

Before the Independent Commissioner  
appointed by Selwyn District Council

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Under the Resource Management Act 1991

In the matter of an application to change the Selwyn District Plan (Plan Change 60 to rezone from Living 2A to Living 1) by **Kirwee Central Properties Limited**

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**Closing submissions on behalf of Kirwee Central Properties Limited**

7 August 2020

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**Applicant's solicitor:**

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**anderson  
lloyd.**

**May it please the Commissioner:**

- 1 These submissions respond to matters raised by submitters and questions from the Commissioner.
- 2 As I said in opening, this issue is whether Living 1 development is appropriate in this particular location. Your responsibility under the Act is to assess the suitability (appropriateness) of a proposed Living 1 zone in this location, compared with the existing Living 2A zone.
- 3 If PC60 is approved, the Applicant intends to subdivide the site to provide for residential housing. Appropriate options exist for access, design and layout, and servicing. The specific details can and will be assessed at the time of subdivision.

**Questions for legal – Part 2**

- 4 The Commissioner queried whether an assessment under Part 2 is required. In my submission, it is not.
- 5 While the RMA requires that decisions on a plan change are to be considered or prepared in accordance with Part 2 of the RMA<sup>1</sup>, the Supreme Court in *King Salmon*<sup>2</sup> has determined that there is no need to refer back to Part 2 when preparing a plan change unless there is invalidity, incompleteness or uncertainty of meaning in the high order planning document.
- 6 The Supreme Court accepted that (in the context of a regional coastal plan), the focus of a private plan change will be on the relevant locality and that the decision-maker may grant the application on the basis which means the decision has little or no significance beyond that locality<sup>3</sup>.
- 7 While not a second generation plan, the Selwyn District Plan is complete, certain and valid with respect to the matters raised throughout the hearing. There are clear environmental outcomes which can and will be achieved for servicing. The evidence is that the land is able to be serviced appropriately if the residential use is intensified. Future subdivision of the PC60 site will be considered pursuant to objectives and policies relating to growth of townships, waste disposal (Chapter B2.4); and utilities which promote their efficient use (Chapter B2.2). Ms Lewes and Ms Elford both referred to Policy B4.2.2 in particular which ensures that any allotment created by subdivision (including any balance allotment) has the

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<sup>1</sup> Section 74(1)(b).

<sup>2</sup> *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38.

<sup>3</sup> *Ibid*, at [135].

services, facilities and characteristics appropriate to the proposed likely use of the land. Provisions relating to the efficient use of utilities will be particularly relevant if a future wastewater reticulated system is available.

- 8 The Commissioner also queried the relevance of *Davidson*<sup>4</sup>. *Davidson* will be relevant to a subsequent resource consent application pursuant to PC60. An overall broad judgement approach to Part 2 is available in the context of section 104 RMA. In *Davidson*, the Court considered that it will be appropriate and necessary to refer to Part 2 in circumstances such as:
- (a) If higher order policies are equivocal and it is unclear from them whether consent should be granted or refused; or
  - (b) If the relevant plan has not been competently prepared in accordance with Part 2 of the RMA, or if there is some doubt about that.
- 9 The more recent decision of the Environment Court in *Bunnings*<sup>5</sup> considered the application of the *Davidson* decision regarding the "subject to Part 2" test when considering resource consent applications under section 104 of the RMA. The Environment Court endorsed the test introduced by the Court of Appeal in *Davidson* as being whether "*the policies are coherent with clear environmental outcomes*".
- 10 While there is an option to consider Part 2 at subdivision stage, it is unlikely to be required based on the assessment above at paragraph 7.

#### **Outline Development Plan (ODP)**

- 11 The Applicant accepts Ms Lewes recommendation that the ODP be included into the District Plan. Ms Elford has recommended the following new rule be included:
- Rule 12.1.3.6.1: –In relation to the Living 1 Zone at Kirwee (east of Courtenay Road), any subdivision shall be in general accordance with the Outline Development Plan at Appendix XX.*
- 12 No party at the hearing disputed the inclusion of the amended ODP, which is consistent with other ODPs in Selwyn. The words "*shall be in general accordance with*" provide flexibility for some movement of indicative roads and the reserve area should realignment be required for future integration. The purpose of the ODP is to provide guidance but it is not intended to default to a non-complying activity status if compliance cannot be achieved.

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<sup>4</sup> *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316.

<sup>5</sup> *Bunnings Ltd v Queenstown Lakes District Council* [2019] NZEnvC 59.

- 13 An additional planning note from Ms Elford is **attached**.

**Mr David John Jarman – 1720 Hoskyns Road**

- 14 Mr Jarman considers PC60 should not proceed until all available Living 1 land has been developed or the District Plan is reviewed. Landowners are entitled to seek to rezone their land. The role of a Council under the Act is essentially a passive or enabling one. As such, plan changes such as PC60 that seek to streamline residential development for future use should be allowed to proceed, unless there is a sound resource management reason for why that streamlining should not occur. That said, both Mr Boyes and Ms Elford reference the limited capacity within existing Living 1 zoned areas in Kirwee in their evidence.
- 15 Mr Jarman also considers PC60 should not proceed until the future sewerage treatment for Kirwee is addressed. In relation to wastewater servicing, I agree with Ms Lewes that it is inappropriate to delay a decision for a co-ordinated approach to wastewater infrastructure which may be some years away. Nor is it appropriate to require this when it is only a possibility and beyond the control of the Applicant. Mr Jarman acknowledged that his existing wastewater system for his property was "pretty effective"; and Mr England confirmed orally that in his experience ECan is likely to consent individual wastewater systems should a reticulated system not be available. Mr England referred to Darfield as an example of where this has occurred locally.
- 16 Mr Jarman's main issue was with "all the traffic coming out of one driveway". Concerns about increased traffic and safety of the intersection at Suffolk Dr/ Hoskyns Rd have been addressed by Mr Carr. You are entitled to give appropriate weight to the evidence of independent experts where the opinion has been carefully expressed and in accordance with the code of conduct.

**Mr Stuart Pearson, NZTA**

- 17 Mr Pearson raised concerns around the local roading network managed by the Council. The Council did not hold these same concerns. NZTA sought future proofing for an internal roading network link to School Lane.
- 18 Future requisite subdivision consent allows for consideration of roading design. Should an internal roading network link be required, PC60 does not preclude this being considered at detailed subdivision design stage. That said, the Applicant has "future proofed" an area as reserve should a link be considered necessary in future. Mr Pearson supports the widened reserve.
- 19 Mr Pearson raised concerns as to how PC60 aligns with Chapter 6 of the RPS, but accepted in response to questions from the Commissioner that Chapter 5 was the more appropriate section to apply to PC60. The geographic extent of Greater

Christchurch for the purposes of Chapter 6 is shown in Map A to that Chapter, and excludes the PC60 area. Put simply, it does not apply. In my submission, it is also significant that Environment Canterbury submitted on PC60 but did not identify Chapter 6 as being relevant to PC60. In fact, Environment Canterbury's submission recognised PC60 location would "consolidate growth around the existing township" responding to an outcome sought in Chapter 5.

#### **Perri Unthank - Fire and Emergency NZ**

- 20 Fire and Emergency want access to water to enable an appropriate response in an emergency. This is acknowledged and it can and will be provided, when considering detailed design at the subdivision stage. At point of subdivision it is a requirement. The Council has specifically reserved its discretion to consider the provision of water for firefighting and resource consent can be declined should provision of sufficient water for firefighting not be provided. Mr England has confirmed that firefighting requirements can be met.
- 21 Ms Unthank acknowledges the Code of Practice is non-mandatory, and that it applies to urban districts (i.e. not the PC60 area) on a reticulated water supply. She accepted that alternative supplies which meet the code can be provided even if development occurs in advance of the Council obtaining a water take for an on demand supply to the PC60 site. Mr England confirmed orally that the Council is anticipating the on demand water supply will be up and running in June 2021. The Council intends to leverage off an existing consent in order to obtain the necessary water take; the well had been bored (200m) and UV treatment budgeted for.
- 22 The additional rule that Fire and Emergency seek is not justified on the basis of effects. A rule in the District Plan has to be necessary in achieving the purpose of the Act, being the sustainable management of natural and physical resources (as those terms are define); it has to assist the Council to carry out its function of control of the actual or potential effects of the use, development or protection of land in order to achieve the purpose of the Act; it has to be the most appropriate means of exercising that function; and it has to have a purpose of achieving the objectives and policies of the District Plan.
- 23 All new subdivisions need to be designed and constructed in accordance with the Councils "Engineering Code of Practice" of which there is a specific section which applies to Fire Service requirements (and requires compliance with the Fire Service Code of Practice). The reference to the Code of Practice is included via a note under relevant rules.
- 24 With regard to concerns raised in relation to water pressure, Mr England confirmed orally, with reference to Council data, there is not an issue with pressure in Kirwee (including during the time of the Kirwee pub fire).

- 25 At the hearing the Commissioner noted that the Christchurch District Plan has included the New Zealand Fire Service Firefighting Water Supplies Code of Practice and queried whether there was any particular reasoning given in the decision for this. There is no explanation given in the section 32 report or the Subdivision Chapter decision for the inclusion.

**Conclusion**

- 26 PC60 is the most appropriate method to enable residential development on this Site. There are significant positive outcomes that will arise from PC60 and the Applicant considers that any effects arising from the proposal can and will be managed during detailed design and subdivision.

Dated this 7<sup>th</sup> day of August

A handwritten signature in black ink that reads "A Booker". The signature is written in a cursive, flowing style.

Alex Booker  
Counsel for the Applicant