

Before an Independent Commissioner  
appointed by Selwyn District Council

Under the Resource Management Act 1991

In the matter of Proposed Plan Change 62 to the Selwyn District Plan

Between

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**Legal submissions on behalf of the Applicants - D Marshall, L Martin and A Formosa, M and T Saunders, B Hammett, and J and S Howson**

15 September 2020

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### **May it please the Commissioner**

- 1 These submissions are made on behalf of D Marshall, L Martin and A Formosa, M and T Saunders, B Hammett, and J and S Howson, the applicants (**Applicants**) for proposed Plan Change 62 (**PC62**).
- 2 The applicants are a group of existing landowners and long term residents of Leeston. They have worked together to advance a proposal for rezoning that will achieve an integrated and well-designed development of the site, that appropriately manages effects and enhances the amenity of Leeston township. Whilst there is no formal evidence provided by the Applicants themselves, they are in attendance at the hearing and available to answer any questions that you may have.

### **Summary of PC62**

- 3 PC62 relates to 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. PC62 seeks to rezone the site from Living 1 (deferred), Living 2 (deferred) and Outer Plains, to Living 1 and Living 2.
- 4 PC62 adopts the existing Living 1 and Living 2 zonings contained in the Selwyn District Plan (**SDP**), together with an Outline Development Plan (**ODP**) with several bespoke rules. Those rules, either proposed by the plan change as sought, or recommended by Ms Lewes and accepted by the Applicants, are:
  - (a) A requirement for minimum floor levels 400mm above the 0.5% Annual Exceedance Probability flood level;
  - (b) Application of additional matters of discretion for subdivision and land use within the PC62 ODP area which require consideration of risks associated with flooding, including whether development will cause or exacerbate any risk, and whether adequate and appropriate measures are in place to mitigate the effects of potential flooding;
  - (c) Provision of a 2m landscaping strip along the boundary with the Business 1 zone;
  - (d) Controls on fencing (consistent with those that apply in some other Living zones);
  - (e) Imposition of non-complying activity status for subdivision beyond 80 residential lots until upgrades to water supply and wastewater infrastructure provide sufficient capacity for additional lots; and

- (f) A requirement that development be in general accordance with the ODP.
- 5 The ODP identifies the location of key site features and future infrastructure, and is supported by text which forms part of the ODP to be incorporated into the SDP. The text explains the ODP diagrams and provides direction for the future development of the site. Together, the ODP package ensures the integrated development, both between PC62 landholdings and with the surrounding environment.

### **Preliminary matters**

#### *Scope for amendments to proposed zoning*

- 6 Two submissions have sought alternative zoning:
  - (a) Sharon Farrant, 33 – 35 Leeston Dunsandal Road: PC62 proposes that the Living 2 (deferred) zoning be amended to Living 2. Ms Farrant seeks that the property be zoned Living 1; and
  - (b) Cochranes of Canterbury Limited (**Cochranes**) 125a High Street: PC62 proposes that the Living 1 (deferred) zoning be amended to Living 1. Cochranes seek that a portion of the property be zoned Business 1.
- 7 The Applicants do not have a particular view on the amendments sought, although it is noted that involvement of those parties as part of the applicant group would have ensured that the amendments were within scope and appropriately assessed as part of the application.
- 8 For the benefit of the Commissioner, I note that:
  - (a) Schedule 1, Clause 6 of the Resource Management Act 1991, provides (my emphasis):

Any person, including the local authority in its own area, may, in the prescribed form, make a submission to the relevant local authority on a proposed policy statement or plan that is publicly notified under Clause 5.
  - (b) In *Clearwater Resort Limited v Christchurch City Council*,<sup>1</sup> the High Court devised a test for determining whether a submission is within scope of a plan change, as follows:

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<sup>1</sup> *Clearwater Resort Limited v Christchurch City Council*, AP34/02, 14 March 2003 (HC). The word "variation" has been substituted with "plan change" so that terminology is consistent with this case.

- (i) A submission can only fairly be regarded as "on" a plan change if it is addressed to the extent to which the plan change changes the pre-existing status quo.
  - (ii) But if the effect of regarding a submission as "on" a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected this is a powerful consideration against any argument that the submission is truly "on" the plan change.
- (c) The test was endorsed in *Palmerston North City Council v Motor Machinists Limited*,<sup>2</sup> where Kós J discussed the two limbs in more detail, as summarised below:
- (i) The first limb involves two aspects: the breadth of the alteration to the status quo entailed in the proposed plan change and whether the submission addressed that alteration. In other words, the submissions must be reasonably said to be within the ambit of the plan change. One way of analysing that is to ask whether the submissions raised matters that should have been addressed in the section 32 evaluation and report. If so, the submission is unlikely to fall within the ambit of the plan change.
  - (ii) The second limb concerns whether there is a real risk that persons directly or potentially directly affected by the additional changes proposed in the submission have been denied an effective response to those additional changes in the plan change process. To override the reasonable interest of people and communities by a submissional side-wind would not be robust, sustainable management of natural resources.

#### *Trade competition*

- 9 I agree with Ms Lewes that the submission of Mr Peter Martin primarily relates to trade competition, and that these submission points should not be considered further, in accordance with section 308A RMA. I comment further on development capacity issues later in these submissions.

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<sup>2</sup> *Palmerston North City Council v Motor Machinists Limited*, [2013] NZHC 1290, at [80]-[83].

## Key issues

### *Flooding*

- 10 The current zone deferrals were introduced in response to recognised surface flooding issues during times of heavy rainfall, and existing flooding issues in Leeston have been a focus of the majority of submissions. The evidence of Mr Hopkins<sup>3</sup> and section 42A report of Mr England<sup>4</sup> confirm that works have commenced on SDC's Leeston North Stormwater Bypass project, which will largely resolve historic flooding issues by diverting floodwaters around Leeston township. The bypass will run along the northern boundary of the PC62 site, and the ODP identifies the area of land that will form part of the project works.
- 11 The minimum floor height rule ensures that, should any development proceed ahead of the Stormwater Bypass being operational, appropriate mitigation of flood risk to buildings is required. The additional matters of discretion require that for subdivision and land use within the PC62 ODP area, particular consideration is given to risks associated with flooding, including whether development will cause or exacerbate any risk, and whether adequate and appropriate measures are in place to mitigate the effects of potential flooding.

### *Stormwater and effects on waterways*

- 12 The ODP identifies the general location and extent of stormwater management areas that will be required to service the site, although as acknowledged by the ODP text and the evidence of Mr Hopkins<sup>5</sup> and Mr England,<sup>6</sup> the exact location and extent of these areas will be confirmed at consent stage. Mr Hopkins and Mr England confirm that appropriate solutions exist for the management of stormwater generated by the site following development, and that detailed design will be addressed at the time stormwater discharge consents are sought.<sup>7</sup>
- 13 The evidence for Harts Creek Streamcare Group and Ellesmere Sustainable Agriculture Incorporated (**Streamcare Group**) raises particular issues with regard to the effects of any stormwater discharge to Harts Creek and Birdlings Brook. These issues will be addressed in supplementary evidence to be presented by Mr Hopkins.

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<sup>3</sup> Evidence of James Hopkins, paragraphs 12, 30

<sup>4</sup> Officer Comments of Murray England, paragraphs 43 - 44

<sup>5</sup> Evidence of James Hopkins, paragraph 22

<sup>6</sup> Officer Comments of Murray England, paragraphs 48 - 49

<sup>7</sup> Evidence of James Hopkins, paragraphs 50 – 52; Officer Comments of Murray England, paragraphs 47, 50 - 51, 53 - 54

- 14 In my submission care needs to be taken in drawing conclusions about the effects of stormwater discharge from the PC62 site from information regarding the stormwater discharge from the existing Leeston township. As acknowledged in the evidence for the Streamcare Group, challenges exist in retrofitting stormwater management to existing development. In contrast, the PC62 site will be serviced by a modern, purpose built stormwater management system. Further, development of the site will be subject to controls (imposed through Canterbury Regional Council stormwater discharge consent rules) to avoid contaminants (such as copper and zinc) which arise from older developments.
- 15 Effects on groundwater and surface water, including Harts Creek and Birdlings Brook, can and will be addressed at stormwater discharge consent stage. It is anticipated that consent will be required as a restricted discretionary activity under rule 5.93 of the Canterbury Land and Water Regional Plan (**LWRP**). In response to the evidence of the Streamcare Group regarding applicability of that rule, I note that condition 1 of that rule reads:

For a discharge that existed at 11 August 2012, an application for a discharge permit is lodged prior to 30 June 2018, or at a later date as agreed between the reticulated stormwater system operator and the CRC

- 16 This condition effectively imposes a deadline for applications to authorise pre-existing stormwater discharges occurring at 11 August 2012. The PC62 discharge did not exist at 11 August 2012, and accordingly the proposed discharge will not breach the condition.
- 17 In my submission, the restricted discretionary status reflects that grant of consent will generally be appropriate. However, as identified in the evidence of Mr Hopkins,<sup>8</sup> there are a wide range of effects based matters within CRC's discretion, and these provide for consideration of the matters raised by the Streamcare Group. CRC will require that discharge contaminant levels are appropriate to the receiving environment.<sup>9</sup> Mr Hopkins confirms that there are a range of treatment options to achieve appropriate discharge quality, and that water quality of the proposed stormwater discharge will exceed ANZECC guidelines prescribed in the LWRP. Monitoring of similar modern systems in the Selwyn / Te Waihora area demonstrates that this level of discharge quality is achievable.<sup>10</sup>

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<sup>8</sup> Evidence of James Hopkins, paragraph 35

<sup>9</sup> LWRP Policy 4.16(c)

<sup>10</sup> Supplementary evidence of James Hopkins

### *Leeston development capacity*

- 18 The Leeston Area Plan was adopted in 2016 and anticipates an increase of 402 households in Leeston to 2031. It also estimates that "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".<sup>11</sup>
- 19 On its face, it appears that there is sufficient existing zoned land to meet demand for housing. However, there can be a disparity between plan enabled capacity and what is actually supplied to market. A decision to subdivide rests with the landowner and there can be a range of reasons why subdivisions do not progress. In the case of Leeston, it appears that the zoned capacity is highly dependent on infill subdivision. It is important to ensure a range of appropriate options for development in the market to ensure the likelihood that some of these are realised, to stimulate competition, and to minimise the risk of land banking.
- 20 The advice of local real estate agent Mr Knowler<sup>12</sup> confirms that there is currently demand for sections which is not being met by development of zoned land. The further information presented by Ms Lewes is that there has been no significant subdivision consents progressed since 2013. This appears to have resulted in a constraint on development of new dwellings since 2018. Mr Vincent will provide further evidence demonstrating the uptake of almost all available residential sections between 2013 and 2018.
- 21 The submission of Mr Martin identifies he has been unable to progress development of his site, and confirms the evidence for the Applicants that notwithstanding demand for sections in Leeston, existing zoned land is not progressing to market. There is no evidence that by not approving PC62, Mr Martin would be able to overcome his current challenges to develop his site and supply lots to meet existing demand.

### *Transport matters*

- 22 Mr Carr confirms that traffic generated by development of the PC62 site can be accommodated within the roading network without significant efficiency or safety issues arising.<sup>13</sup> Mr Mazey records that he is generally supportive of the plan change from a transport perspective.<sup>14</sup>

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<sup>11</sup> Ellesmere 2031: Ellesmere Area Plan Mahere-ā-Rohe, page 22

<sup>12</sup> Appendix 2 to the Evidence of Michael Vincent

<sup>13</sup> Evidence of Andy Carr, paragraph 57

<sup>14</sup> Memorandum of Andrew Mazey, paragraph 3

- 23 A number of submissions have raised issue with the roading connection to Spring Place. This is addressed in the evidence of Mr Carr. Development of the PC62 site could occur without this road connection, however its provision provides better connectivity and access resilience. Amendments have been made to the roading hierarchy applied to this connection and a threshold treatment (to be determined at subdivision consent stage) is proposed to reduce the attractiveness of the route.<sup>15</sup>
- 24 Mr Mazey and Mr Carr comment on roading upgrades that may be required to service the site, and in particular whether a roundabout would be appropriate at the intersection of High Street / Clausen Avenue / PC62 site access. In my submission, and consistent with the views of Mr Mazey and Mr Carr,<sup>16</sup> it is appropriate that any required upgrades are confirmed at subdivision consent stage.

### **Statutory tests**

- 25 Ms Lewes' provides a summary of the relevant statutory tests at paragraphs 6.1 – 6.2 of the section 42A report. These require that PC62:
- (a) Accord with and assist Council in carrying out its functions, including:<sup>17</sup>
    - (i) Achieving integrated management of effects of the use, development and protection of land and associated natural and physical resources;
    - (ii) Ensuring that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district; and
    - (iii) Controlling any actual or potential effects of the use, development, or protection of land, including for the purposes of the avoidance or mitigation of natural hazards;
  - (b) Have regard to the actual and potential effects on the environment, including in particular any adverse effect;<sup>18</sup>
  - (c) Accord with Part 2 of the Act;<sup>19</sup>

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<sup>15</sup> Evidence of Andy Carr, paragraphs 29 – 38, 47 - 48

<sup>16</sup> Memorandum of Andrew Mazey, paragraph 26; Evidence of Andy Carr, paragraph 56

<sup>17</sup> Section 31(1)(a), (aa) and (b)

<sup>18</sup> Section 76(3)

<sup>19</sup> Section 74(1)(b)



- (d) In respect of the existing statutory documents:
  - (i) Give effect to any national policy statement or operative regional policy statement;<sup>20</sup>
  - (ii) Have regard to any proposed regional policy statement, and management plans and strategies prepared under any other Acts;<sup>21</sup>
  - (iii) Have regard to the extent to which the plan is consistent with the plans of adjacent territorial authorities;<sup>22</sup> and
- (e) Establish the most appropriate method for achieving the objectives and policies of the District Plan, undertaking the assessment detailed in section 32.

*Assisting Council in carrying out its functions*

- 26 PC62 will assist Council in carrying out its functions. The proposal achieves integrated management of effects through development in accordance with the ODP and proposed rules. With respect to flood hazards, the ODP identifies land to be utilised for the SDC Stormwater Bypass which will significantly mitigate the existing flood hazard on the site and throughout the Leeston township. Site specific provisions also address avoidance and mitigation of any flood hazard. PC62 will ensure there is sufficient housing development capacity to meet the demand, and provides an alternative to other zoned land which is not progressing to market.

*Effects on the environment*

- 27 Potential effects on the environment will be appropriately managed by the zone provisions, which are consistent with those applying to other Living zones in the District. As detailed above, Mr Carr confirms that traffic generated by the development can be accommodated within the roading network. Mr Hopkins and Mr England confirm that the site can be efficiently and effectively serviced and that effects will be appropriately managed. In particular, stormwater management options exist to ensure that the discharge water quality and quantity will be appropriate for the receiving environment. Effects will be managed through detailed design and resource consent processes.

*Statutory planning assessment*

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<sup>20</sup> Section 75(3)(a) and (c)

<sup>21</sup> Section 74(2)

<sup>22</sup> Section 74(2)(c)

- 28 An assessment against the statutory documents is included with the application and addressed in the evidence of Mr Vincent and s42A report of Ms Lewes. They conclude that PC62 will give effect to the Canterbury Regional Policy Statement,<sup>23</sup> is consistent with the outcomes sought by the Canterbury Land and Water Regional Plan,<sup>24</sup> and will not compromise the values set out in the Mahaanui Iwi Management Plan.<sup>25</sup> It is consistent with the objectives and policies of the District Plan,<sup>26</sup> the key actions identified in the Selwyn 2031: District Development Strategy,<sup>27</sup> and the Ellesmere 2031: Ellesmere Area Plan Mahere-ā-Rohe.<sup>28</sup>
- 29 There are no National Policy Statements relevant to this application, and no statutory direction to have regard to proposed National Policy Statements.

## *Part 2*

- 30 Plan changes must meet the purpose of the Act, which is to promote the sustainable management of natural and physical resources.
- 31 PC62 will not conflict with any matters of national importance under section 6 or with matters in section 8. With respect to section 6(h), the proposal includes methods to appropriately mitigate risks from natural hazards (flooding).
- 32 Regard has been given to those matters set out in section 7 of the Act, particularly:
- (a) the efficient use and development of natural and physical resources (7(b));
  - (b) the maintenance and enhancement of amenity values (7(c)); and
  - (c) maintenance and enhancement of the quality of the environment (7(f)).
- 33 The plan change will enable development of land which is currently subject to a deferred zone, and provide for consolidated development and efficient use of land to provide housing capacity contiguous to the existing Leeston township. The ODP provides for several recreation reserves, including adjacent to the Leeston Creek, which will enhance the amenity of the site and Leeston. The quality of the

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<sup>23</sup> Application section 4.5; Section 42A report, paragraph 10.14; Evidence of Michael Vincent, paragraph 95

<sup>24</sup> Application section 4.6; Section 42A report, paragraph 8.28

<sup>25</sup> Application section 4.7; Section 42A report, paragraph 8.31

<sup>26</sup> Application section 4.4; Section 42A report, paragraph 8.43, Evidence of Michael Vincent, paragraph 96

<sup>27</sup> Application section 4.8; Section 42A report, paragraph 8.45

<sup>28</sup> Application section 4.9; Section 42A report, paragraph 8.46

environment will be maintained and enhanced through development in accordance with requirements of the SDP and LWRP.

*Is PC62 the most appropriate option, compared with the status quo?*

34 PC62:

- (a) Provides land for implementation of the Stormwater Bypass project, which has significant benefits to the wider Leeston township in addressing existing flooding issues;
- (b) Enables additional housing development capacity at Living 1 and Living 2 densities, to meet both longer-term demand in Leeston and to address current challenges in progressing sections to market;
- (c) Provides for development which is compatible with the existing urban form of Leeston and consistent with the Ellesmere Area Plan;
- (d) Will enhance connectivity of the township and improve amenity and recreation opportunities through the provision of pedestrian and cycle linkages and reserve areas identified in the ODP;
- (e) Will improve the amenity and biodiversity of the Leeston Creek through enhancements to the waterway;
- (f) Enables efficient and effective planning and delivery of service infrastructure across the full development area; and
- (g) Will avoid the adverse effects that may arise from ad-hoc development, or development of that part of the site which is currently subject to deferred zoning without regard to future development of adjacent land.

35 This range of benefits will not be realised through the status quo. For these reasons, and having regard to the wider assessments addressed through these submissions, evidence for the Applicants and the section 42A report, it is submitted that PC62 is the most appropriate option and should be approved.

**Sarah Eveleigh**

Counsel for D Marshall, L Martin and A Formosa, M and T Saunders, B Hammett, and J and S Howson

