

**IN THE MATTER** of Resource Management Act 1991

**AND**

**IN THE MATTER** of Proposed Plan Change 7 to the Selwyn  
District Plan

**Supplementary Report on Submissions relating to 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**

**Report Number:** PC080007  
**To:** Hearing Commissioners  
**From:** Cameron Wood  
**Hearing Dates:** 21 and 22 June 2011

## Introduction

- 1.1. My full name is Cameron David Wood. I am employed as a Strategic Policy Planner for the Selwyn District Council. I hold the qualification of Bachelor of Economics from Otago University. I have worked in the field of planning and resource management for the past three and half years. Prior to this I worked for six and half years in Central Government as a Policy Adviser and Senior Adviser. I am familiar with the Selwyn District, its resource management issues and the Selwyn District Plan.
- 1.2. The hearing for Proposed Plan Change 7 (PC7) was held on 3-5 and 10-12 of May 2011. The hearing was heard by two independent Commissioners (Philip Milne and Paul Thomas). 26 submitters presented evidence in support of their original submissions. The hearing was adjourned at the end of the session on 12 May.
- 1.3. On 24 May 2011, the Commissioners issued a minute advising parties on specific matters on which they sought further information on.
- 1.4. This supplementary s42a report addresses the following issues from the minute:
  - Proposed Change 1 to the Canterbury Regional Policy Statement (PC1)
    - Update on PC1
    - Legal opinion on how much weight should be given to PC1
    - Interpretation of Policy 6
      - Are Tables 1 and 2 maximums/ minimums or targets
      - Interpretation of Greenfield/existing zoned land and intensification areas in Table 2
  - Assessment of options for land owned by Denwood Trustees Ltd in Lincoln
  - Assessment of Branthwaite Drive (Greenfield Area in Rolleston)
  - Legal Opinion re Indicative Road shown on ODP Area 5 in Lincoln
- 1.5. The minute states that the hearing for PC7 will reconvene on 21 and 22 June. The first day of the hearing will deal with the issues addressed in the minute and the second day will be primarily allocated to the final response from Officers.
- 1.6. As the planning officer, I will be addressing other issues raised by submitters at the previous session of this hearing during the right of reply.

## **Issue 1 - PC1 Issues**

### **Weight to be given to PC1**

2.1. As part of my officers report, I made the following statement on the amount of weight that should be given to PC1 at this stage. Paragraph 3.7 states:

“s74 (2)(a)(i) of the RMA91 requires Selwyn District Council to have regard to PC1. Significant statutory weight should be afforded to PC1 as decisions on submissions have been released, and in particular weight can be placed on the location of the MUL apart from the relatively discrete matters of appeal relating to Lincoln. The process has involved consultation, public notification, the calling for public submissions, further submissions, provided interested parties the opportunity to be heard and afforded rights of appeal. The principles of Greenfield growth areas being in accordance with good urban design and subject to an ODP (Policies 7 and 8) have also not generally been challenged at appeal, although Policy 6 matters relating to the allocation of household numbers and staging are subject to a number of appeals and therefore are less settled relative to other aspects of PC1”.

2.2. During the hearing for PC7, there was a difference in opinion around this paragraph. Some submissions (e.g. Environment Canterbury and Rolleston Square Ltd) had a similar perspective, while others (Lincoln Land Development and Denwood Trustees Ltd) outlined that no weight should be given to PC1 (note that these submitters have/had an appeal on PC1 at the time and disagree with the outcome of the Commissioners decision on PC1)

2.3. As a result of the different perspectives, the Commissioners asked Council to provide a legal opinion on this issue along with other issues in regard to PC1.

2.4. I have been provided with legal advice from Mr Cedric Carranceja (Special Counsel, Buddle Findlay) on 9 June 2011 (attached as Appendix One). In his advice Mr Carranceja considers the following relating to the issue of weight that should be given to PC1:

“When considering PC7 the Council is required to “have regard to” PC1, which means that PC1 must be considered as part of a weighing-up process. The weight that can be given to any particular provision in PC1 will differ depending on whether and to what extent the provision has been challenged by appeal. Provisions that are unchallenged can be given more weight than those that have been appealed”.

2.5. I consider that this advice is consistent with the approach taken in the officers report in regard to the existing status of PC1.

### **Policy 6 issues**

2.6. There was some debate during the hearing as to the interpretation of Policy 6 contained in PC1 and how PC7 responds to this policy. Three key issues were identified, they are as follows:

- Should Tables 1 and 2 be interpreted as a maximum, minimum or target?
- Interpretation of Table 2, does it include existing zoned land as well as Greenfield Land?
- What happens to land in Selwyn if it is intensified over and above the densities contained in existing zoned land? Are these numbers included in Table 1 or 2?

## **Table 1 and 2 – Maxima, Minima or Target?**

2.7. In his legal advice, Mr Cedric Carranceja considers the following in regard to Table 1 and 2:

- It is clear that the figures relating to Rural Residential Areas in Table 1 are maximums
- It is less clear whether the remaining figures in Table 1 represent maximums, minimums or targets. On balance, we consider that the figures in Table 1 (other than for Rural Residential Areas) are minimums.
- The figures in Table 2, which relate to Greenfields Areas and existing zoned land, clearly represent anticipated targets to be achieved within a range of plus or minus 5%
- Reading Tables 1 and 2 together, the different types of residential development contemplated by PC1 are managed as follows:
  - Rural Residential development is capped by the Table 1 figures;
  - Intensification (as defined in PC1) is not capped by Table 1 or 2. However, Table 1 sets a minimum intensification target for Christchurch City;
  - Residential development of Greenfields Areas and existing zoned land is capped by the Table 2 figures (i.e. it cannot exceed 5% of the Table 2 figures), not by the Table 1 figures.

2.8. This interpretation has been used in the remaining sections of this report (updated household allocations for Rolleston and Lincoln are included as well).

## **Table 2 – Greenfield and Existing Zoned Land Issue**

2.9. During the hearing, the Commissioners heard evidence from Mr Michael Rachlin (Principal Planner at Canterbury Regional Council (Ecan) relating to the interpretation SDC has used within PC7 relating to specific policies contained in PC1 (especially around Policy 6 of PC1). As stated in paragraph 4.14, Mr Rachlin states “In my opinion reference to “new growth” in Table 2 for Lincoln and Rolleston relates to Greenfield areas and not existing zoned land”. This is a similar view to submissions by Denwood Trustees Ltd.

2.10. I understand how Mr Rachlin could reach this interpretation. He is correct in stating that Table 2 has a subheading “New Growth Areas” which you would assume that this directly related to new Greenfield Areas. However in terms of consistency this approach is not supported by the allocations for Christchurch City and Waimakariri.

2.11. Both the allocations for Christchurch City and Waimakariri show Greenfields and existing zoned land in Table 2. So for example in Waimakariri District, Rangiora East and West has an allocation under Table 2 for existing zoned land (zoned) of 550 households and Greenfield land (of 980 households and 110 households). In addition the inclusion of note 2 in Table 2 states that existing zoned land “assume development at densities that are in accordance with existing zoning provisions that apply to those areas”. This note seems to be consistent with the approach that existing zoned land is included in Table 2 for Christchurch City and Waimakariri.

2.12. What is different for Selwyn is that there is no split allocation for the two types of areas. So does this mean that all of the household allocation in Rolleston, Lincoln, and

Prebbleton under Table 2 is for Greenfield land only? I would say no, and the reasons for this stems back to the notified version of Policy 6 and how the numbers for Selwyn evolve through to the Commissioner's decision on PC1.

### **Notified Version of PC1 (28 July 2007)**

2.13. In the notified version of PC1, Table 1 shows an allocation of households for Greenfield Areas. At the time Greenfield Areas includes existing undeveloped zoned land at Rolleston. Table 2 outlined an allocation of households to Rolleston (4350).

Table 1

<b>Selwyn District</b>	<b>2007-16 HH</b>	<b>2017-26 HH</b>	<b>2027-41 HH</b>
Greenfield Areas	3200	3400	2640
Rural Residential Areas	700	700	1000
Existing Rural Zoning	100	100	50
<b>Total</b>	<b>4000</b>	<b>4200</b>	<b>3690</b>

Table 2

<b>Selwyn District</b>	<b>2007-16 HH</b>	<b>2017-26 HH</b>	<b>2027-41 HH</b>	<b>Total</b>
<u>Lincoln</u>	<u>930</u>	<u>905</u>	<u>1290</u>	<u>3125</u>
<u>Rolleston</u>	<u>1000</u>	<u>2000</u>	<u>1350</u>	<u>4350</u>
<u>West Melton</u>	<u>570</u>	<u>0</u>	<u>0</u>	<u>570</u>
<u>Prebbleton</u>	<u>700</u>	<u>495</u>	<u>0</u>	<u>1195</u>
<b>Total</b>	<b>3200</b>	<b>3400</b>	<b>2640</b>	<b>9240</b>

2.14. Table 2 numbers for the four areas in Selwyn equal the Greenfield Areas allocated in Table 1. As existing zoned land in Rolleston is included in Greenfield Areas via Table 1, you would assume that they are also included in Table 2 allocation.

2.15. During this time, Selwyn District Council identified three issues that could impact on the notified version of Table 1 and 2 of Policy 6. They were:

- Draft version of the Lincoln Structure Plan (refining how the future development of Lincoln should occur, including the urban limit and how much households should be within the urban limit)
- the Airport Noise Contour was still to be resolved in Rolleston, so no urban limit was included in the notified version for PC1 for Rolleston.
- Rural residential allocation for Selwyn was 20.4% of the growth of residential households. This was significantly larger than the target contained in PC1 (Objective 1: Urban Consolidation "Growth in rural-residential households restricted to no more than 5% of the growth of residential households")

## UDS/SDC Joint Submission – 30 October 2007

2.16.SDC made a joint submission with the three other UDS partners (Christchurch City Council, Waimakariri District Council, and New Zealand Transport Agency) on PC1. The submission suggested multiple changes to PC1, with the following specific points related to aspects within Policy 6.

- Policy 6, Table 1
  - SDC notes that Objective 1 provides for growth in rural-residential households of “no more than 5%” of the growth of residential households. This is supported. However, out of the total household growth in Greater Christchurch to the year 2041 (74,860 households), Policy 6, Table 1 allocates the full 5% (3910 households) to Selwyn and Waimakariri District alone. SDC’s allocation is 2400 rural-residential households (all to be outside Map 1’s urban limits). This is 20% of the total district allocation of 11,890 households to the year 2041. SDC does not want 20% of the District’s growth allocation to be of that form and outside the defined Urban Limits. Rather, it seeks that 600 households, or 5% of its allocation, are to be Rural-residential (outside urban limits) and the remaining 1800 households be allocated to Greenfield allocation at Rolleston and Lincoln, thereby improving “economies of scale” for those towns.
- If this submission point was accepted the following changes would have been made to Table 1.

Table 1

Selwyn District	2007-16 h/holds	2017-26 h/holds	2027-41 h/holds
Zoned and proposed Greenfield areas	3700	3900	3440
Rural-residential areas (outside urban limits)	200	200	200
Existing Rural zoning	100	100	50
<b>Total</b>	<b>4000</b>	<b>4200</b>	<b>3690</b>

- Policy 6, Table 2 –
  - PC1 is ambiguous in its treatment of West Melton, Lincoln and Prebbleton and clarification is required as to whether the development referred to is to come from existing zoned land or new growth areas
  - In Table 2 add new heading in column one “New Growth Areas “with allocations for Lincoln (110/905/1290), Rolleston (340/2000/1350), West Melton (0/0/0), and Prebbleton (230/495/0). Insert new sub-heading “existing undeveloped zoned land in Lincoln, Rolleston, West Melton and Prebbleton (2520/0/0)
- If this submission point was accepted the following changes would have been made to Table 2.

Table 2

<b>Selwyn District</b>	<b>2007-16 HH</b>	<b>2017-26 HH</b>	<b>2027-41 HH</b>	<b>Total</b>
<b>New Growth Areas</b>				
Lincoln	110	905	1290	2305
Rolleston	340	2000	1350	3690
West Melton	0	0	0	0
Prebbleton	230	495	0	725
Existing undeveloped zoned land	2520	0	0	2520
<b>Total</b>	<b>3200</b>	<b>3400</b>	<b>2640</b>	<b>9240</b>

- SDC sought a second change to Table 2,
  - a consequential change relating to the submission point on Policy 6, Table 1 (which requests that Selwyn District's rural-residential allocation be reduced to 600 households, or 5% of its allocations) and that the remaining 1800 households be re-allocated to Greenfield development at Rolleston and Lincoln, thereby improving "economics of scale" for those towns.
  - work done by the SDC had split between Rolleston and Lincoln (due to the Lincoln Structure Plan) as follows
    - Rolleston – 1075 Households
    - Lincoln – 775 households
- If this was accepted this would have made the following changes to Table 2

<b>Selwyn District</b>	<b>2007-16 HH</b>	<b>2017-26 HH</b>	<b>2027-41 HH</b>	<b>Total</b>
<b>New Growth Areas</b>				
Lincoln	480 (+370)	1100 (+195)	1500 (+210)	3080 (+775)
Rolleston	470 (+130)	2305 (+305)	1940 (+590)	4715 (+1025)
West Melton	0	0	0	0
Prebbleton	230	495	0	725
Existing undeveloped zoned land	2520	0	0	2520
<b>Total</b>	<b>3700</b>	<b>3900</b>	<b>3440</b>	<b>11040</b>

2.17. Within the two changes sought to Table 2, the first was suggested by the UDS partnership, the second was a SDC specific submission point that SDC requested would take precedence.

2.18. In considering the SDC submission (and other submissions), the Commissioners for PC1 made the following changes to Table 2 for Selwyn:

- New heading in column one "New Growth Areas"
- Accepted the allocation of 1800 households from rural residential to Lincoln (775 hh) and Rolleston (1025 hh)
- Rejected the inclusion of an additional row "Existing undeveloped zoned land and the 2520 household allocation in 2007-16"

- However the commissioners allocated 2520 households to Rolleston, Lincoln, West Melton and Prebbleton
- As a result of these changes, Table 2 would have looked like this:

<b>Selwyn District</b>	<b>2007-16 HH</b>	<b>2017-26 HH</b>	<b>2027-41 HH</b>	<b>Total</b>
<b>New Growth Areas</b>				
Lincoln	1300 (+820)	1100	1500	3900 (+820)
Rolleston	1130 (+660)	2305	1940	5375 (+660)
West Melton	570 (+570)	0	0	570 (+570)
Prebbleton	700 (+470)	495	0	1195 (+470)
<b>Total</b>	<b>3700</b>	<b>3900</b>	<b>3440</b>	<b>11040</b>

2.19. However, the Commissioners then reduced the three stages in Table 2 down to two and provided 100 extra households in Prebbleton. With that change Table 2 no longer equals the Greenfield and existing zoned land allocation in Table 1 (this is the first time that this has occurred during the development of PC1). So the final version of Table 2 is as follows:

<b>Selwyn District</b>	<b>2007-20 HH</b>	<b>2021-41 HH</b>	<b>Total</b>
<b>New Growth Areas</b>			
Lincoln	1740 (+440)	2160 (+660)	3900
Rolleston	2052 (+922)	3323 (+1383)	5375
West Melton (zoned)	570	0	570
Prebbleton	998 (+198 / +100)	297	1295
<b>Total</b>	<b>5360</b>	<b>5780</b>	<b>11140</b>

2.20. It was unfortunate that the Commissioners did not accept the additional row that allocated households to existing zoned land in this manner suggested by the SDC/UDS submission. However since the submission was made, SDC has considered that existing land is included within Table 2. This is due to the fact that while there is no specific line item, 2520 households were allocated to Rolleston, Lincoln and Prebbleton by the Commissioners that SDC considered at the time were for existing zoned land within the townships. Further work conducted by SDC via the three Structure Plans for Rolleston, Lincoln and Prebbleton has refined this number.

2.21. The way that Table 2 is constructed (ie allocating growth to the specific townships overall) provides flexibility for Council through PC7 to rezone the appropriate amount of land required in Greenfield and existing zoned land to meet the population requirements of the Townships and the households contained in PC1.

2.22. Therefore, I consider that PC7 is consistent with SDC's position on Table 2, the existing zoned land is included.

2.23. A further modification is likely to be made to Table 2 as a result of a negotiated settlement between Environment Canterbury and Lincoln Land Development in regard



to their appeal on PC1. (Further information on this will be provided to the Commissioners at the hearing).

2.24. This agreement moves a number of households from Stage 2 in to Stage 1. These households are to allow development of all areas included in Stage 1 of PC7 and both the northern and southern part of the Dairy Block owned by Lincoln Land Development. As Table 2 includes numbers in Stage 1 for the northern part of the Dairy Block (which is existing zoned land), this change again reiterates that existing zoned land is included in included in Table 2 households for Selwyn.

2.25. Please note that due to this settlement, I would like to amend my recommendations to the commissioners that submission points (D1, D2, D3, D4, D5, D9, D10 and D11) for submitter 85 be now accepted (Recommendation number 3, page 44 of the s42a report).

### **Intensification allocation in Table 1 and 2 for Selwyn**

2.26. A number of submissions in PC7 have sought additional land to be included and rezoned to Living Z. 5 areas are currently zoned Living 1 or 1B or 2 or 2A. 3 out of 5 areas are fully developed based on their existing zone density. So what happens if these sites were to intensify? Initially in my 42a report I considered that any intensification of areas would have to come off our Table 1 and 2 numbers.

2.27. However after further research I would like to amend my position. In his legal advice, Mr Cedric Carranceja considers that:

*“Intensification within the urban limit would constitute a “bonus” over and above the “Greenfield Areas” and “existing zoned land” allocations in Tables 1 and 2 provided that it is understood the “intensification” in PC1 (as defined in Clause 12A.7) refers only to intensification of developed urban areas, not “Greenfield Areas” or “existing zoned land”. Any intensification occurring within “Greenfield Areas” or “existing zoned land” falls outside the meaning of “intensification” as contained in Clause 12A.7 of PC1, and would not constitute a bonus over and above the household figures for “Greenfield Areas” and “existing zoned land” in Table 1 and 2. Any growth in household numbers within “Greenfield Areas” or “existing zoned land” would count towards those figures in Table 1 and 2.”*

2.28. What does this mean for PC7?

2.29. If Council rezones existing zoned land which has fully developed to a suitable intensification zoning (e.g. Living Z), I consider that the household numbers would not come off Table 2 or Table 1 (as Table 2 only relates to Greenfields and existing zoned land at their existing densities and Table 1 does not include an allocation for intensification for Selwyn).

2.30. On page 24 of my officers report, I identified additional land that have sought to be rezoned to Living Z over and above the areas rezoned as part of PC7. Out of the 8 areas (7 in Rolleston and 1 in Lincoln), 3 areas in Rolleston have developed to their existing zoned density and could be defined as an intensification area. They are:

- Location A: 1, 2, 7 and 15 Oak Tree Lane (14 Households)
- Location B: East Maddisons Road Goulds Road (279 Households)
- Location D: Helpet Park (245 Households)

2.31. As a result of the new interpretation, I would like to amend my recommendation for these three areas in Rolleston and recommend that these three areas should be rezoned to Living Z Deferred. The deferred status would be lifted when an ODP is approved and included in the Selwyn District Plan.

## Denwood Trustees

- 3.1. During the first stage of this hearing, the Commissioners heard evidence from Denwood Trustees Ltd. In their evidence they provided two additional development options (option 1 and 2) for their land in Lincoln. Both options rezoned a larger area of land to Business 2 and Living Z zone. This is over and above the 11 hectares of Business 2 land included in PC7.
- 3.2. These new options were not provided to Council officers before the hearing and therefore the Commissioners through their minute has asked Council officers to assess these options.
- 3.3. However in the minute issued by the commissioners, they state the following:
- 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 (attached as Appendix One) consists of:
    - Area of land proposed for Business 2 in PC7 to be zoned Living Z or Living Z deferred (being a significantly smaller area than is now proposed by Denwood as Living Z)
    - 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)
    - Incorporation of a landscaped buffer 50m 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
- 3.4. Adding Option Three to the other options presented, the options are summarized as follows:

Option	Living Z zoning	Business 2 zoning	Total
PC7 as notified	None	11 Hectares	11 Hectares
Option 1 (Denwood)	47.4 Hectares	29.7 Hectares	77.1 Hectares
Option 2 (Denwood)	55.03 Hectares	22.6 Hectares	77.63 Hectares
Option 3 (Commissioners)	13 Hectares	13 Hectares	26 Hectares
Modified Option 3 (Denwood)	62.13 Hectares	12.76 Hectares	74.89 Hectares

- Please note that a modified version of option 3 was suggested by Denwood Trustees Ltd in a letter to Council dated 3 June 2011.
- 3.5. On 30 May 2011, Council staff met with representatives from Denwood Trustees Ltd to discuss the options and find out which option Denwood prefers. Council staff received a formal response to this discussion on 3 June. The letter attached as Appendix Two suggests that for Denwood, Option 1 is the most preferred, followed by Option 2.

## Assessment of Option 3

- 3.6. The Commissioners have suggested that both Denwood and Council officers should assess the merits of this option. Should this option not be acceptable then the

commissioners have suggested that they would be left to decide between the other three options which are before them.

- 3.7. Denwood Trustees have outlined in their letter to Council that Option 3 could be supported if a number of conditions are included (they are listed in Appendix Two). Council has assessed this option and I would like to make the following comments.

#### Consistency with PC1 Policy 1 and 14

- 3.8. Within Option 3, the Living Z zone is located within the urban limit in PC1 for Lincoln. However the Business 2 land is not within the urban limit. Therefore the Business 2 land is not consistent with Policy 1 (Urban Limit) for Lincoln.

- 3.9. PC1 does contain a policy for development outside the urban limit – Policy 14. The Policy states:

*“During the process of completing district plan changes and Outline Development Plans, territorial authorities may make minor amendments to provide for urban zoning outside the urban limits shown on Map 1 provided all the following conditions are met:*

- Any proposed extension or reduction will not change the Outline Development Plan area by more than 5%;*
- Any additional land is contiguous with the Outline Development Plan area;*
- Economics of scale or other efficiencies for infrastructure would arise; and*
- All other provisions of Policy 8 are met”.*

- 3.10. As ODP Area 5 is only 11 hectares in size, the Urban Limit could only be increase by 5% (0.65ha). This would not be enough to include all of the suggested 13.4 hectares of Business 2 land. As all of the conditions need to be met for Policy 14 to be used, Option 3 would not comply with it.

#### Policy 6

- 3.11. As the Living Z zone part of Option 3 is within the urban limit for Lincoln, Policy 6 does need to be taken into account. However there is a need to consider whether there are enough households to allocate to this new area over and above the households allocated to the five other residential ODP areas contained in PC7.

- 3.12. As stated in paragraph 2.7, it is considered in the Commissioners decision of PC1 that Table 2 is a target, with the unbolded figures defined as anticipated targets to be achieved within plus or minus five percent and totals in bold represent overall totals resulting from managed development. (Note 1 of Table 2).

- 3.13. While Mr Carranceja considers that Note 1 of Table 2 means that you can adjust the allocation of households to either between the four individual townships or for the total allocation to Selwyn in Table 2, I consider there is an alternative approach to interpreting this note. This approach would allow flexibility of plus or minus 5% to any one township but a corresponding change would need to be made to other township so that you did not go over the total allocation of households to Selwyn.

- 3.14. If that note was to be used with the alternative interpretation, five percent of Lincoln's total household allocation of 3900 would be 195 households. Therefore the range for Lincoln would be between 3705 to 4095 households. However if the households were to be increased to the maximum of five percent (4095) this increase would need to be

balanced out in the other townships in order to stay within the total household allocation for Selwyn in Table 2. Without considering the impact of this change on the three townships in Selwyn, I would not recommend that note 2 of Table 2 to be used at this time. (For example West Melton households have already been allocated via Plan Change 3, Stage 1 of Rolleston has been allocated through PC7 and there is enough land within the urban limit to use Stage 2 allocation for Rolleston, and Council is progressing a Plan Change for Prebbleton to allocate its households. Therefore at this time there would be no additional households in the other three townships to cover a 5% increase to Lincoln).

3.15. Based on an existing subdivision consent to the northern part of the Dairy Block and the land rezoned in PC7, this would be the current status of household allocation to Lincoln if the households were developed to the minimum 10 households per hectare (as stated in Policy 11).

	Name	Gross ha	Minus Stormwater	Useable Land @ 75%	Households	Av Section Size	Density
Existing	LLD				402		
ODP 1	LLD	68.00	49.50	37.13	495	750.0	10.0
ODP 2	Hobbs / Glasson	78.00	54.00	40.50	540	750.0	10.0
ODP 3	FH / P&F	155.00	148.03	111.02	1480	750.0	10.0
ODP 4	Mixed	61.00	57.00	42.75	570	750.0	10
ODP 6	SDC	0.75	0.75	0.56	23	244.6	30.7
							.
<b>Total</b>		<b>362.75</b>	<b>309.28</b>	<b>231.96</b>	<b>3510</b>		
Under allocation of households (re Policy 6 Table 2 for Lincoln)					390		

- Please note that there has been an increase of households to the existing zoned land owned by Lincoln Land Development from 371 (as reported in the Section 32 report page 29) to 402. This is result of land not being required for a primary school, LLD has considered that additional households should develop in place of the school.

3.16. Based on 10 households per hectare, there could be an underallocation of 390 households to Lincoln.

3.17. However this may not occur, as the minimum average lot size for the Living Z zone contained in PC7 is 650m<sup>2</sup> (not 750m<sup>2</sup>), and this may be further reduced to 600m<sup>2</sup> in accordance with the Fulton Hogan submission. This lot size equates to 12.5 households per hectare. If development was to occur at 600m<sup>2</sup> for each ODP in Lincoln, this would change the under allocation to an over allocation in the following manner:

	Name	Gross ha	Minus Stormwater	Useable Land @ 75%	Households	Av Section Size	Density
Existing	LLD				402		
ODP 1	LLD	68.00	49.50	37.13	619	600.0	12.5
ODP 2	Hobbs / Glasson	78.00	54.00	40.50	675	600.0	12.5
ODP 3	FH / P&F	155.00	148.03	111.02	1850	600.0	12.5
ODP 4	Mixed	61.00	57.00	42.75	713	600.0	12.5
ODP 6	SDC	0.75	0.75	0.56	23	244.6	30.7
<b>Total</b>		<b>362.75</b>	<b>309.28</b>	<b>231.96</b>	<b>4282</b>		
Over allocation of households (re Policy 6 Table 2 for Lincoln)					-382		

- Please note that medium density areas within each ODP Areas have not been included in these calculations. Additional households will need to be allocated to each ODP Areas as shown on each ODP contained in PC7.

3.18. At this stage there is not enough information to determine which situation will occur and it would be premature to speculate at the beginning of Stage 1 (2007-2020) that an underallocation will indeed occur.

3.19. Monitoring during Stage 1 development will need to be put in place to determine whether or not an under or overallocation will actually occur. Council will be setting up a process to monitor this situation and if an under allocation occurs after the completion of Stage 1, then Council will need to see what impact this will have on Stage 2 development and whether or not this would signal the need to add more land in the urban limit for Lincoln. However right now it is far too early to tell at this stage.

3.20. As a result, adding a further 120 households under option three would result in a larger overallocation of households to Lincoln if developed down to 600m<sup>2</sup> lots and medium density areas.

### SDC Growth Model

3.21. In 2008 the Selwyn District Council adopted a Growth Projection model, developed by Business and Economic Research Limited (BERL). The projection is based on current knowledge about constraints and makes a number of assumptions about the economy, migration, distribution of growth within the district etc. The figures are subject to review as knowledge is increased and/or SDC makes decisions about relieving constraints. (A review of the Growth Model is currently in progress).

3.22. The model outlines the following growth for Lincoln from 2008 to 2041.

Popn	2008	2011	2016	2019	2021	2026	2031	2036	2041
Lincoln	3196	3735	4726	5498	6027	7718	10211	11000	11879
H/Holds	1024	1286	1733	2040	2252	2945	3976	4269	4604

3.23. Two key facts to consider from the growth model for Lincoln are:

- Between 2008 to 2041, 3580 households are required
  - PC7 allocates either 3510 or 4282 households depending on lot size used.
- Between 2008 to 2021 (Stage 1 of PC7), 1228 households are required
  - PC7 and existing consent from LLD allocates 2647 households in Stage 1 (increase due to the agreed settlement between Environment Canterbury and Lincoln Land Development)

3.24. When considering the growth model and the amount of households included in PC7 for Lincoln, Council has overprovided for households in Stage 1 and could be on target for the overall allocation for Lincoln up to 2041. This reaffirms the position that an additional 120 households suggested in Option 3 is not justified at this time.

#### Lincoln Structure Plan

3.25. The Structure Plan contains a section identifying the principles used to develop the document. Generally:

- The Structure Plan has been formulated around a number of boundaries designed to cater for the outward spread of growth to 2041, based on current projections.
- This is a direct consequence of the desire to prevent continuous residential encroachment onto rural land to preserve the rural, open space character of Lincoln and to protect the environment and natural drainage systems.
- These boundaries are highly desirable to the successful management of growth in Lincoln.

3.26. The Structure Plan includes 18 specific principles and/or key features. Three principles are important to this issue:

- The structure plan should provide for consolidated, sustainable coordinated development and the staged provision of services (sewer and stormwater) in a logical direction. A compact urban form incorporating urban design principles is sought.
- Cadastral boundaries have been used to define the growth areas, but also take into account natural growth boundaries such as the Halswell River catchment to the northeast and high water tables to the south.
- Non natural boundaries have also been included such as CRI and Lincoln University land to the west and northwest and roads such as Tancreds and Ellesmere.

3.27. Based on the amount of growth allocated to Lincoln, Springs Road becomes the natural boundary for residential activities. If additional growth over and above what has been allocated to Lincoln should be zoned now, no assessment has been developed to consider the opportunity cost of using the land. For example, should it remain farming land, opportunity for expansion for Lincoln University, location for scientific spin off companies from the CRIs/Lincoln University, future expansion of Business 2 land or living Z land post 2041.

3.28. Closing off an opportunity now could have severe negative effects on Lincoln. The land owned by Denwood might be suitable in the future after the full implementation of the structure plan, but it is too early to tell what should happen until Lincoln has had a chance to develop the land zoned within PC7.

Infrastructure  
Wastewater/Stormwater

3.29. In this regard, I refer to supplementary evidence from Mr Hugh Blake-Manson, Selwyn District Council Asset Manager Utilities (which is attached as Appendix Three), where he advises that “it is my opinion that a variation of Option 3 – being deferral of Living Z and Business land occur. This should be deferred until applicable barriers to sewerage scheme access, stormwater treatment requirements and uncertainty regarding potential liquefaction issues are resolved”.

Roading

3.30. In addressing this issue, I refer to supplementary evidence from Mr Andrew Mazey, Selwyn District Council Transportation Asset Manager (which is attached as Appendix Four) as follows:

This Option has been put forward by the PC7 Hearing Commissioners. It provides a LZ zone and B2 zone along Springs Rd separated by a 50m buffer. I believe the intent of this buffer is to enable a section of the bypass to be incorporated into this in the future. Unfortunately it is not aligned sufficiently to enable the buffer to be used for a bypass route to connect to the University land using the old section of Weedons Rd as already identified as part of the wider route.

In my opinion I would prefer Option 2, which did not include any zoning for any type of residential development and a reduced B2 zone. As explained above the addition of a large amount of residential traffic onto Springs Rd will be problematic in conjunction with existing and proposed uses. A B2 zoning around a potential bypass would minimise future reverse sensitivity issues compared to residential zoning. Furthermore with no residential traffic needed to be catered for, roads and access could be optimised for a B2 activity.

Already, in respect to ODP 5 and the original B2 zoning proposals, ODP 1 has no direct property access to Springs Rd in this vicinity in anticipation of the type of traffic and vehicles that would be generated from a B2 zoning. On this basis it seems more logical to provide any additional (justified) B2 zoning so this can be catered for on a consistent basis along with that originally intended for ODP 5 and its interface with ODP1 and Springs Rd.

**Officers Recommendation Option 3**

3.31. As a result of the inconsistencies with PC1, SDC Growth Model and the Lincoln Structure Plan, I recommended that Option 3 should be rejected.

Options 1, 2 and 3a Assessment

3.32. As option 1, 2 and 3a all contain more households than Option 3, the issues raised in Option 3 apply here as well.

3.33. However, as part of the letter provided to Council, Ms Aston provides an assessment of the impact of Option 1 and 2 on Policy 6, Table 1 and 2 to justify the inclusion of further households. Many of the issues she had raised have already been addressed in this



evidence (re Table 2 is a target plus or minus 5% and existing zoned land is included in Table 2). However she does raise another point that I would like to clarify.

3.34.Paragraph 7 and 8 of her assessment states:

- The PC7 s32 Assessment assumes that PC7 should only rezone sufficient land to meet the household allocation provisions in Table 1, not the GFAs provisions in Table 2 (the latter are greater) and that the GFAs allocations are to provide some flexibility when developing changes to the District Plans.
- The above approach is a 'mis-interpretation' of the purposes of Tables 1 and 2. The Commissioners intended District Councils to include some extra GFA provision to reduce the risk of undersupply and increase the range of choice of locations for Greenfields development (and in some cases to enable significant resource management issues to be addressed in a sustainable manner)<sup>9</sup>. The Commissioners considered that some limited extra Greenfields provision would not undermine the C1 intensification targets because while ... *"the targets are achievable in the long term, the changes in living preferences, market demand and the actual provision of intensification household supply that will accompany the demographic changes, may take some time to develop."*

3.35.While Ms Aston is correctly referencing paragraph 3 and 4 of the commissioners executive summary, she has not included a further reference to paragraph 12,13 14 and 15 which identifies where the extra Greenfield land discussed in paragraph 3 and 4 will be located. Attached as Appendix Five is a copy of the Executive Summary of the decision where it shows that Prebbleton and not Lincoln would receive additional Greenfield Land. The Commissioners also identified the total amount of additional Greenfield land included in Christchurch, Waimakariri and Selwyn Councils.

3.36.In addition, the implied suggestion made by Ms Aston that the Commissioners provided opportunities for additional Greenfield land to be rezoned (such as Denwood) is not the case. Paragraph 870 of the Commissioners Decision on PC1 states:

- The far larger property to the south west comprising 82.3776 ha owned by Denwood Trustees does not have those physical constraints. But by equal token it has no particular features which mark it out as being any different as to its suitability for urban growth than any of the land surrounding it to the north, west and south. It was suggested to us at the hearing that Lincoln required more industrial land than has been provided on the property adjacent to the east as one of two proposed industrial locations at Lincoln to service the new Greenfields residential development. However, that approach overlooks the fact that the Structure Plan emphasises that the industrial land provision made in the Structure Plan is to accommodate *"industrial and other employment uses not compatible with the town centre or residential environments in locations with good accessibility and with minimal visual impact."* (p.12). That emphasis on limiting visual impact accords with the overall thrust of the Structure Plan, which at page 5 describes the character of Lincoln as being predominantly low residential density, particularly servicing education and research activities.
- PC1 as recommended to be amended in this decisions report identifies on a regional basis for significant Greenfields-Business areas for the 35 year planning term at Rolleston and south Hornby, both of which areas are in relatively close proximity to Lincoln. Furthermore, those locations are on the main transport routes (both by road and rail) to the south (or north) and to the airport. We see no need for a substantial or any further provision of Business land at Lincoln.

- For the reasons outlined in many other sections of this decision as to restricting the supply of further Greenfields Residential to avoid the risk of undermining the objectives of urban consolidation and intensification, we do not see any particular reason why this area should be brought into the Urban Limits. That is particularly so given the more consolidated Greenfields provision that has already been made at Lincoln in PC1.

3.37. Therefore I cannot support Option 1, 2, 3a as the additional households proposed are much larger than in option 3. As shown in this evidence, there is no justification for these additional households to meet the growth projections in Lincoln within the timeframe of the Lincoln Structure Plan and PC1 at this time (subject to the impact of the Canterbury Earthquake and the annual growth rate in Lincoln over the next 35 years).

3.38. In terms of the expansion of Business 2 land to either 22.6/29.7 hectares, this does not comply with Table 3 of Policy 6 within PC1. Denwood Trustees Ltd did not appeal the amount of business land contained in Table 3 for Lincoln and as the Commissioners did not recommend to increase the Business 2 land, I would recommend that no further land should be provided to Lincoln over and above the 11 hectares contained in PC7.

#### **Officers Recommendation Option 1, 2, 3a**

3.39. I recommend that Option 1, 2 and 3a should be rejected.

#### **Rural Residential Option**

3.40. A further suggestion has been made rezoning part of the Denwood land surrounding Mr Worners property to Rural Residential. While this might address reverse sensitivity issues for Mr Worner, this is currently the subject of a Private Plan Change lodged by Denwood Trustees and Council's Plan Change 17. I would consider that these processes should be used to discuss rural residential zoning rather than PC7 which deals with urban zoning for residential purposes.

#### **PC7 Option**

3.41. During the hearing Mr Worner in his submission made some valid points around the potential for adverse amenity effects on his (and his three residential neighbours') properties if the 11 hectares identified in PC7 was to be rezoned to Business 2.

3.42. Currently, Policy B4.3.56 provides four bullet points to address in terms of the development of the ODP. The fourth bullet point states:

- Provision of landscaped buffer areas between industrial areas and adjoining land uses, including any specific District Plan provisions to address potential adverse amenity effects, where appropriate.

3.43. This bullet point addresses any adverse amenity issues adjoining the Business 2 Deferred area but not within the area itself. Therefore I recommend that a new bullet point be added to address this issue within the Business 2 Deferred Area, as follows:

- Provision of a landscaped buffer to be negotiated between the existing land owners within this ODP area to address potential adverse amenity effects between residential and Business 2 activities.

**Final Officer Recommendation**

3.44.I recommend that my original recommendation contained in page 139 of the section 42a report still stands, subject to the inclusion of an additional bullet point in Policy B4.3.56 as noted above.

## **Branthwaite Drive**

4.1. My original s42 report summarises the existing position relating to Branthwaite Drive as follows:

- Currently zoned Inner Plains (rural zoning in the Selwyn District Plan, 4ha allotment size) – total size: 146 ha
- 32 landowners in the area
- Would provide 2137 households under the Rolleston Structure Plan (almost the same amount of households rezoned as part of PC7 for the next ten years)
- Land is included with the urban limit for Rolleston as part of PC1
- Issue in regard to inefficient development of wastewater infrastructure (as per Rolleston Structure Plan)
- Most landowners have submitted as part of PC7 supporting the rezoning of their land
- Similar distance to existing Town Centre and other community facilities in Rolleston

4.2. No further information or evidence has been provided to Council from the submitters before the release of this report. Council officers have met with representatives of Branthwaite Drive and Ms Fiona Aston on 31 May 2011 to discuss options for future development.

4.3. The original submission from the residents requests that their land be zoned Living Z within the first stage of development. I have therefore assessed this option in more detail.

## **Consistency with PC1**

4.4. After reinterpreting the Household Numbers based on paragraph 2.7 and 2.27 of this document, the following households have been allocated to Rolleston in Stage 1 of PC1.

Pocket	Name	Gross ha	Minus Stormwater	Useable Land @ 75%	Households	Av Section Size	Density
ODP 1	CDL	63.60	57.50	43.13	633	680.0	11.0
ODP 2	SDC	1.60	1.60	1.20	32	375.0	20.0
ODP 3	Mixed	48.40	48.40	36.30	484	750.0	10.0
ODP 4		7.20	7.20	5.40	108	500.0	15
ODP 5	SDC	19.30	0.00	0.00	0	0.0	0
ODP 6	Fosters	82.60	82.60	61.95	1100	565.0	13.3
<b>Greenfield and existing zoned land total</b>		<b>222.70</b>	<b>197.30</b>	<b>147.98</b>	<b>2357</b>		
Over provision of households (re Policy 6 Table 2 for Rolleston)					315		
Intensification Areas (see paragraph 2.30)					538		
<b>Total Households allocated in Rolleston via PC7</b>					<b>2895</b>		

4.5. PC7 allocates 2357 households to Greenfield and existing zoned land in Rolleston. If you include the additional intensification households which you don't count as part of table 2, this figure increases by 538 households to a final allocation of 2895 households to Rolleston until 2021.

4.6. Based on the SDC Growth Model, Rolleston requires 2425 households up until 2021. Therefore Council has rezoned enough land to meet the project growth in Rolleston and there is no justification to include the Branthwaite Drive area in Stage 1.

4.7. In PC1, Rolleston has been allocated a further 3018 households for Stage 2 (2021 to 2041). Under the Rolleston Structure Plan it is recommended that Branthwaite Drive could accommodate 2137 households. As such there would be enough households to accommodate development in Stage 2 for Branthwaite Drive, however it would rely on when Branthwaite Drive could access Council's wastewater system in the most effective and efficient manner.

#### Infrastructure Wasterwater

4.8. In his supplementary evidence, Mr Blake-Manson makes the following points:

*Council expects to install a trunk gravity sewerage main along Springston-Rolleston Road between Lowes Road and Selwyn Road. At approximately 2.85 kilometres and located in the road centreline it is estimated to cost \$1.6m or \$575 per lineal metre.*

*The trunk gravity pipe has been positioned at a depth, diameter and grade to meet the following constraints:*

- *Application of appropriate engineering principles – efficiency and effectiveness*
- *Provide for direct connection of upstream gravity mains*
- *Ensure an economically feasible terminal pumpstation depth at Selwyn Road*

- *Provide for minimum grades and technically appropriate catchment servicing zones. In this area a pipe grade of 1:400 with minimum pipe cover of 1.2m and a gravity serviceable area of 650m either side<sup>1</sup> of the pipe has been allowed for.*

*The actual gravity serviceable area will be subject to survey.*

*The trunk gravity main is expected to be installed by the end of 2012. It is intended to collect sewage from development eventually expected at/adjacent to Springston-Rolleston Road.*

*I have referred to off-site trunk infrastructure in paragraph 37. In my Utilities S42a report, I also covered how on-site infrastructure is provided. Further explanation is provided as follows, specific to this matter.*

*It should be noted that on-site infrastructure has historically received funding, planning and construction input to varying degrees by Council. While situation dependant, Council's approach is to ensure that infrastructure is provided to meet outline development plan requirements.*

*Council will as a result of supporting on-site infrastructure incur costs, which it debt funds. It then seeks to ensure any costs associated with catering for growth beyond the development area are recovered.*

*I acknowledge that off-site infrastructure makes up the majority of Council debt funded costs. Regardless of the proportion of on-site/off-site costs, each funding commitment represents an increase in the Councils debt- burden.*

*While Council continues to be prepared to assess and take a role in on-site infrastructure, its role as 'banker' represents a risk. It is investing in infrastructure on behalf of future developers. That risk is realised if development does not occur, or if it occurs at a slower rate than anticipated.*

*The extent of land available and its predicted rate of uptake is covered by Mr Cameron Wood's evidence. It is also reflected in the Rolleston Structure Plan. Council relies on a minimum uptake rates being achieved, to fund the debts incurred.*

*Developers have been supportive of Council in its role as banker, however in accepting the associated risks Council should be able to directly control where and when that development occurs. In doing so it is acting prudently on behalf of existing ratepayers.*

## Roading

4.9. In his supplementary evidence, Mr Mazey suggests that:

*"In summary if internally staged and funded accordingly, there are wider transport network development advantages if the SR4 and SR8 (and SR7 to a certain extent) occurred sooner rather than later".*

4.10. Based on planning and infrastructure evidence, Branthwaite Drive is likely to be one of the next areas to be included in stage 2. Therefore if commissioners deem it

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<sup>1</sup> Between Springston –Rolleston and Lincoln-Rolleston - Lowes Road – 620m, parallel to Branthwaite Drive entrance – 1210m

appropriate, this land could be rezoned to Living Z Deferred (uplifted in 2021 with the inclusion of an ODP).

4.11. During the meeting on 31 May, representatives of Branthwaite Drive residents outlined conditional support to rezone Branthwaite Drive land to Living Z Deferred via PC7 if landowners could be allowed some limited development in the interim. The suggested development was splitting the existing Inner Plains (4 hectare) lots in half, creating two hectare lots.

#### Infrastructure Wastewater

4.12. Mr Blake-Manson has made the following comments on this suggestion. He states

*In my opinion neither option for servicing 2ha interim development (i.e. Council funded servicing or interim private servicing) is appropriate as:*

- *Investment in private on property systems which would be abandoned after 2021 is not economically sensible.*
- *Council would not invest in on-site reticulated infrastructure given current poor return and utilisation.*
- *There are many other locations in Rolleston that could provide more suitable land to meet growth predictions as an alternative to the interim development of Branthwaite Drive*

*If the Commissioners are of a mind to allow interim development, then development should allow for and install at its costs utilities infrastructure required for the ultimate density development. Other contributions, fees and changes would also arise as a result of this decision.*

#### Planning

4.13. PC1 has provided some direction on interim development via the inclusion of Policy 15. This policy states:

- Any subdivision and development within Greenfields Areas prior to the outline development plan and district plan change processes set out in Policy 8 shall proceed in a way that does not compromise:
  - For Greenfield Areas – Residential the minimum net densities set out in Policy 11 (a) and (b)
  - For all Greenfields Areas the efficient and effective delivery of future development in terms of Policy 7, 8 and if relevant Policy 12.

4.14. This policy could be used in this situation. However I have the following concerns with using this Policy at this time:

- If Policy 15 was used to allow 2 hectare lots this would double the amount of landowners within Branthwaite Drive. This would make the development of an overall ODP for full Living Z zone challenging and unlikely to be successful.
- In order to comply with Policy 15 two ODPs would be recommended to be developed to show that the interim development would not compromise full development, eg
  - 1<sup>st</sup> ODP would show interim development under 2 hectare lots
  - 2<sup>nd</sup> ODP would show full development under Living Z zone
- No work has started on developing ODPs for this area

- Appropriate Policies, Rules and interim zoning would need to be developed before inclusion in the District Plan (existing District Plan does not have 2ha zone for Rolleston)
  - Would need to consider wider implications of such a zoning in the district, not just the specific site implications.
- Issues with defining the interim zoning and how it would work with the Living Z Deferred zoning
- Is there scope to include interim zoning in PC7?
- Likely to result in the inefficient provision of infrastructure in respect to either the under utilisation of services constructed for full LZ development or the significant investment in the interim provision of alternative infrastructure, which may include reticulated servicing.
- If Branthwaite Drive was to be zoned LZ Deferred (to allow development of an ODP), a second plan change would be required in any event to include the ODP into the District Plan and uplift the deferred status (subject to infrastructure and phasing requirements). The interim zoning could therefore be pursued during the subsequent plan change process.

4.15. While interim development in Branthwaite Drive has some merit for landowners until 2021, there are a number of issues that should be considered further.

4.16. I would like to suggest that Council staff and landowners work constructively together in a separate process to work through these issues, and if deemed by all parties that interim development is suitable, then an appropriate mechanism should be used to implement the interim development in the District Plan. This process should begin after the decision for PC7 is released.

#### **Officer Recommendation**

4.17. That the Branthwaite Drive land be rezoned to Living Z Deferred to be uplifted with the inclusion of an ODP and full development to begin on 1 January 2021.



## Indicative Road on ODP Area 5

5.1. The Commissioners in their minute state the following:

*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.*

5.2. I have been provided with legal advice from Ms Rachel Dunningham (Partner, Buddle Findlay) on 7 June 2011 (Attached as Appendix Six). In her evidence, Ms Dunningham considers the following:

*The question of whether it is appropriate to require an indicative roading route to be shown on the ODP of land adjacent to Lincoln University, is essentially a factual question as to whether there is a satisfactory section 32 analysis supporting this aspect of policy B4.3.56, as opposed to recommending a plan that excludes such provision.*

*While the decision in Capital Coast Health would suggest that where private land is proposed to be set aside for some public purpose (which includes a road) it is better to proceed by a designation process, PC7 clearly does not go this far in terms of Lincoln University's land. We therefore do not consider that case's conclusions are directly applicable in the present circumstances. Nor do we think that the Council is required to undertake a comparison of various routes for the bypass in order to satisfy the requirements of section 32 (although it may be that evidence from the CRETS study or the Lincoln Structure Plan process provides some evidence to support the general route which is indicated).*

*In conclusion, we are reasonably comfortable with the inclusion of the requirement to show this indicative roading alignment on the relevant ODPs from a legal perspective, particularly as there is still clearly scope to advance an ODP with a different alignment, should that be considered justifiable on the facts.*

5.3. As a result of the legal opinion, I see no need to make any changes to my original recommendations on this submission point.

### Officer Recommendation

5.4. There I recommend that my original recommendation stands for Submission s28, Decision No 4 (see Recommendation 52 page 137 of s42 report).