

RESOURCE MANAGEMENT ACT 1991

SELWYN DISTRICT COUNCIL

SELWYN DISTRICT PLAN

PROPOSED DISTRICT PLAN CHANGE NUMBER 62

BY

**D MARSHALL, L MARTIN AND A FORMOSA, M AND T SAUNDERS, B HAMMETT AND
J AND S HOWSON**

TO

**TO UPLIFT DEFERRED LIVING 1 (5.3HA) AND LIVING 2 (22.8HA) ZONED LAND AND
REZONE 31.2HA OF RURAL (OUTER PLAINS) LAND TO THE WEST SIDE OF LEESTON**

Decision by

Commissioner Dean Chrystal

Hearings held on 15th September 2020

Appearances:

Council:

Ms Jocelyn Lewes, Council Planner

Mr Murray England, Council Asset Manager – Water Services

Mr Andrew Mazey, Council Asset Manager - Transportation

Applicant:

Ms Sarah Everleigh (Legal Counsel)

Mr Andrew Carr (Traffic Engineer)

Mr James Hopkins (Engineer)

Mr Michael Vincent (Planning Consultant)

Submitters

Mrs Carey Barnett for Harts Creek Streamcare Group and Ellesmere Sustainable Agriculture Inc

Mr Stuart McLachlan

Mrs Jane West for Cochranes of Canterbury (Planning Consultant)

Ms Emily Allan for Christchurch City Council (Planner)

1.0 Introduction

- 1.1 Pursuant to instruction from the Selwyn District Council (the Council) I was appointed to conduct a hearing and make a recommendation on Proposed Change 62 (PC62) to the Selwyn District Plan (District Plan) together with submissions thereon. A hearing was held at the Leeston Service Centre on the 15th September 2020.
- 1.2 PC62 is a privately initiated plan change by D. Marshall, L. Martin & A. Formosa, M. & T. Saunders, B. Hammett and J. & S. Howson (the Applicants). The plan change seeks to uplift the present deferral of 5.3ha of Living 1 and 22.8ha of Living 2 zoned land, rezoning some 22.8ha of Living 2 to Living 1, and to rezone to Living 1 and Living 2 some 31.2ha of Rural (Outer Plains) zoned land on the western side of Leeston. The proposal involves the deletion of one policy (Policy B4.3.55) and several changes to, and the addition of, rules and includes an Outline Development Plan (ODP) to guide development.
- 1.3 PC62 was publicly notified on the 21st January 2020, to which 18 submissions and four further submissions were received, including one late submission from Harts Creek Streamcare Group. Council Planner Jocelyn Lewes did not consider that the late submission unduly delayed the hearing, nor affected any party. I note that the Applicant's did not oppose the late submission and I agree it can be accepted.
- 1.4 Ms Lewes considered the submission by Mr Peter Martin was a trade competition submission which pursuant to s74(3) of the Resource Management Act (the Act or the RMA) the territorial authority must not have regard. Both the Applicants legal counsel Ms Everleigh and planner Mr Vincent concurred with this although Ms Everleigh couched her words carefully when she said the submission "*primarily relates to trade competition*". I have considered Mr Martin submission and acknowledge that as an owner of residentially zoned land and in seeking a deferred zoning of the plan change site until existing zoned land (including his own) is under development he has placed himself in the position, perhaps unwittingly, of being a trade competitor. There is an element of his submission, which I take Ms Everleigh was eluding to, which steps outside the trade competition ambit, involving his reference to the limited number of sections being sold in Leeston. At the end of the day I have decided that the submission does represent trade competition due to the decision being sought and the way it was framed.
- 1.5 Of the 18 submissions, 10 were opposed in some form, four were in support, three were neutral and one did not state its position.
- 1.6 The issues raised in submissions included:
 - Township form and character;
 - Infrastructure servicing, including stormwater; the impact on firefighting ability and wastewater
 - Versatile soils;
 - Transport safety and efficiency;
 - Land stability and geotechnical risk;
 - Cultural values; and

- Greater Christchurch Partnership.

- 1.7 Prior to and after the hearing I undertook site visits where I was able to view the site from various locations and get an understanding of its position with regards the surrounding environment.

2.0 Section 42A Report

- 2.1 Pursuant to s42A of the RMA Ms Lewes produced a report addressing the proposed plan change and a range of matters she considered were covered by submitters as set out below.

Township form and character

- 2.2 Ms Lewes summarised the submissions relating to the township form and character issue as (a) whether there is a need for further growth in Leeston, (b) whether the Plan Change will result in a loss of amenity, (c) the reverse sensitivity effects of the Plan Change on established businesses in the Leeston township and (d) the appropriateness of alternative zoning requests.
- 2.3 In regard to the need for further growth in Leeston, Ms Lewes made reference to the Ellesmere Area Plan (2016) (Area Plan), specifically noting that the Area Plan anticipates a 49% increase in the population of Leeston and an increase of 402 households. Notably, the Area Plan identifies that there is existing zoned capacity to accommodate up to 953 households within the boundary of the township (which includes the land with a deferred zoning). Ms Lewes concluded that the Area Plan supports growth to the west of the existing Leeston township (towards Harmans Road) and accordingly, considers that the Plan Change is supported by the intent of the Area Plan and provides a logical expansion of the Leeston township. She also notes that the zonings proposed through this plan change is an efficient use of land and will enable provision of a range of housing typologies.
- 2.4 In regard to the loss of amenity arising from the PC62, Ms Lewes noted that the change of use and character of land closest to the existing urban area is anticipated by the underlying Living zoning, accordingly it is unreasonable to expect a continued rural amenity.
- 2.5 Ms Lewes addressed reverse sensitivity effects both generally and specifically (in relation to a further submission by Cochranes of Canterbury). With regards to reverse sensitivity effects generally, Ms Lewes noted that the sort of rural-urban interface proposed always occurs at the edge of townships. She said that urban growth plan changes simply shift the boundary of this interface and there was nothing about the plan change site that would appear to make it more sensitive than typical rural-urban interfaces found in Leeston specifically, or throughout the District more generally. She considered that consistent with the current approach of the Plan, no specific provisions were required to address reverse sensitivity effects at the rural-urban interface. However, with regards to the interface between the existing activity at 125 and 125a High Street and the proposed residential development, Ms Lewes considers that the rule proposed by the applicant requiring 2m wide landscape buffer where allotments adjoin the Business 1 zone sufficiently addresses the reverse sensitivity issue raised by Cochranes of Canterbury.
- 2.6 Lastly, Ms Lewes addressed two submissions that requested an alternative zonings for their sites; specifically, Cochranes of Canterbury requested that a portion of 125 High Street be rezoned to Business 1, while Sharon

Farrant requested that 33 – 35 Leeston Dunsandel Road be rezoned to Living 1. Ms Lewes concluded that these submissions are outside the scope of the Plan Change application and that she is unable to support them.

Infrastructure Servicing

- 2.7 Ms Lewes' infrastructure servicing assessment was supported by the assessment of Mr Murray England. Overall, they concluded that there are no wastewater, stormwater or water supply reasons why the plan change should not be granted.

Flooding and Stormwater

- 2.8 Ms Lewes summarised the progress of the Leeston North Stormwater bypass project noting that Stages 1 and 2 of the project were complete, Stage 3 is underway and a final stage has been budgeted for (which includes land identified in the proposed ODP as 'Stormwater Management Area'. Ms Lewes then went on to summarise the stormwater water management approach proposed as part of the Plan Change, noting that the detailed design would be assessed as part of the subdivision consent process and any necessary regional consenting process. Ms Lewes concluded that specific rules should be included in the Plan to ensure that flooding effects are appropriately managed.

Wastewater

- 2.9 Ms Lewes (and Mr England) acknowledged that the existing Ellesmere Wastewater Treatment Plan has limited capacity at this time, but following its upgrade, would have sufficient capacity to service the development within the Plan Change area. To address this interim constraint, Ms Lewes supported the applicants proposed rule that would restrict subdivision within the Plan Change area to 80 lots until such time as the required upgrade(s) to the treatment and/or disposal system has been undertaken.

Water supply

- 2.10 Ms Lewes (and Mr England) acknowledged the current water supply has limited spare capacity to allow for additional connections in Leeston and to address this, Council were seeking resource consent from the Regional Council for a new bore. This new bore would be able to service the water demands of the development within the Plan Change area. Accordingly, Mr England has proposed a rule that would make subdivision beyond the 80th lot non-complying until such time as the Leeston water supply system is capable of servicing the additional allotments within the Plan Change area.

With regards to water supply and firefighting requirements, Ms Lewes acknowledges the submission made by Fire and Emergency New Zealand (FENZ), but did not consider that an additional rule requiring development within the Plan Change area to comply with New Zealand Firefighting Code of Practice SNZ/PAS 4509:2008 was necessary. She noted that there were already sufficient measures in the District Plan to ensure adequate water volumes and pressure are provided for firefighting purposes.

Transport safety and efficiency

- 2.11 Ms Lewes transportation assessment was supported by the assessment of Mr Andrew Mazey. Overall, they concluded that there are no traffic reasons why the Plan Change should not be granted.

Connectivity

- 2.12 While the roading connection to the Plan Change area from Spring Place had met with opposition from residents in that street, Mr Mazey generally supported the link. However in recognition of the opposition, Mr Mazey had recommended that the access (at 18 Spring Place) be downgraded and formed in line with the District Plan's requirements for a Local Intermediate Road as this he considered would remove the attractiveness of this connection being used as a primary access to the Plan Change area.

Transport safety

- 2.13 Mr Mazey confirmed that he was generally comfortable with the impact on traffic safety following the development of the land within the Plan Change area. He however noted that there were a number of minor upgrades that would be appropriate should the Plan Change proceed. Ms Lewes advised that any upgrades could be satisfactorily dealt with at the subdivision stage.

Transport effects

- 2.14 Christchurch City Council (CCC) submitted that the proposed Plan Change would result in higher commuter volumes into Christchurch City contributing to congestion and emissions. Ms Lewes and Mr Mazey considered a number of issues with the matter raised, including: the 2013 commuter data referenced by CCC reflected a post-earthquake situation that may not reflect current commuter figures, the data did not conclusively indicate that traffic commuting from Leeston was entirely destined for Christchurch City, and there was no analysis presented that showed how Leeston commuters used the road network to access their destination. Ms Lewes and Mr Mazey also noted that the traffic safety matter raised by CCC is governed by the Greater Christchurch Partnership.

Versatile Soils

- 2.15 Ms Lewes concurred with the Applicant that the Plan Change would not have a significant effect on the overall quality and availability of rural land in the Selwyn District. She went on to note that the Plan Change would provide for urban development without compromising larger, more viable farms.

Land Stability and Geotechnical Risk

- 2.16 On the basis of a peer review carried out by Mr McCahon of Geotech Consulting Ltd, Ms Lewes concluded that there were no geotechnical reasons that the Plan Change should not be granted, and that the existing subdivision provisions provide appropriate scope for the Council to assess matters such as liquefaction and lateral spread at the time a subdivision consent application is received.

Cultural Values

- 2.17 Ms Lewes noted that Mahaanui Kurataiao Limited (MKT) reviewed the plan change request and did not identify any wahi tapu or wahi taonga sites of cultural significance within the PC62 area. The review acknowledged the potential for residential development of the site and provided several cultural recommendations related to the future subdivision of the site. However, MKT did identify that the future subdivision of the site presented a high risk to water quality in Te Waihora / Lake Ellesmere as well as any unknown springs in the Plan Change area.

Ms Lewes considered that the concerns raised by MKT could be addressed at subdivision stage, but overall cultural values had been appropriately considered and addressed by the applicant.

Greater Christchurch Urban Development Strategy (UDS)

- 2.18 Ms Lewes addressed the submission of CCC which raised concerns regarding the impact that PC62 may have on the UDS. Ms Lewes considers that this submission raised matters that are beyond the scope of the plan change and also noted that the site falls outside the area of concern of the UDS, was not recognised in the settlement pattern update or considered in the Our Space recommendations for changes to the Canterbury Regional Policy Statement (CRPS). Ms Lewes considered PC62 was consistent with the current, operative, higher order documents and to decline it on the basis that it may not align with future work, the outcomes of which were not currently known, was inconsistent with the principles of natural justice.

Statutory Analysis

- 2.19 Ms Lewes went onto undertake a statutory analysis of the District Plan and other relevant planning documents, including the National Policy Statement on Urban Development (which she did not consider relevant); the Proposed National Policy Statement on Highly Productive Land (which she did not consider relevant); and the National Environmental Standard for Assessing and Managing Contaminations in Soil to Protect Human Health (which she considered could be appropriately assessed at the subdivision stage).
- 2.20 Ms Lewes noted that PC62 was to be considered under Chapter 5 of the CRPS and considered that the outcomes required in this chapter could be achieved and that PC62 was able to 'give effect' to the CRPS. She also considered that the plan change could be efficiently and effectively serviced in a manner that maintained water quality and quantity and was consistent with the outcomes sought by the Land and Water Regional Plan (LWRP).
- 2.21 Ms Lewes considered the values set out in the Mahaanui Iwi Management Plan 2013 (MIMP) will not be compromised and noted that MKT and the rūnanga had made a number of recommendations that were more appropriately addressed at the time of subdivision consent.
- 2.22 With regard to the District Plan, Ms Lewes turned her attention primarily to the urban growth provisions in sections B3.4 Quality of the Environment and B4 Growth of Townships. She concluded that the proposed plan change sits reasonably comfortably against these provisions and that overall, the application had addressed the necessary objectives and policies of the District Plan and concurs that the Plan Change is consistent with the relevant policy framework.
- 2.23 Ms Lewes also concurred with the conclusion that PC62 was consistent with the key actions identified in the Selwyn 2013: District Development Strategy and the Area Plan in that it provides for growth in an integrated and consolidated manner.

Proposed Amendments

- 2.24 Ms Lewes set out the changes to the District Plan including her proposed amendments in Appendix 1 of her s42A report should PC62 be approved, which included:

- a) Amendments to the Planning Maps (Township Volume) and Planning Maps (Rural Volume) to incorporate the zone changes into the planning maps.
- b) Inserting the Leeston Outline Development Plan to the Township Volume.
- c) Deleting Policy B4.3.55 and associated explanation.
- d) A series of rules addressing the flood hazard, reverse sensitivity effects on the Business 1 land, amendments to the rules on fencing and boundary treatment adjoining reserves, and rules associated with the ODP and subdivision which include restricting development until water and wastewater upgrades have occurred.
- e) Consequential amendments

Conclusion

- 2.25 Ms Lewes concluded that PC62, at a strategic level, better achieves the District Plans' objectives than the existing provisions, is consistent with the provisions regarding urban growth management, gives effect to the objectives and policies of higher order documents and is in accordance with the Area Plan. She noted that the proposal is an efficient use of land, part of which is already identified for residential use and will form a logical expansion to the Leeston township and that servicing of PC62 is technically feasible through on-site management of stormwater, and (in time) connection to the Council's reticulated water and wastewater network.

3.0 Hearing

Pre-hearing Information

- 3.1 Prior to the hearing I had issued a Minute seeking information from the Council on the take up of sections and households in Leeston in the period since 2016 so as to provide me with a better understanding of the growth situation in the township. Ms Lewes responded with evidence confirming that the Area Plan anticipates an increase of 402 households (49%) to 2031, and the existing zoned capacity within the town boundary provides for an additional 953 dwellings. The expected household increase (of 402) would yield 26 households a year or 115 to May 2020 (assuming a linear distribution). However, Ms Lewes noted that only 79 dwellings have been consented between 2016 and May 2020. Ms Lewes advised that there were two large Living zoned land parcels in Leeston that remain undeveloped; one had held consent but this had now lapsed, and the other currently has an application with Council to subdivide but it has been placed on hold at the request of the applicant due issues associated with Development Contributions.

Applicant

- 3.2 **Ms Eveleigh** provided a summary of the Plan Change, including the proposed provisions. With respect to the two submissions that sought alternative zonings, Ms Eveleigh referred to *Clearwater Resort Limited v Christchurch City Council*¹ and *Palmerston North City Council v Motor Machinists Limited*², but noted that the

¹ Clearwater Resort Limited v Christchurch City Council, AP34/02

² Palmerston North City Council v Motor Machinists Limited, [2013] NZHC 1290

applicants do not have a particular view on the amendments sought. She concurred with the assessment of Ms Lewes that the submission of Mr Peter Martin primarily relates to trade competition and should not be considered further. Ms Eveleigh then turned her attention to the key issues of flooding, stormwater and effects on waterways (making particular note of the need for regional consents), the Leeston development capacity (noting the disparity between plan enabled capacity and what is actually supplied to market) and transport matters. Ms Eveleigh concluded that the Plan Change will meet the necessary statutory tests.

- 3.3 In response to my questions Ms Everleigh said that there was no direction to consider the Proposed National Policy Statement for Highly Productive Land and that the Area Plan was a matter to have regard to but that the decision doesn't have to be consistent with it. She also considered that Policy B4.3.3 should not be considered in isolation and that an assessment was required 'in the round'. In terms of Policy 5.3.1 of the CRPS Ms Everleigh noted that in itself it did not talk about avoiding development.
- 3.4 In his evidence, **Mr Carr** provided a summary of the traffic related matters pertaining to the Plan Change and updated the transportation data acknowledging the time that had lapsed between his original report and this hearing. Mr Carr addressed all submissions relating to traffic generation, traffic safety, construction traffic and pedestrian safety. Finally, Mr Carr responded to the comments of Mr Mazey. He agreed that road improvements could be addressed at the subdivision stage and that it is appropriate for the Spring Place connection to be downgraded and formed as a secondary road (in response to submissions). However, he disagreed with Mr Mazey that a roundabout be installed at the proposed High Street / Clausen Avenue / Site Access intersection because he considers that the proposed priority intersection has ample capacity to serve the Plan Change area and noted challenges and limitations with both a complying and non-complying roundabout design in this location. Mr Carr concluded that there are no transportation reasons why the Plan Change request could not be recommended for approval.
- 3.5 In responding to my questions Mr Carr said that he saw the Spring Place connection as a secondary route and that engineering solutions could be used to make it less attractive. He considered the principle of a linkage in some form however to be a good one.
- 3.6 **Mr Hopkins** provided a summary of the stormwater management system to service the site, including consideration of the flooding affecting the area, contaminant loadings, stormwater volumes and quality and best practice stormwater design. Mr Hopkins then went on to address the submissions that raised stormwater (including flooding) as an issue. Finally, Mr Hopkins responded to Mr England's report noting the Council's planned water supply and wastewater improvements would fully address the requirements of the Plan Change area and while he generally agrees with Mr England's assessment of the adequacy of the proposed stormwater management, he noted that regardless of the configuration of such measures on the ODP, there are robust processes in place at subdivision and stormwater discharge resource consent stages to ensure that appropriate management is adopted.
- 3.7 Mr Hopkins provided a supplementary statement in order to respond to the evidence of Ms Barnett. He advised that concentrations of heavy metals in modern residential developments are substantially lower than that of established urban environments. To support this, he made reference to monitoring from a new residential

development in Lincoln, which recorded copper and zinc levels well within ANZECC guidelines. With respect to TSS, he noted that these can be a problem during construction, but there are a wide variety of accepted and effective management solutions. The risk of new development contributing to TSS reduces over time as subdivision is built out and exposed soils are less common. Mr Hopkins briefly noted that phosphorus is not typically an issue for modern residential developments. Mr Hopkins considered that there is a wide variety of solutions to managing stormwater contaminants and typical treatment trains are very effective. Mr Hopkins considered that many of the issues raised by Ms Barnett can be satisfactorily addressed at the subdivision and regional consenting phase.

- 3.8 Mr Hopkins indicated that the stormwater ponds would likely be required to be cleaned out periodically (around every 10 years) but that would be dependent on the system used. He was confident that the stormwater system could be created to address any potential groundwater issues.
- 3.9 **Mr Vincent** provided planning evidence in support of the Plan Change. He outlined the changes to the ODP, including the showing of indicative stormwater management area notations, changes to the potential pedestrian and cycle links and amending the Spring Place connection to a secondary road. By in large, Mr Vincent acknowledged support for the recommended amendments to the PC62 provisions but sought to amend Ms Lewes proposed Rule 12.1.4.106 to ensure that the hazard being managed in the Plan Change area was flooding.
- 3.10 Mr Vincent then went on to address the issues as broadly categorised by Ms Lewes. By in large he drew conclusions consistent with that of Ms Lewes, but provided more in-depth commentary on the matter of CCC's concerns about carbon emissions from commuter traffic including noting the role that smaller settlements (including Leeston) played in the Christchurch earthquake recovery, the role that public transport and emerging technologies will play in carbon reductions and the framework for the growth of Leeston signalled by the Area Plan.
- 3.11 Mr Vincent provided a summary of the statutory framework, noted his agreement with Ms Lewes' assessment, the appropriateness of the initial planning assessment that accompanied the Plan Change request (including the s32 assessment), and the appropriateness of the amendments to the PC62 provisions. Overall, he concluded the purpose of the Act was best achieved by the approval of the Plan Change.
- 3.12 In a supplementary statement, Mr Vincent summarised the amendments to the ODP and proposed rule provisions, and also provided a summary of the known development activity within Leeston by comparing google images from 2011, 2013, 2015 and 2018. He noted that development in this time was concentrated in Wheatsheaf Drive / Barley Mow, Monticello, Friars Lane, Showground Place and Millbridge.
- 3.13 In response to my questions Mr Vincent said that he looked for direction from the Area Plan in his analysis as to the direction for growth. He also emphasised that the Plan Change took a long-term view and considered the Area Plan took a medium to long-term view. He said the PC62 was more efficient in terms of yields and services and would serve Leeston for a good number of years. In terms of reverse sensitivity and Policy B4.3.3 Mr Vincent said there were other examples in the District such as Dunns Crossing Road where the urban/rural interface wasn't uniform and while he accepted there was an inconsistency with this policy and a potential for

reverse sensitivity effects he noted that the Area Plan goes beyond the existing proposal and included the “gap land”. He also suggested there remained an opportunity for mitigation, although I was unclear what that entailed.

Submitters

- 3.14 **Ms Barnett** (representing Harts Creek Streamcare Group and Ellesmere Sustainable Agriculture Incorporated) provided a summary of the organisations that she was speaking on behalf of. She raised concerns about the potential for development in the proposed Plan Change area to result in the following: increased contaminants entering surface and ground water; increased water flows in Birdlings Brook; and increased adverse effects resulting from the Leeston Stormwater North Bypass. Ms Barnett considers that the proposal was not consistent the Area Plan.
- 3.15 Ms Barnett went onto say that the ODP did not seem to be prepared in accordance with Policy B4.3.8 in that it did not identify all the requirements of that policy including such things as secondary flow paths for stormwater. She also considered that to have a full understanding of the impacts of PC62 on the surrounding streams an ecological assessment was necessary, saying that if there is going to be a level of contamination what is the likely effect on Birdlings Brook for example.
- 3.16 **Mr McLachlan** said he was concerned about the access onto Spring Place which in his view would change the character of this cul-de-sac. He also raised concerns about the potential for flooding of his rural land adjacent to Harts Creek and Birdlings Brook to be exacerbated by the development of the PC62 area. He went onto explain how flood water can build up on his property in heavy rain events due to downstream drainage problems. Mr McLachlan went on to express concerns about the ability of the Leeston wastewater system to handle increased housing development.

Council Response

- 3.17 Mr Mazey said that connectivity with the existing urban area was important, however he considered the connection to Spring Place could be downgraded through the use of thresholds and speed humps. He indicated that the Spring Place intersection with High Street needed to be upgraded and that a path was required on the north side of Spring Place. He said the roundabout at the High Street / Clausen Avenue / Site Access intersection was about creating a western threshold to the town and that the speed limit would determine the roundabout design.
- 3.18 Mr England indicated that the consent for the new water supply was expected later in the year and that the Council hoped to have the supply available by the middle of next year. A subsequent memo was received from Mr England on 8 October confirming that consent to take and use groundwater had been granted by Environment Canterbury.
- 3.19 In response to my questions regarding wastewater and stormwater Mr England indicated that an upgrading of the wastewater system would be required to cater for increased development, however this was to some extent dependent on demand. He also said that the current consent for the diversion of stormwater around Leeston was on hold, but that it covered the existing urban area.

- 3.20 In her response Ms Lewes produced a land capacity calculation sheet which had been used to determine the figures in Area Plan. I note here that it became clear at the hearing that there were some problems with this sheet which Mr Vincent subsequently responded to.
- 3.21 Ms Lewes went onto say that she considered the Area Plan figures were quite rudimentary and showed a more theoretical capacity. She considered there was a lack of section supply in Leeston due to there presently being no available land consented for subdivision.
- 3.22 Ms Lewes considered Living 2 zoning was an inefficient use of land and that the Plan Change promoted the most efficient use. She also did not see the need for buffer areas to be included as a rule with regards the Cochrane site. Ms West then noted that such a rule would only deal with visual aspects.
- 3.23 In terms of Policy B4.3.3 Ms Lewes said that it was clear that the policy was to avoid residential development on three boundaries, and she agreed that was its intent, however she noted that in terms of the rural/urban transition there was no requirement for any form of mitigation. In response to my questions around Policy B4.3.4 which encourages development to occur on vacant land in existing Living zone if available and appropriate, Ms Lewes referred to it as “an interesting policy in a District Plan” and said that the PC62 deferred land would be consistent with it and that the rezoning of the rural land goes beyond what the policy is seeking to do. However, she said she would look at policies in terms of obtaining a broader view.
- 3.24 Turning to the CRPS Ms Lewes considered Policy 5.3.1 was trying to stop growth jumping outside and beyond urban areas. She also said that in terms of versatile soils that this site was not different than any other around Leeston and that it was a balancing exercise in determining whether the soil class was enough to restrict the expansion of the township. She considered a wider rural area could be protected by zoning this area and that the Plan Change was consistent with Policy B1.1.8.

Right of Reply

- 3.25 At the end of the hearing I adjourned to enable the applicant to provide a right of reply. This was received on the 23rd September 2020 and included further evidence from Mr Vincent. As a result, I issued a further minute enable the parties the ability to comment on this new evidence.
- 3.26 In his evidence Mr Vincent responded to Ms Lewes land capacity calculation sheet. He noted that a number of sites (including the hospital and schools) should not be included in the calculation for infill potential (resulting in a reduction in available infill land of 12.5ha, or 115 sections). He also noted that the infill calculation does not take into account the likelihood of infill subdivision occurring and highlighted that only five addition infill allotments had been created between 2016 and 2019 (I note his Table 2 appeared to actually show 8 allotments). With respect to infill subdivision capacity, Mr Vincent concluded that the rate of infill subdivision within Leeston was very low. Mr Vincent then turned his attention to the yield potential of greenfield subdivision and noted that the now lapsed subdivision consent for land north of Leeston Dunsandel Road achieved 163 lots, whereas the Council’s calculations estimated of 194 lots. Lastly, Mr Vincent recalculated the capacity of the Leeston deferred zones to be 78 lots (compared to the Council’s calculation of 244 lots). As a result of the recalculations undertaken by Mr Vincent, he advised that there is an identified capacity in Leeston of 672 lots.

- 3.27 Ms Everleigh in the right of reply emphasised that Policy 5.3.1 of the CRPS seeks to ensure (amongst other things) that any urban growth occurs in a form that concentrates or is attached to existing urban areas. She noted that the Courts³ have cautioned that explanatory statements do not override the wording of the objectives, policies and rules and should be considered in the broader context of the plan. Ms Eveleigh conceded that PC62 was not consistent with Policy B4.3.3, but on balance the Plan Change achieves the objectives of the District Plan regarding the growth of townships. Ms Eveleigh advised that it is within the scope of submissions to only rezone the deferred land, but advised there are a number of reasons why rezoning the whole Plan Change area is more appropriate, including enabling better provision of services and integration of development. With regards to development capacity, Ms Eveleigh stated that the need for additional development capacity is not a necessary pre-requisite to rezoning land, and also that there is no effects-based reason associated with development capacity for declining the plan change. She also referred to the NPS-UD and the applicability of Clause 1.3 (Application), stating that it could arguably apply, but regardless there are a number of NPS clauses that apply to PC62 and overall PC62 is in accordance with the NPS-UD direction.
- 3.28 Ms Barnett provided a right of reply dated 6 October, in which she noted that regardless of the development capacity being debated there is inadequate 'environmental capacity' and the submitters remain concerned with any potential adverse environmental effects on surface water and groundwater quality and quantity down gradient and downstream of Leeston Township.
- 3.29 The hearing was close via a minute issued on the 23rd October 2020.

4.0 Statutory Tests

- 4.1 The general approach for the consideration of changes to district plans was initially summarised in the Environment Court's decision in Long Bay⁴, which has due to various amendments to the RMA been superseded by the Colonial Vineyards decision⁵. The relevant requirements in this case are set out below:
- (a) The plan change should be designed to accord with and assist the Council to carry out its functions under section 31 and to achieve the purpose of the Act (s74(1)(a) and (b)).
 - (b) The plan change must give effect to any national policy statement, a national planning standard and the operative regional policy statement (s75(3)(a), (ba) and(c)).
 - (c) The plan change shall have regard to the actual or potential effects on the environment of activities including, in particular, any adverse effects (s76(3)).
 - (d) The plan change shall have regard to any relevant management plans and strategies under other Acts (s74(2)(b)(i)) and must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district (s74(2A)).

³ Waterfront Watch Inc v Wellington City Council [2018] NZHC 3453

⁴ Long Bay – Okura Great Park Society Inc v North Shore City Council A 078/08

⁵ Colonial Vineyards Ltd v Marlborough District Council [2014] NZEnvC 55

(e) Finally, section 32 requires that rules are to implement the policies and are to be examined, having regard to their efficiency and effectiveness, as to whether they are the most appropriate method for achieving the objectives of the District Plan taking into account:

- (i) the benefits and costs of the proposed policies and methods (including rules); and
- (ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods; and
- (iii) if a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances.

4.2 Overall, the s32 test is one of appropriateness (i.e. not necessity) and the requirement is to achieve the objectives of the District Plan.

5.0 Assessment

Scope Issues

5.1 Before I address the wider issues associated with the Plan Change there is a question of scope associated with the submissions lodged by Cochranes of Canterbury (Cochranes) and Sharon Farrant.

5.2 Cochranes has requested that a portion of the land at 125a High Street be zoned Business 1, in keeping with the historical use of that area as part of the existing business operating from the site.

5.3 Ms Farrant is supportive of the proposal to lift the deferral over her property at 33-35 Leeston Dunsandel Road but has requested that the zoning be changed from Living 2 to Living 1. The effect of the Plan Change as proposed would be to leave Ms Farrant's property at 33-35 Leeston Dunsandel Road, along with the property at 31 Leeston Dunsandel Road owned by a third party, surrounded by more intensive Living 1 development.

5.4 As referred to by Ms Everleigh leading cases in this situation are Motor Machinists Limited and before that Clearwater Resort Limited, and the question is whether the submission is 'on' the plan change or not. The submission must reasonably be said to fall within the ambit of the Plan Change.

5.5 In my view Ms Farrant's submission falls within the ambit of the plan change and can clearly be considered to be 'on' the Plan Change and therefore within scope. The submitter is seeking a zoning the same as that proposed for the land surrounding their site i.e. Living 1. The fact that she did not participate in the Plan Change process is of little relevance. Finally, I do not consider there is any risk that a person directly or potentially directly affected by the additional zoning has been denied an effective opportunity to respond. As I understood it all landowners in the deferred area were approached about the rezoning.

5.6 The Cochranes situation is however different because the submission is seeking quite a different zone i.e. a Business zone, from that associated with the Plan Change. The Plan Change is not promoting any form of Business zoning and in my view therefore the submission by Cochranes is not 'on' the plan change and is not within scope.

- 5.7 At this point I acknowledge that there is no submission dealing with 31 Leeston Dunsandel Road and any changes to this site would have to be dealt with via the District Plan Review.

Plan Change Components

- 5.8 While there is a high degree of integration, PC62 can be for the purpose on my considerations divided into component parts.
- 5.9 The first part is the deferred land. The reasons for the deferral are set in the District Plan (Policy B4.3.55) as being the area is subject to surface flooding at times of heavy rain which relates to the limited capacity of the Market Street Culvert which requires remediation. The explanation and reasons to the policy state that *“once a remedy has been decided upon and implemented, the ‘deferred’ notation and subdivision restriction will be removed by Plan Change”*. A determination in terms of the deferred land itself is therefore limited to considering whether stormwater and its associated issue has been satisfactorily addressed. A second consideration in terms of the deferred land, should the first be overcome, then relates to the density of development which requires a broader assessment than simply a focus on stormwater.
- 5.10 The rezoning of the rural land to urban land also requires a much broader assessment again and there are a number of objectives and policies which address and provide guidance on this.

Development Capacity

- 5.11 The issue of existing development capacity was not particularly addressed by either the Applicant in the Plan Change documentation or by Ms Lewes s42A report which I found in the circumstances somewhat surprising. As a result, I had issued a Minute seeking information on the take up of sections and households in Leeston in the period since 2016 (the period since the Area Plan had been adopted) so as to provide me with a better understanding of the growth situation in the township. The subsequent information provided by Ms Lewes showed consents for new dwellings grew substantially in the post Christchurch Earthquake period jumping from 11 in 2010 to a peak of 61 in 2013. Since then the number of consents has steadily declined with 23 in 2017, 9 in 2018 and only 3 in 2019. Up until May 2020 there had been four dwellings consented. The evidence therefore points to the fact that Leeston experienced a significant uptake in residential development in the post-earthquake period, but that development has now dropped back to similar levels experience in the pre-earthquake period.
- 5.12 Ms Lewes suggested that the drop in consented dwellings could be due to the lack of available sections. Mr Vincent had also provided a letter from Mr Stephan Knowler a real estate agent in Leeston who said that the supply of sections in the town had been exhausted and that he had a list of prospective purchasers. Just what the level of demand is was clear to me, nevertheless any current lack of available sections does not appear to be due to a shortage of zoned land. As Ms Lewes pointed out in her further information the Area Plan identified that there is existing zoned capacity to accommodate a significant number of households within the boundary of the township.
- 5.13 Ms Lewes provided further information at the hearing in the form of a sheet detailing the Ellesmere Land Capacity Calculations for Leeston. It was apparent that there were some issues with the calculations and

subsequently Mr Vincent undertook a helpful analysis of the Area Plan and the Land Capacity Calculations which identified some sites (Including Ellesmere College and Ellesmere Primary School) which simply were not realistically suitable to be counted in the land capacity calculations along with errors in the calculations. He also questioned the level of infill housing anticipated and noted that only eight lots had been created within the Living 1 zone in the past four years. His revised calculation was 672 households including the deferred land (78 households) at its current zoning. While I acknowledge this is based on 2015 data and is now 5 year old it is still a substantial figure for a town the size of Leeston and of course it doesn't take into account the 'up-zoning' now sought in PC62 for a large proportion of the deferred land nor the proposed rezoning of the rural land.

- 5.14 I have looked at the more recent data referenced in the application documentation - Selwyn's Potential Growth Path up to 2048 – Table 3. That begins with population and household forecasts from 2018/19 through to 2047/48. Bringing it up to the present date (2020/21) the projection indicate that 362 households (an average of 33 per year) will be required in the 11 year period through until 2030/31, a further 340 (an average of 34 per year) in the next 10 year period to 2040/41 and a further 238 (an average of 34 per year) in the seven year period to 2047/48. That is a total of 940 households over the next 28 years period. Given the current level of development over the past five years these figures seem now to be optimistic, noting that the number of actual dwellings consented over the last two years will have fallen well short of the predicted 30 dwellings in Table 3.
- 5.15 In terms of undeveloped zoned land there is presently some 32.5ha of vacant Living XA zoned land left in two separate location on the north (Leeston Dunsandel Road) and south (Carsten Street) sides of the town. Both sites appear to me to be integral to creating a consolidated urban form. Using the Councils figure of 40% for reserves and services⁶ this would equate to a capacity figure of some 300 allotments. I was informed that both these sites had been the subject of subdivision consents with the formers consent having lapsed in 2018 after 10 years and the latter being on hold since 2018, possibly due to issues associated with development contributions. Given that both sites have had subdivision consents sought and one had been granted there can be no suggestion of land banking occurring in Leeston. Quite why neither has been able to get sections to the market was unclear.
- 5.16 In terms of the Living 1 zone I acknowledge the point made by Mr Vincent and I agree there is some level of uncertainty as to just how much infill development (Mr Vincent's revised figure was 198 households) within the Living 1 zone will occur. Yet having driven around Leeston and looked on aerial photographs it seems to me that there are some reasonably large undeveloped or limited developed sites within the town and there also appears to have been a certain amount of infill development occur. In my view it is difficult to put a realistic figure on this but having considered Mr Vincent's additional evidence I consider something in the range of 100-150 households is reasonable.
- 5.17 In terms of the Living 2 and 2A zones it is difficult to understand what level of land capacity remains and I have therefore assumed a conservative figure of 10 households.

⁶ The Ellesmere Area Plan Land Capacity Calculations have assumed 40% of land will be required for reserves and services giving a formula of gross land area x 6/10 = Net. The Net is then divided by the minimum lot size to give a capacity figure.

5.18 Overall, therefore I consider the existing land development capacity for Leeston can be described as follows:

Living XA	300 households
Living 1	100-150 Households
Living 2 & 2A	10 Households
Living deferred	78 households
Total	488 – 538 Households

5.19 In addition to the above the PC62 application proposes that some 28.1ha of deferred Living 2 land be rezoned Living 1, 1.6ha of deferred Living 2 land be rezoned Living 2 (this is land whose owners did not take part in the application) and that some 31.2ha of Rural (Outer Plains) be split between Living 1 (13.9ha) and Living 2 (17.3ha). The application indicates that in total this would provide approximately 410 allotments. This would therefore add a further 332 households to the above figures (i.e. 410 minus 78). Given my decision on scope above the 1.5ha block of Ms Farrant's would at a Living 1 zone add an additional 11 dwellings net.

5.20 On the basis of the above, the implementation of PC62 would therefore provide for a development capacity for Leeston of between 831 and 881 households.

5.21 While I acknowledges Ms Everleigh submission that the need for additional development capacity is not a necessary pre-requisite to rezoning land, and also that there is no effects based reason associated with development capacity for declining the plan change, I consider consideration of development capacity is relevant in the context of servicing, urban growth, the policy framework of the District Plan and the National Policy Statement – Urban Development.

Actual or Potential Effect on the Environment

5.22 I considered the key effects associated with the PC62 can be broken down into the following areas, being the infrastructure servicing (water, stormwater and wastewater), density, character and urban form, reverse sensitivity and, transportation and connectivity. These have been dealt with in turn below.

1. Infrastructure servicing

(i) Water

5.23 With the consent for the new water supply now being approved I consider the issue surrounding sufficient water supply has been addressed and that this goes some way to addressing the concerns expressed by FENZ regarding the impact on firefighting ability. I accept that it may take some time to connect the new bore to the wider water supply system and until that time a restriction of development within the Plan Change area remains appropriate.

5.24 As to whether a specific provisions should be included in the District Plan to cover the PC62 area to ensure compliance with the New Zealand Firefighting Code of Practice SNZ/PAS 4509:2008 or an alternative on-site firefighting water supply be provided, as I stated in my decision on PC60 I do not consider the inclusion of provisions as sought by FENZ would meet the s32 test of efficiency and effectiveness and I consider the risk of not including them is limited give the existing provisions in the District Plan and the Council's subdivision Code

of Practice. As discussed in the PC60 decision, in my opinion there are alternative options which could be pursued.

(ii) Wastewater

- 5.25 Mr England acknowledged that growth at Leeston could result in exceedance of current wastewater resource consent conditions and require additional capital expenditure and he supported a restriction of up to 80 allotments at this point in time within the Plan Change area. From what I understood there is funding for the upgrade of the Ellesmere Wastewater Treatment Plant in the year 2023/24, but there are future requirements the Council will need to meet including reducing Total Nitrogen concentrations which will necessitate expanding the area the effluent is applied to.
- 5.26 There was no evidence to suggest that the required upgrading of the Ellesmere Wastewater Treatment Plant could not be achieved or that problems could arise with the rezoning of the PC62 land. I am therefore confident on the basis of Mr England's evidence that wastewater issues can be addressed in the fullness of time and that in the interim a cap of development is appropriate.

(iii) Stormwater

- 5.27 The issue of flooding and the potential for development of the PC62 land to exacerbate this assumed some importance in hearing. Mr England noted that flooding issues in Leeston are well known, and it was for this reason that part of the Plan Change area has an existing deferred zoning. The Council has been implementing in stages the Leeston North Stormwater bypass which is designed to divert flood flows away from Leeston township and the Plan Change area thus providing it with a greater level of protection from flooding. The final stage is in the pre-construction phase and Mr England noted that the Stormwater Management Area along the northern boundary of the property above Leeston Dunsandel Road which forms part of the PC62 area was critical to allowing the provision of the final stage of the bypass.
- 5.28 Ms Barnett expressed concerns that further development in Leeston would exacerbate flood effects for farmers to the north-east and east of the township and further contaminate Birdlings Brook and that the proposal did not address adequately adverse environmental effects on surface water and groundwater quality and quantity. She also pointed to wider issues associated with existing stormwater disposal where there may already be significant adverse effects occurring.
- 5.29 Mr England's view was that the stormwater management area shown on the ODP appeared to be adequately sized, however he considered additional stormwater management areas may be required to ensure all discharges are adequately managed. While Mr Hopkins concurred with this, he suggested the absence of additional areas did not in any way reduce the obligation of individual developers to provide any and all stormwater management necessary. He considered showing additional (smaller) areas could introduce a level of detail in the ODP that could then complicate or even hinder a developer in providing appropriate stormwater management if a solution was identified that did not closely align with one of the (smaller) areas shown on the ODP. In this regard I accept that unless detailed design is undertaken it can be difficult within the ambit of an ODP to show all the details associated with stormwater (and other matters) on an ODP, however while I am not convinced leaving everything to the subdivision stage is necessarily the correct approach either, I accept that

there are parallel processes involving Environment Canterbury which will necessitate addressing the quantity issues in detail raised by Ms Barnett. There is an inherent fine line in plan change processes seeking rezoning as to the level of detail necessary to address actual or potential effects on the environment, particularly where a further process is necessary from another jurisdiction. In my opinion the relevant experts have provided sufficient detail and evidence to convince me that the effects associated with stormwater quantity on the environment are able to be addressed. I also note that rules are proposed internally to the Plan Change area to address the issue of the flood hazard by requiring raised floor levels.

- 5.30 In terms of stormwater quality, I accept Mr Hopkins detailed evidence that the concentrations of heavy metals in modern residential developments is substantially lower than that of established urban environments and that modern treatment systems and management of construction are able to achieve acceptable water quality levels so that downstream water bodies are not adversely affected. Ultimately this too will be tested via consents required from Environment Canterbury but for the purposes of this Plan Change I am satisfied that there are solutions available to address stormwater quality before it is released into the wider environment.

2. Density, character and urban form

- 5.31 PC62 proposes to increase the density of development on the deferred land by rezoning it all Living 1. Some submitters have expressed concerns about the increase in density and potential effects it brings, including noise, privacy, character and stormwater run-off, with the latter already being addressed above.
- 5.32 The deferred part of the site has, subject to addressing the stormwater issue, already been identified for urban development. The question then becomes whether a denser form of development is more appropriate for this part of the site or would create a higher level of adverse effects. I accept that intensifying an area that is zoned for residential use, albeit deferred, is a more efficient use of land and that this area represents a logical expansion to Leeston township. Indeed, that latter fact could be said to have already been determined.
- 5.33 As referred to by Ms Lewes it is somewhat inevitable that if approved the Plan Change will result in changes in character for existing residents along the present interface with the adjoining farmland. That change has essentially been signalled for many years with the deferred Living zonings and therefore in this circumstance can reasonably be anticipated. I can therefore only conclude that the effects on the character and amenity of the existing residential areas in this context are acceptable.
- 5.34 In terms of urban form, I agree that connecting to the existing Living 1 zone on Spring Place complements the existing residential environment and ensures connections to the centre of the town. I also accept that the proposed extension of the Living 1 and 2 zones along High Street would align somewhat with the existing residential development on the south side of High Street and could be seen as a natural extension of the Leeston urban environment. However, that argument does have its downside in that unless expansion is symmetric with the opposite side of the road it opens the door to the same argument to be applied again. In this case there is a pocket of rural land on the south side of High Street where this would apply.
- 5.35 However, in terms of the shape of the outer zone boundary to the south of Leeston Dunsandel Road I do not consider it creates a particularly good urban form with the surrounding of the Rural zone. While I acknowledge that this was not the original intention the fact remains it is what is in front of me. In the context

of urban form itself I do not consider this is fatal, however when coupled with the reverse sensitivity issue below it becomes in my view a major issue in terms of potential effects on the environment.

3. Reverse sensitivity

5.36 In the context of a Plan Change the guidance in a District Plan is to be found within the objectives and policies and in terms of reverse sensitivity this is to be found in the Quality of the Environment and Growth of Townships sections (B3 and B4).

5.37 The issue of reverse sensitivity on the adjoining rural land was not particularly addressed in any detailed way by either planner. While this may have been because there was no submission raising it, that does not extinguish it from being a potential effect on the environment.

5.38 In this regard Objective B3.4.3 seeks that “reverse sensitivity effects between activities are avoided” while Policy B3.4.39 seeks to “*avoid rezoning land for new residential development adjoining or near to existing activities which are likely to be incompatible with residential activities, unless any potential ‘reverse sensitivity’ effects will be avoided, remedied or mitigated*”. The explanation and reasons state:

Rezoning land for new residential development around townships should not create ‘reverse sensitivity’ issues with existing activities in any zone. Policy B3.4.39 does not preclude rezoning of land for residential development adjoining ... sites in the Rural Zone which have activities with incompatible effects provided appropriate methods are used to address potential ‘reverse sensitivity’ issues.

5.39 Policy B4.3.3 then seeks to “*avoid zoning patterns that leave land zoned Rural surrounded on three or more boundaries with land zoned Living or Business*”. The explanation and reasons state:

The new zoning pattern should also avoid leaving a patch of land zoned ‘Rural’ surrounded by Living or Business zones. Such a land zoning pattern can increase the potential for ‘reverse sensitivity’ issues between the site and adjoining zones.

5.40 The District Plan also discusses potential mitigation measures for addressing reverse sensitivity issues. The explanations and reasons to Objectives B4.1.1 and B4.1.2 for example state:

At some locations around townships, a low density Living 2 environment may be appropriate on the edge of towns. Within such low density living environments particular regard should be had to reducing the potential for reverse sensitivity by increasing the size of allotments at the rural interface, reducing the number of people exposed to potential reverse sensitivity effects and in turn providing an appropriate buffer between the rural area proper and the more concentrated township areas.

5.41 Policy B4.1.3 states “... Elsewhere in the District to allow, where appropriate, the development of low density living environments in locations in and around the edge of townships where they achieve the following:

- *Reduce the exposure to reverse sensitivity effects;”*

5.42 Again, the explanations and reasons to this policy state that “*Effort should be made to reduce the potential for reverse sensitivity effects by increasing lot sizes and reducing the number of people exposed to effects*”.

- 5.43 Having reviewed the above, in my view the District Plan provides a high level of guidance on reverse sensitivity in urban growth situations including potential mitigation options.
- 5.44 The shape of the zoning proposed in my opinion significantly elevates the potential for reverse sensitivity effects particularly on that part of the rural property which is surrounded on three sides by Living zoning when compared to a linear boundary, by increasing the interface. While I acknowledge Mr Vincent's comment about a similar scenario on Dunns Crossing Road that does not mean that those properties are in any better situation. The District Plan's guidance in my view it relatively clear in that reverse sensitivity issues are to be avoided or reduced and in my opinion having reviewed the plan change I find that there has been very little attempt to address this aside from the Living 2 zoning along some parts of the rural boundary. Indeed, I consider a zone boundary shape of this nature is not supported by the District Plan, is simply inappropriate and raises the potential for adverse effects.
- 5.45 Turning to the Cochrane land, with respect to Ms Lewes, Mr Vincent and the application documentation I do not agree that the District Plan does not currently require mitigation or interface measures for Living zoned sites which adjoin a Business 1 zone. Again, there is policy guidance to be found in Policy B3.4.39 (referred to above) which I consider is clear. While I except there is some ambiguity in the explanation and reasons even then they refer to *"rezoning land for new residential development around townships should not create 'reverse sensitivity' issues with existing activities in any zone"*. [my emphasis]
- 5.46 Having said that, I consider the rule proposed as part of the plan change goes as far as it can in terms of the Cochrane land in addressing reverse sensitivity effects. The residual Cochrane land is zoned Living and it was unclear as to whether there was any resource consent for the activities occurring on it. However, I consider given the industrial nature of the Cochrane site the rule should cover more than just landscaping. The further submission from Cochranes was clearly concerned about noise in suggesting mounding and fencing in addition to planting to minimise reverse sensitivity effects and I agree that either one of these should be required to address as far as practical noise.

4. Transportation and connectivity

- 5.47 The primary transportation issue identified was the connection through to Spring Place. While I understand the concerns expressed by residents of the street given it is a cul-de-sac it would appear from the evidence of Mr Mazey that a connection into the PC62 area has always been a proposition. In my view the connectivity provided by this connection is warranted in provided a more integrated urban form and I consider the downgrading of the road link and associated in-road measures would reduce the vehicle traffic impact on Spring Place.
- 5.48 In terms of the other transportation matters raised regarding roading upgrades and a roundabout I consider these are beyond those which I need address in terms of a Plan Change.

National Policy Statement for Freshwater Management 2020

- 5.49 The National Policy Statement for Freshwater Management 2020 (NPS-FM) came into effect on the 3 September 2020 and I am bound to consider it. Having reviewed the objective and policies I do not consider

there is anything specifically in them that PC62 does not give effect to. That is not to say however that matters associated with the NPS-FM might not arise in any subsequent consenting process when details of the discharge regimes in particular are developed.

National Policy Statement for Urban Development

- 5.50 I have previously considered the interpretation of Clause 1.3 and the definition of ‘urban environment’ and reached a conclusion that the National Policy Statement for Urban Development (NPS-UD) is not relevant to townships less than 10,000 people. Ms Everleigh has suggested however that the NPS-UD is relevant albeit acknowledging the clause 1.3 is unclear. She has identified Objective 2 and Policy 2 as being relevant because they do not refer to ‘urban environments’ along with Clause 3.2 of Part 3 Implementation, Subpart 1 – Providing development capacity.
- 5.51 In the circumstances therefore I have decided to consider those provisions referred to above. In this context I note that the NPS-UD in clause 1.4 defines the following:
- Short term means within the next 3 years
 - Short-medium term means within the next 10 years
 - Medium term means between 3 and 10 years
 - Long term means between 10 and 30 years
- 5.52 Objective 2 seeks that *“planning decisions improve housing affordability by supporting competitive land and development markets”*, while Policy 2 requires *“Tier 1, 2, and 3 local authorities, at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term”*.
- 5.53 Clause 3.2 - **Sufficient development capacity for housing** of the Implementation section requires that:
- (1) *Every tier 1, 2, and 3 local authority must provide at least sufficient development capacity in its region or district to meet expected demand for housing:*
 - (a) *in existing and new urban areas; and*
 - (b) *for both standalone dwellings and attached dwellings; and*
 - (c) *in the short term, medium term, and long term.*
 - (2) *In order to be sufficient to meet expected demand for housing, the development capacity must be:*
 - (a) *plan-enabled (see clause 3.4(1)); and*
 - (b) *infrastructure-ready (see clause 3.4(3)); and*
 - (c) *feasible and reasonably expected to be realised (see clause 3.26); and*
 - (c) *for tier 1 and 2 local authorities only, meet the expected demand plus the appropriate competitiveness margin (see clause 3.22).*
- 5.54 I have considered these NPS-UD provisions with particular reference to the section above on development capacity.

- 5.55 My analysis in paragraph 5.18 concluded that the current existing land development capacity for Leeston, assuming the deferred land was enabled as is, was between 488 – 538 Households. The up-zoning of all the deferred land to Living 1 (some 29.7ha which includes the 1.5ha site) would add an addition 196 households (i.e. 274 minus 78) bringing the development capacity to between 684 – 734 households, while the full extent of PC62 would add an additional 343 households (again including the 1.5ha site) bringing the development capacity to between 831 – 881 households
- 5.56 There is little doubt that whatever the configuration, PC62 would increase the land supply and support a more competitive land and development market, so the Objective 2 would be met. The key question in Policy 2 and Clause 3.2 is whether there is sufficient development capacity in Leeston to meet expected demand for housing over the short term, medium term, and long term.
- 5.57 Using the Council's yearly growth figure of 34 households, which now seem somewhat doubtful, there is currently sufficient development capacity for the next 14 – 16 years. Therefore, the requirements of Policy 2 and Clause 3.2 in this regard are already met for short, medium and long-term development. The up-zoning of the deferred land would extend the capacity out to 20—22 years, while the full PC62 proposal would extend the capacity out to 24—26 years.
- 5.58 Overall, I consider while the requirements of the NPS-UD as they relate to Leeston are largely met by the present situation, PC62 in whatever form would clearly enhance that situation.

Canterbury Regional Policy Statement

- 5.59 PC62 is required to give effect to the Canterbury Regional Policy Statement (CRPS) and in my opinion the relevant provisions are those located in Chapter 5.
- 5.60 The relevant provisions of Chapter 5 provide an overview of significant resource management issues and in particular in relation to PC62, provisions seek to achieve consolidated, well designed and sustainable growth in and around or attached to existing urban areas and promote a coordinated pattern of development and energy efficiency in urban form, transport patterns and site location (Objective 5.2.1 and Policy 5.3.1).
- 5.61 I considered PC62 is generally consistent with the various elements of these provisions. It is consistent with all but one of the subclause in Objective 5.2.1, that being *i. avoids conflicts between incompatible activities* and it meets the requirements of Policy 5.3.1 to be attached to an existing urban area and generally promotes a co-ordinated pattern of development. Further, there is nothing to suggest it does not or will not achieve the remaining clauses of the policy.
- 5.62 Policy 5.3.2 sets out the development conditions which include:
1. ensuring adverse effects are avoided, remedied or mitigated including where these would compromise or foreclose:
 - options for accommodating the consolidated growth and development of existing urban areas:
 - the productivity of the region's soil resources; and
 - the protection of sources of water for community supplies.

2. avoiding or mitigating natural hazards; and reverse sensitivity effects and conflicts between incompatible activities.
3. integrating with infrastructure and transport networks.

- 5.63 The explanation and reasons state that Policy 5.3.2 establishes the standards to be met for development within the wider region, regardless of whether such development is located within, or outside of, existing urban areas and indicate that the approach in Policy 5.3.1 is to ensure that urban development outside of existing urban areas is to be avoided, so as not to compromise the efficient form and development of existing settlements as the primary focus for meeting the region's growth needs.
- 5.64 With regards this policy I consider PC62 would, to the extent that the rural zone land is lost and in the context of the development capacity available, foreclose the productivity of the region's soil resources and that reverse sensitivity effects and conflicts between incompatible activities have not been avoided or mitigated. The Plan Change does not however particularly foreclose options for accommodating the consolidated growth and development of the existing urban area of Leeston as far as I can tell or compromise the protection of the community water supply. It also mitigates the flood hazard and integrates with the transport network.
- 5.65 In terms of the explanation and reasons Ms Everleigh pointed out that the Courts have cautioned that explanatory statements do not override the wording of the objectives, policies and rules and should be considered in the broader context of the plan. I accept this and have given little weight to the reference to Policy 5.3.1 having an approach ensuring that urban development outside of existing urban areas is to be avoided because that is simply not the case. As Ms Everleigh stated in the right of reply *"Policy 5.3.1 does not seek to avoid urban growth beyond existing urban areas. To the contrary, it explicitly provides for urban growth that is attached to (and therefore not within) existing urban areas"*.
- 5.66 Policy 5.3.5 seeks to ensure development is appropriately and efficiently serviced with potable water, and sewage and stormwater disposal, while Policy 5.3.6 seeks the avoidance of development which constrains the on-going ability of these services to be developed and used and discourages them where they will promote development in locations which do not meet Policy 5.3.1.
- 5.67 I accept that the new water supply will be available to efficiently service the PC62, that the stormwater issues are able to be appropriately addressed and that the wastewater system can in time be upgraded and in the meantime development would be restricted. In this context PC62 is consistent with these two policies.
- 5.68 Finally, I accept that PC62 meets the intent of Policy 5.3.8 which seeks the integration of land use and transport.
- 5.69 The question therefore does PC62 give effect to the CRPS. While there are matters of inconsistency with some provisions my conclusion is that on balance PC62 does give effect to the CRPS.

Land and Water Regional Plan

- 5.70 I do not consider the PC62 is inconsistent with the Land and Water Regional Plan, however I note that future subdivision and development would generate the need for consents under this plan, which would need to comprehensively address matter such as stormwater.

Other Relevant Documents

5.71 The other relevant planning documents to be considered in evaluating PC62 under section 74 include:

- (i) Mahaanui Iwi Management Plan 2013
- (ii) Ellesmere Area Plan
- (iii) Proposed Selwyn District Plan

Mahaanui Iwi Management Plan 2013

5.72 The application documentation included an assessment of the Mahaanui Iwi Management Plan (IMP) undertaken by Mahaanui Kurataiao Limited. The assessment makes six recommendations all of which appear to me to be matters that would need to be addressed at future subdivision and consenting stages. On this basis I accept that PC62 will not compromise the values set out in the IMP.

Ellesmere Area Plan

5.73 The Area Plan assumed a degree of importance in PC62, principally for two reasons. Firstly, it identified the deferred land as an area where more intensive development may be able to occur⁷. Secondly, it identified the rural land beyond the deferred Living Zones out to Harmans Road as *“Possible Future Area for Low Density Residential Development”* on the map entitled *“Leeston Preferred Future Development Areas”*⁸.

5.74 The Area Plan was adopted in September 2016 and states that in 2015 the population of Leeston was 2,275 people (813 households), with this population projected to grow to 3,402 by 2031 (1,215 households) which represents an estimated increase of 1,127 people (402 households). This was taken from the Selwyn Growth Model.

5.75 For Leeston the Area Plan indicates that *“overall, there is considered to be sufficient available land to accommodate projected population growth through to 2031 without Council proactively zoning additional residential ‘greenfield’ land. The maximum potential yield for infill subdivision of the Living zoned land in Leeston (including Deferred zoned land), could amount to as many as 953 additional sections. There are also a number of undeveloped residential sections within existing established neighbourhoods in Leeston”*⁹. It also states that *“at this point in time there appear to be too many constraints and insufficient demand to actively zone additional greenfield land under the District Plan Review. The strong uptake of available land, resolution of infrastructure servicing constraints and reduction in hazard risks may warrant additional land being considered for residential zoning in the medium to long term timeframes”*¹⁰.

5.76 The Area Plan highlights that there are issues that need to be addressed to facilitate additional growth, including:

⁷ Figure 9 of the Area Plan, page 27 and Preferred future development areas, page 28

⁸ Figure 9 of the Area Plan, page 27

⁹ Residential land capacity, page 22

¹⁰ Population, growth capacity and urban form, page 25

- *infrastructure constraints relating to integrated stormwater management, access to potable water and the limited capacity of the Leeston wastewater treatment plant, should significant growth occur*
- *natural hazard risks, including specifically flooding and land inundation that may be exacerbated by increased storm events arising as a consequence of climatic cycles and the potential for increased groundwater levels, and*
- *the need to manage growth to avoid any adverse impacts this may have on cultural sites and the mana whenua values attributed to the area or the water quality of drains and tributaries to Te Waihora/Lake Ellesmere¹¹.*

5.77 I consider that the evidence shows that these matters are able to be resolved.

5.78 The Area Plan concludes that *“the retention of the current township boundary through to 2031 is consistent with the principles contained in Chapter 5 of the Canterbury Regional Policy Statement, the District Growth Strategy Directions and the Area Plan Principles, which reinforce the need to manage growth in an integrated and consolidated manner, while avoiding the social, economic and environmental impacts associated with dispersed settlement patterns”*. It goes on to say that it *“does not preclude any additional greenfield land from being considered for zoning through privately initiated plan change requests under the RMA, but signals that there is sufficient capacity within the township to accommodate growth through to 2031 without the need for the Council to proactively zone additional land through the District Plan Review (DPR)”¹².*

5.79 Mr Vincent’s further evidence has brought into question some of the assumption contained in the Area Plan particularly around capacity. His analysis of the ‘Ellesmere Area Plan Land Capacity Calculation’, presented by Ms Lewes at the hearing has shown that some sites, such as Ellesmere College, included in the calculations were more theoretical than realistic and other sites such as the PC62 site were wrongly calculated. Quite why this was done and how it occurred is unclear, but in my view, it is unhelpful when the Area Plan is being used in the context of these and presumably other proceedings including clearly the District Plan Review.

5.80 Mr Vincent’s revised calculations were that there was an identified capacity of 672 lots (as at April 2015) which included 198 lots of infill within the Living 1 zone and 78 lots are within deferred zones which are part of the PC62 site. This compares with the 953 identified by the Area Plan.

5.81 I note that the Area Plan indicated that the Living 2 deferred land (subject to this application) could be intensified to standard residential densities¹³ and that is what is essentially proposed by PC62. As referred to above that would add around 196 households to Leeston’s development capacity.

5.82 One of the difficulties with the Area Plan’s growth strategy is its seemingly ‘bob each way’ approach. By that I mean on the one hand it is saying that there is sufficient capacity and no new areas are required for residential purposes to accommodate the projected growth of Leeston through until 2031 and as a result there is no need for the Council to proactively zone additional land through the District Plan Review. That sentiment remains intact even with Mr Vincent’s revised figures in that the 402 households projected to be required is still easily

¹¹ Conclusion, page 29

¹² Conclusion, page 29

¹³ Leeston Area 1, page 28

achieved. Yet on the other hand it states that the consideration of additional greenfield land for residential purposes is not precluded.

- 5.83 Nevertheless, the Area Plan does provide direction in terms of growth. While Ms Lewes suggested that the Area Plan does not identify a preferred growth option for Leeston,¹⁴ with respect I do not consider that is correct. The Area Plan in my view clearly identifies the next areas for future residential growth being LEE1 (intensification of the Living 2 land within the PC62 site), LEE 2 and LEE 4. The Area Plan states:

Figure 9 shows preferred areas for future 'greenfield' growth that could accommodate residential development either beyond 2031 or more immediately through a privately initiated plan change process, Figure 9 also illustrates areas where more intensive development may be able to occur and explains the advantages and disadvantages of each respective area, and also shows other possible areas for future development. [emphasis added]

- 5.84 LEE 2 and LEE 4 are clearly the "preferred areas of future 'greenfield' growth" and along with LEE 1 have been analysed in the Area Plan as to their advantages and disadvantages. I note that LEE 2 and LEE 4 have subsequently been identified in the Proposed Selwyn District Plan (PSDP) as growth area overlays. Conversely, the Area Plan other than identifying part of the rural area subject to PC62 in map form contains no other analysis of this area, which one might have expected, and simply refers to it as a "possible future area for low density residential development". I therefore do not believe what is proposed by PC62 is consistent with the direction for growth contained within and anticipated by the Area Plan.
- 5.85 In my opinion PC62 is reasonably consistent with the intentions of the Area Plan in terms of the deferred land in promoting intensification and addressing the flooding hazard, however in terms of the rural land which is not identified as a preferred areas of future 'greenfield' growth there is in my view a reasonably high degree of inconsistency particularly in terms of the preferred direction for growth around Leeston, but also in the type of growth proposed where around 40% is at a density which would be considered greater than the low density¹⁵ referred to by the Area Plan.

Proposed Selwyn District Plan

- 5.86 As discussed in my Minute 5 I consider that the PSDP should be given little weight. The only reference I have made to it is to note the inclusions of the LEE 2 and LEE 4 areas from the Area Plan as growth area overlays in the PSDP.

Greater Christchurch Urban Development Strategy

- 5.87 For the avoidance of doubt, I confirm that I do not consider the Greater Christchurch Urban Development Strategy of any relevance to these proceedings.

¹⁴ Paragraph 7.6 of s42A report

¹⁵ Objective B4.1.2 refers to the Living 2 zone as being low density

Section 32

Proposed Amendments

- 5.88 The proposed amendments to the District Plan are outlined in detail in Appendix 1 of Ms Lewes s42A report subject to some further amendments proposed by Mr Vincent.
- 5.89 The changes include the deletion of Policy B4.3.55 and the associated Explanation and Reasons, with which I agree, the inclusion of a number of rules and an ODP and changes to the Planning Maps.
- 5.90 In terms of the rules I generally support their intent subject to the amendments proposed by Mr Vincent to rule 12.1.4.106 and the inclusion of a requirement for mounding or fencing in proposed Rule 4.2.5 and a consequential addition to the Rule 4.2.8 to add a further matter of discretion. However, for the reasons outlined below associated with my conclusions further amendments will be necessary.
- 5.91 In terms of the ODP and Planning Maps again as a result of my conclusions amendments to these will be necessary.

Objectives and Policies

- 5.92 PC62 does not propose any alteration of to the objectives of the District Plan. It is therefore incumbent on me to determine whether the proposal rezoning's are the most appropriate means of achieving the relevant objectives of the District Plan and whether it implements the policies having regard to their efficiency and effectiveness and taking into account the benefits and costs and the risks of acting or not acting.
- 5.93 Having considered the objectives and policies identified in the plan change application I consider the following are of particular relevance to my considerations and I have started with the key growth provision in section B4 because of their direct relevance.
- 5.94 Objective B4.1.1 promotes a range of living environments, while maintaining the overall 'spacious' character of Living zones, while Objective B4.1.2 seeks that new residential areas are pleasant places to live and add to the character and amenity values of townships. The only real policy of relevance in this situation is the second part of Policy B4.1.3 which requires that *elsewhere in the District to allow, where appropriate, the development of low density living environments in locations in and around the edge of townships where they achieve the following:*
- i. A compact township shape;*
 - ii. Consistent with preferred growth options for townships;*
 - iii. Maintains the distinction between rural areas and townships;*
 - iv. Maintains a separation between townships and Christchurch City boundary;*
 - v. Avoid the coalescence of townships with each other;*
 - vi. Reduce the exposure to reverse sensitivity effects;*
 - vii. Maintain the sustainability of the land, soil and water resource;*

viii. *Efficient and cost-effective operation and provision of infrastructure.*

- 5.95 In my view PC62 is consistent with elements of this policy but not with others. It is obviously consistent with iii, iv and v and in my view aside from the 'rural gap' achieves i to an acceptable level, however I consider zoning the rural component of the plan change Living is inconsistent with ii and vi for the reasons I have already outlined and for those reasons there is a degree of inconsistency with vii in terms of the sustainability of land and soil. Finally, if the Councils preferred growth area is to the north then potentially there is an inconsistency with viii, however due to a lack of evidence around this I consider this criterion is neutral.
- 5.96 Objectives B4.3.1 seeks that township expansion does not adversely effect, amongst other things, natural and physical resources, other activities and the amenity values of the township, while Objective B4.3.2 seeks that new residential development adjoins existing townships at compatible urban densities or at a low density around townships to achieve a compact township shape which is consistent with the preferred growth direction for townships and other provisions in the Plan. The other relevant objective in this suite is Objective B4.3.4 which requires that new areas for residential development support the timely, efficient and integrated provision of infrastructure, including appropriate transport and movement networks through a coordinated and phased development approach.
- 5.97 In terms of Objective B4.3.1 other activities would include rural activities and my conclusions are that there is a reasonable potential for reverse sensitivity effects on the adjoining rural land particularly as a result of the zoning configuration. While I consider the PC62 achieves to a large extent the first part of Objective B4.3.2 in term of adjoining an existing townships at a compatible urban density, I am not convinced overall it fully achieves a compact township shape given the configuration of the rural urban interface nor given what is contained in the Area Plan is it consistent with the preferred growth direction for the township. In terms of Objective B4.3.4 there was nothing to suggest this would not be achieved.
- 5.98 Post the above objectives and at the beginning of the section entitled Residential and Business Development — Town Form Policies the District Plan states:
- Policies B4.3.1 to B4.3.10 of this section apply to rezoning of land for residential or business development in addition to the general policies in, Part B, Sections 1.1 to 4.2 and 4.4. Any variation or plan change request should be consistent with each and every relevant policy in these two parts of the Plan or seek to change those policies with which it is not consistent. [my emphasis]*
- 5.99 This appears to be a note in the District Plan rather than any sort of provision and I am reluctant to provide it with any great weight other than to note that the policies identified are the core ones associated with growth and that Plan Change has not sought to change any of them.
- 5.100 The policies of relevance which implement the above objectives are B4.3.1, B4.3.2, B4.3.3, B4.3.4 and B4.3.6. These are assessed below. Policy B4.3.8 was also identified by Ms Barnett as being relevant and not properly complied with and indeed the Applicant also refers to it in Appendix 8 concluding that PC62 is consistent with its intent. Having reviewed Policy B4.3.8 and the policy preceding it (B4.3.7) there is a major question mark in my mind as whether it is actually relevant in this case and instead only relates to the Living Z zone. I note Ms Lewes did not refer to it at all. In my opinion Policy B4.3.8 is at best a guide as to what should be included in

an ODP, however I do not consider having reviewed the District Plan that there is a policy framework that requires an ODP in this situation.

- 5.101 Policy B4.3.1 seeks to ensure that new residential development either: complies with the Plan policies for the Rural Zone; or the land is rezoned to an appropriate Living Zone that provides for rural-residential activities (as defined within the Regional Policy Statement) in accordance with an Outline Development Plan incorporated into the District Plan; or the land is rezoned to an appropriate Living zone. PC62 would in the main be seen to be consistent with this latter criterion.
- 5.102 Policy B4.3.2 requires that any land rezoned for new residential development adjoin, along at least one boundary, an existing Living or Business zone in a township, except that low density living environments need not adjoin a boundary provided they are located in a manner that achieves a compact township shape. PC62 achieves this policy.
- 5.103 Policy B4.3.3 requires the avoidance of zoning patterns that leave land zoned Rural surrounded on three or more boundaries with land zoned Living or Business. This is a very directive provisions and it is generally accepted that the use of the word “avoid” has as a result of case law taken on a stronger meaning. Ms Everleigh acknowledged that PC62 was inconsistent but referred me to the explanations and reasons and submitted that no issue has arisen in relation to the provision of utilities and services and that the ODP identifies locations for future road connections with the adjacent land if it is rezoned in the future.
- 5.104 In terms of reverse sensitivity, Ms Everleigh noted that:
- (a) Areas of Living 2 zoned land are proposed, which provides for a lower density of development and therefore a reduced risk of reverse sensitivity effects;
 - (b) The landowner of the adjacent land has not raised concerns regarding potential for reverse sensitivity effects through this process; and
 - (c) Ms Lewes noted that it is a common feature of the development pattern throughout Selwyn for Living zoned land (including at higher densities such as Living 1) to be located adjacent to Rural land with no form of buffer.
- 5.105 I do not consider the explanation and reasons particularly help because they simply explain some of the implications of this land zoning pattern and while I acknowledge the zoning pattern might not have implications for the provision of utilities and services the issue around reverse sensitivity remains and the fact that the adjacent landowner has not raised concerns is of little relevance in a policy context. I have already acknowledged the Living 2 zoning along some parts of the rural boundary however the majority is the denser Living 1 zone and even if it were all Living 2 I do not consider the policy would actually support this. I accept that there may be instances where Living 1 zoned land is located adjacent to Rural land with no form of buffer, whether that is historic or not was not explained. Nevertheless, the policy framework does not generally support this as I have already referred to (see discussions around Objectives B4.1.1 and B4.1.2 and Policy B4.1.3).

5.106 In terms of Policy B4.3.3, there is little doubt in my view that PC62 fails to achieve this policy and therefore it is inconsistent and even contrary to it.

5.107 Policy B4.3.4 seeks to *“encourage new residential or business development to occur on vacant land in existing Living or Business zones if that land is available and appropriate for the proposed activity”*. The explanation and reasons state:

Many townships in Selwyn District have sites within existing Living or Business zones that may be able to be used for new residential or business activities. The Council encourages use of sites, in existing zones, in the first instance, to encourage a consolidated township area. Consolidated Living or Business areas may have the following benefits:

- *Reduced potential ‘reverse sensitivity’ issues with activities in the Rural zone by reducing the ‘interface’ of the zones.*
- *More efficient utilisation of infrastructure, especially reticulated utilities.*
- *Fostering of a ‘village’ atmosphere.*

5.108 Firstly, I agree with Ms Lewes that the deferred area would fall to be an “existing Living zone” for the purposes of this policy. Taking that into account there is between the deferred land and the Living XA Zone some 62ha of vacant greenfield land which as I understood it is, and if enabled by this Plan Change, would be available and appropriate for residential development. On top of that there is a level vacant land within the exiting urban area which may also well be available although the certainty of that was less clear. As I have already discussed that quantity of land based on current projections is sufficient to meet long term capacity demands. I therefore do not consider the zoning the rural land in PC62 is consistent with the intent of this policy. I note that Ms Everleigh in paragraph 13 of her right of reply agrees that PC62 is not consistent with Policy B4.3.4 and I took from the comments of Ms Lewes that she accepted that there was an inconsistency.

5.109 Policy B4.3.6 encourages townships to expand in a compact shape where practical. The explanations and reasons state that for *new residential development, Policy B4.3.6 promotes shapes and situations that foster a compact or consolidated town shape. Compact means zones of similar lengths and widths, rather than long, thin strips of land following a particular road, waterbodies or other feature. A compact shaped township helps mitigate adverse effects in the following ways:*

- *Reduction of the number of allotments that share a boundary with the Rural Zone, and therefore the area for potential conflicts between incompatible activities.*
- *Facilitating of cost-effective provision of services such as reticulated water, sewage, roads and footpaths because more connections are provided, or houses served, per kilometre of pipe or road.*
- *Reduction in the distance of houses to businesses and community facilities, which may encourage people to walk or cycle rather than use motor vehicles for short trips. It may also help to facilitate the ‘village’ atmosphere of townships, such that the shopping centre and community facilities are close to all houses.*

- *Reduction in the impacts on the road network, and more opportunity to impose lower speed limits in the township (refer to Part B, Section 2.1).*
- *Maintenance of the visual distinction between the rural area and townships (refer to Part B, Section 3.4).*

Policy B4.3.6 recognises that a compact shaped zone may not always be practical if there is a constraint to a zone expanding in a particular direction(s). Such constraints may include (but are not limited to) geographical features such as mountains, waterbodies, and transport routes.

- 5.110 In my view PC62 generally meets the intent of this policy, it is reasonably compact except for the ‘rural gap’ and aside from the first bullet point addresses the remaining features of the explanation and reasons.
- 5.111 With the proposed deletion of Policy B4.3.55, Policy B4.3.54 is the only relevant policy specific to Leeston. The policy seeks to ensure any land rezoned for new residential development does not cause, or exacerbate, a natural hazard by increasing the rate of stormwater runoff into the Leeston main drain. Given the evidence before me on the developing Leeston North Stormwater bypass and the ability to retain stormwater through onsite retention I consider PC62 in consistent with this policy.
- 5.112 The natural resources land provisions in particular Objective B1.1.2 seeks that new residential activities do not create shortages of land or soil resources for other activities in the future and Policy B1.1.8 requires the avoidance of rezoning land which contains versatile soils for new residential development if:
- *the land is appropriate for other activities;*
 - *and there are other areas adjoining the township which are appropriate for new residential or business development which do not contain versatile soils.*
- 5.113 Canterbury Maps show that Leeston is surrounded by Class 2 and 3 soils. The Class 2 soils are to the west and encompasses much of the PC62 land and the Class 3 soils are to the north and east. My simple understanding of the classifications is that the lower the numerical value the higher the versatility. In assessing these provisions, the application document in Appendix 8 states:
- “... most of the land around Leeston Township is reasonably versatile by virtue of being located on the Canterbury Plains, and therefore arguably may not meet the first limb of the test in Policy B1.1.8. However, given the location of the site adjoining the existing development of the township, and given this area is not more or less versatile than other areas adjoining the township, it is considered the proposal site is an appropriate location for the expansion of the township.*
- 5.114 I agree that the first limb of the policy is not met in that the land is appropriate for other activities, although I would note that an extensive part of the PC62 area is already zoning for residential purposes albeit presently deferred. In terms of the second limb both Class 2 and 3 soils are versatile however the Class 2 soils have a higher versatility and there appears to less of them in the wider Selwyn and indeed Canterbury context. This would suggest that from a purely versatile soils perspective the preference for growth around Leeston should

be to the north and east which is where the Area Plan (and now PSDP) proposes. There is therefore in my view some degree of inconsistency with these provisions.

- 5.115 The natural resources water provisions in particular Objective B1.2.1 and Policy B1.2.1, B1.2.2, B1.2.4 and B1.2.5 relate to protecting the quality of, and avoiding effects on, ground or surface water resources from services; ensuring rezoned land can be serviced; and providing protection around water supply bores. PC62 is generally consistent with these provisions.
- 5.116 Objectives B1.3.2 and B1.4.1 look for the natural character of rivers and their margins to be recognised, protected and enhanced, where appropriate, in townships and that the expansion of townships does not adversely affect the values of outstanding natural features and landscapes. In my opinion the treatment of the Leeston Creek running through the site is appropriate and there are no outstanding natural features and landscapes that need to be taken into account.
- 5.117 The physical resources transport provisions in particular Objective B2.1.1 and Policies B2.1.13, B2.1.14 and B2.1.15 promote an integrated approach to land use patterns and transport to manage effects, encourage walking and cycling and the impacts on the roading network. I consider PC62 is generally consistent with these provisions. I also consider PC62 is consistent with the relevant utilities provisions (Objectives B2.2.3, B2.3.1 and B2.4.2 and Policies B2.2.1, B2.3.1 and B2.4.4).
- 5.118 Objectives B3.1.1, B3.1.2, and B3.1.3 seek to ensure activities do not lead to or intensify the effects of natural hazards, that potential loss of life or damage to property is mitigated and that mitigation measures do not create or exacerbate adverse effects on other people or the environment, while Policy B3.1.2 requires the avoidance of new residential development in areas known to be vulnerable to a natural hazard, unless any potential risk of loss of life or damage to property is adequately mitigated. In my view PC62 achieves these provisions through the mechanisms proposed.
- 5.119 The Quality of the Environment objectives (B3.4.1, B3.4.3, B3.4.4 and B.4.5) promotes a pleasant place to live and work, the avoidance of reverse sensitivity effects, a compact urban form and provision of a variety of living environments and housing choices and a high level of connectivity. Policy B3.4.39 requires the avoidance of rezoning land for new residential development adjoining or near to existing activities which are likely to be incompatible with residential activities, unless any potential 'reverse sensitivity' effects will be avoided, remedied or mitigated. I accept that the boundary with the Business 1 zone is able to be mitigated albeit with some additional control that I have recommended. In terms of the rural boundary there is no specific activity such as a poultry farm which needs to be mitigated against however general agricultural activity and the times it operates can generate complaints and thus reverse sensitivity effects. While I accept that there is always going to be some form of rural/urban interface, in this case the shape of the zone exacerbates in my opinion the potential for reverse sensitivity and there has been little attempt to mitigate this. There is therefore in my opinion an inconsistency with Objective B3.4.3 and Policy B3.4.39.
- 5.120 In terms of the other features covered by the objectives referred to above, I consider the Plan Change meets their intent.

Benefits and Costs

- 5.121 I accept that PC62 provides for a greater density of development across the current deferred land and there are inherent benefits in such an approach in terms of efficiency of land use, greater connectivity and sense of community, increased housing choice and capacity and greater support for community facilities and business services.
- 5.122 The costs of PC62 appear to be a loss of versatile soils, a future need to upgrade the wastewater treatment facilities in order to release to full potential of the PC62 land, a potential for the duplication of infrastructure given the amount of zoned but undeveloped land and those experienced by the Applicant in pursuing the plan change and the potential need for minor road upgrading. As the Council were already pursuing an upgrade of the water supply, I do not consider this can be seen as a cost associated with PC62.

Risk of Acting or Not Acting

- 5.123 The risk associated with PC62 relate to the potential for reverse sensitivity effects as outlined and that growth occurs in a direction which is not preferred. On the other side the risks of not allowing for PC62 at least in part is that urban zoned land will not be developed due to its continued deferment.

Alternatives

- 5.124 The s32 accompanying the application did not appear to consider the alternative growth options identified in the Area Plan nor did it evaluate the option of simply up-zoning all the deferred land to Living 1 and not rezoning Rural land. This seems to me to be a flaw in the Applicant's case and I would have thought both those alternatives were pertinent to any consideration of alternatives in this case.

Conclusion

- 5.125 Having considered the objective and policy framework and in particular those focussed on urban growth I do not consider that the rezoning of the rural land in PC62 is moving in the direction sought by the District Plan and the Area Plan in terms of the management of urban growth. In my view this is a case where there are specific provisions which relate directly to the matter at hand, being urban growth, which just cannot be ignored. Put simply there are just too many key objectives and policies within the primary growth of townships section with directive guidance which are not met by the rural component of PC62 for me to overlook them in favour of a broader overall judgement.
- 5.126 While I accept that there are some benefits, particularly in terms of providing for denser development, integration, connectivity and further increasing housing capacity there are also a series of costs and the potential for adverse effects, in particular those associated with reverse sensitivity. I have therefore reached a conclusion that PC62 in full is not the most appropriate means of achieving the relevant objectives of the District Plan. However, I consider the uplifting of the deferred zoning and its up-zoning to Living 1 would be an appropriate means of achieving the relevant objectives of the District Plan.

Sections 31

- 5.127 I consider that in terms of servicing and continuity of development PC62 would in part achieve integrated management of effects, however I do not consider as a whole it is necessary in ensuring that there is sufficient development capacity for housing in Leeston. Further, I am not convinced PC62 would be achieved without creating any actual or potential effects on the environment and the unnecessary loss of Class 2 versatile soils.

Part 2 of the RMA

- 5.128 Overall, I consider the most relevant objectives of the District Plan will not be achieved as a result of the changes proposed as part of PC62, particularly in relation to the rezoning of the rural land. Nevertheless, I have gone onto consider the matters contained in Part 2 of the Act.

Section 6

- 5.129 Section 6 of the Act relates to matters of national importance. I agree with Ms Lewes that there are no section 6 matters of specific relevance at play in this case.

Section 7

- 5.130 Section 7 of the Act sets out other matters I am to have particular regard to. Of particular relevance are section 7(b) concerning the efficient use and development of natural and physical resources; section 7(c) relating to the maintenance and enhancement of amenity values; and section 7(f) in terms of the maintenance and enhancement of the quality of the environment.
- 5.131 I acknowledge that part of the PC62 site has already been identified for urban development i.e. that which is deferred. For this part of the site what is being considered here is whether a denser form of development is more appropriate for this site. In this context there is a distinction to be made between rezoning urban land to enable a higher density and rezoning rural land. In this case the former represents in my opinion a more efficient use of the land resource given its current zoning and its proximity to the existing urban area. Furthermore, of the competing potential land uses i.e. residential development at Living 2 or Living 1 densities I again consider the latter is the more efficient use. If all the deferred land (29.6ha i.e. including the 1.5ha) were zoned Living 1 this would equate to some 270 households.
- 5.132 I am not convinced however that the use of the rural component of the plan change area is an efficient use of land. In addition to the deferred land there is already a significant amount of greenfield land zoned for residential development for a township of Leeston size and there is potential for infill growth. This is coupled with a declining demand in recent years and thus some doubt around the current growth projections. Given these circumstances alongside the direction anticipated for growth in the Area Plan (and now in the PSDP) I consider there is a degree of caution needed in assessing the continued expansion of residential development into the rural area. There are also potential inefficiencies in terms of infrastructure provisions. Overall, in my opinion a more efficient use of this rural land is to enable it to continue to be used for rural farming activity.
- 5.133 In terms of the maintenance and enhancement of amenity values and the quality of the environment I consider PC62 would generally achieve those.

Section 8

- 5.134 Section 8 of the Act requires that the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) be taken into account. I accept that there are no specific section 8 matters at play in this case.

Section 5

- 5.135 The ultimate purpose of the plan change is to achieve the purpose of the Act as defined in section 5. In the case of a plan change that purpose is usually subsumed in the greater detail and breadth of the operative objectives and policies, the principal ones of which are not sought to be changed. That is the situation in these proceedings.
- 5.136 Therefore having considered the Plan Change and all the relevant evidence and documentation I am of the opinion for the reasons set out above that PC62 in its fullness, has the potential to generate adverse effects, is inconsistent with the preferred growth direction in the Area Plan, is not appropriate in terms of the s32 tests and overall does not meet the purpose and principles set out in Part 2 of the Act in promoting sustainable management of natural and physical resources. As I have already indicated my conclusion on the deferred land alone would be different.

6.0 Decision

- 6.1 This has proven to be a complex decision to get to this point and it has taken me some time, and numerous paragraphs and assessment to get to my decision. My options in these circumstances are as follows:
- i. Decline the Plan Change outright
 - ii. Allow the Plan Change in part i.e. the deferred area only
- 6.2 I have reached a conclusion that it would not be appropriate in the circumstances to decline the Plan Change outright and that the deferred Living 1 and Living 2 zones should be uplifted and that whole area, aside from 31 Leeston Dunsandel Road (which would remain Living 2) should be zoned Living 1. In reaching that conclusion I am conscious that changes will be required to the rules proposed, the ODP and the planning map. I also consider that the rural/urban interface needs to be addressed, although I am not suggesting densities at a Living 2 zone level be imposed.
- 6.3 I am therefore issuing an interim decision (as suggested by Ms Everleigh if I reached this point) to enable further input from the Applicant on the following:
- i. The provision of a revised ODP covering the deferred land only.
 - ii. The inclusion of provisions or mechanisms for the Living 1 zone at the rural/urban interface to address potential reverse sensitivity. These might include larger lot sizes, dwelling setbacks and/or covenants.
 - iii. The inclusion of acoustic fencing or mounding to a height of 1.8m in proposed Rule 4.2.5 and an additional associated matter of discretion in Rule 4.2.8.
 - iv. The updating of all other rules and the planning map to reflect the Living 1 zoning of the deferred land only.

- 6.4 I accept that this may take some time to address and therefore I have not imposed a strict timeframe for that to occur. However, I would hope that the above can be addressed by at least by the 14th of December so that I can issue my final recommendation to the Council prior to Christmas.
- 6.5 Finally, I would like to thank those involved in this process for their input and I acknowledge for the Applicant there will be a degree of disappointment with this decision, however as I have set out I consider there are strong reasons for my decision.



Commissioner DM Chrystal

23rd November 2020