

SELWYN DISTRICT COUNCIL PROPOSED PLAN CHANGE 7

Growth of townships, urban development and rezoning of land for urban purposes including the introduction of a new Living Z zone at Lincoln and Rolleston

MINUTE OF COMMISSIONERS

Context

1. The hearing of Plan Change 7 to the Selwyn District Plan was adjourned at the end of the session on 12 May. To date we have completed six full days of hearing (3-5 and 10-12 May) and a locality visit. During the hearing presentation, evidence was provided by 25 submitters.
2. The hearing will be reconvened on 21 and 22 June to allow the remaining submitters to be heard and to hear the officer's reply. We will also use that opportunity to hear further from a number of submitters who we have asked to re appear.
3. The purpose of this Minute is to advise parties of the matters on which we seek further information.

Matters Arising From the Scope of Submissions

4. There are a number of submissions which the officers' section 42A report concluded were beyond jurisdiction. The report had been prepared by officers on the basis of a legal opinion that concluded that for the most part submissions that are associated with land that does not have a relationship to the land within PC 7 are outside of the scope of PC 7.
5. At the commencement of the hearing we heard from submitters in this category, as to whether we have jurisdiction to make recommendations on their submissions.
6. After considering this matter, we indicated that we would not be making a preliminary decision on this matter. We concluded that it would be appropriate to hear evidence before determining this issue. We indicated some reservations as to the position outlined in the legal advice, however, we have not reached a final view on that matter. We also indicated that even if we were to conclude that particular submissions may be outside of our jurisdiction, that we would be likely to reach a conclusion on their merits in any event. That is because any decision of ours in relation to scope would be open to challenge and the Courts might reach a different view. Given that possibility it seemed that it would be useful to submitters, the Council and potentially the Court if there are appeals, for us to reach a conclusion on the merits of each submission.

7. The officers indicated that there were some submitters who had not prepared for hearing, in anticipation that their submission might be found to be outside of scope. We directed the officers to advise those submitters that they were welcome to present their submissions.
8. A few parties advised us that they were not in a position to present evidence in support of their submission within the scheduled hearing time because they had been awaiting our decision on scope before preparing evidence. We confirmed that we would schedule additional hearing time to enable this material to be presented.
9. We also noted that, as the section 42A report was based on the Council legal advice, the assessment and reporting on these submissions was limited. We have therefore provided the officers with an opportunity to provide a supplementary section 42A report on some or all of these submissions. That is to be issued to all parties at least five working days prior to the commencement of the reconvened hearing.
10. We are aware that a group of submitters associated with Branthwaite Drive and advised by Ms Aston wish to be heard at this time. We understand that Ms Aston may be out of the country on the relevant days. We are happy to receive her evidence and any other evidence or legal submissions in writing, during the week prior to the hearing.
11. We request that any other parties, who have not appeared before us already, should advise Cameron Wood at the Council that they wish to appear and how long they require before 1 June.

Denwood Trustees Ltd

12. We have heard evidence from Denwood Trustees Ltd. This included evidence on two additional development options (Option 1 and 2) for their land at Lincoln. We note that these new options are substantially different to options contained in the submitter's original submission.
13. The new options had not been provided to the officers before the hearing and therefore were not considered in the officer's report. Accordingly, we have asked the officers to report to us further on these options as part of their supplementary section 42A report. Denwood may make a further appearance to respond to this further assessment by officers.
14. We can indicate that (even leaving aside PC1) we are currently struggling to see the need for as much Living Z or Business 2 land as is proposed by Denwood at the hearing. Accordingly, we would like the officers and Denwood to consider a further option. This option is shown on the Plan attached and in broad terms consists of:

- The area of land proposed for Business 2 in PC 7 to be zoned Living Z or Living Z deferred (being a significantly smaller area than is now proposed by Denwood as Living Z).
 - The land to the south of this owned by Denwood Trustees to be zoned Business 2 (being a significantly smaller area than is now proposed by Denwood as Business 2).
 - The incorporation of a landscaped buffer 50 m wide between these two areas that could potentially be the subject of a notice of requirement for a road in the future.
 - The balance of the Denwood land to be left out of the Plan Change.
15. We note that Mr Worner is a submitter who is directly affected by this additional option and we will allow him to comment on this and the other options during the course of the reconvened hearing.
16. We will hear from the officers and the submitter as to whether if this option was to proceed it should be on the basis of Living Z or Living Z deferred. We note that the Business 2 zoning would not need to be deferred provided that an Outline Development Plan for this area is approved as part PC 7.
17. If this option is not acceptable to Denwood then we would be left to decide between the other three options which are before us:
- As per Plan Change 7
 - Denwood Option 1
 - Denwood Option 2

Plan Change 1 to the Canterbury Regional Policy Statement

18. During legal submissions of Denwood Trustees Ltd and Lincoln Land Development at the hearing, two issues were raised in regard to the PC1. They are:
- The amount of weight commissioners should give PC1; and
 - Interpretation of Policy 6 of PC1
 - are the tables maximums/minimums or targets?
 - interpretation of Greenfield and intensification areas in regard to Table 2
19. In relation to the weight issue, LLD and Denwood seek that we place no weight on the PC1. The officers and the Regional Council seek that we place considerable weight on PC1 and indeed the Plan Change and the officers report are based upon giving effect to PC1. In view of this divergence of position and the importance of this issue, we would appreciate further guidance on the matter.

20. In relation to the Policy 6 issue, it is not currently clear to us whether it would be a failure to give effect to Policy 6 if we to allow some increase over the numbers set out in the tables (accepting that we are not currently required to give effect to the Policy).
21. We have requested that the Council seeks legal advice on these issues and respond to the legal submissions made by Denwood Trustees Ltd and Lincoln Land Development in regard to the weight issue.
22. This advice is to be appended to the Supplementary section 42A report and parties who appear before us at the reconvened hearing will be able to respond as appropriate. In view of the similar position adopted by the officers and the Regional Council, it is appropriate that if the Regional Council wishes to comment, those comments also be appended to the supplementary section 42A report.

Indicative Road

23. During the hearing, counsel for Lincoln University questioned the appropriateness of the inclusion of an 'indicative' road on an Outline Development Plan in the context of the requirements of s.32 of the RMA. Queries were also raised with regard to the timing of such infrastructure and whether a Notice of Requirement process should be pursued instead of being part of the ODP criteria. We confirm that we have requested that Council obtain a legal opinion on this matter. This will also be included with the Supplementary Section 42A report for the reconvened hearing.

Other matters

24. There were a number of other matters which we have asked the officers to comment on and these will be addressed in the officer's reply. For example, we have a concern that future subdivision applications generally in accordance with an outline development plan, would not be served upon affected persons. The current process would be the only opportunity for affected persons to be heard on a proposed development. People may not be aware that this is the situation. Particularly where ODP's have been developed after the notification of the Plan Change. We are also concerned that the "*generally in accordance with*" standard may be too uncertain and may leave too much discretion to Council officers (that is a matter which could be addressed by way of redrafting).

Next Steps

25. The hearing will reconvene on 21 and 22 June. We envisage that we will hear from submitters on the first day and the second day will be primarily allocated to a final response from Council officers. Officers will prepare a timetable.
26. The supplementary officer's report will be circulated to all parties at least five working days prior to the commencement of the reconvened hearing. This will

include any legal advice and any comment from the Regional Council in relation to PC1 issues and the further Denwood Trust option.

24 May 2011

Philip Milne
Independent Hearings Commissioner

Paul Thomas
Independent Hearings Commissioner