

In the Environment Court of New Zealand
Christchurch Registry

I Te Kōti Taiao O Aotearoa
Ōtautahi Rohe

Under	the Resource Management Act 1991
In the matter of	an appeal under Clause 14, Schedule 1 of the Resource Management Act 1991 on Plan Change 62 to the Selwyn District Plan
Between	D Marshall, B Hammett, L and A Martin, M and T Saunders
	ENV-2021-CHC-065
	Appellants
And	Selwyn District Council
	Respondent

Consent Memorandum

5 November 2021

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**anderson
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May it please the Court:

- 1 This consent memorandum relates to an appeal by D Marshall, B Hammett, L and A Martin, and M and T Saunders (the **Appellants**) against part of a decision of the Selwyn District Council (**Council**) on Plan Change 62 (**PC62**) to the Selwyn District Plan.

Background

- 2 The PC62 Application (**Application**) sought to rezone approximately 60 hectares of land located to the west of the existing Leeston township, generally bounded by High Street, Harmans Road and Leeston Dunsandal Road, together with a portion of land to the north of Leeston Dunsandal Road (**Application Site**) from Living 1 (deferred), Living 2 (deferred) and Rural (Outer Plains) (**Rural**), to Living 1 and Living 2. A copy of the Outline Development Plan (**ODP**) as sought is **attached** as **Schedule 1**.
- 3 The Council's decision on PC62 was to rezone part of the Application Site to Living 1 Zone, and to decline rezoning of additional land to the west. A copy of the Council decision version of the ODP¹ is **attached** as Schedule 2. The Appellants did not appeal the decision to rezone land to Living 1 Zone.
- 4 The parts of the decision appealed concerned:
 - (a) The decision to decline the rezoning of areas of land identified as Areas A, B and C depicted on the plan attached as Appendix A to the notice of appeal in favour of retention of Rural zoning on those areas; and
 - (b) The location of the primary stormwater infrastructure as depicted on the ODP.
- 5 A copy of the ODP as sought in the appeal is attached as **Schedule 3**.² In addition to the rezoning of Areas B and C and relocation of the primary stormwater infrastructure, the ODP appended to the appeal included a new road through those areas, connecting to High Street.
- 6 The Howson Family Trust joined the appeal as a section 274 party.

Mediation

- 7 On 13 September 2021 the parties to the appeal took part in Court-assisted mediation and reached an agreement in principle to resolve the appeal on the

¹ See Appendix B to Council's Decision dated 24 March 2021, Appendix 2

² Paragraph 19 below explains a correction to the ODP as appealed.

following terms, as shown in **Schedule 4** (revised ODP – map and accompanying wording) **attached** to this memorandum:

- (a) To rezone Area A to Living 2 Zone, as set out in Schedule 4;
- (b) To rezone Area B to Living 2 Zone, as set out in Schedule 4;
- (c) To rezone Area C to Living 1 Zone, as set out in Schedule 4;
- (d) To amend the boundary of Area B and Area C as sought in the appeal, by moving it west approximately 20 metres, as set out in Schedule 4;
- (e) To amend the indicative location of the Stormwater Management Area (**SMA**) shown on the ODP, as set out in Schedule 4;
- (f) To amend the ODP to include a symbol indicating threshold treatment at the intersection of Clausen Avenue, High Street and the proposed indicative secondary road as shown by an asterix, as set out in Schedule 4;
- (g) To amend the wording of the ODP, as shown in Schedule 4 to:
 - (i) Update the approximate ODP development area under the heading *Introduction* to reflect the rezoning of Area A, Area B and Area C and the amended boundary of Area B and Area C as follows:

Introduction

This Outline Development Plan (ODP) is for the development of approximately 2942.8 ha of land west of Leeston township. The development area is bound by Leeston Dunsandel Road to the north, with one section north of Leeston Dunsandel Road; Spring Place and Ellesmere College / Te Kāreti o Waihora to the east; High Street to the south and rural zoned land to the west. The ODP has been broken down into four components – Land Use, Transport Network, Green Network and Blue Network.

- (ii) Amend the paragraph under the heading *Land Use* as follows (addition shown in underline):

Land Use

The ODP area provides for residential development in accordance with the Living 1 and Living 2 zone standards...

- (iii) Add a new paragraph under the heading *Movement Network* to signal the need to consider integration and threshold treatment for the

intersection of Clausen Avenue, High Street and the proposed indicative road as shown on the ODP as follows:

A second primary road, following a north to south alignment from High Street and aligned with the intersection with Clausen Avenue, before turning to the east and continuing parallel to High Street. The intersection of this primary road, High Street and Clausen Avenue is to be designed to safely incorporate an appropriate treatment that clearly defines this intersection as an entry point to the township, thus acting as a spatial threshold that informs motorists that different speeds and behaviours are expected. Detailed design solutions are to be determined by the developer in collaboration with Council at the time of subdivision and related approvals;

~~Three~~Other secondary roads as required to facilitate circulation around the ODP; and

...

- 8 The parties have continued to engage following mediation to confirm the in principle agreement. In particular, the parties have:
 - (a) Confirmed the updated ODP (set out in Schedule 4); and
 - (b) Agreed the revised wording for the ODP in respect of paragraph 6(g)(iii) above.
- 9 This agreement between the parties results in a full settlement of the appeal, as set out in Schedule 4 to this memorandum.
- 10 The rationale for the changes, and the assessment of the changes in terms of section 32, is explained in an affidavit of Michael Vincent.

Consequential relief

- 11 The appellants sought consequential amendments as part of the relief in its notice of appeal.³
- 12 Consequential relief must relate to the grounds of the appeal and cannot be relied on to extend the nature and extent of relief beyond the scope of the appeal.⁴ The test for scope to make consequential amendments was discussed recently in

³ See paragraph 15(d) of the Notice of Appeal dated 27 May 2021

⁴ *Queenstown Airport Corporation Limited v Queenstown Lakes District Council* [2013] NZEnvC 14 at [95].

*Gertrude's Saddlery Limited v Queenstown Lakes District Council*⁵, where the High Court affirmed the test stated in *Albany North Landowners v Auckland Council*⁶: that the amendments are “necessary and desirable” and “foreseen as a direct or otherwise logical consequence of a submission”.⁷ Dunningham J considered that the same test applies in respect of an appeal. Consequential amendments generally include uncontested matters, such as amending planning maps to reflect the substantive change that is sought. It is an amendment which flows naturally and inevitably from the change that is sought, reflecting the natural justice considerations that underpin the principle of scope.⁸

- 13 With regard to this appeal, the agreement reached includes as consequential relief:
- (a) amendment of the indicative location of the primary Stormwater Management Area (**SMA**);
 - (b) amendment of the boundary of Area B and Area C by moving it west approximately 20 metres; and
 - (c) addition of a symbol indicating threshold treatment at the intersection of Clausen Avenue and High Street.
- 14 The amendment to the location of the SMA results from the parties' further consideration of the potential extent and appropriate location of this area. The presence of relatively high groundwater levels in the Leeston area means that stormwater basins are likely to be shallower and wider than is usual in many other areas. Confirmation of the area required for stormwater management requires detailed design and will occur at the time subdivision and discharge consents are sought. However it is anticipated that a greater area may be required than is shown on the ODP in the Council decision or the appeal, and that the SMA may need to move towards High Street in response to existing ground levels. Although the ODP notation describes the SMA as "Indicative Stormwater Management Area / Local Purpose (Drainage) Reserve To Be Confirmed At Subdivision", the parties consider it prudent to identify that the SMA may be located over part of the Living 2 zone. The new location for the SMA is partly within the PC62 boundary but entirely on land owned by the appellants at this time.

⁵ *Gertrude's Saddlery Limited v Queenstown Lakes District Council* [2020] NZHC 3387.

⁶ *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [108] and [135].

⁷ *Gertrude's Saddlery Limited v Queenstown Lakes District Council* [2020] NZHC 3387 at [99].

⁸ *Gertrude's Saddlery Limited v Queenstown Lakes District Council* [2020] NZHC 3387 at [99].

- 15 One of the benefits of the rezoning of Area C is the creation of a more uniform entrance to Leeston, with residential land on both sides of High Street. It is anticipated that this will assist in managing traffic speeds in this area. That would be further enhanced by the alignment of the new PC62 road opposite Clausen Avenue (as sought in the appeal and shown in Schedule 4) and the application of a threshold treatment (for example, a round-about) to slow traffic at this intersection. To reflect this intention, an additional notation indicating a threshold treatment at the intersection has been added to the ODP (as set out in Schedule 4). The parties have also agreed to amend the wording of the ODP to provide for the primary road and the threshold treatment for the intersection.
- 16 In identifying the location of the boundary of Area C and the Rural zone on the ODP, the Appellants had omitted to consider the requirement in the PC62 Living 1 zone for a 20m building setback from the Rural zone boundary, as required by the original decision on the plan change request. This element of the decision was not appealed. Given the width of the Area C land between the primary road and the Rural zone boundary as depicted in the ODP attached to the appeal, the application of the required boundary setbacks would not leave sufficient width for residential development. As it was agreed that the primary road should intersect High Street opposite Clausen Avenue, movement of the primary road is not an appropriate solution to provide sufficient width for residential development. Accordingly, the parties agreed that the boundary of Areas B and C should be extended west by 20m, into the Rural Zone. The number of allotments that could be created from Areas B and C will not alter as a result of this amendment.
- 17 The parties consider that the above amendments directly relate to and are a consequence of the relief sought in this appeal. The changes are necessary or desirable to give effect to the relief sought and ensure that development of the site is integrated both internally and with the surrounding urban area. The extension of changes in zoning is still within the property boundary of one of the Appellant's land, and the parties consider the changes do not give rise to any additional effects. Importantly, no question of unfairness to others arises as a result of these changes.
- 18 For these reasons the parties are satisfied that (b), (e), (f) and (g) of the agreement reached fall into the category of consequential relief and are within the scope of the appeal.

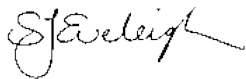
Correction

- 19 The parties have identified that the version of the ODP included as Appendix A to the notice of appeal inadvertently omitted the notation "future roading connection". This notation relates to the indicative future roading connection into Lot 2 DP 365379 (north of Leeston Dunsandel Road). The notation was not appealed and Schedule 2 to this consent memorandum reinserts the notation.

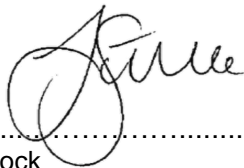
Orders sought

- 20 The parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act, including, in particular, Part 2.
- 21 The parties respectfully seek that the Court allow the appeal and confirm the amendments as set out in Schedule 4 **attached** to this consent memorandum. All parties have executed this memorandum.
- 22 The parties are agreed that costs should lie where they fall and accordingly no order of costs is sought.

Dated this 5th day of November 2021



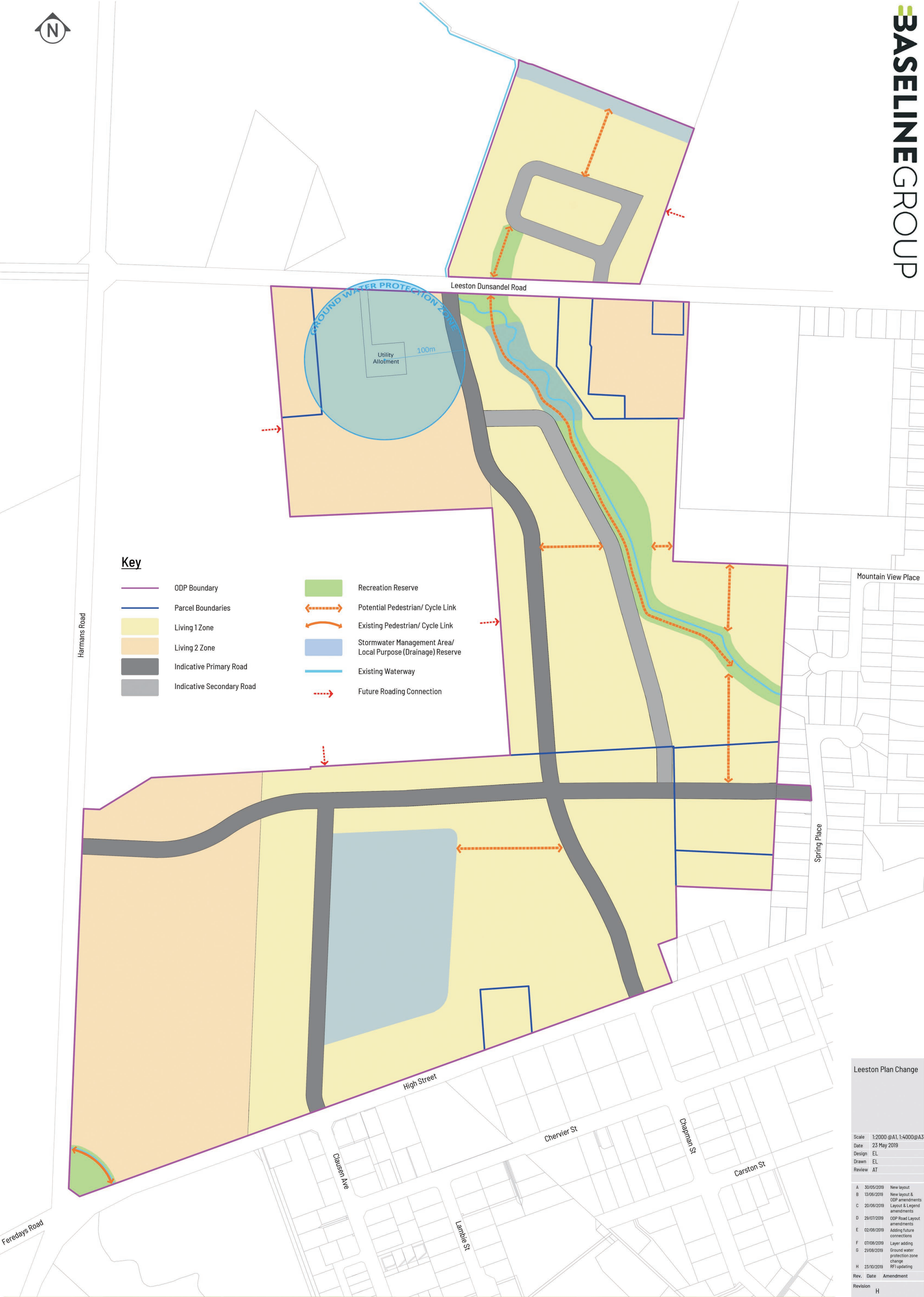
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Counsel for Selwyn District Council

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Counsel for Howson Family Trust

Schedule 1 – Plan Change 62 Application ODP



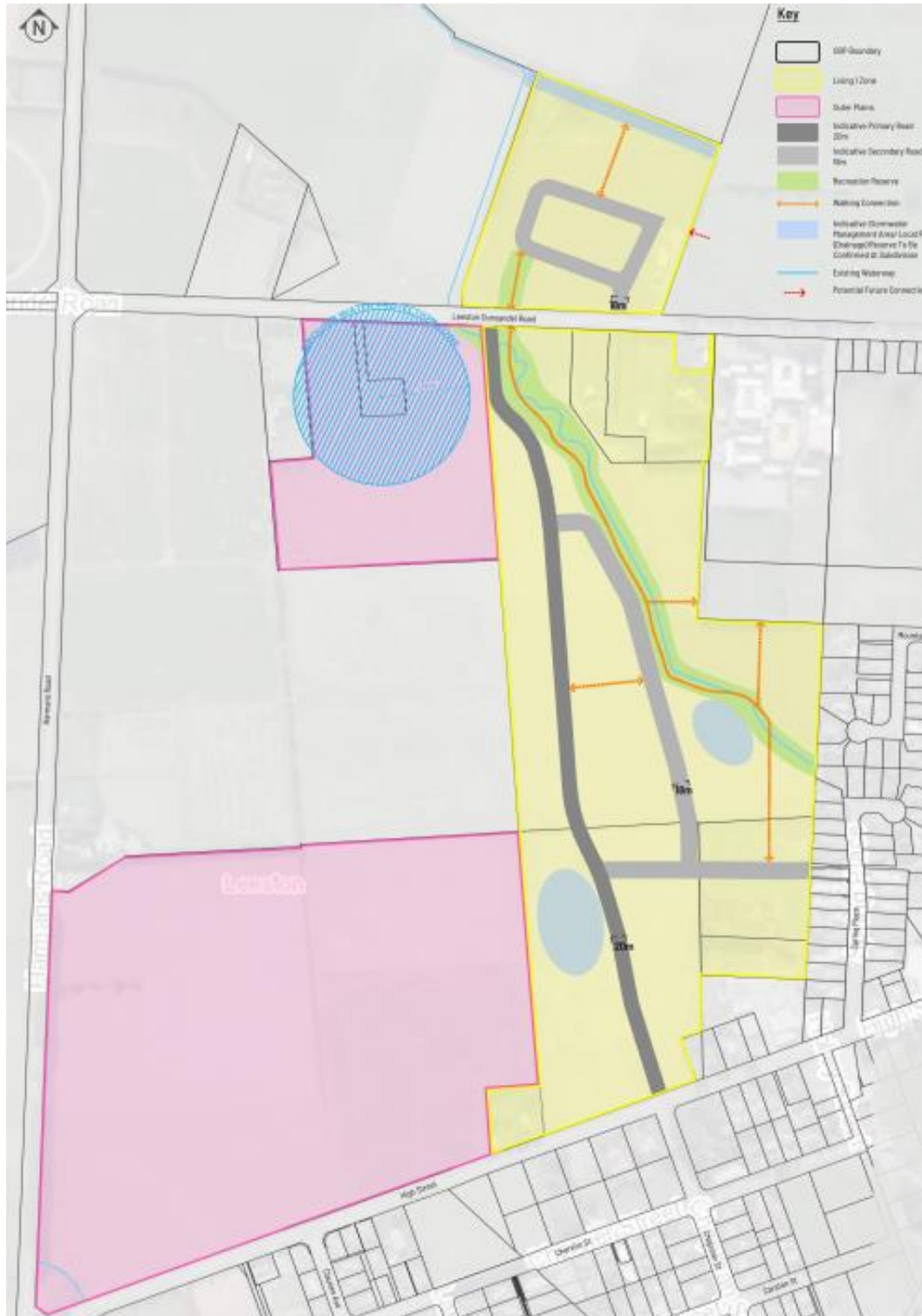
Leeston Plan Change		
Scale	1:2000 @A1, 1:4000 @A3	
Date	23 May 2019	
Design	EL	
Drawn	EL	
Review	AT	
A	30/05/2019	New layout
B	13/06/2019	New layout & ODP amendments
C	20/06/2019	Layout & Legend amendments
D	29/07/2019	ODP Road Layout amendments
E	02/08/2019	Adding future connections
F	07/08/2019	Layer adding
G	21/08/2019	Ground water protection zone change
H	23/10/2019	RFI updating
Rev.	Date	Amendment
Revision	H	
Sheet	1	

Schedule 2 – ODP as decided

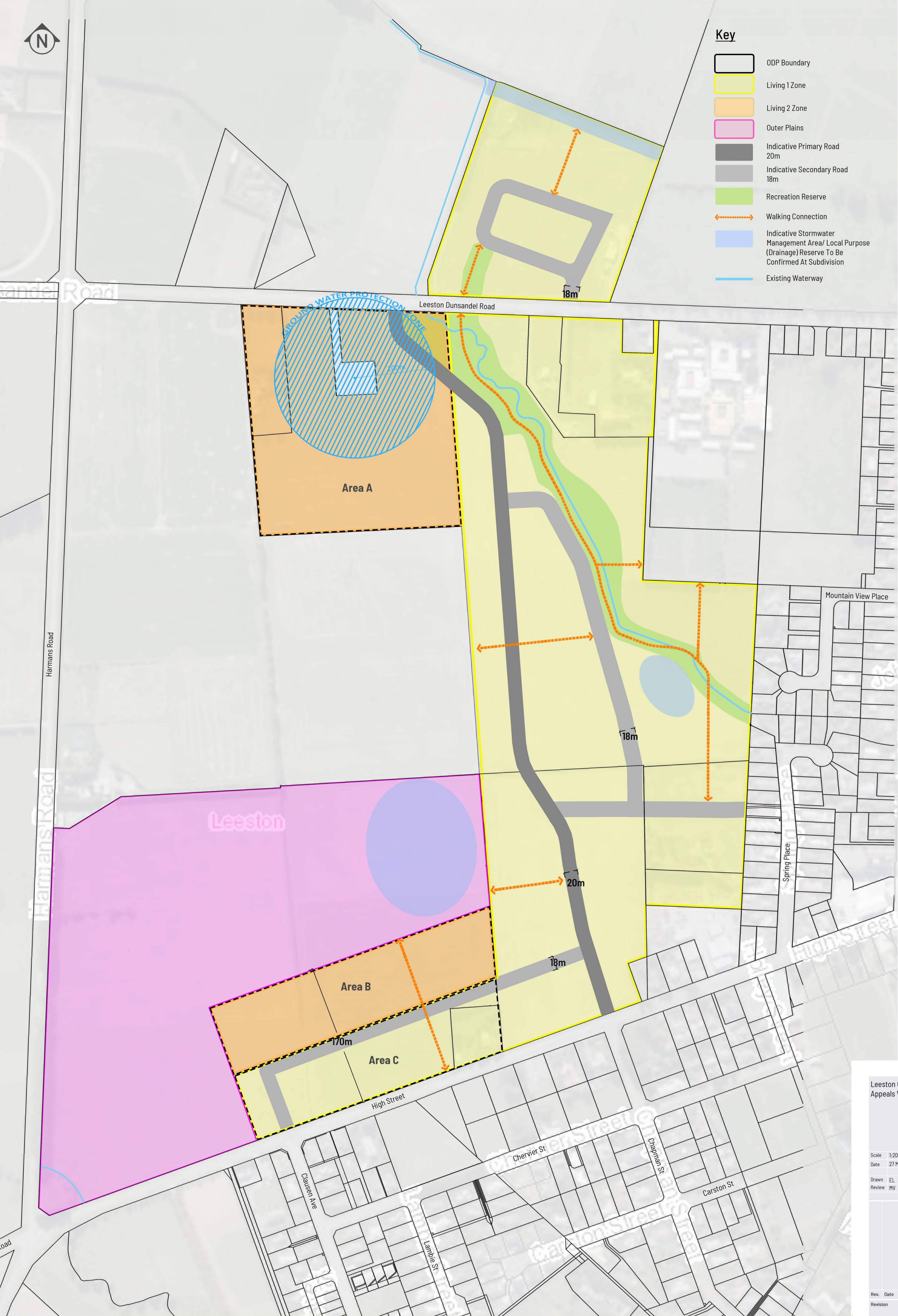
Appendices

Amendment 2

Add the Leeston Outline Development Plan to the Township Volume of the Plan as Appendix 51 (E51)



Schedule 3 – ODP as appealed



Leeston ODP - Appeals Version

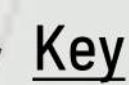
Scale 1:2000 @A1 1:4000 @A3
Date 27 May 2021

Drawn EL
Review MV

Rev.	Date	Amendment
Revision		

Sheet

Schedule 4 – ODP as agreed by the parties following mediation



ODP Boundary

Living 1 Zone

Living 2 Zone

Outer Plains

Indicative Primary Road

Indicative Secondary Road

Recreation Reserve

Walking Connection

Indicative Stormwater
Management Area/ Local Purpose
(Drainage) Reserve To Be
Confirmed At Subdivision

Existing Waterway

Threshold Treatment

Appendix 2 – Proposed Outline Development Plan (Appendix 51)

Introduction

This Outline Development Plan (ODP) is for the development of approximately 2942.8 ha of land west of Leeston township. The development area is bound by Leeston Dunsandel Road to the north, with one section north of Leeston Dunsandel Road; Spring Place and Ellesmere College / Te Kāreti o Waihora to the east; High Street to the south and rural zoned land to the west. The ODP has been broken down into four components – Land Use, Transport Network, Green Network and Blue Network.

Land Use

The ODP area provides for residential development in accordance with the Living 1 and Living 2 zone standards.

Movement Network

The movement network will provide connections to the existing roading network, residential areas and Leeston township. The ODP includes primary and secondary roads, as well as walkway and cycleway linkages throughout the ODP area. For the purposes of the ODP, the built standard for the 'Primary Road' will be the equivalent to the Plan standards for a Collector Road or Local-Major Road standards, and a 'Secondary Road' will be the equivalent to the Plan standards for a Local-Major or Local-Intermediate Road.

The ODP provides for an integrated transport network incorporating:

- A primary road following a north to south alignment from Leeston Dunsandel Road to High Street. This primary road will align with Chapman Street;
- A second primary road, following a north to south alignment from High Street and aligned with the intersection with Clausen Avenue, before turning to the east and continuing parallel to High Street. The intersection of this primary road, High Street and Clausen Avenue is to be designed to safely incorporate an appropriate treatment that clearly defines this intersection as an entry point to the township, thus acting as a spatial threshold that informs motorists that different speeds and behaviours are expected. Detailed design solutions are to be determined by the developer in collaboration with Council at the time of subdivision and related approvals;
- ~~Three~~Other secondary roads as required to facilitate circulation around the ODP; and
- Pedestrian, cycle and non-vehicular linkages to encourage alternative modes of transport and to provide connections throughout the ODP site and to Ellesmere College / Te Kāreti o Waihora.

The remaining roading network must be able to accommodate progressive development over time and roading connections must be arranged and aligned in a way that long term connectivity is achieved to provide a safe and efficient roading network and non-vehicular linkages.

Green Network

A minimum of three reserves are required to be established throughout the development area. The reserves could be located as follows:

- Stormwater management areas should be provided with surrounding reserve areas;
- Leeston Creek and its margins are to be vested to Council as reserve. The reserve should run for the entire length of Leeston Creek within the development site and should be provided with walkways along the Creek and a central play area. Any bridge infrastructure over Leeston Creek shall be designed to avoid adverse effects on the flow of the Leeston Creek; and

- A reserve connecting the development block north of Leeston Dunsandel Road with Leeston Dunsandel Road and Leeston Creek reserve.

The reserves can be accessed by road, pedestrian and cycle linkages.

Council's open space requirements cited in the Long Term Plan and Activity Management Plans should be referred to during subdivision design.

Blue Network

Stormwater:

The ODP area is subject to high ground water level and localised flooding in high rainfall events. Detailed stormwater solutions are to be determined by the developer in collaboration with Council at the time of subdivision. Stormwater management areas have been identified at the northern most part of the site to be vested to Council for the purposes of the Leeston North Stormwater Bypass; Leeston Creek; and the naturally low point of the site for stormwater attenuation.

Stormwater management and flow rates will need to be detailed at the time of subdivision to ensure Leeston Creek and the Market Street Culvert can accommodate the stormwater without resulting in flooding or ponding. Most of the stormwater from the site will need to be managed using the north strip and the low point management areas, rather than Leeston Creek, however Leeston Creek could be utilised for stormwater management provided the flows remain at pre-development rates.

Stormwater management and attenuation areas must be designed by a suitably qualified engineer, so the impact of flooding is not increased. The stormwater management area has been located in the natural low point of the site. The stormwater management area should be connected to the surrounding roads through pedestrian and cycle links and should have sufficient street frontage to allow for passive surveillance, create a sense of openness, and provide a high level of amenity.

Sewer:

Upgrades to the existing wastewater infrastructure in Leeston will be required to service the site and discharge into the Ellesmere Treatment Plant after the 80th residential allotment to enable future development.

Water:

The water reticulation will be an extension of the existing reticulated network. Council owns a utility allotment west of the site which will provide potable water for the future development. The provision of infrastructure to service the ODP shall align with the Council's indicative infrastructure staging plan, unless an alternative arrangement is made by the landowner/developer and approved by Council.

Cultural Values

Development of the site has the potential to effect Te Waihora / Lake Ellesmere, due to increased density and stormwater discharge. Te Waihora / Lake Ellesmere is an area of significance to local Rūnanga, Taumutu. Consultation with Taumutu should be undertaken when developing the site.