

C 48/ 2000

Law
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Decision No. C 48 /2000

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a reference pursuant to Clause 14 of the
First Schedule of the Act

BETWEEN

LINCOLN DISTRICT
ENVIRONMENTAL ACTION GROUP
INCORPORATED

(RMA : 099/99)

Referrer

AND

SELWYN DISTRICT COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge J R Jackson (sitting alone under section 279 of the Act)

IN CHAMBERS at CHRISTCHURCH

RECORD OF DETERMINATION OF APPEAL

Background

[1] This reference under the Resource Management Act 1991 ("the Act") by Lincoln District Environmental Action Group Incorporated ("the referrer") concerns the decision of the Selwyn District Council ("the Council") to accept the recommendation of a Hearing Commissioner, Mr R W Batty ("the commissioner") in respect of Plan Change 45 to the Ellesmere Section of the Transitional District Plan ("the transitional plan").



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[2] Kajens Trading and Development Limited ("Kajens") made a submission to the Council on Plan Change 45 and the referrer made a further submission to the Council opposing the Kajens submission. On 23 December 1998 the referrer received the decision of the Council's hearing commissioner Mr R.W.Batty.

[3] On 8 February 1999 the Court received this reference from the referrer. The referrer sought that the decision of the commissioner be overturned, and that Plan Change 45 be rejected.

[4] Lincoln University ("the University"), D J and M J Brown ("the Browns"), G L and L C Doak ("the Doaks"), Lincoln Community Committee ("the Committee"), I and D Eilken ("the Eilkens") and Mr Lindsay Philps ("Mr Philps") respectively gave notice that they wished to be heard on the reference under section 271A of the Act.

[5] After the reference had been filed the parties agreed to mediation and this was conducted by Environment Commissioner I G C Kerr in June 1999. Those taking part in the mediation were the appellant; the Council; the University; the Browns; the Doaks; the Committee; the Eilkens and Mr Philps. As a result of that meeting and subsequent negotiations, agreement was reached. On 18 November 1999, the Court received a memorandum of the parties, signed by a representative of the appellant, counsel for the Council, counsel for the University, a representative of the Kajens, a representative of the Browns, a representative of the Doaks, a representative of the Committee, a representative of the Eilkens and Mr Philps himself. This set out a compromise manner in which the reference with the approval of the Court might be determined by consent.

[6] After considering the first memorandum of consent the Court issued a minute to the parties dated 16 December 1999 requesting clarification of the plans. The Court received a response in the form of a letter dated 20 December 1999. After considering the letter from Kajens advice from counsel, and subsequent correspondence from the parties, the Court issued a further memorandum to the parties dated 15 February 2000 requesting a further memorandum of consent signed by all parties to be filed with the registrar with all the agreed changes included. The Court has since received from the parties another memorandum of consent dated 24



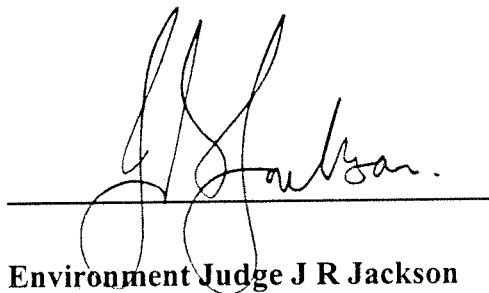
February 2000. The most recent memorandum is signed by all parties and addresses the concerns that the Court raised with counsel.

Orders

[7] Having considered the reference and the final consent memorandum of the parties the Court, by consent, orders:

- (1) Appeal RMA 099/99 is allowed to the extent set out in (2) below.
- (2) Under clause 15(2) of the First Schedule to the Act the Council's decision in respect of Plan Change 45 to the Ellesmere Section of the Transitional District Plan is deleted and the documents marked as "Appendix 1" attached to and forming part of this order are to be inserted in the transitional plan in the various places identified in Appendix 1.
- (3) There is no order as to costs.

DATED at CHRISTCHURCH this **28** day of **February** 2000.


Environment Judge J R Jackson



Resource Management Act 1991

Selwyn District Council – Transitional District Plan

Ellesmere Section – Proposed Plan Change 45

**Recommended to Council with consequential alternations pursuant to
Clause 10(2) of the First Schedule and amendments agreed to by the parties to RMA 99/99 as
contained in the Memorandum and Draft Consent Order**

**1.0 Ellesmere County Operative District Scheme, Part VI, Lincoln Township, Section 1 –
Scheme Statement, Clause 2, Development Policy (page 157)**

1.1 Following Clause 2.3 add a new paragraph 2.3.1 as follows:

"2.3.1 Within the area identified on Planning Map No 5 (B) it is intended to create a landscaped subdivision containing allotments of various sizes, so that the average area of the lots cannot be less than 850m², which exceeds the minimum allotment size that generally applies in the township. To restrict any further subdivision of allotments once a plan has been deposited, any further subdivision of allotments (other than of the balance lot and other than by way of boundary adjustment) shall be a non-complying activity. Any subdivision by way of a boundary adjustment shall be a discretionary activity, the standards for which shall be those applying to predominant uses."

1.2 Part 3, Zoning Statement (page 159) insert the following as a new Section 3.2 and the subsequent renumbering of existing Sections 3.2-3.5 to become Sections 3.3-3.6:

"3.2 The Rural Intensive Zone (Lincoln Township)

This zone borders the township of Lincoln to the south east. It is designed to encourage intensive farming on small holdings having a minimum of 4ha in area and



located on land comprising good soils. This zone also acts as a buffer between the Residential Zone and the more extensive Rural B Zone. This zone is to be distinguished from a similar zone near Rolleston which is referred to in Part II, Rural Area, Ordinance 1, and also in Part VII, Rolleston Village, Ordinance 1."

- 1.3 Page 159, Section 3.2 (amended by above to Section 3.3) amend to read:

"The residential zone covers an area of some 71.90ha as shown on the District Planning Map."

- 1.4 Part VI (page 162):

Table 2	-	Use Zoning within Urban Fence
Table 3	-	Zoning within Urban Fence

amend residential zone area to read:

"71.90"

2.0 Ellesmere County Operative District Scheme, Part VI, Lincoln Township, Section 2 – Code of Ordinances

- 2.1 Page 165, Ordinance 1, Clause 2, Permitted Uses, add new clause 1(f) as follows:

"(f) Elderly residential care, limited to one site in the location shown on Concept Plan C1 as "site proposed for rest home" and also on Planning Map 5(B) by the notation "*E.P.H."

- 2.2 Following sub-clause 1(f) referred to above and before clause 2.2, add a new clause 1A as follows:

"1A Conditions Relating to Permitted Uses.



Notwithstanding compliance with all other relevant provisions of this ordinance the elderly residential care provided for in Clause 2.1(f) above is subject to the following additional controls.

- (i) This site shall have an area no smaller than 8000m².
- (ii) Elderly residential care should be limited to 80 residents in residential care beds, single bedroom units or separate apartments, provided that residential care beds be limited to a maximum of 30.
- (iii) Parking and outdoor storage areas shall be screened from adjoining sites by landscaping, fence(s) or a combination thereof to at least 1.8m in height along the length of the parking or storage area. Where such screening is by way of landscaping it shall be for a minimum depth of 1.5m.
- (iv) The maximum height of any building shall be 7.0m.
- (v) Staff and visitor parking spaces shall be provided within the site at the following rate:
 - 2 spaces per 6 care beds
 - 1 space per 4 single bedroom units
 - 1 space per apartment unit."
- (vi) No Elderly Residential Care Facility may be erected on a site that adjoins the zone boundary where such boundary adjoins another residential zone boundary in existence as at the date of public notification of Plan Change 45."

3.0 Ordinance 1, Clause 3 (Page 166) Conditions Relating to Conditional Uses

3.1 Following clause 3 insert a new clause 3A as follows:

"Restricted Discretionary activities



Elderly Residential Care Facilities on a site of less than 8,000 sq.m. provided that the Council's discretion will be limited to the number of residents that can be accommodated within the facility."

4.0 Ordinance 1, Clause 4 (page 167) Bulk and Location Requirements

4.1 Following the table in Clause 4.1 insert a new clause 1A as follows:

"Within the area identified on Planning Map NO. 5(B) by way of crossing hatching any dwellinghouse or residence must be located a minimum of 150 metres from the boundary of the area designated for the Lincoln Sewage Treatment Plant as identified on planning map Ellesmere County District Scheme Designation of Sewage Treatment, Lincoln Change No 6 1:10,000. Any dwellinghouse or residence that does not meet this requirement will be non-complying.

5.0 Ordinance 1, Clause 5 (page 170) Subdivision of Land

5.1 Add the following new clauses:

"(e) Notwithstanding the above, within the area identified on Planning Map No 5(B) a minimum average allotment area of 850m² shall be achieved across the overall site. Within the area identified on Planning Map No 5(B) any subdivision plan submitted to the Council for consent shall provide for a minimum of 31 allotments. Following the deposit of any plan of subdivision consequent upon the grant of any subdivision consent the further subdivision (other than by way of boundary adjustment) of any of the allotments within that plan of subdivision (other than a balance lot) shall be a non-complying activity.

Any further subdivision by way of boundary adjustment shall be a discretionary activity.

(f) Within the area identified on Planning Map No. 5(B) a roadway at least 20m in width shall be provided on any subdivision plan submitted to Council affecting the area in question between the following points:



- (i) On the western boundary of the site 180 metres from the southern boundary of Lot 13 DP 73008.
- (ii) On the eastern boundary of the site within 50 metres of the southern extent of the residential boundary.
- (g) At the same time as internal roads are being formed that relate to the two points referred to in clause (f) above, and where a road is, or roads are, provided for outside the area identified in Planning Map No. 5B to link with these points, a roadway shall be formed to the respective points on the boundary."
- (h) Within the area identified on Planning Map No 5(B) any subdivision plan submitted to Council shall be accompanied by a landscape plan detailing plantings to be undertaken and reserve areas to be established generally in accordance with the Concept Plan, C1, C2 and C3. This plan shall include a reserve area that extends to the western boundary of the site below Lot 13 DP 73008. This plan is to be certified by a Council Officer as to its design, layout and location and extent of reserves, and types of plantings proposed."
- (i) The intersection between the road entrance to any residential development within the area identified on Planning Map No. 5(B) and Kildare Terrace and South Belt shall be in accordance with Traffic Design Group drawing 3709KT1 dated 28th of April 1999 (Appended). All costs associated with any upgrading of Kildare Terrace and its intersections with South Belt and Gerald Street that are required as a result of the approval of residential development within that area identified on Planning Map No. 5(B) will be at the expense of the applicant."

6.0 Following Ordinance IV on page 181, add a new Ordinance V as follows:

"ORDINANCE V – RURAL INTENSIVE ZONE"

CLAUSE 1 – INTRODUCTORY



Relationship to Part 1 Ordinances: This ordinance forms part of the code of ordinance for the administration and implementation of the district scheme. The requirements,

provisions and conditions contained herein shall be read and interpreted in conjunction with and subject to all the relevant provisions of the Code of Ordinances to Part 1 of the District Scheme.

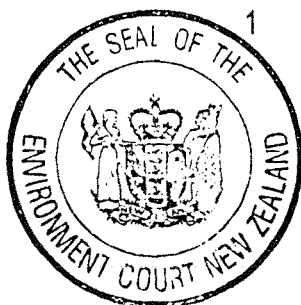
2. Policies: The policies which the ordinances are intended to implement are to be found in Section 1 of the Scheme Statement.

CLAUSE 2 PERMITTED USES

- 1 Predominant Uses: Subject to compliance with the relevant provisions of this ordinance the predominant uses shall be:
- a. Agricultural, pastoral and horticultural farming, excluding factory farming, and excluding any of the following activities within 50m of any neighbouring residential building: the housing or keeping of pigs, opossum, fitch or goats, or more than 4 dogs, or more than 12 poultry or rabbits, or more than a density of 16 livestock units per hectare of any other animals.
 - b. Dwellinghouses, limited to one per site comprised in a separate certificate of title and being not less than 4.0ha in area provided that there is physical access to an existing formed road.
 - c. Buildings, excluding dwellinghouses, accessory to the use of buildings or land for any of the foregoing uses.
 - d. Protection and amenity forestry.
 - e. Reserves.

CLAUSE 3 BULK AND LOCATION REQUIREMENTS

1 Requirements for Predominant Uses: The following shall be the yard, height and location requirements for predominant uses. For exceptions to these requirements see Ordinance VI 2(2) of the Code of Ordinances to Part 1 of the District Scheme.



- a. Maximum Height shall be 10m provided that no part of any building shall penetrate a 40° recession surface originating 2.5m above the ground level along each boundary.
- b. Front Yard minimum depth shall be 20m provided that if truck and other vehicle servicing access is not from the front of the site, and the vehicles thus engaged are located clear of the roadway, then the front yard may be reduced to 10m on application for a dispensation.
- c. Other Yards minimum depth shall be 20m in the case of dwellinghouses and buildings accessory to extensive or intensive farming for housing animals, and otherwise 10m reducible to 3m for other accessory buildings and 6m for the other buildings through application for dispensation where the policies are satisfied, where close settlement would not result and where there would be no detrimental effect on or from adjoining properties.
- d. Within the area identified on Planning Map No. 5(C) by way of cross-hatching and shown as "Rural I" any dwellinghouse or residence must be located a minimum of 150 metres from the boundary of the area designated for the Lincoln Sewage Treatment Plant as identified on planning map Ellesmere County District Scheme Designation of Sewage Treatment, Lincoln Change No 6 1:10,000. Any dwellinghouse or residence that does not meet this requirement will be non-complying.

CLAUSE 4 SUBDIVISION OF LAND

1 Predominant Uses

Subject to the other provisions of these ordinances, the following standards apply to the creation of lots for predominant uses, provided that every subdivision shall be so designed as to provide sites that meet the requirements of this ordinance for predominant uses, and for the bulk and location of buildings and the provisions of parking;

- a. The minimum area of any allotment shall be 4.0ha.



7.0 Ellesmere County Operative District Scheme, Part 1, Section 3, Ordinance II – Interpretation (page 31)

7.1 After the definition of the term 'Erection', include the following new term:

"'Elderly Residential Care' applies only to that position identified as 'E.P.H.' with an asterisk on Planning Map 5B and also shown on Concept Plan C1 and means a facility providing care for the elderly up to but not including hospital care where such care is provided in a building or buildings that include a full nursing care licensed resthome."

8.0 Planning Maps

Amend District Planning Map No. 5 as per attached Planning Map.

Insert after Planning Map No. 5(A) the following Map identified as Planning Map No 5(B).

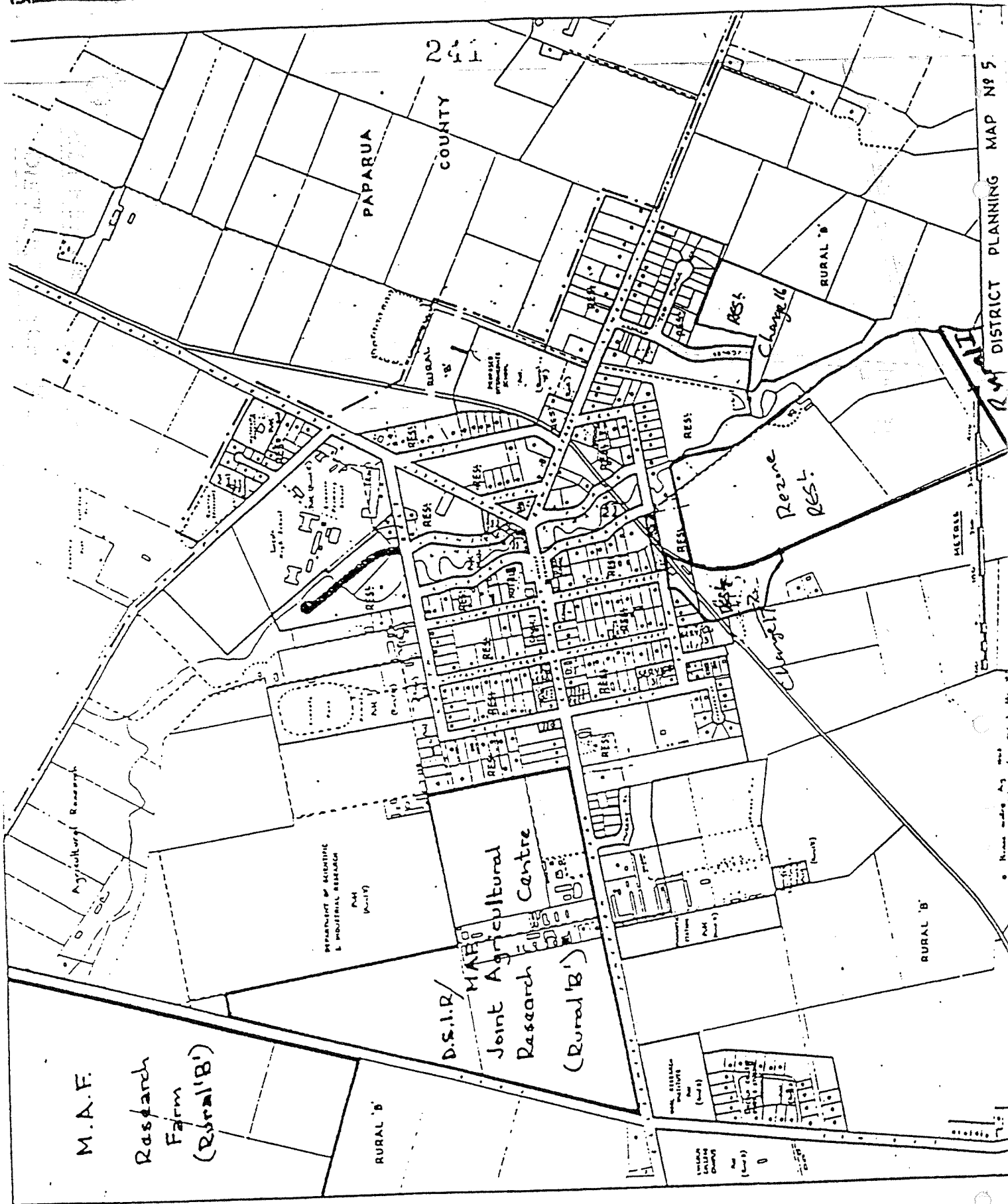
Insert after Planning Map No. 5(B) the following Map identified as Planning Map No. 5(C).

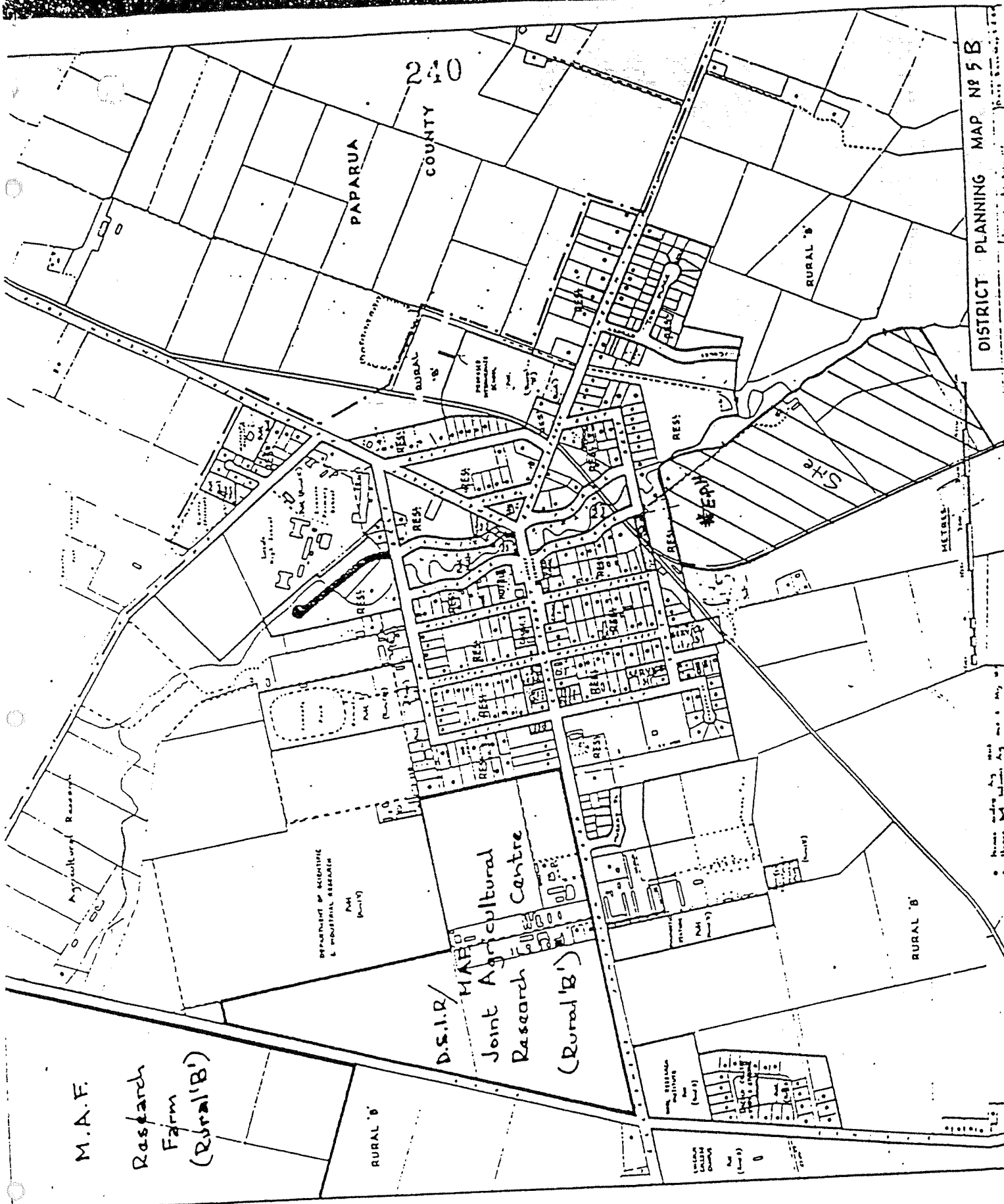
Insert after Planning Map No. 5(C) Concept Plans C(1) (2) and (3).

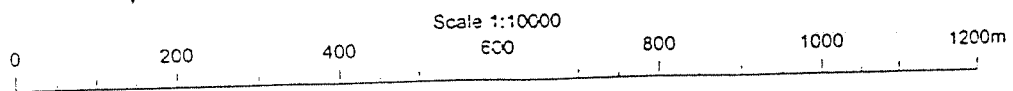
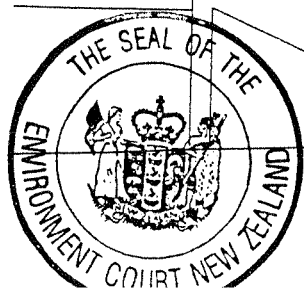
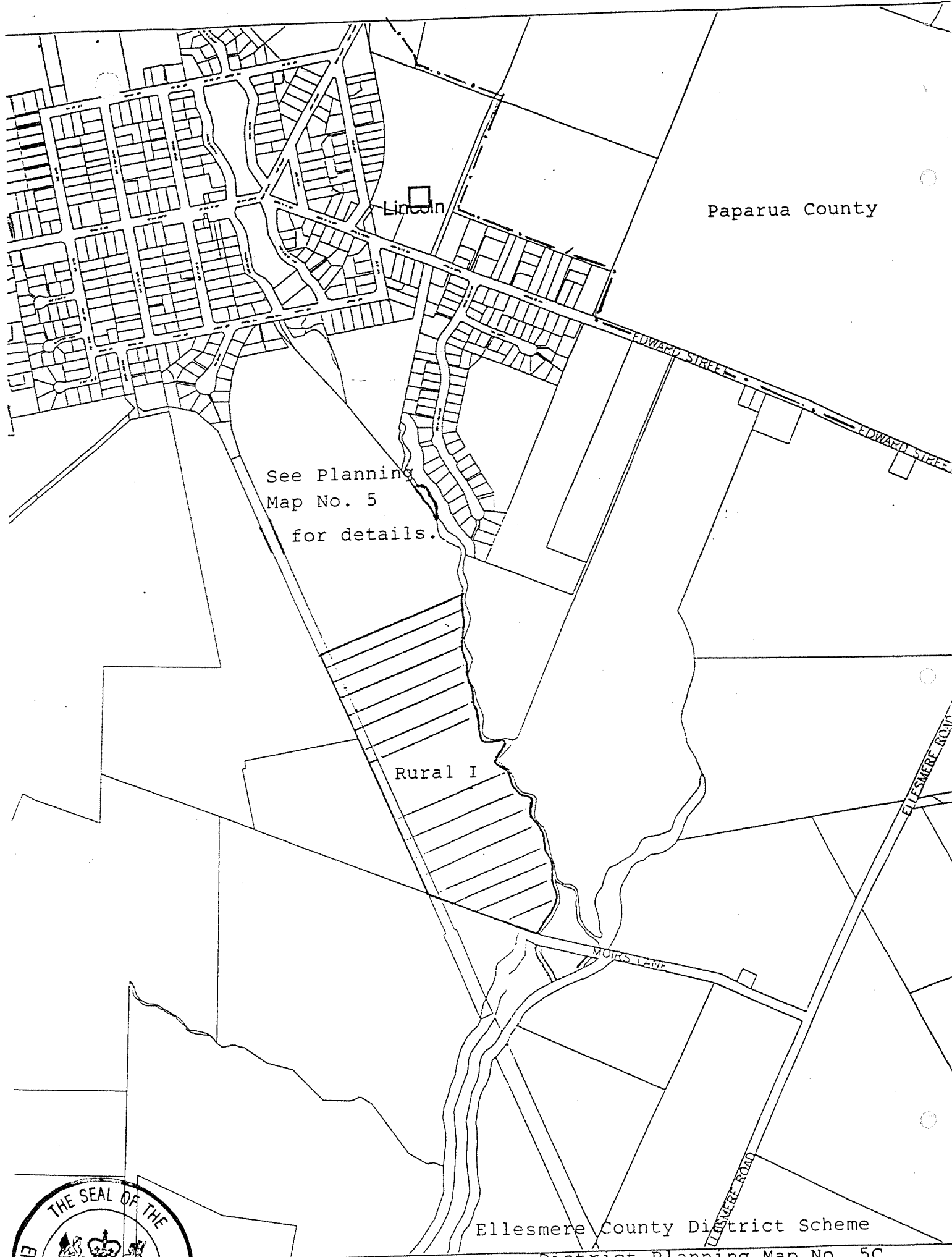
Insert after Planning Map No. 5(C) Traffic Design Group drawing 3709KT1.

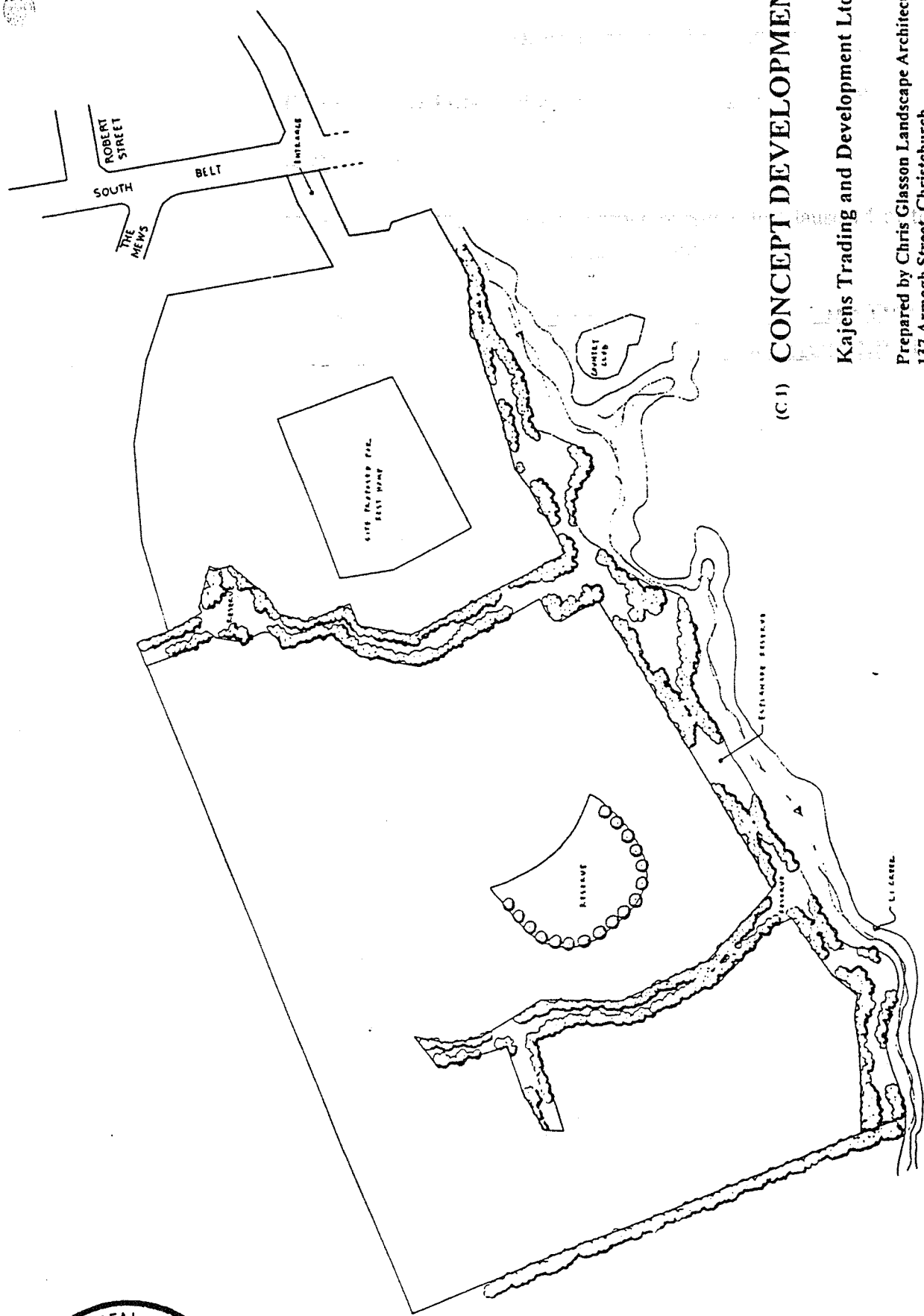
Insert after Traffic Design Group drawing 3709KT1 a copy of planning map 5/2 entitled "Ellesmere County District Scheme – Designation of Sewerage Treatment Plant Lincoln". This map is part of the District Plan by virtue of Change No.6 and is included in the planning maps annexed to Plan Change 45 by way of information only.









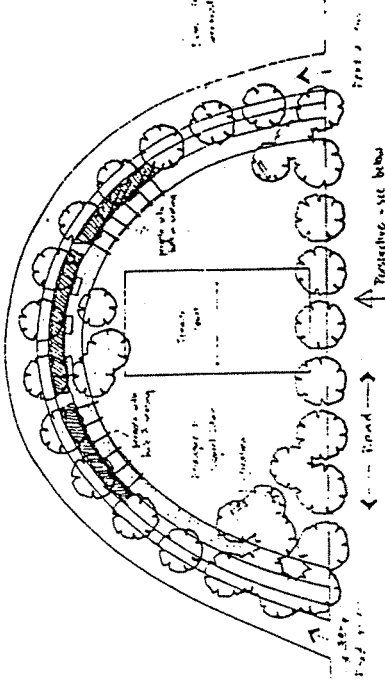


(C.1) CONCEPT DEVELOPMENT PLAN

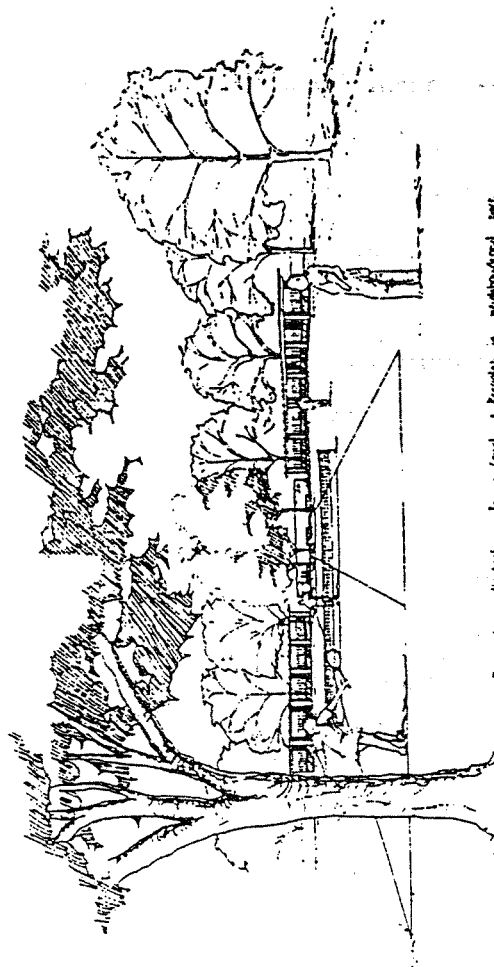
Kajens Trading and Development Ltd
Prepared by Chris Glasson Landscape Architects Ltd
137 Armagh Street, Christchurch

Ph : 365 4599 Fax : 377 7830
Date : October 26, 1998 Scale : 1:1250 @ A1
(Amendment number 3)

Residential Sections



TENNIS COURT & PERGOLA PLAN SCALE 1:50



Perspective illustration Tennis Court & Pergola in neighbourhood plan

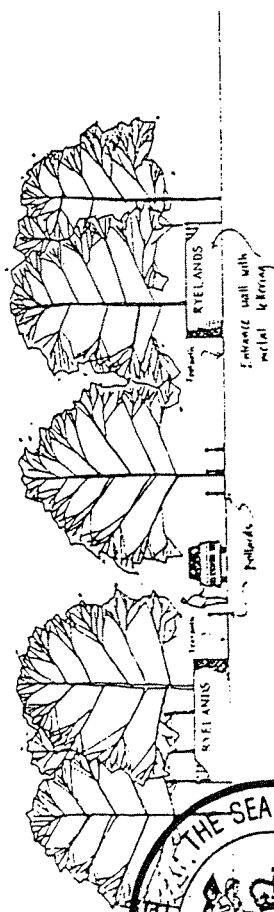
Concept Plan (C2)

Ryelands Subdivision

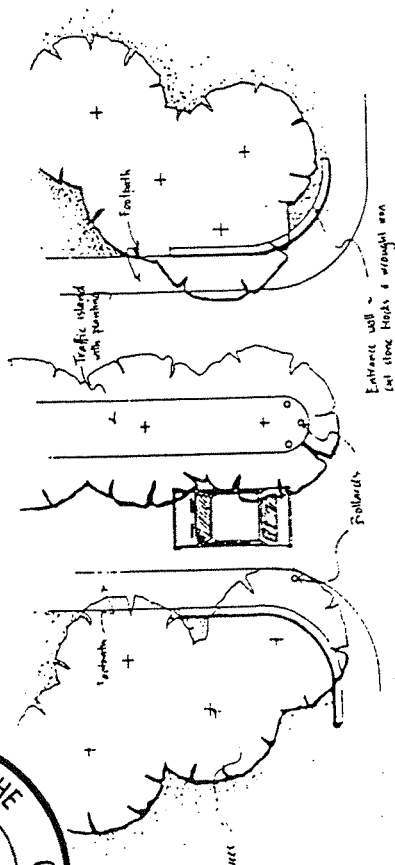
Kajens Trading and Development Ltd

Prepared by Chris Gibson Landscape Architects Ltd
137 Arundel Street, Christchurch
Phone: 341 1714
Fax: 341 1714

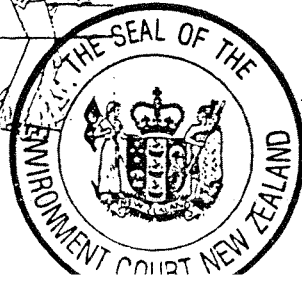
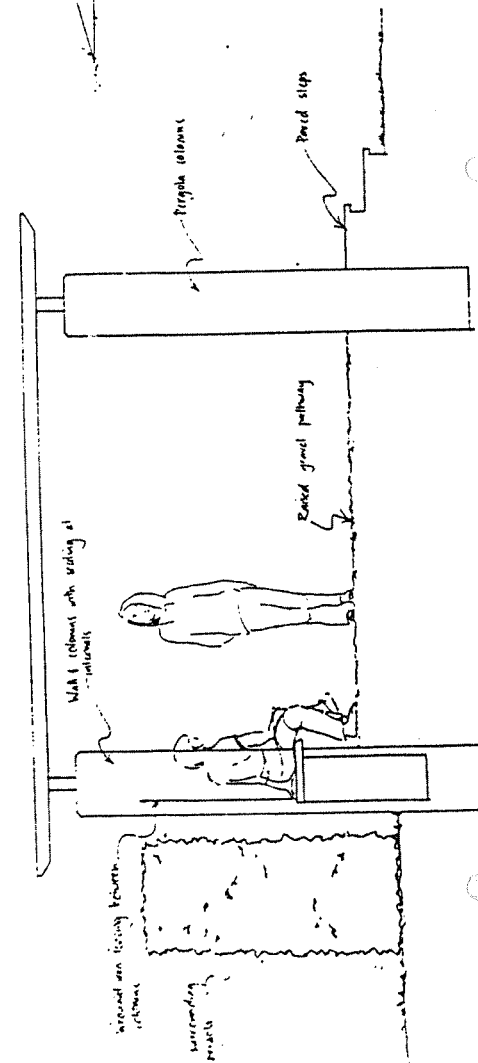
Date: 21/1/98
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Sheet 1 of 1



ENTRANCE WALL ELEVATION SCALE 1:100



ENTRANCE PLAN SCALE 1:100





Exotic Trees for Reserve & Street Planting

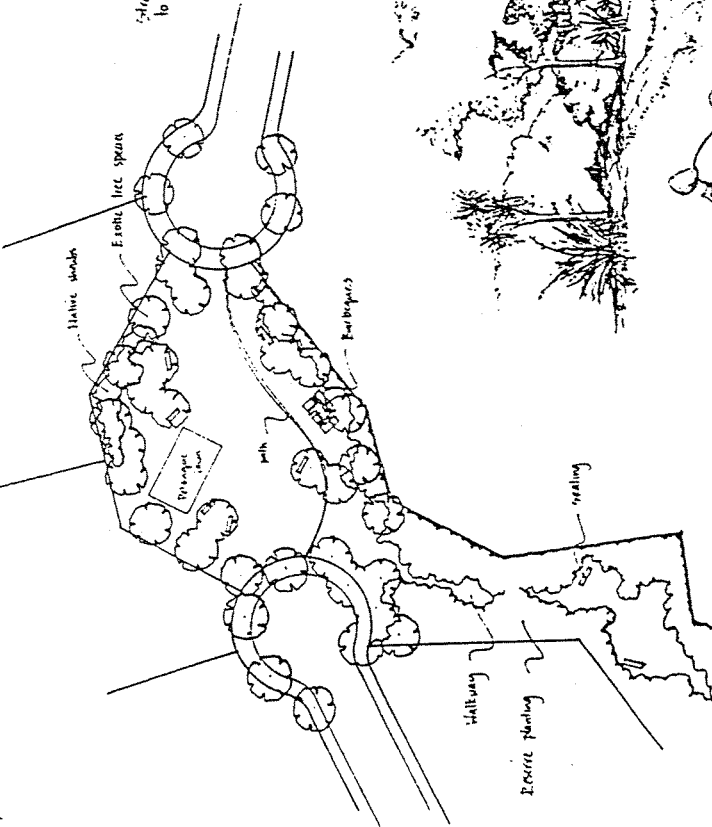
to include: Ash
Plane
Bulb
Lime
Alders

Collecting Species for Reserve & Riverside Planting

to include: Larch
Kauri
Lambert
Lopson
Kauri
Totara

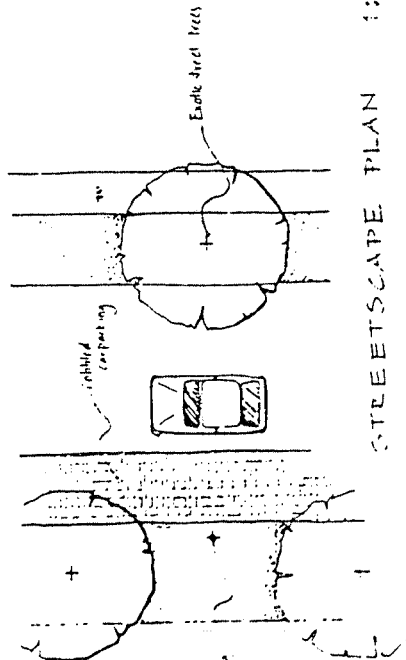
Accessories for Hillside Planting

to include: Larch
Shorea
Totara
Pine

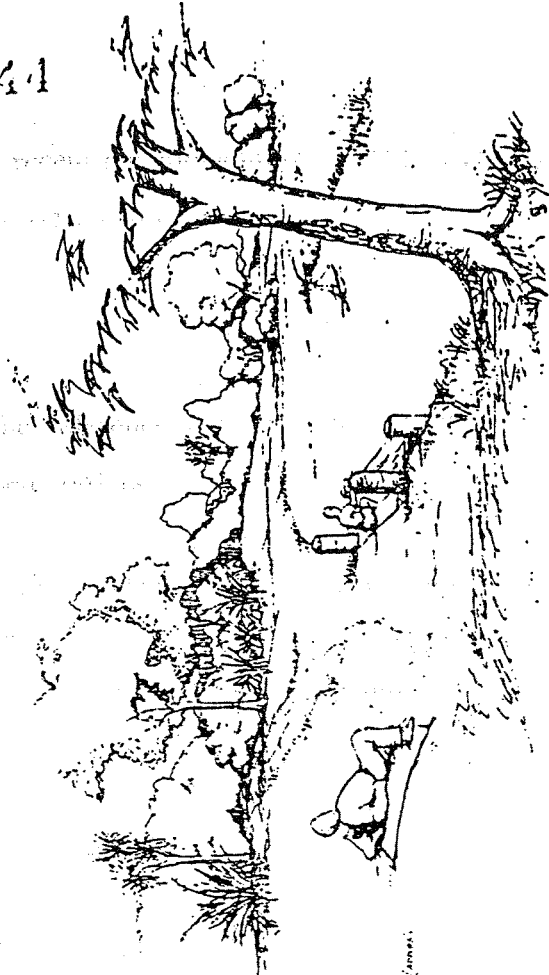
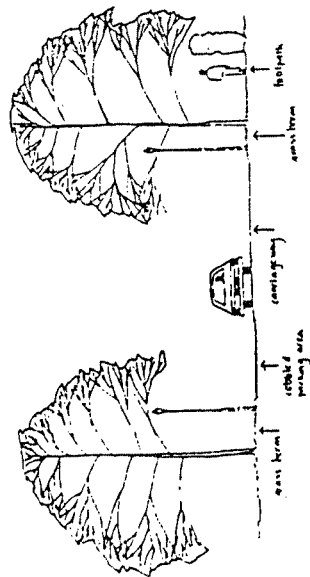


RESERVE PLAN 1:400 (approx)

TRANSVERSE SECTIONAL PARK AT END OF JAIL DE WAYS



STREETSCAPE PLAN 1:100



Riverside Transverse

Concept Plan (C3)

Rylands Subdivision

Kajens Trading and Development Ltd

Prepared by: Clark Gibson Landscape Architects Ltd
133 Armagh Street, Christchurch
Phone: 03 489 4899 Fax: 03 477 7834

Date: 21/1/98
Scale:
Sheet 1 of 3

