

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

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

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Applicant's solicitors:

Sarah Eveleigh
Anderson Lloyd
Level 3, 70 Gloucester Street, Christchurch 8013
PO Box 13831, Armagh, Christchurch 8141
DX Box WX10009
p + 64 3 379 0037
sarah.eveleigh@al.nz

**anderson
lloyd.**

May it please the Commissioner

- 1 These submissions in reply 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**). The submissions address a number of discrete issues raised during the course of the hearing, namely:
 - (a) Explanation and reasons relevant to Policy 5.3.1 of the Regional Policy Statement (**RPS**);
 - (b) Consistency with Policy B4.3.3 of the Selwyn District Plan (**SDP**);
 - (c) Proposed zoning of land at 33 Leeston Dunsandel Road;
 - (d) Rezoning of Living (deferred) land only; and
 - (e) Development capacity considerations, including the National Policy Statement – Urban Development and land capacity calculations undertaken to inform the Ellesmere Area Plan.

Regional Policy Statement – explanations and reasons

- 2 The Commissioner has identified the following from the explanation and reasons to Policy 5.3.2 of the Regional Policy Statement (my **emphasis**):

The approach in **Policy 5.3.1 seeks to ensure that urban and rural residential development outside of existing urban areas is to be avoided** and limited respectively, so as not to compromise the efficient form and development of existing settlements as the primary focus for meeting the region's growth needs. District plans have a role in providing an appropriate and comprehensive zoned approach to new rural-residential development and new urban development to manage effects arising from these based on the demands, constraints and opportunities within the respective districts.

- 3 The Courts have ascertained the meaning of objectives and policies by referring to the explanation and reasons for the policy. The Courts have also 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.¹

¹ *Waterfront Watch Inc v Wellington City Council* [2018] NZHC 3453

- 4 Policy 5.3.1 provides (my **emphasis**):

5.3.1 Regional growth (Wider Region)

To provide, as the primary focus for meeting the wider region's growth needs, sustainable development patterns that:

1. **ensure that any**

a. **urban growth**; and

b. limited rural residential development

occur in a form that concentrates, or **is attached to, existing urban areas** and promotes a co-ordinated pattern of development;

2. encourage within urban areas, housing choice, recreation and community facilities, and business opportunities of a character and form that supports urban consolidation;

3. promote energy efficiency in urban forms, transport patterns, site location and subdivision layout;

4. maintain and enhance the sense of identity and character of the region's urban areas; and

5. encourage high quality urban design, including the maintenance and enhancement of amenity values.

- 5 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. The explanation and reasons should not be used to interpret Policy 5.3.1 contrary to the express wording on the policy. PC62 gives effect to the direction contained in Policy 5.3.1.

Selwyn District Plan – objectives and policies for Growth of Townships

- 6 During the hearing the Commissioner had particular questions about the consistency of PC62 with Policy B4.3.3 of the SDP:

Policy B4.3.3 – Avoid zoning patterns that leave land zoned Rural surrounded on three or more boundaries with land zoned Living or Business

- 7 PC62 is not consistent with that policy, to the extent that it would leave a portion of the adjacent Lot 2 DP 82846 (to the west of the PC62 site) surrounded by Living 1 and Living 2 zoned land.

- 8 As discussed above, the explanation and reasons may be used as an interpretative tool, but not to the extent that it overrides the meaning of the words used in the policy. In this case, the explanations and reasons identify the 'mischief' that the policy is directed towards addressing:

To achieve Objective B4.3.2... 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. It also makes the provision of utilities and services more difficult, because it is uncertain whether this land will be rezoned in the future. In turn there are uncertainties about whether pipes and cables installed past the boundary should include capacity to serve the area, and, if so, who pays for it.

- 9 In the case of PC62, no issue has arisen in relation to the provision of utilities and services. Mr England discussed the potential for expansion of existing infrastructure (particularly the water supply bore(s) and wastewater management system) to meet future demand. The ODP identifies locations for future road connections with the adjacent land if it is rezoned in the future.

- 10 In relation to reverse sensitivity, it is 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.

- 11 Policy B4.3.3 is directed to achieving Objective B4.3.2:

Objective B4.3.2 - For townships outside the Greater Christchurch area, new residential or business 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.

- 12 As discussed above, the proposed Living 2 zoning is a lower density and therefore more compatible with adjacent rural land. The location of PC62 achieves a compact urban form, falling between Living zoned land to the south and west, and is consistent with the direction for growth contained in the Ellesmere Area Plan.

- 13 In considering PC62, section 32 directs assessment of whether the provisions in the proposal are the most appropriate way to achieve the objectives. Notwithstanding the fact that PC62 is not consistent with Policy B4.3.4, in my submission having regard to the specifics of the PC62, it remains the most appropriate way to achieve the objectives of the SDP regarding Growth of Townships. Ms Lewes also assesses that "at a strategic level, PC62 is consistent with the policy direction concerning the management of urban growth".²

Zoning of land at 33 Leeston Dunsandel Road

- 14 In the event that the Commissioner finds it is within scope to rezone the land at 33 Leeston Dunsandel Road (owned by Sharon Farrant) to Living 1, that would address any concerns regarding the integration of development of that allotment with the surrounding Living 1 zoned land.
- 15 It would however result in a small parcel of Living 2 zoned land at 35 Leeston Dunsandel Road, which cannot be resolved through PC62 as there is no submission seeking Living 1 zoning of that land. While this creates something of a planning anomaly, it is unlikely to be of any practical effect. 35 Leeston Dunsandel Road is 1592m², so rezoning to Living 1 would give potential for creation of only 1 additional lot. In light of the fact that the landowner has not submitted seeking the alternative zoning, it seems unlikely that they would be motivated to undertake that subdivision. The planning anomaly could be resolved through the District Plan review. In my submission the temporary planning anomaly is not sufficient to tip the balance of an assessment as to whether rezoning of the land generally is more appropriate than retaining the existing Living deferred / Outer Plains zoning.

Rezoning of deferred land only

- 16 The Commissioner queried whether he could recommend rezoning of the Living (deferred) land only. That is within the scope of submissions. In the event that the Commissioner considers that it is most appropriate to rezone an area less than the full PC62 site, it would be appropriate to issue an interim recommendation seeking further input from the Applicants as to modifications to the ODP.
- 17 However, the Applicants' position is that, in comparing rezoning of the deferred land only with rezoning of the entire PC62 site, rezoning of the entire PC62 site will better enable provision of services and integration of development, including integration with residential land to the south of High Street. In particular:

² Section 42A report, paragraph 8.42

- (a) In consultation with Council, the Applicants have proposed a transport network that creates a high degree of connectivity, through alignment of plan change roads with Chapman Street and Clausen Ave, and connection to Harmans Road. Provision is made for a number of pedestrian and cycle links to provide a high amenity environment that can be enjoyed by both future PC62 residents and other residents of Leeston.
- (b) In addition to the Living (deferred) land, there is particular merit in including:
 - (i) The land proposed as Living 2 zone, adjacent to Leeston Dunsandel Road and surrounding the water supply utility allotment. That water supply allotment has been established to meet further water demand throughout Leeston, and is not specific to supplying the PC62 site. The creation of the water supply allotment (which has already been subdivided and is owned by SDC) creates some challenge to the efficient rural use of the surrounding land, particularly after the remainder of the allotment (currently within the deferred zone) is developed.
 - (ii) 85 Leeston Dunsandel Road, to the west of the lot surrounding the water supply allotment, which is approximately 8094m² and therefore has limited options for rural uses; and
 - (iii) 149 High Street, adjacent to the existing Living 2 (deferred) land. Again, this has an existing lot size of 6011m² and therefore limited options for rural uses.
- (c) As Mr Hopkins commented during the hearing, Councils generally prefer fewer, larger stormwater management areas. These are more efficient, both in terms of the area of land required, ongoing maintenance, and management of discharges to the environment. If a reduced area of the PC62 site is rezoned now and the remainder rezoned later (which would be consistent with the Area Plan indications for future development areas) that will create duplication of stormwater management assets and corresponding inefficiencies; and
- (d) As set out below, rezoning of the full PC62 site appropriately provides for development capacity at Leeston.

Development capacity considerations

18 I address below:

- (a) The relevance of development capacity considerations to determination of PC62;
- (b) Guidance that can be taken from the NPS-UD regarding planning horizons and the calculation of development capacity; and
- (c) Assessment of development capacity at Leeston.

Relevance of development capacity considerations

19 The need for additional development capacity is not a necessary pre-requisite to rezoning land. Common reasons for seeking to limit development capacity to meet demand are:

- (a) Challenges for provision of infrastructure, with excess zoned land resulting in demand for extension of services in multiple directions and at rates that exceed actual growth in households. In this case, I note that the Council officer recommends that the plan change be accepted. Mr Hopkins and Mr England confirm that the site can be efficiently and effectively serviced. No issue has been raised as to the additional zoned capacity having negative effects with respect to coordinated provision of services.
- (b) Inefficient use of land. In the case of the PC62, development will be timed to meet market demand. That development will occur in accordance with the ODP in a way that anticipates connection to future stages, and in accordance with lot size rules that are appropriate for the rural township, thereby ensuring efficient use of land as it is developed. In the meantime, there is no impediment to sufficiently sized areas of the PC62 site which have not proceeded to development stage continuing to be used for rural activities, in the same way that other areas of Living zoned land which have not proceeded to development continue in rural uses.

20 In my submission, there is no effects based reason associated with development capacity for declining the plan change.

21 On the other hand, the Resource Management Act is enabling legislation – the sustainable management purpose of the Act is to enable people and communities to provide for their social, economic and cultural wellbeing, while sustaining the potential of resources to meet the needs of future generations and managing effects. Further, it is well recognised that constraints in the planning system have made it harder for people to build and live in the homes they want, where they want. This has led to high land prices, unaffordable housing, and a system

that incentivises land banking and speculation.³ It is this very issue that the NPS-UD seeks to address by requiring local authorities to ensure there is sufficient capacity to meet long term demand. Policy 8 of the NPS-UD directs that decisions relating to urban environments be responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments, even if the development capacity is unanticipated by RMA documents and out-of-sequence with planned land release.

- 22 In my submission, it is appropriate to take an enabling approach to consideration of a plan changes that provide long term development capacity where the site can be efficiently and effectively serviced and potential adverse effects of the zoning/development can be managed. Further information regarding development capacity is set out below and in the Evidence in reply of Michael Vincent. In the event that the Commissioner considers further information is required to inform his recommendation, this can be requested in accordance with section 41C(3), prior to the close of the hearing.

National Policy Statement – Urban Development (NPS-UD)

- 23 The NPS-UD prescribes its application as follows:

1.3 Application

- (1) This National Policy Statement applies to:

(a) all local authorities that have all or part of an urban environment within their district or region (ie tier 1, 2 and 3 local authorities); and

(b) planning decisions by any local authority that affects an urban environment.

- (2) However, some objectives, policies, and provisions in Parts 3 and 4 apply only to tier 1, 2 or 3 local authorities.

- 24 As detailed by Ms Lewes, Leeston is not an "urban environment" as defined by the NPS-UD. In my view, the drafting of clause 1.3 provides for application of the NPS-UD where either (a) or (b) is satisfied. Selwyn District Council is identified as a tier 1 local authority, which means part (a) is satisfied, even though Leeston would not satisfy part (b). However I acknowledge that the drafting of clause 1.3 is not entirely clear. If the NPS-UD applies (in accordance with clause 1.3) then the decision on PC62 must be in accordance with it. However even if the NPS-UD does not apply, in my submission you should still take guidance from it in

³ See for example *A3 graphic on the NPS-UD 2020*

<https://www.mfe.govt.nz/sites/default/files/media/Towns%20and%20cities/npsud-a3-graphic.jpg>

considering the appropriate approach to consideration of development capacity issues.

25 The majority of NPS-UD provisions are drafted to specifically refer to urban environments, however there are also a number which are not. The following relevant provisions are not drafted as specific to urban environments:

- (a) Objective 2: Planning decisions improve housing affordability by supporting competitive land and development markets.
- (b) Policy 2: 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.
- (c) Part 3 Implementation, Subpart 1 – Providing development capacity:

3.2 Sufficient development capacity for housing

(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

(d) for tier 1 and 2 local authorities only, meet the expected demand plus the appropriate competitiveness margin (see clause 3.22).

(d) Definitions of planning timeframes:

(i) Long term means between 10 and 30 years

(ii) Medium term means between 3 and 10 years

(iii) Short-medium term means within the next 10 years

(iv) Short term means within the next 3 years.

- 26 Accordingly, the NPS-UD directs that development capacity be provided to meet expected demand over a 30 year planning horizon. In considering existing development capacity, consideration is to be given to whether development is feasible and reasonably expected to be implemented.
- 27 Rezoning of the PC62 site is in accordance with the NPS-UD direction. It addresses both short-term capacity constraints arising from other zoned land not being developed and brought to market, and provides capacity for long term growth of Leeston.

Development capacity at Leeston

- 28 In my submission, the Ellesmere Area Plan land capacity calculations for Leeston (as provided at the hearing by Ms Lewes) should be considered a significant over-estimate of the feasible development capacity, for a number of reasons. A review of those calculations is set out in the Evidence in reply of Michael Vincent.
- 29 Mr Vincent identifies a number of appropriate amendments to the calculations, which would result in a revised identified capacity of 672 lots (as at April 2015). This includes 198 lots of infill within the Living 1 zone, which in my submission exceeds that which is reasonably likely to be achieved, and 78 lots within deferred zones which are part of the PC62 site.

Conclusion on development capacity considerations

- 30 In summary:
- (a) It is not necessary to demonstrate that there is unmet demand as a pre-requisite for rezoning. A planning approach that unduly constrains supply can lead to adverse economic, social and cultural effects;
 - (b) The NPS-UD directs that that development capacity be provided to meet expected demand over a 30 year planning horizon. In considering available capacity, consideration is to be given to whether development is feasible and reasonably expected to be implemented;
 - (c) Review of land capacity calculations undertaken for the Ellesmere Area Plan indicate that these significantly over-estimate capacity. The calculations do not reflect development that is feasible and reasonably expected to be implemented;

- (d) All evidence before you is that a large portion of zoned land was developed prior to 2018; remaining zoned land is not progressing to market; and there is unmet demand for greenfield sections;⁴
- (e) PC62 is intended to address both short term supply issues and provide for the long term growth of Leeston in a location identified for future development.

Sarah Eveleigh

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

⁴ Submission of Peter Martin; Evidence of Michael Vincent, paragraph 52 and Appendix 2 Letter from Stephen Knowler; Council officer response to request for further information; Supplementary evidence of Michael Vincent