canterbury Regional Council** that the clause applies only to land below the 60m contour.
73. **S1263 RK Watson Family Trust** seeks to remove the words “separately saleable allotment”. These words have been retained in Council’s revised wording (see **S1267**), however I would agree with the submitter that they are not necessary having regard to the proposed new wording which provides for existing allotments held in their own Certificate of Title or granted by way of a subdivision approval which has not lapsed. **S1263** also seeks to remove the words “Any dwelling on a separately saleable allotment....” in rule 3.10.3. I note that the Council’s revised wording removes this clause and now incorporates it into 3.10.2. Reference to clause 3.10.2 shows that the DP uses the words “any dwelling on any allotment”. I am not sure if the submitter remains concerned with the revised clause 3.10.2. I am not aware that there are any difficulties with interpretation or administration of this rule and accordingly, I do not recommend any further change to 3.10.2 from that suggested in Council’s own submission.
74. **G Horgan F1266** has submitted opposing the Council’s submission (I note that G Horgan seeks PC6 be rejected in its entirety) while **F1290 D & D Chapman** supports Council’s submission in part. I would have no difficulty with further changes to the wording if that refinement assisted with clarity and effective administration of the DP, e.g., **S1285.3 IH Duff** seeks a minor adjustment of wording by inserting the notification date into the new clause.
75. **S1276 Drinnan Investments** seeks that dwellings on the Lower Slopes of the Port Hills of not less 4ha be provided for as a permitted activity subject to meeting a performance standard for reflectance. The submission also seeks that subdivision rules provide for minor adjustments to lot boundaries and right-of-way locations for

Lots 1 to 6 of subdivision R307290 that do not result in additional lots or additional development.

76. In my opinion, it is not unreasonable for Council in fulfilling its Section 6(b) duties, to have the opportunity to review the design and appearance of dwellings, having regard to the landscape values of the particular locality. A Controlled Activity status is one such mechanism. It provides the landowner with some assurance that the proposal cannot be turned down, but offers Council some opportunity to review elements of design or appearance which may impact on landscape values. It is relevant to note that Council cannot impose such draconian conditions that the application is frustrated or effectively declined.
77. The submission from Drinnan Investments seeks permitted activity status for dwellings on 4ha allotments. In my opinion there is a limitation to the effectiveness of rules to ensure protection of landscape values. Rules such as setback, height, site coverage etc of buildings do not guarantee that a building will be well placed and sensitively designed within the landscape. It is possible for a fully complying building to be constructed that has an adverse effect on the character and amenity of a locality while a well-designed and sited building is not accommodated by rules. Rules will always be limited by the need for certainty and clarity of administration and this limitation needs to be considered when forming an overall view on the degree of permissiveness/restriction in developing management mechanisms. Having regard to the variation in the Port Hills landscape in terms of topography, vegetation and land use patterns some consideration of the design and appearance of particular buildings in relation to individual site features as a Controlled Activity may achieve a better landscape outcome than rules alone.
78. The submission from Drinnan Investments also seeks to provide for minor adjustments to lot boundaries and right of ways where there is no increase number of lots or development provided for. This submission point is not supported. There are already processes (both informal and statutory) by which Council can amend subdivision plans which have been lodged. The process followed depends at what stage the subdivision has reached. If a survey plan has not been lodged and the variation is of a minor nature I understand that the Council enters an informal amendment process with an applicant. If however, the subdivision process is more advanced a formal application to vary the original consent would be required. I understand that Council would not wish to set in place a DP rule which provided for minor adjustments without consideration of the formal process involved and the potential for such adjustments to involve changes to boundaries which may affect landscape features. Accordingly, this submission point is not supported.

79. **S1297.1 Ahuriri Farm Ltd** seeks a new objective and policy statement be added to the DP to cater for the grandfather clause. In my opinion an additional policy is not required in Section B1 which is concerned with the natural resources of the Rural Area. Policy B1.4.9 seeks to “ensure any building or structured on the Port Hills and any associated access, utilities or other infrastructure is designed, site, landscaped and finished....etc”. One of the methods by which this policy can be achieved is through a Grandfather clause. A policy may however be desirable in B4 which is concerned with Rural Growth and where matters relating to density and exemptions are already discussed. In particular, I note that Policy B4.1.5 already identifies the exemptions provided for dwelling on any existing allotments created by subdivision under the Transitional Plan within the 10 years preceding notification. The submitter does not make any suggestions as to appropriate wording and the following (as underlined in Policy B4.1.5) is suggested as a basis for further consideration or comment by the submitter and Commissioner. If accepted then consequential amendments would be required to the Explanation and some suggested text is shown in Appendix 2 for consideration.

Policy B4.1.5

Exempt the following activities from the residential density ratios set out in Policy B4.1.1:

(a) Any additions to or replacement of existing, dwellings;

(b) Temporary structures erected on nohoanga and Mahinga Kai sites (identified in the Ngāi Tahu Claims Settlement Act 1998); and

(c) The erection of a dwelling on any existing, bare allotment upon which a dwelling might have been erected as a permitted activity under the Transitional District Plan, provided that the relevant allotment has been bought, sold or subdivided for the purpose of erecting a dwelling within the 10 years preceding notification of the Rural Volume of the Proposed District Plan.

(d) The erection of a dwelling on any existing, bare allotment upon which a dwelling might have been erected as permitted activity prior to the adjustment of the boundary of the Outstanding Landscape on the Lower Slopes of the Port Hills Area affecting land between the 20m and 60m contours.

Recommendations on the Grandfather Clause

80. Having regard to the above discussion, those submission, and further submission points seeking amendments to the Grandfather clause to remove confusion and clarify its application to subdivision that has been consented (but titles not yet issued) and to sites only below the 60m contour, are recommended to be accepted and accepted in part. The recommended text is set out in detail in Appendix 4. Those further submission points opposing the amendments are recommended to be rejected.
81. The submission seeking recognition of the Grandfather clause in a policy is recommended to be accepted.

82. These recommendations are detailed in Appendix 3 and the reasons for the recommendations outlined below:

Reasons

- It is necessary that the DP is clear and can be administered clearly and consistently;
- It is fair, reasonable and appropriate that the Grandfather clause applies to subdivisions which are consented (but not necessarily given effect to);
- That the exemption provided by the Grandfather Clause is applied to those who are losing development future opportunity i.e., land previously zoned Rural Plains (Inner) and is not applied more widely to all land in the Lower Port Hills;
- That as an ONL, the Council has the opportunity to consider the design and appearance of residences on landscape values;
- That the grandfather clause be supported by an appropriate policy.

Earthworks

83. As discussed in paragraph 22, pre-notification of PC6 the DP provided for earthworks up to 20m³ in any one hectare in any five year period. The Council found this rule difficult to interpret and administer with clarity. PC6 proposed a very restrictive standard by removing the reference to “any one hectare”. Further to community feedback during the submission period, the Council agrees that this volume is too restrictive, and lodged its own submission (**S1267.4**) indicating that a volume up to 150m³, as provided for in other ONLs in the District, may be appropriate. This submission was opposed by **F1266 G Horgan** and supported in part by **F1290 D & D Chapman**.
84. Other parties who have submitted on earthworks include:
- **S1263.3 Watson RK Family Trust**
 - **S1266.2 G Horgan** (supported by **F1298 Federated Farmers (North Canterbury)**)
 - **S1270.2 Ahuriri Farm Ltd** (supported by **F1264 Basapole**)
 - **S1273.2 Canterbury Regional Council**
 - **S1284 D & A Florance** (supported by **F1266 G Horgan** and **F1290 D & D Chapman**)
 - **S1285.4 IH Duff**

- **S1286 NR Cameron** and **S1287 BK Cameron** (both supported by **F1264 Basapole Limited**)
- **S1294 Director General of Conservation** (opposed by **F1264 Basapole Limited** and **F1270 Ahuriri Farm Ltd**)
- **S1273 Canterbury Regional Council** (opposed by **F1266 G Horgan**, supported in part by **F1290 D & D Chapman** and supported by **F1283 Summit Road Society (Inc)**)

85. **S1263.3 Watson RK Family Trust** considers the permitted excavation amount too restrictive. The submission also comments that the Selwyn District Plan makes no exemption for earthworks associated with utilities or works permitted pursuant to subdivision or building consent. The submitter seeks only specific relief however in relation to the volume of earthworks and suggests 25m³ or no more than 100m³ per site, whichever is the lesser in any five year period. I note that the scope of PC6 would limit the ability to amend the DP provisions for earthworks that may apply more widely across the District and I make no recommendations in respect of earthworks for utilities in general.
86. Other submitters seek a similar increase in the earthworks volume e.g., **S1266 G Horgan** and **S1285 I Duff** seek consistency with the Land and Vegetation management Regional Plan of 100m³ in any one hectare in any ten year period. **S1294 the Department of Conservation** and **S1273 Canterbury Regional Council** support more restrictive thresholds for earthworks. I refer to the report of Mr Craig where he discusses the potential landscape effects created by earthworks. The report notes that elevation and the continuity of pastoral vegetation amplify the visibility of earthworks, detracting from naturalness and the legibility of landforms. In particular, Mr Craig notes that it is the depth and length of cuts which have the greatest potential to disrupt landform and suggests that these would be appropriate matters to restrict to specifically address landscape effects. I note that many district plans restrict the depth of cuts in addition to limiting the volume of earthworks. The submission **S1285.6 I Duff** seeks that the maximum height of a cut should be 1m, which is also the maximum permitted depth of cut suggested by Mr Craig. The submission of I Duff does not provide scope for a maximum length of cut.
87. Having regard to the above, I recommend 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. Although 150m³ is applied in other ONLs in the Selwyn District this applies to much larger landscapes in locations more remote from larger population centres.

Recommendations on Submissions for Earthworks

88. Having regard to the discussion above, those submission and further submission points seeking a greater volume of earthworks as a permitted activity are recommended to be accepted and accepted in part. Those submission points supporting the earthworks volume as notified are recommended to be rejected. The submission of I Duff seeking a maximum cut depth of 1m is recommended to be accepted. These recommendations are detailed in Appendix 3 and the reasons for the recommendations outlined below:

Reasons

- The volume of earthworks provided for in PC6 was too restrictive to reasonably accommodate activities anticipated in the Rural Port Hills and significantly less than provided for in other ONLs in the Selwyn District.
- A standard that is closer to the volumes for other ONLs will enable use of land without resulting in significant adverse effects on landscape values, whilst still maintaining a reasonably conservative threshold beyond which effects can be assessed.
- A maximum depth of cut is appropriate as cuts potentially have the most visible and significant adverse effects on the landscape values of hillsides.

Assessment Matters

89. The following submission points seek amendments to the proposed assessment matters.
90. **S1266.3 G Horgan** (supported by **F1298 Federated Farmers (North Canterbury)**) seeks that 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. I would agree that this is a relevant matter when considering earthworks and support an amendment to the assessment matter along the lines of the following:
- “The appropriateness of the building site and its access having regard to geotechnical conditions and site stability.”*
91. **S1266.4 G Horgan** also seeks a definition of “public viewing point”. This phrase is proposed in the new assessment matter “the visibility of the building from public viewing points, having regard to the accessibility of the viewing point.”

92. In my experience landscape architects, as a matter of best practice, will include views from publicly accessible places when undertaking a landscape assessment. The proposed assessment matter is therefore formalising a matter of best practice but qualifying it so that regard is given to accessibility of that viewing point, which may be public land but never used or frequented. I have no difficulty if some additional or alternative wording can be proposed which clarifies the intent of the provision. The submitter has not made any suggestions as to preferred wording. My suggestion would be to amend the assessment matter rather than to create a definition which has no application in other parts of the district plan. I set out some suggested words for consideration by the submitter and the Commissioner as follows:

“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.”

93. **S1266.5 G Horgan** is also concerned that the Assessment Matters do not consider positive effects of a proposed building site. As noted in the submission, at present PC6 includes “whether the proposal creates opportunities to protect open space, indigenous vegetation or nature conservation values”. The submitter suggests an additional clause which allows for “any positive effects of a proposed building or accessway” to be taken into account. The words “any positive effects” are very general and offer less guidance or direction as to where Council’s discretion is to be limited. Consideration of indigenous vegetation, nature conservation values and open space clearly indicates what the Council will specifically consider these as benefits when assessing the effects of buildings on landscape values. Landscape provisions in district plans are however often controversial and where there is an imposition on private property rights it is appropriate that the District Plan provides opportunity for balanced considerations. Accordingly, I consider an assessment matter as suggested by the submitter to be appropriate, particularly where the nature of future development and activities and their benefits are unknown. I set out some suggested words for consideration by the submitter and the Commissioner as follows:

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

Recommendations on Submissions Seeking Amendments to Assessment Matters

94. Having regard to the above discussion it is recommended that the following submission points and further submissions are accepted **S1266.3 G Horgan** (supported by **F1298 Federated Farmers (North Canterbury)**), **S1266.4 G Horgan** and **S1266.5 G Horgan** by amending the relevant assessment matters and adding a new assessment matter to the DP to read as follows, or to adopt similar wording. Appendix 4 shows the District Plan text as amended by these Recommendations:

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

“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.”

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

Reasons

- In addition to a building, the access to the building site also creates potential visual effects. The assessment matter already acknowledges that geotechnical considerations are important in determining the location of a building, and similarly geotechnical considerations are important in determining the location and route of an access. The geotechnical stability of an access also influences the ability of earthworks to be successfully rehabilitated and maintained without erosion and scarring.
- Defining what is meant by a public viewing point assists in achieving consistent administration of the DP and ensuring all parties have a clear understanding of intent.
- It is appropriate that positive effects are considered in addition potential adverse effects of a proposed activity. A balanced assessment is more likely to achieve sustainable management as defined in the RMA.

Provision for Horticultural Activities

95. **S1295 Horticulture New Zealand** is concerned with provision for horticulture on the Lower Slopes of the Port Hills. Pre notification of PC6, activities such as orchards and vineyards on the Lower Slopes (i.e., between 60m and 160m) would require a resource consent as a Restricted Discretionary Activity. This status would now extend to orchards and vineyards below 60m where previously the land was excluded from the ONL.
96. Vineyards and orchards fall under the definition of a Plantation. Where there are existing plantations (including vineyards or orchards) these are excluded by the definition of Existing Plantation which enables replanting of existing trees or vineyards in perpetuity. Accordingly, existing vineyards and orchards on land below the 60m contour may continue without resource consent, but any expansion or new planting would require resource consent. Horticulture New Zealand would like to amend the definition of Plantation to exclude orchard and vineyard accordingly.

97. In my opinion, it would not be appropriate to amend the definition in a manner which affects the whole of the Selwyn District and would go beyond the scope of PC6 to do so. It is more a question of the appropriateness of amending the DP to exclude vineyards and orchard from land between the 20m and 60m contour lines of the Port Hills. This could include altering either the definition of Plantation or a performance standard and requires consideration of the landscape effects of such a change. I understand from discussion with Mr Craig that the potential for irrevocable loss from these types of rural activities is far less than from buildings. The opportunity to restore nature landscape qualities is more easily achieved and the activities themselves are land-dependent and typically found in rural areas. Mr Craig considers these activities could potentially affect landscape values where the landform is highly legible or visible such as the toe slope south of Tai Tapu. However, having regard to the fact that these are rural activities and the landscape can be restored more readily than occurs with built residential development I consider that an exemption could be made for these activities. I have considered the definition of plantation (set out below), but consider that it may be more efficient to provide an exemption in Rule 2.2.1.1. I set out a suggestion below (with the change shown underlined). The submitter and Commissioner may wish to further discuss and refine this wording.

"Plantation: means any group of trees planted on a site, whether intended to be harvested or not, which are not classed as amenity plantings or shelterbelts. A plantation may be comprised of exotic or indigenous species and includes but is not limited to: forests planted for harvesting, conservation, soil erosion control, pest or wilding tree management and any orchard, vineyard or woodlot which does not comply with the definition of amenity planting (refer also to the definition of Existing Plantation)."

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, excluding vineyards and orchards located on land between the 20m and 60m contours of the Port Hills

98. **S1295.3 Horticulture New Zealand** is concerned with Policy B1.4.9. This policy reads as follows:

"Ensure any building or structure erected 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."

99. The submission queries if the "structures" referred to are included as "buildings". If yes, then the submitter seeks that the word "structure" be deleted. I refer to the definition of "Building" as follows:

"Means any structure or part of any structure whether permanent, moveable or immovable, but does not include any of the following:

-Any scaffolding or falsework erected temporarily for maintenance or construction purposes.

-Any fence or wall of up to 2m in height.

-Any fence or yards for the containment of stock.

-Any structure which is less than 10m² in area or 2m in height...."

100. My interpretation of the definition is that a structure is a building. Accordingly, the use of the word "structure" in the policy is to some extent redundant. From reading of the submission from New Zealand Horticulture I understand there is a real concern that horticultural activities are under threat from planning regulation. The careful and consistent use of words is therefore of importance. Accordingly, I have no opposition to the deletion of the word "structure" from Policy B1.4.9. The alternative relief sought by New Zealand Horticulture to add another definition for structures over 2m in height is not required.

Recommendations on Submissions Seeking Amendments for Horticultural Activities

Having regard to the above discussion it is recommended that **S1295.2 and S1295.3** are accepted by providing for orchards and vineyards between 20m and 60m as a permitted activity and removing the words "*or structure*" from Policy B1.4.9. Reject **S1295.1** to amend the definition of Plantation.

Reasons

- The use of the word "structure" in Policy B1.4.9 duplicates the definition of Building and adds to uncertainty in interpretation of the policy and its application and relationship to rules.
- It is inappropriate to amend the definition of Plantation to exclude vineyards and orchards below the 60m contour as this may have implications for other parts of the District not addressed in PC6.
- Vineyards and orchards are rural, land-dependent activities which do not have the irrevocable impacts on landscape values created by built development. As activities they are anticipated in the rural environment.
- Amending the performance standards for Plantation by providing an exception for vineyards and orchards on land below the 60m contour of the Rural Port Hills Area is the most efficient and effective method of providing for this activity.

PART IV STATUTORY ANALYSIS

101. Section 74 of the Act sets out the matters that must be considered in preparing a change to the District Plan. Amongst other things, section 74 requires a local authority to comply with its functions under section 31, its duties under section 32, contents of district plans under section 75 and the overall purpose of the Act under Part 2. This includes the matters of national importance (section 6), other matters that require particular regard in achieving the purpose of the Act (section 7) and the Treaty of Waitangi (section 8).

102. Proposed PC6 is consistent with Council's functions under section 31, which includes:

"(a) the establishment, implementation, and review of objectives, policies and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district."

103. Proposed PC6 introduces mechanisms or rules intended to address the integrated management of the Port Hills as an Outstanding Natural Landscape. The discussion of landscape effects in Mr Craig's report along with the grouping and discussion of submission points in this report is intended to assist the Commissioner's considerations as to how PC6 achieves integrated management.

Section 32

104. In accordance with Section 32 of the Act, the Council has a duty to consider alternatives, benefits and costs of the proposed change. I note that Section 32 is a process whereby initial investigations, followed by the consideration of submissions at a hearing, all contribute to Council's analysis of costs and benefits at its final decision-making. Accordingly, the Section 32 report prepared for PC6, is further supplemented by the submissions received and will further benefit from the information to be presented at the hearing. As proposed PC6 is adding controls to the District Plan it is necessary that the final decision-making carefully considers the costs of the new or amended provisions.

Sections 74 and 75

105. Section 74 (2) (a) requires a Council to have regard to any proposed regional policy statement while section 75 (3) (c) requires Council to give effect to any regional policy statement.
106. Chapter 8 of the Regional Policy Statement (RPS), Landscape, Ecology and Heritage is concerned that landscapes which meet the criteria for regional significance are protected from adverse effects of the use, development, or protection of natural and

physical resources. I note that the 1993 Canterbury Regional Landscape Study identifies the Port Hills as a regionally significant landscape. The RPS identifies that activities including the clearance or modification of indigenous vegetation, earthworks, tree planting and the erection of structures may affect landscape values.

107. I note that the submission of **Canterbury Regional Council S1273** supports PC6 on the basis that it is consistent with the RPS.

Part II

108. Section 5 of the RMA requires Councils to manage the use and development of the natural and physical resources of the Port Hills in a way, or at a rate that will enable the community to provide for its social, economic and cultural wellbeing while avoiding, remedying, or mitigating any adverse effects of activities on the environment. This results in a balancing of interests, and is controversial where perceived public benefits are derived from private land use and management. Subclause (a) of Section 5 requires resources to be sustained to meet the reasonably foreseeable needs of future generations. I note that subdivision and dwellings are the focus of the majority of the submitters, with the exception of one or two. I understand from Mr Craig that residential development is an almost irrevocable use of land and is rarely reverted back to a natural state. Acknowledging that the Port Hills have been identified as an ONL by both the RPS and at district level, it is appropriate that the nature of future residential activities is subject to some consideration. Having regard to the possible range of activity status that can be imposed, the Controlled and Restricted Discretionary status proposed by PC6 for subdivision and residential development on the lower slopes is at the lower end of intervention. The purpose of PC6 is not to prohibit development, but require greater consideration of how development may impact on landscape values.
109. Section 6 of the RMA identifies matters of national importance which the Council must recognise and provide for. Most relevant to consideration of proposed PC6 is Section 6(b) requiring the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development. The focus of Section 6(b) is on the word “inappropriate” and Councils must consider how they will determine what is or isn’t inappropriate. Proposed PC6 suggests that this is best achieved on a site by site basis enabling consideration of the particular values and features of a site. This is achieved by imposing very low thresholds for density which trigger consent for a buildings design and appearance.
110. In achieving the purpose of the Act, the District Plan should also have particular regard to the Other Matters identified in Section 7. Of relevance to proposed PC6 are (b) the efficient use and development of natural and physical resources, (c) the maintenance and enhancement of amenity values and (f) maintenance and

enhancement of the quality of the environment. These potentially conflicting matters (i.e., efficient use versus amenity considerations) reflect the issues that led to the promotion of PC6. On this basis, section 7 does not offer any clear direction or guidance on how to resolve issues associated with the economic use of the Port Hills and their protection in terms of Section 6(b), other than the need to carefully balance these conflicting matters.

111. In conclusion, it is my opinion, that proposed PC6 better achieves the purpose of the Act, than the current District Plan provisions. Proposed PC6 recognises the whole landform as an ONL and therefore better fulfils the statutory duty of Section 6(b). It also provides for site specific assessment of a proposal which may ultimately lead to better landscape outcomes in the longer term. The resource consent process does however impose costs on individual landowners and Council should consider addressing these costs through alternative mechanisms and benefits such as reducing application fees, providing for environmental compensation benefits etc.

PART V RECOMMENDATIONS

112. My full recommendations are set out in Appendix 3. However in summary and on the basis of the discussion in this report, it is my recommendation that:

- those submissions seeking to withdraw proposed PC6 are rejected;
- those submissions in support of the proposed PC6 are accepted;
- those submissions seeking detailed or specific amendments to provisions or maps are accepted and rejected as discussed throughout this report and as detailed in Appendix 3.
- Proposed PC6 be confirmed, subject to the amendments shown highlighted in Appendix 3.

Appendix 1: Landscape Report

