

SELWYN DISTRICT COUNCIL

**HEARING OF PROPOSED PLAN CHANGE 7
AND SUBMISSIONS**

**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 and recommendations by Hearing Commissioners

Philip Milne and Paul Thomas

7 October 2011

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1. INTRODUCTION

- 1 We were appointed by Selwyn District Council (SDC) as Hearing Commissioners to hear Proposed Plan Change 7. We are required to recommend whether the proposed plan change should be declined, approved or approved with modifications and recommend decisions on submissions to the Plan Change.
- 2 We conducted a hearing of the details of this Plan Change and related submissions at the Selwyn District Council offices in Rolleston on the days of the 3rd to 5th and 10th to 12th May 2011 inclusive. The parties that appeared before us are listed in Appendix 1.
- 3 At the commencement of the hearing we heard from relevant parties on the issue of whether the relief sought in their specific submissions is within the scope of the Plan Change and therefore within our jurisdiction to determine. This was in response to legal advice as part of the Council's section 42A report that submissions seeking the zoning of additional areas of land are not within the scope of the Plan Change.
- 4 We report on this matter in more detail later but we indicated verbally after hearing from all relevant parties that before ruling on jurisdictional issues we wished to hear all the evidence relating to those submissions that parties wished to put before us. Some parties indicated that they would need some time for preparation of that evidence. The hearing was therefore adjourned on 12th May and reconvened on 21st and 22nd June to hear those submissions and also to hear the officers' reply. The hearing concluded at 4.00 pm on 22nd June 2011. We sought further information from the officers and some submitters. The last of that information was received on 12th August 2011.
- 5 A total of 97 submissions were received on Plan Change 7 and further submissions were lodged by 35 parties. For the record we note that the section 42A report advises that
 - Christchurch City Council has withdrawn its submission and no recommendation is therefore made on it.
 - Nimbus Group Ltd has withdrawn the part of its submission seeking that the plan change be rejected.
 - Canterbury Regional Council has withdrawn two of its seven decision points.
- 6 The officers' reply included some changes to the officers' original position in relation to some of the submissions. The most significant of which are:

- The officers advised that they were no longer opposed to the relief sort by Lincoln Land Developments Ltd (LLD) in so far as that sought to bring forward the second part of the Lincoln Land Development subdivision in ODA1 in Lincoln to Stage 1 rather than Stage 2 (no other party was opposed to this).
 - The officers now support zoning areas in Rolleston sought by submissions as Living Z where those have been assessed to have intensification potential or where development has previously been authorised by resource consents. These include Park Grove, Park Lane, Helpet Park East Maddisons / Goulds Road, and Branthwaite Drive.
- 7 The officers and Counsel for the Regional Council and Lincoln Land Developments advised us at the resumed hearing that LLD and various other parties have proposed consent orders to the Environment Court to settle their appeals in relation to PC1. Subsequent to the close of the hearing the Court issued an interim decision which explained why it would leave its final decision on the merits of the general PC1 approach (e.g. use of metropolitan urban limits and consolidation policies) until a later date. We have had regard to that interim decision in deciding how much weight we should give PC1.
- 8 We note that Council officers issued waivers to accept three submissions that they considered were received after the closing date and these are therefore valid submissions. There is one late further submission that has not been waived by the officers from Mr Kevin Williams who supports submissions of others in relation to rezoning of land at Oak Tree Lane. This submitter is a land owner directly affected by these submissions and we do not consider that any other party would be prejudiced by accepting this submission. We therefore grant a waiver to accept this further submission pursuant to section 37(1) (b) of the Act.
- 9 The Council provided a comprehensive section 42A report ("*officers' report*" to all parties in advance of the hearing. This consists of an overall report by Cameron Wood of SDC that makes recommendations which draw on the following technical reports:
- Liquefaction Hazard in Rezoned Living Z areas, Rolleston and Lincoln by Geotech Consulting Ltd
 - Desk based Ground Contamination Assessment PC 7: Tonkin and Taylor Ltd
 - Report on Subdivision Design and Medium Density Housing Issues by David Hattam, SDC

- Report on Retail Provision by Tim Heath Property Economics Ltd
- Technical Report on Open Space by Anne Greenup, SDC.
- Technical Report on Servicing by Hugh Blake-Manson, SDC.
- Technical report on Transportation by Andrew Mazey, SDC.

10 The overall report groups matters together in order to deal with submissions on common issues. We have largely adopted those groupings in this report. We will first provide a summary of our key decisions and then proceed to discuss each issue in more detail. **Appendix 2** sets out our decisions on a submission by submission basis.

2. THE PROPOSED PLAN CHANGE AND ITS BACKGROUND

11 Plan Change 7 seeks to rezone land identified in Proposed Plan Change 1 to the Canterbury Regional Policy Statement (PC1), to provide for the future growth of both townships in accordance with the Greater Christchurch Urban Development Strategy. It also involves changes to the objectives, policies and rules of the Selwyn District Plan by amending the way the plan deals with urban growth and providing for application of the subdivision design guide to existing residential zoned land.

12 The section 42A report describes the main changes as including the following:

- *New District-wide and Township specific provisions to provide greater direction at an objective and policy level for the management of urban growth within the UDS portion of the District.*
- *Rezoning approximately 585 hectares of land in Lincoln and Rolleston to a new "Living Z" or "Living Z Deferred" zone for residential development, and 11 hectares of land in Lincoln to "Business 2 Deferred" for industrial development.*
- *The requirement to develop an Outline Development Plan (ODP) before development can occur and identifying ODP criteria that will need to be addressed within the ODP to support the implementation of the key aspects of the both Structure Plans.*
- *Identifies when household development can occur within Phase 1 (2007-2020) and Phase 2 (2021-2041) of Proposed Change 1 to the Regional Policy Statement.*
- *Amends the subdivision section of the District Plan to implement the principles described in the Subdivision Design Guide, along with provisions relating to medium density housing (to implement the principles set out in the Medium Density Design Guide) to support the consolidation of townships while achieving good urban design outcomes.*

13 The Plan Change represents a significant change in planning approach which has emerged from the Great Christchurch Urban Development Strategy. Previously management of urban growth has relied on private plan changes being promoted for specific areas of land. The urban development strategy involves a more Plan led approach to growth across the region in order to achieve a more efficient and integrated form of development, improved urban design outcomes and planned intensification targets. It is also implicit that future private plan

change requests which are not consistent with this approach will be discouraged by the policies within PC7 and would be much less likely to be approved

- 14 It is important to note at this stage that PC 1 to the RPS is subject to a large number of appeals. Some of these appeals were resolved before the close of our hearing. We also note that some aspects of PC1 have been the subject to reconsideration by the Councils following the earthquakes which has in turn led to the settlement of some of the appeals. (subject to Environment Court confirmation). The weight to be given to PC 1 was a key issue for the hearing and is considered in later in this report. The Environment Court issued an interim decision in late August which discusses the ramifications of the earthquakes in relation to PC1. The Court has deferred a final decision on the merits of the overall PC1 approach until it has heard further evidence.
- 15 We note, however, that PC1 is not the sole driver of Plan Change 7. Selwyn District Council has also carried out a community wide *structure plan* processes for Rolleston and Lincoln which sit behind the PC 7 proposals. PC 7 seeks to implement the entire Greenfield growth identified in the Lincoln Structure Plan allocated to the periods 2007-2020 and 2021-2041. In contrast the PC 7 proposals for Rolleston are for the 2007-2020 period only. It was explained to us that Stage 2 development for Rolleston is to be addressed at a later stage because of the substantial size of the MUL which can accommodate several options for growth beyond 2020. There is therefore an opportunity to determine post 2020 growth closer to that time having regard to the provision of infrastructure, uptake of Greenfield land and intensification opportunities.
- 16 At this stage we would like to try and summarise the mechanics of how PC 7 is proposed to work in terms of both policies and rules.
- 17 PC 7 would make quite significant changes to the planning maps by introducing a Living Z and Living Z Deferred zone at Rolleston, and Living Z, Living Z Deferred and a Business 2 zone at Lincoln.
- 18 These zones are all within the proposed Metropolitan Urban Limit (MUL) as set out in proposed PC1 to the Regional Policy Statement. Development will be allowed within these zones subject to the deferral of some development until after 2020 and subject to the provision and approval of an Outline Development Plan (ODP) for each Area. The Outline Development Plan Areas are shown on the plans attached as Appendix 4.
- 19 In many cases an ODP has been included as part of the Plan Change and in other cases an ODP has been introduced by the officers or proposed by

submitters during the process. There are a small number of Outline Development Plan Areas where no ODP has been submitted. In those cases the land will be zoned for Living Z and/or Business 2 but the zoning will not change activity status until such time as an ODP is accepted for the area and introduced by way of a further Plan Change. We have summarised the various ODA's and the status of the ODP's in relation to each below.

Outline Development Area	Source of outline development plan
Rolleston	
ODP Area 1	Notified as part of PC7
ODP Area 2	Lodged through submission by Council
ODP Area 3	Notified as part of PC7
ODP Area 4	No ODP proposed
ODP Area 5	No ODP proposed due to Recreation Precinct
ODP Area 6	Notified as part of PC7
Additional areas	
Park Grove ODPA 7	ODP submitted during hearing
Park Lane ODPA 8	ODP submitted during hearing
Helpet Park ODPA 9	No ODP
E Maddisons/Gould Rd ODPA 10	No ODP
Branthwaite Drive ODPA 11	No ODP
Lincoln	
ODP Area 1	Notified as part of PC7
ODP Area 2	Notified as part of PC7
ODP Area 3	Notified as part of PC7
ODP Area 4	Notified as part of PC7
ODP Area 5	Alternative ODPs submitted by Denwood Trustees Ltd but extend beyond ODPA 5 ODP left to be finalised after hearing.

Additional areas

E Earnshaw (adjacent to ODP Area 3)	No ODP
McIntosh, Jang & Lee (between ODP Areas 1 and 2)	Issues considered during hearing
Extension of Lincoln ODP A 5	Denwood Trustees proposed alternative ODPs seeking to extend ODP Area 5 to the whole of its land.

20 PC 7 also involves extensive amendment and addition to the Objectives and Policies of the Plan. In summary these include:

- Additional **Quality of the Environment** Objectives relating to the form of urban growth being compact, having housing choices and including medium density. Secondly an objective dealing with connectivity and access to transport. These are supported by policies amendments to B3.4.1 to recognise the provision of planned medium density housing and to Policy B3.4.3 which relates to the outcomes of Living Zones and medium density residential developments within them.
- The **Residential Density** Objective and Policies are also proposed to be amended to include medium density residential development within Outline Development Plans. Policy B4.1.13 is an additional policy setting out the scope of urban design considerations that are to be considered for medium density housing design. Additional subdivision objectives (B4.2.3 and B4.2.4) with three new policies (B 4.2.9 – 11) on urban design scale of residential blocks and accessibility to facilities, variety of housing types, connectivity and avoiding rear allotments.
- Significant amendments are proposed to the section titled **Residential and Business Development** in Section B4.3. This section makes links with the greater Christchurch Urban Development Strategy, and explains the change in approach to urban growth. This results in four new objectives referring to
 - Development to be within the Urban Limits defined in the RPS.
 - A phased development approach to match infrastructure development.
 - Require a net density of at least 10 households units per hectare.

Amendment and addition to the **Residential and Business Development - Town Form Policies** as follows:

- Policy B 4.3.1 has been amended to now require that new development be within the RPS Urban Limit and developed in accordance with an approved Outline Development Plan.
- Policy B4.3.6 states that new growth areas shall not be developed until an Outline Development Plan (ODP) has been included in the District Plan AND infrastructure to service the area is available.
- Policy B4.3.7 identifies the scope of matters that an ODP shall address and specific requirements including a minimum net density of 10 lots or household units per hectare.
- Policy B4.3.8 deals with 'phasing' and records that in Rolleston deferred areas shall be uplifted once ODPs have been added to the Plan for those areas. However in Lincoln deferred Living Z areas will not be uplifted until 2021 provided servicing is available and an ODP included. The proposed Business 2 Zone is only deferred until an ODP is included.
- Policy B4.3.9 deals with the situation where a developer wishes to change an ODP which has already been included in the Plan and the policy tests that will apply.
- Policy B3.4.10 was proposed in response to submissions in the section 42A report in relation to the provision and role of neighbourhood and local centres.

- 21 The specific policies for Lincoln are also proposed to be amended indicating that Greenfield urban growth should be limited to ODP Areas and in accordance with phasing. Policy B4.3.56 identifies the specific matters that each ODP in Lincoln is required to address. While ODPs have been agreed with the Council for all areas apart from ODP 5, this provides site specific tests to assess any proposed future changes to ODPs.
- 22 A similar approach is taken with a specific policy setting out ODP requirements for each of the Rolleston areas.
- 23 Turning to the Plan rules, the Plan Change introduces rules for the Living Z Zone and the medium density housing within it. It also amends the matters for discretion for all other Living Zones. The structure of the rules maintains the existing Plan framework with permitted residential activities subject to compliance with conditions and a discretionary activity consent where these standards are not met and in some cases full discretionary activity and non complying activity rules. Subdivision is generally a restricted discretionary

activity with full discretionary status applying if the subdivision is not in general accordance with an approved ODP.

24 The scope of rule changes are summarised below:

- In Living Z or Business 2 deferred zones the existing rural Inner or Outer Plains provisions apply until the deferral is removed.
- Neighbourhood and local centres are subject to Business 1 Zone Rules
- Within the Living Z are a subset of rules to provide for medium density areas of development
- Additional areas of discretion have been added to all Living Zones

The rules are structured under topic issues as follows

Buildings and Site Coverage

Permitted:	35% and 40% for comprehensive residential development within a medium density area where there are 4 or more lots of less than 350 m ²
Restricted Discretionary	40% and 45% where above applies
Non complying:	Over 40% and 45%.

Buildings and Building Position

Permitted	3m set back from road boundary or ROW Garage door set back of 5.5 m Principle building other set backs of 2m Requirements for windows and balconies at first floor level Specific 40m set back from SH1 for Rolleston ODP 3 and acoustic design between 40m and 100m (proposed in section 42A report)
Restricted Discretionary	Non compliance on most standards except that below
Discretionary	Non compliance with common wall standard
Non Complying	Non compliance with Lincoln Sewage Treatment 150 m set back

Comprehensive Residential Development within a Living Z Medium Density is a restricted discretionary activity restricted to a list of design related matters and linking to Medium Density Housing Guide

Buildings and Streetscene

Permitted Activities	Front fence max 1 m
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	Garages no more than 50% of front building facade
Restricted Discretionary	Any non compliance
Private Outdoor Living Space	
Permitted	50 m ² and 4m wide
	Balconies 1.5m count but other space not permitted in front yard
Restricted Discretionary	Any non compliance with above
Parking Standard	Living Z medium density 1 onsite parking space
Subdivision	
Controlled rule 12.2 and 12.3	
Restricted Discretionary	On medium density site greater than 350 m ² min building area of 10m X 15m.
	Comprehensive residential development in medium density – no minimum building area
	Must be in “general compliance” with ODP.
Lincoln	
	Lot size – Average not less than 650 m ² , min individual lot size of 500 m ² . In medium density areas 450 m ² and 350 m ² respectively.
	Comprehensive residential development no min site size but max density of 350 m ² per unit.
Rolleston	
	Lot size – Average not less than 750 m ² , min individual lot size of 550 m ² . In medium density areas 450 m ² and 350 m ² respectively.
	Comprehensive residential development no min site size but max density of 350 m ² per unit.
Full Discretionary	Non compliance with the above
	Consent notice to be applied to any new medium density areas.
Non Complying	Contrary to Rural Inner Plains and ahead of approved ODP
	Comprehensive residential development with lots less than 350m ² .

Business 2

Deferred zone has Rural Outer Plains rules until ODP operative

In Living Z any area shown as neighbourhood or local centre is subject to Business 1 provisions with consent notice on title.

Subdivision to be in general compliance with ODP

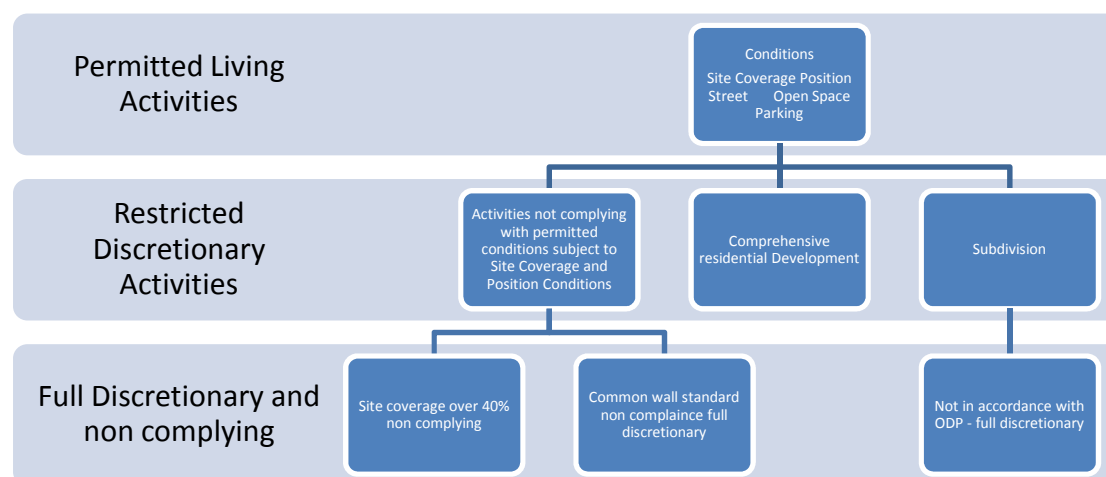
RURAL VOLUME

Policy to ensure subdivision does not compromise implementation of ODPs

Rule providing reserved control over this aspect.

12.1.6.6 is an assessment criteria that deals with subdivision not generally in compliance with ODP which is full discretionary.

This is summarised in the following diagram



3. JURISDICTIONAL ISSUES

- 25 A number of issues arose as to the scope of our jurisdiction to consider particular submissions and/or the Council's jurisdiction to make particular changes to PC7 as notified.

Officers Report In Relation To Scope

- 26 Based upon legal advice which was attached to the s42A report, the officers report concluded that the following submissions are beyond the scope of this hearing.
- 17 (Decision D1 and D2), 18 Decision (D1, D2 and D3), 19 (Decision D1, D2 and D3), 77 (D1 and D2) seeking land within **Oak Tree Lane** to be rezoned to Living 1B
 - 21 (Decision D1 and D2) seeking land within **East Maddisons / Goulds Roads** to be rezoned to Living Z
 - 25 (Decision D1, D2, D3, D4, D5 and D6) seeking land within **East Maddisons Road** to be rezoned to Living Z
 - 33 (Decision D1 and D2) and 64 (Decision D1, D2 and D3) seeking land within **Helpet Park** to be rezoned to Living Z
 - 40 (Decision D2) seeking land within **Park Lane** subdivision be rezoned to Living Z
 - 42, 56-63, 65-76, 81 and 92 (Decision D1 and D2) seeking land within **Branthwaite Drive** to be rezoned to Living Z or rural residential
 - 53 (Decision D1, D2, D3) seeking land within **Park Grove** subdivision be rezoned to Living Z
 - 13 (Decision D1 and D2) seeking land at 624 **Ellesmere Road** to be rezoned to Living Z
 - 90 (Decision D3, D13) seeking 70 hectares of land to be rezoned to Living Z (**Denwood Trustees**)
- 27 In addition a number of further submitters argued that **submission 89 from McIntosh, Jung and Lee** is beyond scope. The Council's legal advice suggested that submission 89 is within scope.
- 28 Mr Wood in the s42A report did not entirely rule out the possibility of some of the claimed out of scope submissions being found to be within scope.

I consider that PC7 is not the suitable avenue to resolve the issues contained in these submissions.

However should Commissioners consider that these submissions are within scope of PC7, I would recommend that the following areas could be rezoned as part of PC7:

- **Oak Tree Lane** (as the Airport Noise Contour is no longer bisecting these properties, limited additional households required, widespread landowner agreement on rezoning proposals and consistent with the Rolleston Structure Plan)
- This area could be rezoned to Living 1B
- **Park Grove** (consistent with an existing resource consent, limited additional households required and widespread landowner agreement on re rezoning proposals)
- This area could be rezoned to Living Z Deferred
- **Park Lane** (as subdivisions to the west and east of this area are zoned to Living 1 or Z (750m2), Park Lane should be intensified to the same zoning for good urban form, limited additional households required, consistent with the Rolleston Structure Plan)
- This area could be rezoned to Living Z Deferred

I would also like to suggest that the other additional land sought to be rezoned could be considered for further plan changes in the future (most likely to deal with how to intensify existing zoned land or rezoning Greenfield land for Stage 2 development 2021-2041).

Legal Submissions for the Council

- 29 Mr Carranceja in his report to the Council outlined three slightly different lines of case law as follows:
- The *Clearwater* two part test.
 - The *Naturally Best* “relationship” test
 - “The *Option 5* “scale and degree” test.
- 30 Under the *Clearwater* (High Court) test, one first compares the relief sought in a submission with the spectrum of relief available between the status quo and the amendments introduced by the change. If the relief passes that test one must then consider whether allowing the submission may disenfranchise affected persons from participating in the Plan Change. The Court noted that submissions coming from “leftfield” may provide little opportunity for public participation.
- 31 Under the Environment Court’s *Naturally Best* relationship test... *“there must be a kinship between the reference and it must be a reasonably close relationship.”*
- 32 The High Court in *Option 5* refers to and endorses the High Court test in *Clearwater*. The Court focused on the scale and degree of difference between the subject matter of a submission and the policy and purpose of a variation or plan change. Matters which will be relevant include:
- The policy behind the change

- The purpose of the change
 - Whether allowing the submissions in would deprive interested parties of the opportunity for participation.
- 33 Mr Carranceja concluded that apart from submission 89 none of the potentially out of scope submissions met either of the High Court tests. *"In terms of policy and purpose rezoning is proposed only in those areas contained within ODP areas"* as identified on the plans contained in PC7. He noted that apart from submission 89 all of the other submissions (listed in the officers report and set out above) seek to zone land outside of an ODP area. In reaching this conclusion Mr Carranceja focussed on the scope and purpose of PC7 as set out in the Section 32 Report.
- 34 He also concluded that the second part of the Clearwater test (third point of *Option 5*) was not satisfied because:
- Some people may have chosen not to participate because they were not concerned in relation to the land shown on the maps.
 - Those people may not have reviewed the summary of submissions because they were not concerned about the subject matter of the plan change (ie if limited to the original ODP Areas as notified).
 - Some of those people may have wished to participate if they had been aware of the submission.

Submissions On Behalf Of Denwood Trustees

- 35 Mr Christensen responded to the Council's advice and submitted that in fact the three tests were all variations of each other. He submitted that the four crucial issues are:
- What is the policy and purpose behind PC7?
 - What is the extent of the submission?
 - How closely does the submission relate to PC7 (the policy and purpose)?
 - Would accepting the submission deprive interested parties of the opportunity for participation?
- 36 In terms of the purpose of PC7 Mr Christensen referred to paragraph 6.2 of the section 32 report.....*"a frame for managing the growth of townships....so as to achieve the integrated settlement pattern as set out in the Urban Development Strategy and Proposed Plan Change 1"....*

- 37 He notes that a key technique employed in PC1 and PC7 is the identification of urban limits and that it follows that the location of boundaries of ODP Areas is a key component of the implementation of the policy behind PC7. He submitted that submissions seeking to extend the boundaries are within scope. He noted the comments of the High Court in Clearwater that it is common for submissions to request that an issue be dealt with in an entirely different way from that proposed by the Council. He said that it cannot be the case that submissions on PC7 were not entitled to seek any changes to the boundaries of the ODP Areas. He pointed out that if that was the case it would not be open for us to decide that an alternative boundary is more efficient and effective in terms of achieving the objectives and principles of the Plan and the purpose of the Act.
- 38 In terms of the question of potential prejudice he submitted that Mr Carranceja is wrong to suggest that the acceptance of any submission seeking rezoning of an area outside of the ODP Areas would prejudice others. He said that it must be a question of degree having regard to fairness and reasonableness to others.

Discussion

- 39 We are grateful to both counsels for assisting us on this difficult issue. We are not a Court of law but are bound by all of the decisions and must prefer the High Court decisions to that of the Environment Court. Nevertheless we tend to agree with Mr Christensen that the Naturally Best decision is not necessarily at odds with the High Court decisions.
- 40 In terms of the purpose and scope of the PC7 our starting point was the Public Notification rather than the section 32 report.
- 41 The Public notice describes PC7 as relating to:
- "The 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."...*
- "seeks to rezone land identified in Plan Change 1 to provide for future growth of both townships in accordance with the Greater Christchurch Urban Development Strategy. It also involves changes to the objectives and policies of the Plan by amending the way the plan deals with urban growth".*
- 42 The notice then says that these changes include four listed matters which we summarise as:
- New district wide and township specific subdivision provisions to implement the subdivision design guide

- Provisions relating to medium density housing to implement the medium density design guide
- Rezoning approx 585 ha of new land as living Z or living Z deferred between the two townships
- Rezoning 11 ha at Lincoln as Business 2 deferred
- A requirement to develop an ODP before development can occur and identifying ODP criteria that will need to be addressed in the ODP
- Identifies whether development is in Phase 1 or Phase 2 planning periods

- 43 There are a number of different circumstances relating to submissions that may be beyond the scope of the Plan Change. The first circumstances we consider are submissions seeking Living Z zoning beyond those areas notified in PC 7 or an extension beyond that notified and beyond the MUL.
- 44 We are satisfied that those reading the Public Notification would have regarded it as a comprehensive Plan Change dealing with all urban development within and on the outskirts of Lincoln and Rolleston. Although it was clear that the Council wanted to limit future urban development to the boundaries shown in the plan change in our view the Council's purpose does not define the scope of the Change.
- 45 The change deals with all urban development in and adjoining these towns. It is clear that the purpose of the change is to identify and plan for defined growth areas at Lincoln and Rolleston including a goal of limiting growth to defined urban areas. In our view, submissions seeking to provide for growth disconnected from these centres would have been beyond scope. However in our view submissions which seek to extend a proposed ODP Area boundary are within the scope of PC7.
- 46 It was clear that the question of whether the proposed limits have been properly justified and whether they are correctly located or should be extended or retracted in particular locations would be and has been a critical issue for the Plan Change. In our view the Council did not limit the scope of the hearing by providing that the intention of the change was to limit the ODPs to the MUL shown within PC1. This is reinforced by the fact that those limits are under appeal and the limits in PC7 are based upon those limits and upon the structure plans which have not been subject to the First Schedule process.
- 47 We have concluded that the Council's legal advice on this issue is too narrowly focussed where it suggests that it is only submissions which seek *intermediate relief* in relation to the same land as proposed by Council which are within scope. It seems to us that this is not what the case law requires. Certainly the relief sought in the submission must be between the status quo and the Council proposal in terms of what is sought. Thus for example a submission seeking that an area proposed by Council as Living Z deferred become non deferred is clearly within scope but a submission seeking rural residential zoning would not be within scope. We do not agree however that submissions need to be limited to the same area provided that they seek relief which is intermediate in nature.
- 48 In terms of the Clearwater test submissions such as Denwood's do in our view seek an outcome along the spectrum between opposition and support and do

relate to the topic of the plan change which is ...*The growth of townships, urban development, and rezoning of land for Urban Purposes...including the introduction of a new living Z zone in Lincoln and Rolleston.*".

- 49 PC7 seeks that most of Denwood's land remains in rural zoning. Denwood's submission is in opposition to that outcome and seeks that the ODP Area boundary be shifted to include all of its land. Its submission is directly addressed to the topic covered by the Plan Change as outlined above. It is also addressed to one of the key purposes of the plan change which is to limit urban growth. However, Denwood and other such submitters oppose the location of the proposed growth limits. That must be within the ambit of our inquiry otherwise there would be no ability for submitters to challenge a key component of the change.
- 50 In terms of the question of potential prejudice, people when deciding whether to submit on the PC7 could, or should have anticipated that some submitters would seek that the boundaries be shifted outwards and/or that new areas close to these towns be added. Indeed, it was inevitable that those persons challenging the MUL within PC1 would also seek to extend the PC7 boundaries.
- 51 The submissions which sought such changes were summarised by the Council and others had an opportunity to submit. We do however note that Clause 8 of the first schedule has since October 2009 limited the right of further submission to those with an interest greater than the public generally or a person representing a relevant public interest. There is no longer a right for any submitter to make a further submission. Accordingly, members of the public not having an interest greater than the public generally could not have lodged a further submission in support or opposition to a submission seeking to extend the boundaries of an ODA or create a new ODA. Those who were potentially affected by a proposed extension or addition had a right to make a further submission and in our view will not be prejudiced by the acceptance of the submission as being within scope.
- 52 We accept that there may have been persons who would have been interested in the extension but were not interested in a manner different from the public generally. These persons would have had no right to lodge a further submission, however that is a consequence of a deliberate decision of Parliament rather than a result of the submission coming from "leftfield". As discussed above submissions seeking extensions or additions were not from "leftfield", they were entirely predictable. As a result of the 2009 amendments it is now necessary for those who wish to see the contents of a Plan Change stay

the same as proposed, to lodge a submission in support if they want to have a say on submissions which may come in, seeking changes.

- 53 In the present case it was open for those who supported the ODA boundaries as notified to lodge a submission in support which would then by definition have been treated as being in opposition to extensions of the ODA areas. In our view the question of prejudice is more focussed on those who may be potentially affected by a submission than those who may have a wider interest. We are satisfied that those who were interested could have lodged a further submission and were not prejudiced. Those who were interested but not affected could have lodged an original submission in support and if they did not do so, the hearing and appeal process addresses the merits of the changes sought.
- 54 We accept Mr Carranceja's point that some people may not have submitted because they were happy with the proposed boundaries and for the same reasons may not have perused further submissions. We also accept that some such people may have been opposed to any extension or to particular extensions to the ODP Areas. However, we do not agree that such persons were *shut out* of the rezoning process as a result of a submission coming from leftfield.
- 55 The reality is that the amendments to the Act now have the effect that people who do not want change to a council proposal, need to submit in support, so as to avoid being shut out of the process. We agree that people should not need to submit so as to have a right to have a say on a "leftfield" proposal. However, in the present case, any submissions which were addressed to the topic of "*The growth of townships, urban development, and rezoning of land for Urban Purposes...*" were not leftfield and could have been anticipated by other submitters. This situation is very different from the factual situation in *Clearwater, Option 5* and the *Avon Hotel* decisions (where submissions were found to be out of scope) and is more akin to the factual situation in the *Naturally Best* decision where the Court concluded that a submission seeking the extension of a resort zone by 127ha was within scope.
- 56 In summary, we have concluded that proposals which seek residential zoning to extend outside of the ODA areas as notified are within scope. We also note that if we were to reject these proposals on jurisdictional grounds, that would be likely to be the subject of an appeal and the Court might reach a different view. In that event the Council and submitters would be deprived of the opportunity to have the merits of these submissions considered at first instance. We have concluded that it is preferable to consider such proposals on their merits.

Submission 89: McIntosh Jung and Lee : Lincoln

- 57 The Council advice concluded that this submission was within scope and we agree. Mr Belcher (a further submitter) disagreed with the legal advice and pointed out that PC7 does not include all of the land that submitter 89 seek as Living Z, within Lincoln ODP1. He also points out that the submission seeks a new ODP7 area.
- 58 For the reasons already outlined above, we have concluded that submissions to extend the proposed urban boundaries beyond those shown on the proposed ODPs are within scope. We do not agree with Mr Belcher's suggestion that this was an "out of left field" proposal. Accordingly we have considered submission 89 on its merits, but have ultimately rejected it on substantive grounds.

Intensification Of Areas Within MUL - Helpet Park, East Maddisons / Goulds Rd and Branthwaite Drive.

- 59 Various submissions sought the rezoning of the above lands as Living Z. These areas are all within the Metropolitan Urban Limit but for various reasons have not been included within a PC7 Outline Development Plan area. In essence these submissions all seek intensification of urban development within the urban growth area, but outside of the areas which the Council has proposed for "Greenfield" development up until 2020.
- 60 The Council legal advice concluded that these submissions are beyond scope. For the reasons already outlined in relation to the Greenfields submissions we do not agree. Submissions which seek Living Z within the urban growth limits are clearly within the scope of a plan change which deals with "*urban development, and rezoning of land for Urban Purposes including the introduction of a new Living Z Zone at Lincoln and Rolleston.*"
- 61 For the same reasons as outlined earlier we do not agree that any person will be prejudiced by our dealing with these submissions on their merits rather than ruling them out on jurisdictional grounds.

Replacing Unimplemented Consents within MUL with an ODP Area and in Some Cases Approving an ODP (Park Grove and Park Lane)

- 62 Some submissions sought to replace existing unimplemented subdivision consents for land within the MUL with an ODP. For the same reasons as discussed above we have concluded that this is within scope. Council officers are agreeable to these being identified as new ODP Areas and have worked with

the submitters to develop an ODP which can potentially be approved via the current process.

- 63 Given that these proposals are within the MUL, are supported by officers and in effect replace existing unimplemented consents, we have concluded that no third party is likely to be adversely affected. Unlike the Denwood situation we do not consider that it is necessary for the approval of an ODP to go through a further Plan Change.

Including ODPs by Way of Submission

- 64 The Selwyn Community Board and some other submitters expressed concern regarding developers seeking the inclusion of ODPs through a submission.

- 65 In view of our conclusion that the Denwood ODP should await a further Plan Change and that submission 89 should be rejected, this issue is now only relevant to the following ODP areas in Rolleston.

- ODP Area 2. This ODP area is a small triangular area of land of 1.6 hectares close to the centre of Rolleston and bounded by Rolleston Drive, Norman Kirk Drive and connecting also to Markham Way. The ODP was introduced by way of a submission by Council. There were a number of submissions which sought various changes to the ODP but none which opposed it entirely.
- ODP Area 6. Foster Holdings Ltd lodged an ODP for this area by way of submission and presented extensive evidence in relation to that ODP. Mr Wood reported that after some modifications the officers are satisfied that the ODP now meets the criteria to be included within the PC 7 policy provisions.
- New ODP Area 7. (Park Grove - Submission 53)
- New ODP Area 8. (Park Lane - Submission 40)

- 66 The Plan Change as notified included a "*requirement to develop an Outline Development Plan before development can occur.* " Although the notification does not make it clear that submitters could seek to have an ODP approved via the current process, we consider that there was sufficient information to alert people with an interest in urban growth in or around these towns to consider the section 32 report and the wording of the change. Paragraph 6.43 (p35) of the Section 32 states in relation to Rolleston ODP Areas 2,4,5 and 6: "*The inclusion of these ODPs may be done through the submission process on PC7 (subject to being within scope), with the merits of the ODP being assessed as part of the*

hearings process". It is however of note that under the heading of "*Scope of the proposed plan change*" the report identifies that PC7 will set out where ODPs are required and what they will need to include, but does not state that the Change itself will approve ODPs.

- 67 Accordingly, people with an interest in PC7 should have been aware of the need to make an initial submission in relation to particular ODP Areas. Those who might be affected (more than just interested) by a proposed ODP introduced by a submitter were able to make a further submission in relation to ODP's proposed by submitters.
- 68 We have earlier noted that Clause 8 of the first schedule since 2009 limits the right of further submission to those with an interest greater than the public generally or to persons representing a relevant public interest. There is no longer a right for any original submitter to make a further submission. We appreciate that this restriction along with the process of allowing ODPs to be introduced by way of submission, in conjunction with rules which allow ODP compliant development to proceed without public notification or service of affected persons, together have the potential to exclude the general public from the process. That was a matter of concern to us, but the rights of participation have been deliberately limited by Parliament as part of the "Simplifying and Streamlining" amendments. Those who are directly affected by an ODP (eg near neighbours) could have and in a number of cases have made a further submission.
- 69 We also note that apart from the proposed ODPs which go beyond the notified ODP Area boundaries (which we have addressed above) the remainder were foreshadowed in the Plan Change as notified. These are proposed development areas where the Council is encouraging the provision of an ODP.
- 70 Although we have concluded that the process of introducing ODP's by way of submission is lawful, we also recognise the need for us to carefully scrutinise the ODP's on behalf the general public who could not submit on such ODP's and on behalf of those who may be affected but may not have appreciated the need to make a further submission.
- 71 Rolleston ODPs 2 and 6 and Lincoln ODP 5 are relevant examples. In each case we have provided considerable opportunity for parties to present evidence on ODPs lodged through submissions and to enable further submitters to make responses after original submitters' evidence had been presented. In addition, we conducted the hearing in a manner that elicited comment from officers at the time specific issues were raised, so that interested parties were aware of the

matters being raised and general direction that evidence and questioning was taking. As a result we do not consider that submitters affected by new ODPs have been disadvantaged in this process.

- 72 Notwithstanding this last point, we are satisfied that someone reading the section 32 report, would have understood, at least in relation to Rolleston, that ODP's could be introduced by way of the submission process.
- 73 In terms of ODP Areas 2 and 6 it is difficult to see that anyone has been prejudiced. There have been submissions in opposition in relation to both of these areas and we have carefully considered those. In relation to the Foster land (ODP Area 6) the main opposition came from Ms Holton but her main concern seemed to be that her land had not been included.
- 74 PC 7 as notified specifically included ODP Area 6 as an area to be rezoned for residential development and the submitter/landowner has submitted a very detailed ODP which is in accord with the criteria included in the Plan when notified. Any person having an interest in development in this area would have been alerted to the need to lodge an original submission. Such persons (like Ms Holton and the Community Board) would also have considered the summary of submissions and would have been at liberty to lodge a further submission opposing the approval of the ODP. Accordingly we agree with the submissions of counsel for Foster Holdings Limited that its submission and the approval of the ODP are within scope.
- 75 With regard to ODP Areas 7 and 8 we concluded that requiring these two ODPs to be advanced by way of a separate plan change would be inefficient given the relatively non contentions nature of these proposals and the scope of existing consents.

Business Activities in B1 Zone

- 76 Submissions 39 and 93 sought to amend the rules of the Business 1 zone. We agree with the legal advice to the Council that since PC7 does not deal with the Business 1 zones submissions seeking changes to the B1 provisions are in our view beyond scope.
- 77 PC7 did seek to apply Business 1 provisions to "local business areas" (now termed *neighbourhood and local centres*) and submissions in relation to this are within scope.
- 78 We had a separate concern as to whether it is appropriate for PC7 to provide that Business 1 provisions will apply to areas identified on ODPs as

neighbourhood centres and local centres. This is because there is some variability in the level of detail of the ODPs in front of us and therefore variation of the extent of definition of the areas to which the rule would apply. It is proposed that if subdivision consent is granted, a consent notice would be placed on those titles within the neighbourhood or local centre, to state that Business 1 provisions apply to that land. While this provides some certainty for the landowner, it seems to us that it is effectively confirming what rules apply to what land through a subdivision process rather than a plan change process.

- 79 It is a fundamental requirement that there should be certainty within a District Plan as to what provisions apply to a specific area of land. Later in this report we record that we have recommended that the ODPs being approved through this process be revised to bring them into a more consistent form and level of detail. This provided the opportunity to more clearly define the area of land involved in each neighbourhood and local centre.
- 80 The ODPs attached have addressed this concern where relevant and as a result we are satisfied that they provide sufficient certainty for the public and for administration of the Plan.

Geotechnical Assessment

- 81 The officers seek to have two assessment criteria relating to Geotechnical assessment added to PC7 and we discuss the merits of these elsewhere. We have no difficulty with the proposed additions which reflect a common sense response to the earthquakes which is supported by CERA and which is unlikely to be contentious.
- 82 Strictly speaking these changes are beyond scope since no submitter has requested them and they were not part of PC7 as notified. Nevertheless this issue was discussed in the Officers' report and there was no objection from any submitter to including these changes. We agree with the officers that these changes should be adopted pursuant to clause 16 as being of *minor effect*. We note that the Council has other means by which it could require Geotechnical assessments and we consider it appropriate to list the "requirement" as assessment criteria.

4. MATTERS TO BE CONSIDERED IN MAKING DECISIONS ON THE PLAN CHANGE

83 The Environment Court in its *Long Bay* decision summarised the framework for evaluating a Plan Change as follows:

84 **A General Requirements**

- *A district plan (change) should be designed to accord with, and assist the territorial authority to carry out its functions so as to achieve the purpose of the Act.*
- *When preparing its district plan (change) the territorial authority must give effect to any national policy statement or New Zealand Coastal Policy Statement.*
- *When preparing its district plan (change) the territorial authority shall:*
 - a. *Have regard to any proposed regional policy statement;*
 - b. *Give effect to any regional policy statement.*
- *In relation to regional plans:*
 - a. *The district plan (change) must not be inconsistent with a regional plan for any matter specified in section 30(1) [or a water conservation order], and*
 - b. *Must have regard to any proposed regional plan on any matter of regional significance etc.*
- *When preparing its district plan (change) the territorial authority must also:*
 - a. *Have regard to any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations, and to consistency with plans and proposed plans of adjacent territorial local authorities.*
 - b. *Take into account any relevant planning document recognised by an iwi authority, and*
 - c. *Not have regard to trade competition*
- *The district plan (change) must be prepared in accordance with any regulation (there are none at present)*
- *The formal requirement that a district plan (change) must also state its objectives, policies and rules (if any) and may state other matters.*

B Objectives [the section 32 test].

- *Each proposed objective in a District Plan (change) is to be evaluated in terms of the extent to which it is the most appropriate way to achieve the purpose of the Act.*

C *Policies and methods (including rules) [the section 32 test for policies and rules]*

- *The policies are to implement the objectives , and the rules (if any) are to implement the policies.*
- *Each proposed policy or method (including each rule) is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives of the district plan taking into account:*
 - a. The benefits and costs of the proposed policies and methods (including rules), and*
 - b. The risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.*

D *Rules*

- *In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment.*

E *Other Statutes*

- *Finally territorial authorities may be required to comply with other statutes*

36. We record at this point that there are no relevant national policy statements. There is an operative regional policy statement that must be given effect to and a proposed change to the RPS (PC1) that must be had regard to. We must also have regard to the existing objectives and Policies in the Selwyn District Plan. There are few if any relevant matters in relation to regional plans but there are a number of other relevant strategies prepared under other Acts. In particular we have already noted that the Rolleston and Lincoln Structure Plans were prepared pursuant to the Local Government Act 2002 and form an important foundation for the Plan Change. Although we have had regard to those documents and the Urban Development Strategy we are mindful that these documents have not been the subject of independent scrutiny and have not yet been reviewed in the light of the Canterbury earthquakes.

5. THE POLICY ISSUES ASSOCIATED WITH CHANGE 1 TO THE CANTERBURY REGIONAL POLICY STATEMENT

- 85 Change 1 to the Regional Policy Statement seeks to direct the management of urban growth to implement the Greater Christchurch Urban Development Strategy. Submissions were considered by a panel of independent Commissioners and changes were made to the provisions as a result of this process. Over 50 appeals were then lodged with the Environment Court. The Court has established a staged approach to hearing the appeals and stage 1 matters relate to the technique of adopting metropolitan urban limits. We were updated on the progress with these appeals on the last day of the hearing. Agreement has been reached between the parties on all stage 1 appeals and this has resulted in some proposed but not yet confirmed changes to the growth allocations.
- 86 The appeals affect a wide range of the provisions, however, only 2 appeals directly affect land allocations associated with Lincoln and Rolleston. Firstly, an appeal by Lincoln Land Developments Ltd concerning the staging of urban development in ODP 1. This appeal has been settled with the result being that if confirmed by the Court, ODP 1 would now form part of Stage 1 growth. This occurred after we heard evidence on this matter. As a result of the proposed settlement the Council officers and the Regional Council Are now supportive of LLD's submission seeking the lifting of deferred status on ODP 1.
- 87 The other appeal is by Denwood Trustees and relates to ODP 5 at Lincoln and adjacent lands. This appeal is not part of the Stage 1 appeals and has not been the subject of any settlement proposal.
- 88 Change 1, which is attached as Appendix 6, aims to achieve consolidation of urban areas and avoid unsustainable expansion outside of urban areas. In essence it is seeking
- higher density living environment,
 - planned Greenfield peripheral development,
 - intensification within the Christchurch urban area,
 - self sufficient growth of outer town including Lincoln and Rolleston
 - rural residential growth constrained to 5% of planned urban growth
- 89 It also seeks to put in place
- long term planning of land use integrated with infrastructure development,

- the sustaining of key activity centres including Lincoln and Rolleston,
- compatible growth of business land,
- integration of transport infrastructure and land use and
- development and protection of strategic infrastructure.

- 90 The above are provided for in the objectives of this new section of the RPS. The policies are led by a direction that urban activities shall only occur within specified urban limits. All of the Plan Change 7 proposals as notified are within the urban limits of PC 1 as approved by the Commissioners. However, a number of submissions are seeking that additional land that is not within the urban limits be included.
- 91 Intensification is targeted in the City Centre but does not exclude other existing urban areas particularly Key Activity Centres. Policy 5 sets out in some detail the obligations of territorial local authorities in relation to key activity centres and we will return to this in relation to specific submissions later.
- 92 Policy 6 sets out the quantum of household growth in each territorial local authority and Table 2 identifies the target number of households for each "Greenfield Area" for two periods 2007-2020 and 2021-2041. Table 3 sets out the business land provision in hectares for the entire 2007-2041 period. There was much debate as to whether Table 2 sets minimum targets or maximum provision.
- 93 PC 7 includes the business land provision for Lincoln but not Rolleston. PC 7 includes the complete allocation of land to 2041 for Lincoln but only up to 2020 for Rolleston.

6. WEIGHT TO BE GIVEN TO CHANGE 1.

94 As discussed earlier the Council is not required to *give effect to* PC 1 until it is operative. Given the appeals in relation to PC1 it is inevitable that it will change before it becomes operative. We are merely required to have regard to PC1. The weight which we place on it is for us, but depends upon a number of factors including:

- The extent and scope of appeals.
- Any proposed settlements of those appeals and whether those have been confirmed by the Court.
- The Environment Court's interim decision in relation to "Stage 1" matters (Stage 1 relates to general attacks on the PC1 approach)
- The extent to which PC1 and the Urban Development Strategy have been reconsidered in the light of the Canterbury Earthquakes
- Uncertainty in relation to the intention and meaning of some of the provisions including in particular Policy 6 and its related Tables.

95 In view of the proposed settlement of all of the appeals against the general approach of PC1 (the stage 1 appeals) we consider that notwithstanding the Environment Court's interim decision, we can put *moderate* weight on the overall approach in PC1 which has been described in the section above.

96 In terms of the location of the MUL that is unchallenged in relation to Rolleston and most parts of Lincoln. We consider that we can put moderate to high weight on the location of the MUL in areas where it has not been challenged. We cannot, however, put full weight on these unchallenged parts of the MUL because the Court has not yet determined the general appeals against the approach. In particular, it has not yet confirmed whether the overall approach of setting an MUL is appropriate, particularly in the light of the changed circumstances following the earthquakes.

97 There is only one appeal to the extent of the MUL which is relevant to our consideration being the appeal by Denwood. In view of that appeal we can only place modest weight on the MUL so far as it applies to Lincoln ODA 5. However, as discussed in our section on Denwood we have concluded that there is no sound basis for extending it to include all of the Denwood land. That matter will be further pursued by Denwood through its appeal but it is not for us to pre-judge the outcome of that.

- 98 There was considerable debate in the hearing about the interpretation of Policy 6. Accordingly, we specifically requested Council officers to provide a legal opinion on this matter. This was provided to us prior to the resumed hearing and was discussed in the Supplementary Section 42A report. Some submitters (including Denwood) responded to this report when we reconvened on 21st June.
- 99 There was common ground that the rural residential areas in Table 1 are *maximums* and this is clearly stated in Note 2 to the table. Council officers and legal counsel acknowledged that it was less clear whether the remaining figures in Table 1 are maximums, minimums or targets.
- 100 Mr Carranceja (counsel for the District Council) explored this issue in considerable detail and concluded that a range of alternative interpretations are available. On balance he considered that interpreting the Table 1 figures as minimums (other than the Rural Residential figures) *avoids conflicts with other parts of PC1 and would better enable the provisions of the decisions version of PC1 to read together as a consistent and coherent whole*". Ms Thomas for Denwood Trustees Ltd agreed with that interpretation because Note 2 only applies to rural residential development. Mr Carranceja at para 7 of his opinion noted that Policy 6 is titled "*Projected Household Growth in Greater Christchurch 2007 – 2041*". The word "projected" is in our assessment significant. Our understanding of a projection is that it is not a policy target, nor maximum or minimum. It is an estimate based on specified assumptions relating in this case, principally to the variables of birth rates, death rates, regional migration and household formation.
- 101 It seems to us that it is only the total households for each period for Greater Christchurch that can be regarded as a projection. This projection has then been allocated to locations and forms of development in accordance with the wider policy base of PC 1. The correct position may therefore be that these figures relate to policy distribution targets applied to a best estimate projection, with the policy qualification that rural residential numbers in the Table shall not be exceeded.
- 102 Table 2 is about "*providing for development*" in accordance with the table and within the boundaries of the urban limits. The officers consider that the Table 2 figures are capped by the plus or minus 5% provision in Note 1 to Table 2. Mr Carranceja identifies situations where densities may be higher or lower than the "minimum" requirement of 10 households per hectare.
- 103 We note that the expression used in Table 2 Note 1 for unbolded figures is "*anticipated targets*". However, it also makes it clear that this does not apply to

bolded figures which include a Selwyn District Council total for each period. This is expressed as a single figure in each case and not a range and is expressed in Note 1 as "*totals resulting from managed development*". This supports Mr Woods interpretation which he explores in para 3.13 of his supplementary report, namely that there is flexibility of plus and minus 5% for each settlement but not for the District overall so that any adjustment in one settlement needs to be balanced by another.

- 104 Ms Thomas (for Denwood Trustees) addressed us on this issue. She, like Mr Carranceja regarded the figures in Table 2 as all having the same meaning, namely as *targets*, rather than the bold and unbold figures having different meaning. We agree with Ms Thomas that a target is not a cap or a maximum, but it is also not a minimum. It is important to appreciate that one of the key policy elements in PC 1 is that green field growth should not be allocated so generously that it hampers the achievement of the Christchurch intensification policy albeit that it is recognised that this will take time to implement. Therefore, we do not agree with Ms Thomas's interpretation of Policy 6's expression of "*sufficient land*" as meaning that the targets may be exceeded as long as households are within the MUL. This is inconsistent with Note 4 to Table 2 which acknowledges that the MULs provide greater capacity than is necessary to achieve the numbers to allow some planning flexibility.
- 105 We note Ms Thomas's mathematical argument but we do not consider it is compelling. Clearly, if a large area was increased by 5% it may take reductions from more than one of the other smaller areas to counterbalance it. In effect this argument is that it is the MUL which puts the limits on the residential growth and Table 2 simply illustrates how the growth projections have been calculated and requires the Council to make *sufficient* provision to achieve those targets. We do however accept that there needs to be some flexibility built into how the policy is applied not only through the "in general accordance" qualification but also in order to ensure that targets are achieved, albeit by not by more than 5%.
- 106 Ms Thomas also refers to evidence presented recently to the Environment Court by Mr McCallum for Environment Canterbury. In this he states that the household numbers were designed as minima because they were based on the minimum density policy requirement. Higher densities are not considered to be contrary to the policy and therefore is it possible that greater numbers of households will be achieved from the stated land areas. We note however that

this refers to households achieved from land areas rather than the quantum of land itself.

- 107 The development of PC 1 has followed a sequence of decisions. This could be crudely put as follows:

Step 1: Determine the number of households expected in the region to 2041.

Step 2: Determine the distribution between settlements (and in some cases sites) to achieve policy outcomes.

Step 3: Have regard to existing structure plans in setting Metropolitan Urban Limits which converts households to land areas on the basis of 10 households to the hectare and may provide some flexibility within the MULs for local planning preferences.

- 108 We note that the issue of whether the table includes existing zoned land not yet developed has been explored in some detail in the supplementary report and we agree with the conclusion that existing zoned land is included in Table 2. We return to these issues when considering the merits of additional land allocations as part of PC 7.

- 109 We therefore conclude that the Policy 6 allocations are likely to have been intended to be policy distribution targets based on projection estimates. In order to achieve those targets it is reasonable to argue that that some additional land should be provided because for any one of a number of reasons all developments may not proceed in the timing anticipated. However, PC 1 considers that this is provided for in terms of the Metropolitan Urban Limits which exceed the area necessary to provide for Policy 6 allocations. Therefore, minor additions to Living Z over and above PC 7 that may better ensure the target is achieved may be able to be accommodated within this policy framework if they are within the MUL (as finally determined by the Court). This is relevant to our decision in relation to Denwood Trustees submission and Lincoln ODP Area 5. We have concluded that allowing for a relatively small increase in the Stage 2 Lincoln provision (around 80-90) may not be contrary to Policy 6.

- 110 While we have tried above to interpret Policy 6 and Tables 1 and 2 so that we can have regard to them, we emphasise that we are not a Court of law and ultimately those provisions will be the subject of interpretation and almost certainly refinement by the Environment Court during the course of the current appeals.

- 111 Furthermore, we also note that the various numbers whether they be targets, minima or maxima, have not been reconsidered in the light of the Canterbury earthquakes. (Except within the context of the proposed settlements of some appeals). Accordingly whatever interpretation we put on these tables it is still possible that the numbers in the table may be changed by the Court.
- 112 In summary, we have been confronted with multiple interpretations of Policy 6 and its associated tables and however we may interpret it, our views are not binding and are unlikely to reflect the final form of the policy, tables and values if they survive the Environment Court process. Accordingly, although we have had careful regard to it we conclude that under the circumstances we should place only a modest weight on Policy 6 and its attendant tables. Furthermore even if Policy 6 was clear and did reflect maximums per period, the Council is not yet required to give effect to it.

7. THE LINCOLN AND ROLLESTON STRUCTURE PLANS

- 113 The Lincoln and Rolleston Structure Plans form the foundation documents for Plan Change 7. PC 7 seeks to implement all the growth planned in the Lincoln Structure Plan but only a first stage of the Rolleston Structure Plan. Both Plans seek to set out an integrated urban design framework for the future development of the two towns. In particular the structure plans propose a specific staging of development to fit with efficient infrastructure development. We were told that in the case of Lincoln that the Structure Plan links to an Integrated Stormwater Management Plan which addresses treatment and disposal of urban stormwater and that the Council will be pursuing discharge consents associated with this in the near future.
- 114 A number of submitters suggested that we should give little weight to the Structure Plans because they have not been through the level of scrutiny that the Resource Management Act requires of District Plans. However, we note from reviewing the structure plans that an extensive public consultation process was put in place in each case and in our assessment appropriate expertise was used in preparing them. We also note that section 74(2)(b)(i) specifically requires us to have regard to management plans and strategies prepared under other Acts. The Structure Plans, prepared under the Local Government Act, are exactly the sort of document that this section is referring to.
- 115 On the other hand we also note that the Urban Development Strategy and in particular predictions of future growth in Selwyn District have not been revised since the earthquakes and that this strategy is linked to the structure plans. We consider that we should allow for the possibility of accelerated growth within Selwyn.
- 116 We note that PC 7 does not seek to zone land for development that goes beyond the Structure Plan proposals although some submissions do. However, we also note that some Outline Development Plans do vary from the Structure Plans proposals. Our finding in terms of weight is that we should give active consideration to the Structure Plans but this does not preclude us from departing from them if this is justified on the merits.

8. ROLLESTON TOWN CENTRE

- 117 There are two principle issue areas that we need to address in relation to Rolleston Town Centre. The first relates to reverse sensitivity effects from development of ODP Area 2 on existing and future town centre commercial activities. The second relates to the PC 7 proposals for neighbourhood and local centres in Rolleston and their potential effect on the vitality, functioning and amenity of Rolleston Town Centre.

Submission	Further Submission(s)
[S54] The New Zealand Guardian Trust Company	[F82] Rolleston Square Ltd (Support) [F83] Rolleston Retail Ltd (Support) [F84] Roll Ten Investments Ltd (Support)

- 118 We turn first to the reverse sensitivity issue which was raised in submission and planning evidence on behalf of New Zealand Guardian Trust Company Ltd. (NZGT). Ms Kirsten Dueling told us in evidence that NZGT are the mortgagees of the property owned by Masefield Mall Ltd at 442 Masefield Mall. This is approximately half of the block bounded by McCauley Street, Dryden Avenue and Masefield Drive all of which is zoned Business 1. The site with NZGT interest has a resource consent for a retail and commercial office development and the remainder of the block has a consent for a supermarket.
- 119 NZGT is concerned that development of ODP Area 2 in accordance with the Living Z provisions and ODP 2 could result in reverse sensitivity effect on the future use of the hopefully soon to be developed Business 1 land. The concerns relate in particular to offsite effects such as night time truck deliveries along Rolleston Road from State Highway 1, rather than on site effects which are subject to permitted activity standards.
- 120 In response Ms Dueling proposed two additional standards for ODP 2 residential properties which front Rolleston Road, namely acoustic insulation of buildings in a similar manner to that required for dwellings in the vicinity of SH1 and a building set back condition.
- 121 Mr Wood in his section 42A report emphasised that ODP Area 2 is a relatively small area of land which is already zoned for residential development. PC 7 has the potential to increase the number of households on this area from 16 to 32. Further, the Business 1 zone package has been designed to deal with on site interface risks and it is proposed that a supermarket be located between the NZGT land and ODP Area 2.

- 122 Mr Mazey was asked whether the traffic flows and characteristics on Rolleston Road going forward with growth and development of the network in accordance with the Rolleston Structure Plan would, in his opinion, risk reverse sensitivity effects. He confirmed that flows along Rolleston Road would remain relatively modest and in his opinion there was a low risk of reverse sensitivity effects from such a small area of development. In his reply Mr Wood provided data on current flows which at Norman Kirk Drive in April 2011 were 7500 ADT. We were also advised that Rolleston Drive which currently has the hierarchy status of an Arterial Road is proposed to be downgraded to a Collector Road. Finally, Mr Wood emphasised that effects on future residential amenity was considered in the assessment of effect of the proposed supermarket and was not considered to be material. As a result, there are no consent conditions relating to hours of operation or truck delivery.
- 123 We note that PC 7 includes conditions of the nature proposed by Ms Dueling in relation to activities close to SH1. We are also aware that supermarket deliveries involve heavy goods vehicles and are often undertaken at night. However, we note that The Rolleston Structure Plan provides in the longer term for the arterial network to feed to the town centre from Levi Road and a SH1 intersection north east of the town. This would mean that deliveries are unlikely to pass ODP Area 2.
- 124 In these circumstances, we are not satisfied that in terms of section 32 additional rules or controls are justified on the risks and evidence before us.
- 125 Ms Dueling also raised in her evidence a concern about the accuracy of figure 7.1 headed Rolleston RPS PC 1 Development Sequence. We record that at the time we noted that this is a Figure within the Rolleston Structure Plan and not within PC 7 and therefore is beyond our jurisdiction to address, however officers indicated that the Structure Plan is to be updated in the near future and this would be addressed at that time.

Recommendation No 1

Submission 54 (Decision D1) be accepted in part, (Decision D2 and D3) seeking to amend PC7 to include additional Issues, Objectives, Policies, Rules and assessment criteria to address perceived reverse sensitivity issues be rejected.

- 126 The second matter relates to the provision of neighbourhood and local centres and their potential effect on Rolleston Town Centre. This matter was pursued collectively by Rolleston Retail Ltd, Rolleston Square Ltd, and Roll Ten Investments Limited. Put simply, their case was that in the interests of maturing the Town Centre as quickly as possible, there should be no provision for neighbourhood and local centres in the short to medium term.

Submission	Further Submission(s)
[S82] Rolleston Square Limited	[F91] Foster Holdings Ltd (Oppose) [F44] Coles (Oppose) [F45] Alfeld (Oppose) [F109] Christchurch International Airport Ltd (Support) [F32] CDL (Oppose) [F54] New Zealand Guardian Trust (Support)
[S83] Rolleston Retail Limited	[F91] Foster Holdings Ltd (Oppose) [F44] Coles (Oppose) [F45] Alfeld (Oppose) [F32] CDL (Oppose) [F54] New Zealand Guardian Trust (Support)
[S84] Roll Ten Investments Limited	[F91] Foster Holdings Ltd (Oppose) [F44] Coles (Oppose) [F45] Alfeld (Oppose) [F32] CDL (Oppose) [F54] New Zealand Guardian Trust (Support)
[S85] Lincoln Land Development Ltd (re medium density)	

- 127 This issue brings in the spectre of trade completion effects and Mr Maw addressed us on that matter. In essence the case law seems to clearly establish that there are a series of tests to be applied as follows:

- (a) Whether the effects are beyond those caused by trade competition?
- (b) If so whether those effects are “significant”?
- (c) If so they must then be considered against the relevant planning objectives.

- 128 The context to this analysis is that the existing Business 1 zoned land is owned by a limited number of entities and in Mr Woods opinion there is some risk of a monopolistic situation in the town centre should the Masefield Mall land be purchased by Rolleston Square Ltd. Mr Maw in his written reply dated 12 May claimed this was not the case as there is a multiple ownership situation. We note that he points to land owned for two supermarkets which we can reasonably discount from this debate because supermarkets are not provided for in neighbourhood and local centres. The issue from a trade competition perspective is whether the submitter is in the business of competing with those who might enable the supply of convenience stores in neighbourhood and local centres.
- 129 We note that the Environment Court has further considered this matter since the hearing closed, in its decision *General Distributors Ltd v Foodstuffs Properties (Wellington) Ltd (2011/212)*. In this case the Court concluded that Foodstuffs was caught by s308B and declared accordingly. Our situation is not as clear cut as this and relates to a wider variety of trading circumstances. We do not, therefore, see the need to reject these submissions without exploring the wider tests above.
- 130 In narrowing down the matters at issue here, we should note that the s42A report acknowledges the need for an amendment to PC 7. In response to this issue and sought a specialist report from Mr Tim Heath of Property Economics to assist in determining the appropriate response.
- 131 It is agreed between the parties, that PC 7 should not undermine the long term role, function and viability of the town centre. To address this Council has proposed that an additional Policy be inserted to the Plan with appropriate explanation and that clearer definitions of neighbourhood centres and local centres be included. Mr Heath's advice is that neighbourhood centres should not exceed 2000m² with individual stores not exceeding 450 m². The definition proposed in the report envisaged neighbourhood centres of 6-15 stores and local centres of 1-5 stores. Importantly he recommended that a rule be included that classes non compliance as a non complying activity and that this should apply to both Rolleston and Lincoln. This is a specific matter that we discuss later.
- 132 The evidence presented by witnesses for Rolleston Square was written in the knowledge of these recommendations Mr Bathurst provide us with helpful background on the development of retail activities in Rolleston and the difficulty of attracting retail tenants to Rolleston. He considers that it will take 20-30

years to develop the Masefield Mall shopping centre and that this is because of the success of the general merchandising of The Warehouse.

- 133 He contends that with PC 7 growth neighbourhood centres and local centres will not be required in Rolleston until after 2020. He equates the now suggested 2000m² limit of neighbourhood centres to be equivalent to all the speciality shops in Rolleston Square and that if a new neighbourhood centre was created both the existing stores and new stores would struggle. He considers the s42A report recommendations to be *"far too permissive"* and therefore ineffective.
- 134 Mr Evan Harris who is a Property Manager with HG Livingstone Ltd and Colliers International also opined that there is only sufficient retail spend to provide for one Town Centre and argued not to have that retail spend split amongst a variety of smaller centres. He considers that there is sufficient capacity in the Town Centre for a further 30 small retail outlets growing to 50 in 2020. He concludes that the retail spend within the District should not be allowed to dissipate to neighbourhood centres.
- 135 The social effects on the town centre were considered by Dr Taylor an experienced social researcher. In his assessment PC 7 has the potential to undermine the further development of the town centre such that *"this centre is disenabled from delivering functional and social amenity to the people of Rolleston"*. He concludes that there would need to be growth beyond the projected 2041 population of Rolleston before neighbourhood and local centres would be justified.
- 136 He helpfully describes the social infrastructure of Rolleston and acknowledges the high rate of growth expected in Selwyn District and that this is likely to be further enhanced by earthquake relocation. At paragraph 44 however he settles his concern on the effects on the town centre arising because of the *"potential size of the areas allocated to retail centres in the Plan Change and the diversity of activities identified as able to locate in them."* He describes that as *"unnecessary competition with retail activity in the town centre"* rather than providing convenience to local residents and considers that the levels of development proposed in the s42A report will have significant effects.
- 137 Ms Jane Whyte then provided planning evidence which also concludes that the *"scale and rate"* of business development is inappropriate for Rolleston and that the changes proposed by Mr Heath do not go far enough. She considers that the scale provided by the neighbourhood centre to be significantly in excess of a local service activity.

- 138 Mr Heath provided a brief response to a number of the issues raised as part of the officer's reply. While he was critical of much of the hard analysis, in essence, he agrees that PC 7 should seek to entrench the role of the town centre by providing opportunities for complimentary local servicing. He acknowledges that it may be some time before there is a market for neighbourhood and local centres but that they should be enabled a part of longer term planning. His opinion is that at the point that they are viable, the town centre will have grown further and *"entrenched itself in the market."*
- 139 We tend to agree with Mr Heath that the witnesses for Rolleston Square provided little in the way of hard evidence from a retail and economic effects perspective on what the potential impacts might be. In this context we note Mr Heath's comment that *"In all my years of undertaking retail research and analysis around NZ under the RMA I have never come across a situation where a local/neighbourhood centre has undermined or jeopardised a town centre, and to the best of my knowledge it has never been proven in the Court system"*.
- 140 We agree with Ms Whyte that Rolleston is still very much in a developmental stage and it will not be a "large town" until 2041. However, waiting until then is too late to plan for complimentary local retail and community services. The Rolleston Structure Plan has set a long term framework into which stages of development are being enabled. Establishing a clear hierarchy of centres is shown as Development Principle number 2 out of a list of 18. That emphasises that neighbourhood and local centres are to be complimentary to the town centres focus.
- 141 The Rolleston Structure Plan sets a framework for a total of five neighbourhood centres which form the focus of medium density development within reasonable walking distance of each of these.
- 142 Plan Change 7 as now proposed by officers provides for part of one neighbourhood centre as part of ODP 6. In addition there are two local centres one relating to the recreation precinct on the northern edge of ODP 6 and one in ODP 1.
- 143 As part of the reply, officers proposed further clarification to the definition of these centres, such that neighbourhood centres should not exceed 2000 m² and local centres should be approximately 450 m². We have considered elsewhere how much of a neighbourhood centre should be enabled as part of ODP 6 and have concluded that the reference to 'partial' proposed in the officers reply should be clarified to not exceed 1000 m² gross floor area. Under this situation

PC 7 would be enabling a total of 1900 m² of retail floorspace outside of the town centre.

- 144 The principle of the Outline Development Plan approach is that there is a broad spatial plan as to how an area will be developed and that it will occur in an integrated manner. We support that overall approach and consider that neighbourhood and local centres should be planned within each ODP Area in order to ensure that the overall form and design principles are able to be achieved. We appreciate that it may be some time before these centres are established as they are unlikely to be viable until a considerable amount of residential within the ODP Area has been constructed and settled.
- 145 We agree with those witnesses that have focussed on scale and rate. The issue is one of forward planning and timing. Given the level of development enabled by PC 7 and the realistic prospect that it will take some time for any development to occur, we consider that the risks to the ongoing development of the town centre are less than minor and definitely not 'significant' as required by case law before any action is justified.
- 146 While a neighbourhood centre may consist of only 2-3 stores to start with it must be planned for the long term complimentary role once the town has reached its "larger" town maturity. While we appreciate that a District Plan must be subject to review, on a ten yearly basis it does not mean that it can't embrace longer term strategic planning such as a staged approach to a hierarchy of complimentary neighbourhood and local centres.
- 147 Given that conclusion, we have no difficulty with the overall policy fit both with PC 1 and the Selwyn District Plan which was the subject of extensive evidence from Ms Whyte and reply from Mr Wood.
- 148 One further matter that was debated in some detail within the context of the wider debate was the maximum size of each retail unit that is appropriate and should be enabled through the PC 7 provisions. Mr Bathurst in answers to questions and later confirmed in the written reply, noted that local centre shops would likely not exceed 120m² GFA and would probably be in the 60-80 m² range. The provisions as proposed by officers limit each unit to 450 m² although Mr Heath in his reply conceded that it would be appropriate to reduce this to 350 m². He does not consider that there is any justification to further reduce this rule to the level suggested by Mr Bathurst.
- 149 Clearly the rules do not prevent smaller units being established. We consider that the cap on total size of centres is more crucial than constraining the size of

units that the market might demand. We have recommended that ODP 6 neighbourhood centre be limited to 1000 m². This might consist ultimately of three 330 m² shops, fourteen 70 m² shops or some other combination between the two. We do not think that is for the rules to determine at this stage, beyond setting an upper limit that provides some flexibility. We are comfortable with the suggested 350 m² limit for both neighbourhood centres and local centres and we recommend accordingly.

Recommendation No 2

The recommendation is that submission 82, 83 and 84 (Decision D2, D3, D5, D6, and D7) seeking the inclusion of a definition for Neighbourhood Centre and Local Centre and protecting the function of the town centre by limiting the size of these centres in both Rolleston and Lincoln be accepted in part.

- 150 The final issue that we need to deal with here is the class of consent required for non compliance with the rules setting the maximum total gross floor area for these centres and the maximum area for each individual unit. Officers have in their reply proposed that this be in two separate rules numbered 22.14.1 and 2 and we agree with that.
- 151 Jason Jones in his evidence for Foster Holdings Ltd argued that the restricted discretionary activity class of consent was appropriate for addressing scale effects associated with these centres and for individual buildings. Officers have proposed that this be a non complying activity on the basis that larger centres and units are unlikely to be compatible with the town centre. Mr Jones argued that this should be capable of being assessed on a case by case basis and that there is potential for good environmental outcomes in certain circumstances.
- 152 We note that later in Mr Jones evidence he notes that a retail activity greater than 450 m² is classed in the rest of the Living Z zone and any other Living Zone as a Discretionary Activity.
- 153 We agree with Mr Jones that this does present an inconsistency within the Plan provisions. It is important that a proposal that does not comply with the permitted activity rules is fully tested including its compatibility with the town centre but that does not necessarily require it to be classed as a non complying activity.
- 154 Similarly we have reservations concerning classing the activity as a restricted discretionary activity as there is potentially a wide range of issues that may need to be considered. We consider that the manner in which the policy is

expressed does not require a non complying activity to implement it. The policy test is one of “compatibility with the Town Centre” which in our assessment is capable of being applied through a Discretionary Activity. We have therefore concluded that in terms of Section 32 non compliance should be classed as a Discretionary Activity and we recommend accordingly.

Recommendation No 3

The recommendation is that submission 82, 83 and 84 (Decision D3) be accepted in part.

9. LIVING Z RULES GENERAL

The Role of ODPs

- 155 A number of issues were raised regarding the nature and structure of the rules introduced through PC 7. We have summarised the scheme of the rules in some detail in Section 2. In terms of subdivision (which is generally the first step in development of Greenfield areas) the fundamental requirement reflected in Policy B4.3.9 is that the subdivision should be in "general accordance" with an approved Outline Development Plan. If the subdivision application is in general compliance with an approved ODP, any application is classed as a restricted discretionary activity and has the benefit of a non notification and non service clause. If not, the proposal is classed as a full discretionary activity and is subject to the notification tests of section 95.
- 156 The scheme of the Plan Change is that ODPs are incorporated into the Plan either through this, or some subsequent, Plan Change. That is a fully publicly notified process and therefore is open to full public scrutiny. There is no ability for the Council to approve an ODP except via the current or a future plan change process. Having been through this process, subdivision applications are protected from a second round of third party scrutiny if they are in general compliance with the ODP. We are satisfied that this basic philosophy is sound and is effective and efficient in terms of section 32.
- 157 We had some concerns about the variability of detail and scope of content of ODPs and this was raised in the evidence of the Selwyn Central Community Board. We also have a concern that the "*general compliance*" wording in Rule 12.1.3.37 is rather loose. There needs to be certainty for both the developer and the community as to what is required in order to come within the more favourable "restricted discretionary" class. In our view the current wording of the rule does not provide sufficient certainty and potentially leaves the Council with an unlawful discretion to decide whether an application comes within the requirement of an ODP or not.
- 158 Policy 8 of PC 1 set out the scope of what is required of an ODP. An ODP that is less detailed and less specific provides more scope to be "generally compliant" with the ODP than one that is more detailed. In some cases there are components where strict compliance rather than "generally compliant" is warranted and agreed between the parties. We requested the officers to consider which matters fall into that category and amend the draft ODPs to make that clear. Rule 12.1.3.37 will then require compliance with those

standards in order for a proposal to qualify as a restricted discretionary activity. We recommend that any matters such as minimum height, non standard set backs, specific entry requirements etc, be included in the ODP as standards which must be complied with.

- 159 Our recommendation is that rule 12.1.3.37 be amended as follows:

Rule 12.1.3.37 Any subdivision within a Living Z Zone that is subject to an operative Outline Development Plan within the District Plan shall be in general compliance with that Outline Development Plan and shall comply with any standards referred to in that Outline Development Plan.

- 160 The intention is that there is flexibility to provide for minor departures from the lines on an ODP but that any standards specified in either the rules or attached to the ODP will need to be met in order to achieve restricted discretionary status. This allows for the Council to attach area specific standards to an ODP which must then be complied with. An example of this is ODP 2 in Rolleston which includes provisions which should be stated as standards.

- 161 In our view allowing minor departures from the lines on an ODP will not infringe the requirements regarding certainty within rules. Any matters of significance should be dealt with is standards. The adjustment of minor details within an ODP (but not to the boundaries of the ODP) allows a minor degree of flexibility. The Council also has discretion to add additional requirements during the consent stage.

- 162 We will address ODP specific issues in later sections but we note that Lincoln ODP 4 text is limited to the plan block margin while others have separate plans and more detailed text. As a guide we consider Rolleston ODP 6 which was submitted through a submission to be an appropriate model to follow subject to the addition of standards as discussed above, and we have asked as part of this report for officers to bring all relevant ODPs into this format. The officers have put considerable effort into this task over the last two months and we are now satisfied with the final form of all of the ODPs except for the one proposed by Denwood which still requires adjustment.

No Opportunity For Submissions In Relation To Subdivision Consent Applications

Submission	Further Submission(s)
[S93] Jens Christensen	[F15] Lincoln Estates Ltd (Oppose) [F44] Coles (Oppose) [F45] Alfeld (Oppose) [F91] Foster Holdings Ltd (Oppose)
[S15] Lincoln Estates Ltd	

- 163 There was a submission and evidence from Jens Christianson seeking that the non notification rule be deleted and all subdivision applications be publicly notified. We also raised this as an issue of concern in our minute during the course of the hearing. In response to this Mr McMahon for CDL New Zealand Ltd drew our attention to the existing framework of current rules in the plan for subdivision in living zones which includes a non notification / service rule and his opinion that this is a tried and tested method in terms of section 32. It is also acknowledged that the inclusion of ODPs in the Living Z zone provides a greater degree of certainty and scrutiny as to the form of development to be enabled by the Plan compared with other living zones. We have concluded that provided that the ODPs are brought into a more consistent form and detail with standards clearly defined and the "generally in compliance with" requirement not applying to such standards, the non notification/non service rule is appropriate in terms of section 32.
- 164 We also considered whether we should recommend that the rule be amended so as to waive the public notification requirement but still require service of affected persons. We do have a concern that potentially affected persons may not have been aware of the an ODP proposed post notification and/or may not have been aware of the fact that this would be the last opportunity to have input into development standards on nearby land.
- 165 We have to weigh the efficiency and effectiveness of the proposed approach (no service) against the risk of unfairness to those who may be affected by development which is in accordance with an ODP. We have concluded that the rule should remain as it is. We note that rule 12.1.2 in the Plan as it currently is, already provides for non notification and non service in relation to subdivision in Living Zones which complies with relevant standards. An amendment to this rule would affect all subdivisions within any Living Zone and we doubt that we have jurisdiction to make such an amendment.

- 166 In any event as discussed above, those who are potentially affected did have a right to make a further submission. The current process has allowed for standards and criteria to be included in ODPs to minimise adverse effects on others. The Council will still have a discretion to decline consent for a compliant subdivision or (more likely) to adjust proposed conditions. We have concluded that it would be inefficient and unnecessary for developers to be put to the potential cost of going through a public hearing process to scrutinise development which is accordance with an ODP that has already been the subject of scrutiny through the current process or a future plan change.
- 167 Finally, we note that this approach of determining development areas, standards and criteria by way of the current process, so as to streamline the subsequent consent process is at the heart of PC7 and PC1.

Recommendation No 4

The recommendation is that submission 93 (Decision D1 and 4) be rejected in part. Submission 15 (Decision D27) be accepted

Subdivision Design and Urban Design Requirements

Submission	Further Submission(s)
[S85] Lincoln Land Development	
[S15] Lincoln Estates Ltd	
[S49] Broadfield Estates Ltd	[F31] New Zealand Transport Agency (oppose)
[S40] Craig Harold Thompson	

- 168 A number of submitters have raised issues in relation to subdivision design and urban design. These issues have been reported on comprehensively in the Section 42A report. In terms of evidence we heard from Mr Peter Glasson on behalf of Lincoln Estates Limited. His concern is that the additional criteria applied to subdivision as a result of PC 7 is reducing the design flexibility for applicants which he described as “micromanagement by Council planners” which would result in “standardised design outcomes”. Specific areas of concern included the ability to reflect market preferences in relation to front fences, rear

lots and gated communities. His concern is to enable the market to determine these design issues rather than urban design doctrine.

- 169 We have considered the issues raised by Mr Glasson carefully. We note that these are matters of assessment for restricted discretionary activities rather than compliance. However, the criteria do state clear design preferences which need to be taken into account in subdivision design. We do not agree that these matters express the personal opinion of the planner, however, there is a risk that when applied the discretion does enable personal values to come through.
- 170 The scope of issues included in the provisions in effect codifies the Subdivision Design Guide. This enables the guide to be updated without necessarily affecting the Plan provisions. We do not accept that the developer's perception of the markets preferences is always a reliable determinant of design issues and consider that there is scope to significantly improve overall design quality particularly at higher densities.
- 171 We note that the Council has applied appropriate urban design expertise at various stages of the overall process and that it is a signatory to the Urban Design Protocol. In short we are satisfied that this part of the PC 7 provisions is soundly based and is appropriate in terms of promoting and enabling higher quality design outcomes and is also appropriate in terms of section 32.
- 172 Broadfield Estates Ltd requested an increase in the permitted site coverage standard in the Living Z zone from 35% to 45%. We understand this to be for Living Z as opposed to Medium Density Living Z which is proposed to be 40% and 45% as a Comprehensive Residential Development and would be a Restricted Discretionary Activity. Mrs Harte who gave evidence for Broadfield did not address us on this matter but we generally agree with Mr Hattam's assessment of this matter which recognises that Living Z does not seek to achieve a high density of development, although it does provide for medium density development in specified areas. In the context of a reasonably low density zone, site coverage of 35% is appropriate as a permitted activity standard to ensure there is an openness and spaciousness to the residential character.

Recommendation No 5

Submission 15 (Decision D3, D4, D5, D6, D7, D8, D9, D10, D11, D17-22, D23, D24, D25, D26, D30), submission 40 (D4), submission 49 (D2) and submission 85 (D7, D8, D15, D16, D17) seeking changes to the subdivision / urban design rules in PC7 be rejected.

Submission 15 (Decision D1) be rejected in part.

Staging of Development

- 173 A number of submissions challenged the staging approach applied in Lincoln which was derived from the Lincoln Structure Plan and subsequently PC 1. We address later specific evidence in relation to individual ODP Areas. We confine ourselves here to the principle of staging Greenfield urban growth. We note that staging of development is a fundamental principle on which PC 7 has been developed and is enshrined in a number of policies including Policy B4.3.8. In many cases this staging occurs within in ODP Area and is planned within that framework.
- 174 We did not receive any expert evidence opposing the principle of staging although we acknowledge this remains a matter at contest in the PC 1 appeals. The issues were addressed in some detail however in section 7 of the s42A report. In essence we agree that a move to a plan led approach to growth requires consideration of how a long term strategy should be staged to match the planning period of a District Plan. The Structure Plans have set out a 35 year horizon for Lincoln and a 75 year horizon for Rolleston which compares with the 10 year review period of a District Plan. The Council has developed infrastructure development and investment strategies based around those long term plans and their own LTCCP. Planned growth has been determined to target projected demand as discussed in detail in Section 9 in the context of PC 1. This has then been related to the Structure Plan and the efficient development of publicly owned infrastructure including water, wastewater and roads. We consider such an approach is entirely valid in terms of Section 32 and we recommend accordingly. We consider specific staging issues later in our report.
- 175 Lincoln Estates did include in their submission a number of amendments to the provisions to link staging more clearly to the demand that occurs in reality and the ability to provide infrastructure rather than being based around a development stage starting at 2020. It also sought that non compliance should be classed as a Limited Discretionary Activity.
- 176 We have considered this carefully. Staging is effectively controlled and implemented through the ODP for each area which must comply with stated policy criteria. Subdivision must be in general compliance with that staging with non compliance being determined as a Discretionary Activity. That regime in itself does provide some flexibility to respond to changing circumstances and consent not in accordance with the ODP can be approved if circumstances warrant it. This seems to us to provide a framework that enables what the

submitter is seeking while retaining a clear expectation that stage 2 development will be enabled after 2021 if infrastructure is available.

- 177 Some changes to staging are recommended in response to earthquake relocation demand later in this report and other changes may be required as needs are more clearly established. We therefore conclude that the policy and rule framework for staging is appropriate and recommend accordingly.

Recommendation No 6

Submission S15 (Decision No D2, D12, D13, D14), S49 (Decision No D3), S89 (Decision No D3, D4, D5, D6, D7, D8, D9) and S90 (Decision No D4, D5, D6, D7, D8, D9, D10) regarding staging of development in Lincoln be rejected. Submission S15 (Decision No D28, D29) be rejected in part. S85 Decision No D1 be accepted in part, Decision No D2, D3 and D4 be accepted and Decision No D5, D9, D10 and D11 be rejected.

Tangata Whenua Values

- 178 As part of this process we benefitted from a joint submission from Mahaanui Kurataiao Ltd, Te Runanga o Nagi Tahu, Te Waihora Management Board and Te Taumutu Runaga. We discuss ODP specific issues later in this report but their submission and evidence presented to us also raised some wider issues relating to the policy framework of PC 7.
- 179 The overall thrust of their submissions and evidence is that the District Plan should incorporate objectives and policies, including amending some proposed policies, to ensure that tangata whenua values are required to be recognised, provided for and protected in the development and implementation of Outline Development Plans.
- 180 We agree that there is a fundamental responsibility on the Council under the Act to ensure this occurs and officers concurred with that in their reply. The hearing has enabled us to consider specific values raised and these are discussed in later sections and amendments to ODPs have been made where appropriate.
- 181 However, on the question of the need for additional objectives and policies, Mr Wood in the s42A report has carefully drawn our attention to the content and scope of existing relevant sections of the Plan. We have reviewed these carefully and we are satisfied that appropriate objectives and policies are

already in place to achieve what iwi are seeking. This includes Section A4.2, Section B3.3 Objectives B3.3.1 to B3.3.2 and Policies B3.3.1 to B3.3.4

- 182 We note that Council officers have acknowledged that despite these policies the Structure Plan process did not adequately engage and consult with iwi and that a number of initiatives are being taken to address this. We also note that particular focus is currently being applied to the ISMP process. We therefore do not consider that further policy changes are warranted in terms of section 32 and recommend accordingly.

Recommendation No 7

Submission 87 Decision No's D1 & D2 be accepted, Decision No D3 be accepted in part and Decision No's D15-24 be rejected.

Open Space and Reserves

- 183 The Selwyn Community Board and Rolleston Residents Association sought that open space and reserves in ODPs are restricted so that reserve contribution from these areas is provided as both land and cash. We agree with the officer's advice in the s42A report that this is a matter for the LTP and is beyond the jurisdiction of this RMA process. We recommend that these submissions be declined but respectfully suggest these issues are taken up with the Council through the LTP process.

Recommendation No 8

Submission 22 (Decision D7), 79 (Decision D7) and 93 (Decision D5) seeking a change to the reserve contribution policy is out of scope of PC7 and be rejected. Submission 93 (D2) should be accepted.

Archaeological Sites

Submission	Further Submission(s)
[S26] New Zealand Historic Places Trust	None

- 184 NZ Historic Places Trust has submitted that additional text be inserted drawing attention to the possibility of affecting unrecorded archaeological sites and the

need for consultation with NZHPT. The section 42A report notes that there are no recorded archaeological sites within the land areas proposed to be zoned for development. The officers also noted that when a subdivision consent is approved, attention is drawn to the legal requirements in the event that material is found and to the Councils protocol for dealing with this circumstance which specifically includes notifying NZHPT. We consider that this is the appropriate point in the process to draw attention to this issue and we agree with the officers that further information within PC 7 is not required.

Recommendation No 9

Submission from NZ Historic Place Trust (Decision No D1) be rejected

Policy Issues

Submission	Further Submission(s)
[S46] Environment Canterbury	[F89] McIntosh (Oppose) [F90] Denwood Trustees Ltd (Oppose) [F31] New Zealand Transport Agency (Support) [F29] Plant and Food Research (Oppose) [F82] Rolleston Square Ltd (Support) [F83] Rolleston Retail Ltd (Support) [F84] RollTen Investments Ltd (Support)

- 185 This relates to issues raised by Environment Canterbury which sought some changes to the wording of policies to better reflect their intent. Mr Rachlan presented evidence on these submission points. In his evidence he accepted that it was not necessary to amend Policy B3.4.3 to ensure that developments are designed in accordance with the stated design principles and we generally agree with that. Mr Wood agreed with the second point being that the Subdivision and Design Guides should be explicitly referred to as a Method under Policy B3.4.3 and we also concur with that.
- 186 There next point was in relation to Policy B4.1 Residential Density Strategy where Mr Rachlin considers that additional explanation is required to ensure that objectives and policies are fully aligned in relation to densities and the planned areas of medium density in PC 7. In general, we consider that the amendments to the policy sections and explanation are very clear in relation to medium density policy. However, Mr Rachlin proposed some additional wording that we

accept is appropriate and involves the addition of the following text at the end of B4.1. *"The exception is in Living Z Zones and particularly their Medium Density area where greater densities are anticipated. These areas are subject to additional controls which will ensure high quality urban design outcomes to maintain the amenity of towns."*

- 187 A further submission point on ODP areas was withdrawn.

Recommendation No 10

Submission 46 (Decision No D1) be accepted in part and (Decision No D3 and 4) relating to policies that affect both Rolleston and Lincoln be accepted. Decisions D2 and 6 be rejected.

Reticulated Water Supply

Submission	Further Submission(s)
[S86] New Zealand Fire Service	None

- 188 NZ Fire Service has sought assurances that development within any of the ODP areas will be serviced by a reticulated water supply which meets the Code of Practice. The section 42A report identifies relevant policies and rules in relation to water supply in the District Plan and also in PC1. We are satisfied that what the submitter requests is already a requirement of development and no further changes are required.

Recommendation No 11

Submission 86 from New Zealand Fire Service (Decision No D1) relating to ODPs being serviced by reticulated water supply is accepted as PC7 has already included this requirement within the ODP Areas being rezoned to Living Z.

Policy B3.4.3

Submission	Further Submission(s)
[S22] Selwyn Central Community Board	[F15] Lincoln Estates Limited (Oppose) [F32] CDL (Oppose)
[S79] Rolleston Residents Association	[F32] CDL (Oppose)
[S85] Lincoln Land Development	

- 189 Two submitters have sought a one word amendment to Policy B 3.4.3 to refer to a layout that “minimises” the number of rear lots rather than “limits”. Officers agree that this is an improvement and is clearer and we have no difficulty with this minor change.

Recommendation No 12

Submission 22 (Decision D1) and submission 79 (Decision D1, D8) be accepted in part.

Submission 22 (Decision D2) and 79 (Decision D2) seeking a change in wording in Policy 3.4.3 be accepted and the submission 85 (Decision D6) be accepted.

Medium Density Housing

Submission	Further Submission(s)
[S82] Rolleston Square Limited	[F91] Foster Holdings Ltd (Oppose) [F44] Coles (Oppose) [F45] Alfeld (Oppose) [F109] Christchurch International Airport Ltd (Support) [F32] CDL (Oppose) [F54] New Zealand Guardian Trust (Support)
[S83] Rolleston Retail Limited	[F91] Foster Holdings Ltd (Oppose) [F44] Coles (Oppose) [F45] Alfeld (Oppose) [F32] CDL (Oppose) [F54] New Zealand Guardian Trust (Support)
[S84] Roll Ten Investments Limited	[F91] Foster Holdings Ltd (Oppose) [F44] Coles (Oppose) [F45] Alfeld (Oppose) [F32] CDL (Oppose) [F54] New Zealand Guardian Trust (Support)

190 The principle concerns of these submitters related to the provision of neighbourhood and local centres and we deal with those matters in a separate section. However, additional issues were raised in relation to medium density housing. We did hear considerable evidence from these parties but not on the medium density issues raised.

191 The first issue was the status of the medium density housing guide being both in draft form and not included in the District Plan itself. We note that officers wish to finalise the design guide once the form of rules has been finalised through this decision making process. We do see some merit in this. We note that it is common for Design Guides to be part of the Plan itself. In this case it is proposed that the guide remain outside the Plan but the key elements of the design guide scope have been codified into the Plan through the additional Assessment Criteria for discretionary restricted subdivision assessment in section 12.1.4. The assessment criteria therefore clearly indicate the key requirements albeit being matters of assessment rather than compliance. The

design guide provides more extensive information on good design practice in achieving the assessment criteria.

- 192 We note that Clauses 31 to 35 of the First Schedule to the Act deal with the incorporation of external documents by reference within a District Plan and clause 31 requires any change to such a document to be made by way of Plan Change or variation. However this does not apply in this case because the Design Guide is not being incorporated into the Plan.
- 193 We are satisfied that this is an appropriate approach and provides an efficient and effective balance between statutory provisions and non statutory guidance. The consequence is that adherence to the design guide cannot be a requirement but can be a matter which the Council takes into account in decision making through the stated assessment criteria.
- 194 The second matter raised by these submissions was in relation to rule 1.14.1(b) which relates to the permitted activity standard for private open space provision for comprehensive residential developments. Mr Hattam for the Council has acknowledged that there is a discrepancy between this rule and the design guide and has recommended it's deletion. It occurs to us that in any case this rule is not correctly located as comprehensive residential development is expressly a restricted discretionary activity under rule 4.12.1. The rule referred to in this case is located as a permitted activity standard. Rule 4.12.1 does not include any standards for restricted discretionary activities. We therefore agree to the deletion of this rule.
- 195 A third matter related to claimed inconsistencies between PC1 and PC 7 in relation to densities which relate to an average density over the whole of an ODP. We do not have any concern about inconsistencies, and note that the standards for minimum average lot size and minimum individual lot size will be applied to each subdivision consent and therefore each stage of development within an ODP Area.
- 196 A further matter raised in these submissions relates to clarification that elderly persons housing is an anticipated outcome of comprehensive residential development. We agree with the officers that the PC 7 seeks to provide for a variety of housing types through the comprehensive development rules without the need to specify particular age group markets and therefore accept the advice that this submission point be rejected.

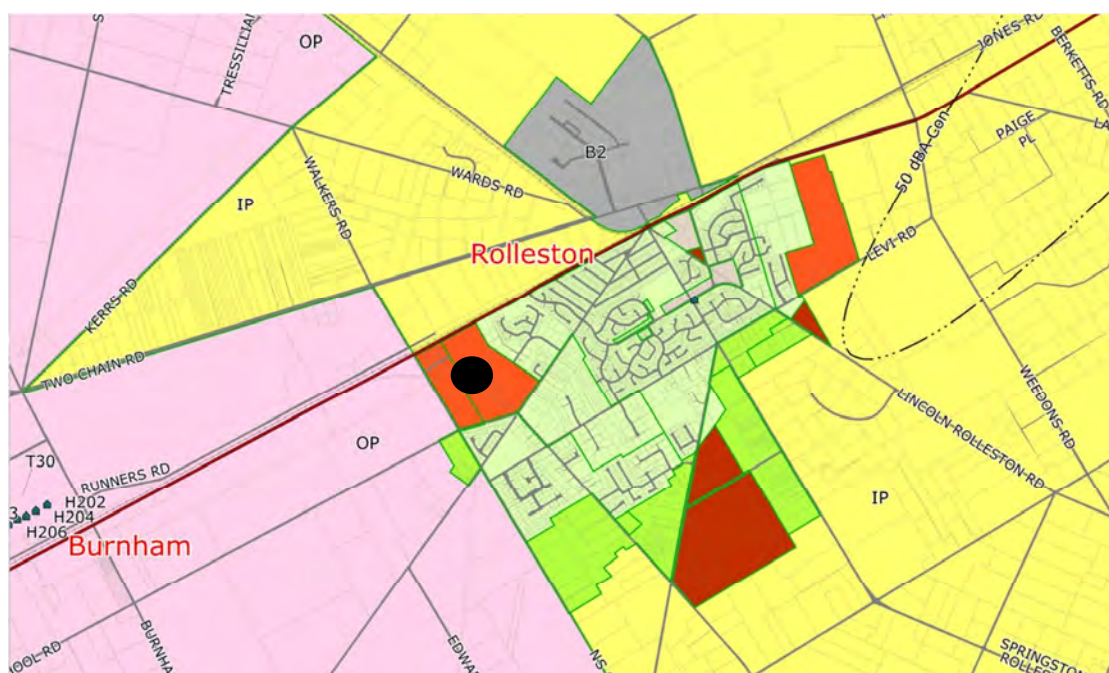
Recommendation No 13

Submission 82, 83 and 84 (Decision D1 and D9) be rejected in part, and (Decision No D4, D8, D10 and D11) on Medium Density Housing be rejected.

Submission 85 (D18 and D19) on Medium Density Housing be rejected.

10. ROLLESTON ODP Area 1

- 197 Rolleston ODP Area 1 is located west of Rolleston and is currently zoned Living 1B and Living 2. An ODP has been included in PC7 as notified which achieves a net density of 11 households per hectare and provides for 633 households.
- 198 The parties who made submissions on this matter are shown below along with a plan showing the location of ODP Area 1:



Submission	Further Submission(s)
[S2] Sia Choo Leng	[F31] New Zealand Transport Agency (Oppose) [F82] Rolleston Square Ltd (Oppose) [F83] Rolleston Retail Ltd (Oppose) [F84] RollTen Investments Ltd (Oppose)
[S3] Mei Hong Hua	Same as above
[S4] Wen Bin Lin	Same as above
[S5] Worthwhile Ltd	Same as above
[S6] Hoo Ting Yen	Same as above
[S7] Christine Siew Ing Yek	Same as above
[S8] Ming Shong Chen and Xin Ling Lin	Same as above
[S10] Jason Hoo	Same as above
[S14] Song Yu Rong	Same as above

[S35] Ming Xing Wang	Same as above
[S36] Jin Ping Huang	Same as above
[S37] Chen Jian Wang	Same as above
[S32] CDL Land (NZ) Ltd	[F31] New Zealand Transport Agency (Oppose) [F82] Rolleston Square Ltd (Oppose) [F83] Rolleston Retail Ltd (Oppose) [F84] RollTen Investments Ltd (Oppose)
[S41] Horncastle Homes Ltd	[F31] New Zealand Transport Agency (Oppose) [F32] CDL Land NZ Ltd (Oppose)
[S52] Selwyn Plantation Board Ltd	N/a
[S22] Selwyn Central Community Board	[F32] CDL Land (NZ) Ltd [F27] Ministry of Education
[S79] Rolleston Residents Association	[F32] CDL Land (NZ) Ltd [F27] Ministry of Education

- 199 The first issue raised in relation to this ODP relates to a small triangle of land which has been excluded from the ODP but which is within the wider ODP area. All parties agree that this area of land should be included and we concur with that for the reasons outlined in the officers' report. The ODP is, therefore, to be amended to show its inclusion.

Recommendation No 14

Submissions S2, S3, S4, S5, S6, S7, S8, S10, S14, S35, S36 and S37 (Decision No D1) be accepted in part and (Decision No D2) be accepted

- 200 The second issue related to Worthwhile Ltd seeking that the Outline Development Plan for this area include a neighbourhood centre on the connecting road to Dunns Crossing Road and effectively in the southern quadrant of the development area. The submitter owns the land in question.
- 201 The ODP as included in PC 7 shows a neighbourhood centre in a more central location of the ODP and adjacent to green linkages and medium density housing. A "*key open space location*" is also located close to where the submitters are seeking the neighbourhood centre. Some evidence on this matter was presented by Mr Bond a Surveyor who relies heavily on the fact that

a previous version of the ODP showed two centres one broadly where it is now proposed and one where the submitters are seeking it.

- 202 We note that the Rolleston Structure Plan shows a neighbourhood centre on the southern boundary of the ODP at East Maddisons Road and a local centre further north. Mr Wood does not support the provision of an additional centre on the basis that the density proposed by the ODP is not as high as was envisaged in the Rolleston Structure Plan and the centre proposed is better located being at the intersection of new primary and secondary roads.
- 203 Ms Liz White, a planner with RMG Ltd gave evidence for CDL the major landowner in this ODP. She was supportive of the ODP and the recommendations of the officers' report but she did raise a number of issues relating to terminology and inconsistencies. We note that the ODP text talks about the urban design principle of providing neighbourhood facilities within walking distance of any part of the development area and within walking distance of a bus stop serving the area. We note that these were important principles within the overall structure plan and we agree that neighbourhood centres should be located to provide maximum non motorised accessibility to the local neighbourhoods. In our opinion the location proposed by the submitters fails to do this and we do not consider that, at this stage of the development of this part of Rolleston, a second centre is required. We have earlier addressed the evidence put before us in terms of risks to the developing town centre of an over supply of local / neighbourhood centres.
- 204 Ms White correctly raised concerns about terminology which seem to relate to the history of this ODP. We confirm at this point that as signalled and largely agreed at the hearing, we recommend that the term *local business centre* should be removed from all parts of PC 7 and that there be two forms of centre a *neighbourhood centre* and *local centre*, along with appropriate definitions as now proposed by the officers in the 42A report. We note that clearer definitions were pursued by submitters 82, 83 and 84.
- 205 There were also some inconsistencies in documents, as to which type of centre is to be included in the ODP. The ODP plan legend refers to a "Neighbourhood Centre" however the parties all agreed that it should be a "local centre". We agree that this is appropriate and recommend that the ODP and Plan provisions be amended accordingly.

206 We also agree with Ms White that Policy B4.3.10 is intended to and should refer to both neighbourhood and local centres.

207 This helps confirm that Business 1 rules are to apply to both neighbourhood and local centres which addresses Ms White's concerns over the status of an early child hood centre which is permitted in the Business 1 zone.

Recommendation No 15

Submissions S2, S3, S4, S5, S6, S7, S8, S10, S14, S35, S36 and S37 (Decision No D3) seeking a new neighbourhood centre within ODP 1 be rejected.

208 The third issue identified in the section 42A report was that that this area does not need to be supplied with a separate water supply and this bullet can be removed from Policy B4.3.68. CDL Ltd also submitted that the areas shown on the ODP as specifically to provide *Comprehensive Residential Development* be altered to *Medium Density*. This is to provide greater flexibility as to where and how any comprehensive residential development might be delivered. Mr Wood in his report was receptive to this to the extent that the comprehensive residential development provisions sit within the medium density provisions and are enabling, however he was concerned that this might place at jeopardy the overall density target for the ODP. Mr Jason Adams the General Manager of CDL Ltd provided evidence on this point and emphasised that this would provide more flexibility while achieving the overall spatial design principles of the ODP. He stressed that in delivering the ODP it would be necessary at each stage to demonstrate that the density requirement would be achieved otherwise subdivision consents would become a full discretionary activity with notification consequences.

209 We have previously stated that we would like to see more consistency in the format and content of ODPs however we are satisfied that it is not necessary for ODP to commit to where within medium density areas comprehensive residential development must occur. This is because it is a restricted discretionary and the provisions enable consideration of the design and location issues to ensure that the development is appropriately designed and located.

Recommendation No 16

Submission 32 (Decision D1 and D2) seeking changes to the ODP surrounding the provision of water be accepted, and the changes to ODP regarding deleting comprehensive housing (Decision D3) be accepted.

- 210 The fourth issue related to the identification of a primary school within the ODP. Mr Wood advised us that the Ministry is not in a position to commit to a school within this area, nor to a location or site. However, it seems that there are reasonable prospects of a primary school at some stage. Ms White generally agrees with Mr Wood that not requiring a school within the ODP is a reasonable approach at this time, albeit that it does not provide any certainty going forward. The reference to this is in Policy B 4.3.68 which identifies matters that must be addressed in approving ODPs. ODP1 is being approved as part of PC7 and therefore this policy would only apply if a revised version of the ODP was submitted as a future Plan Change. If this were to occur we anticipate that the matter of an additional school would likely have moved forward and would be a matter that should further considered. We, therefore, agree that it should be identified as a matter in this policy.

Recommendation No 17

Submission 22 (Decision D3) and 79 (Decision D3) seeking a provision of a primary school within ODP 1 should be accepted in part.

- 211 Horncastle Homes submitted on the issue of interface standards at the boundary of medium density areas particularly in relation sunlight shading, however no appearance was made on this matter. In response Mr Hattam has recommended that the standard recession planes should apply at the boundary of all medium density areas. This would be achieved by the deletion of rule 4.9.1.1 and we agree that this is appropriate in terms of section 32.

Recommendation No 18

Submission 41 (Decision D1 and 2) seeking the removal of medium density housing along the landowner's property boundary should be rejected in part

- 212 Finally, the Selwyn Plantation Board has sought additional pedestrian / cycle connections to rural land to the west. Evidence was not submitted on this matter and we are therefore largely reliant on the advice from officers. We note that Plan Change 8, which is a private plan change, is seeking that the land west of ODP 1 be zoned for rural residential land and Plan Change 17 is also addressing this issue. We also note that ODP 1 provides for two road connections to Dunns Crossing Road and we agree with the officers that this provides adequate potential for pedestrian and cycle access in the event that rural residential development to the west is authorised.

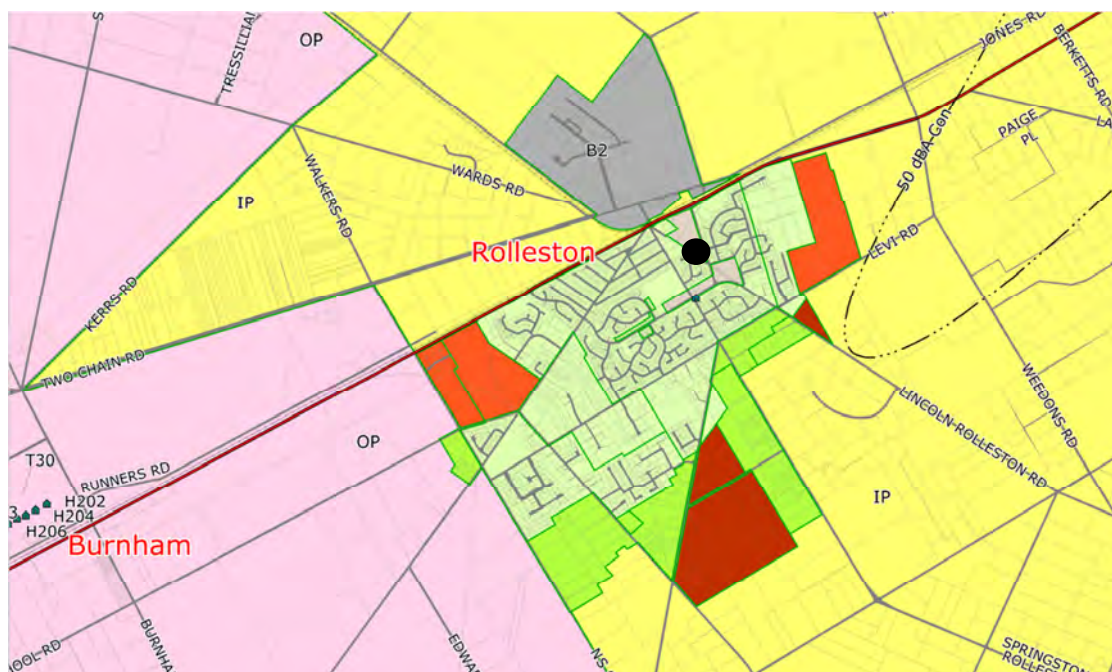
Recommendation No 19

Submission 52 (Decision D1, 2, 3 and 4) seeking additional pedestrian and cycle ways to a potential rural residential development should be rejected.

11. ROLLESTON ODP Area 2

213 This ODP area is a small triangular area of land of 1.6 hectares close to the centre of Rolleston and bounded by Rolleston Drive, Norman Kirk Drive and connecting also to Markham Way.

214 The land is owned by Selwyn District Council and the submissions and location are shown below.



Submission	Further Submission(s)
[S24] Greg and Maria Rolton	
[S55] Vicki Henderson and Ruben Groot	
[S34] Rolleston Park Residents Group	
[S43] Selwyn District Council	[F22] Selwyn Central Community Board (Oppose)
[S22] Selwyn Central Community Board	[F31] New Zealand Transport Agency (Oppose)
[S79] Rolleston Residents Association	

- 215 An ODP for this area was submitted by way of a submission from the Council. Key features of this ODP include:
- (a) A pedestrian and cycle linkage from Markham Way to the school.
 - (b) Vehicle access solely from Markham Way but extending to Rolleston Drive for cycles and pedestrians.
 - (c) A limit of 6 accesses off Rolleston Drive.
 - (d) A Markham Way buffer area requiring a 5 m set back single storey buildings and minimum of 450 m² sections.
 - (e) The area has been planned as a medium density area which is likely to include comprehensive residential development.
- 216 The Rolleston Park Residents group appeared before us and largely supported the ODP but sought that the Markham Way buffer area elements be "compulsory" and that wording to that effect be included in the ODP. In addition they sought that access from Markham Way, be limited to 17 accesses for amenity and traffic safety reasons.
- 217 PC 7 includes criteria for assessing the ODP. The ODP achieves a density of 20 households per hectare. We are satisfied that the ODP is consistent with the criteria but as stated earlier this is a case where the development constraints imported into the ODP must be given the status of permitted activity conditions requiring compliance, rather than the general compliance test. This will avoid the need for reference to compulsory elements. The ODP has been amended accordingly.
- 218 A number of submitters sought that access be from Rolleston Drive and not Markham Way. We accept that there are sound traffic engineering reasons why this is problematic as set out in Mr Mazey's report. We are also satisfied that the buffer area restrictions will provide an appropriate interface with the existing Markham Way residential area and that Markham Way is capable of accommodating the level of traffic generated by development. We therefore do not consider that a restriction to 17 accesses as sought by submitters is justified.

Recommendation No 20

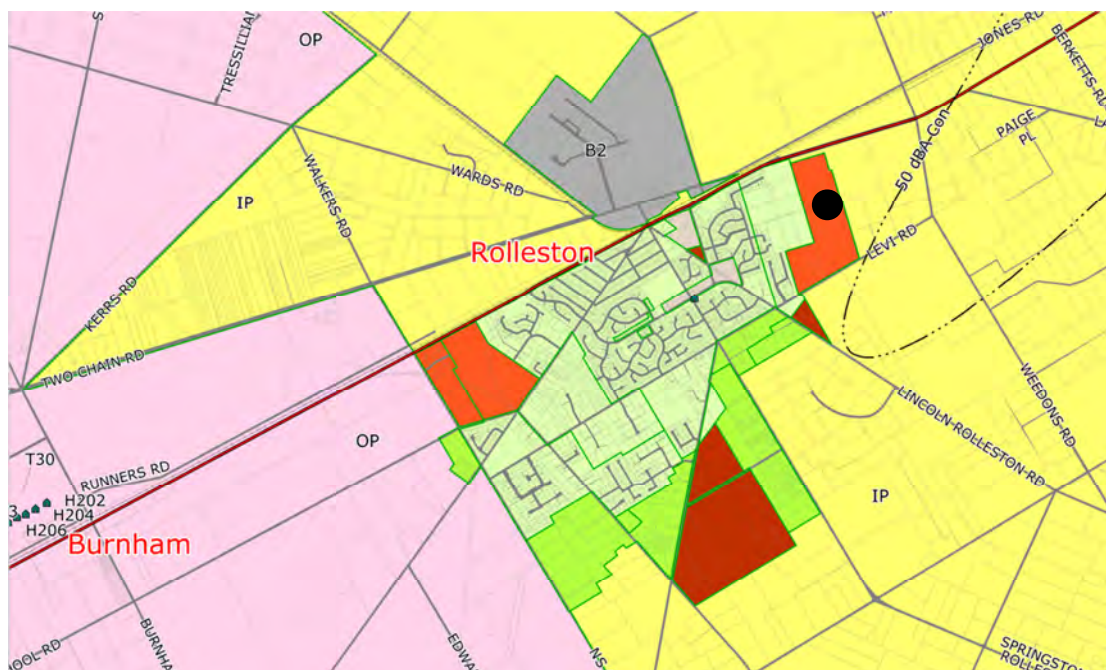
Submission 43 (Decision D1 and 2) seeking to include an ODP for ODP Area 2 and rezone the land to Living Z be accepted. Submission 34 (Decision D5) seeking the provision of the maximum number of household per hectare be rejected as this is provided in the ODP criteria and the allotment size for Living Z

Submission 22 (Decision D4), 24, (Decision D1), 34 (Decision D2 and 3) and 79 (Decision D4) seeking to modify the vehicle access in ODP 2 be rejected.

Submission 24 (Decision D2), 34 (Decision D1 and D4) and 55 (Decision D1 and D2) opposing medium density housing in ODP 2 should be rejected.

12. ROLLESTON ODP Area 3

- 219 ODP Area 3 involves 49 hectares of land on the north eastern edge of Rolleston. An ODP for this area was included in PC 7. While there are some submissions on this ODP it did not feature significantly in terms of evidence presented during the course of the hearing. It should be noted at the outset that the ODP area does not extend within 40 metres of State Highway 1. The location and submitters are as follows.



Submission	Further Submission(s)
[S11] LR and JA Bain	[F16] Joseph and Glennis Burdis (Support)
[S16] Joseph and Glennis Burdis	
[S44] Bruce and Michelle Coles	[F82] Rolleston Square Ltd (Support) [F83] Rolleston Retail Ltd (Support) [F84] RollTen Investments Ltd (Support) [F16] Joseph and Glennis Burdis (Support)
[S45] Murray and Lisa Alfeld	[F82] Rolleston Square Ltd (Support) [F83] Rolleston Retail Ltd (Support) [F84] RollTen Investments Ltd (Support) [F16] Joseph and Glennis Burdis (Support)
[S31] New Zealand Transport Agency	[F44] Bruce and Michelle Coles (Support)

[S22] Selwyn Central Community Board	
[S79] Rolleston Residents Association	

- 220 A number of submissions support ODP 3. Submissions seeking changes include expanding two peripheral cycle links, road reserve width for future roads, noise reverse sensitivity and access to SH 1.
- 221 Mr Wood reported that land adjacent to ODP 3 is being considered for rural residential as part of PC 17 and that this would require a road access from ODP 3. However, in his opinion, this could be accommodated in the event that PC 17 is approved, through approval of the subdivision consent as it is only a local road access rather than a primary or secondary road connection. We accept that this is a reasonable way forward in the circumstances.
- 222 NZTA lodged submissions on the other issues above but did not present evidence. NZTA sought deletion of rule 4.9.25 and replacement of it with rules that do not permit dwellings within 40 m of the highway and require noise insulation between 40m and 100m. However Mr Wood alerted us to a further Plan Change PC 12 which replaces rule 4.9.25. Mr Wood recommends that ODP 3 be excluded from 4.9.25 and that two additional rules be added as recommended by NZTA. In his opinion this would bring the provisions in line with NZTA policy while retaining provisions that apply to other areas. We accept this advice and recommend accordingly.
- 223 Finally, NZTA has questioned whether there is sufficient protection to ensure no access is formed to the State Highway. The ODP does not provide for any access to SH1 and therefore any application that did so is most unlikely to be approved without a plan change amending the ODP and NZTA would be considered an affected party. We concur with Mr Wood that in terms of section 32 adequate provisions have been included to ensure that ODP 3 does not include access from SH 1.

Recommendation 21

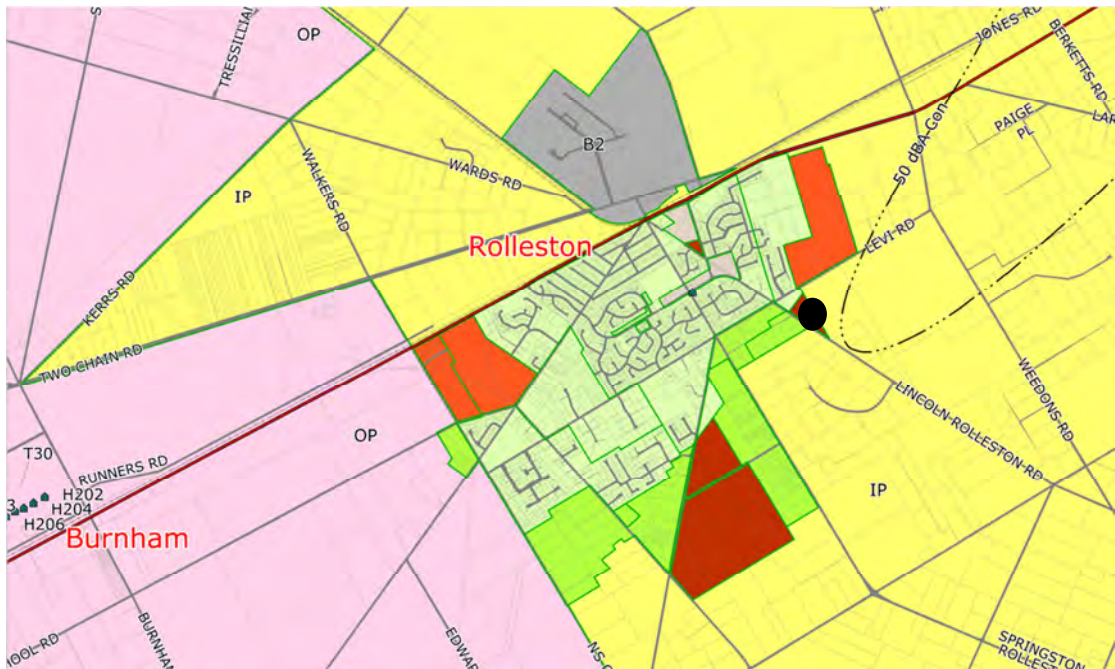
Submission 11 (Decision D1), 16 (Decision D1), 44 (Decision D1) and 45 (Decision D1) seeking land in ODP Area 3 to be rezoned to Living Z be accepted.

Submission 22 (Decision D5) and 79 (Decision D5) seeking the ability to turn a walkway / cycleway in to a road in the future is already addressed in the ODP and should be accepted in part.

Submission 31 (Decision D1 and D2) addressing reverse sensitivity issues should be accepted and that issue relating to the access to State Highway 1 (Decision D3) should be rejected due to existing provisions in the District Plan.

13. ROLLESTON ODP Area 4

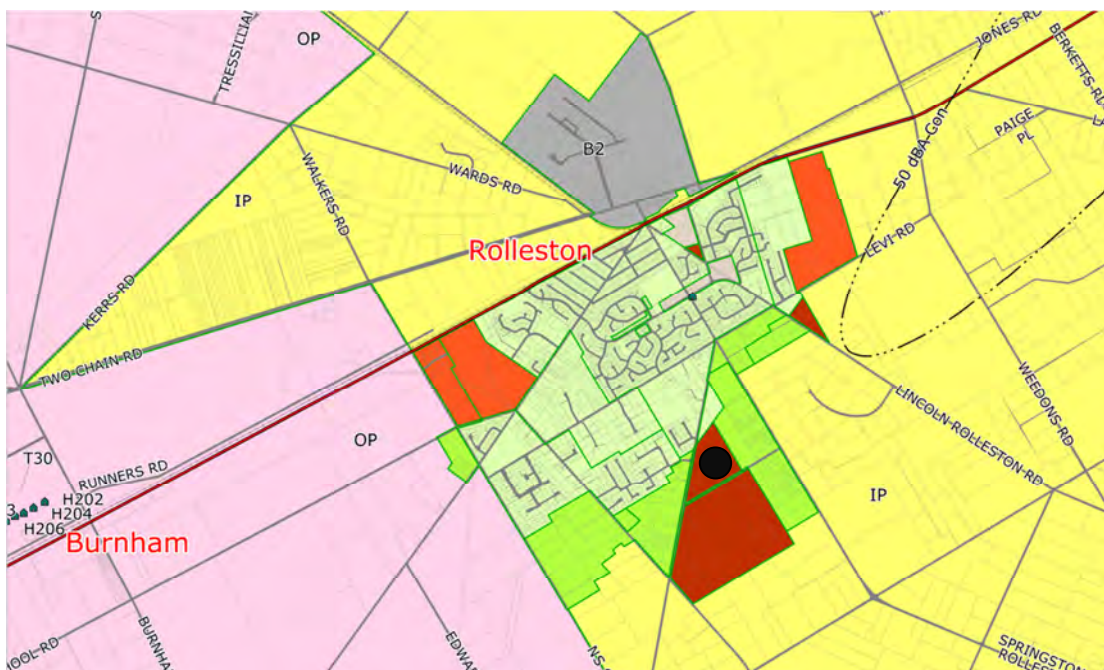
- 224 ODP Area 4 covers approximately 7.2 hectares of land in the east of the township currently zoned Inner Plains which permits subdivision down to a minimum allotment size of four hectares. The Rolleston Structure Plan shows housing density of 15 households per hectare for this area, and has the capacity to provide for some 108 new households.



- 225 No submissions were made on this Area. An ODP for this area has yet to be developed and therefore this area will remain deferred until such time as an ODP is included in the District Plan.

14. ROLLESTON ODP Area 5

- 226 ODP Area 5 covers approximately 19.3 hectares of land located between Goulds Road and Dynes Road to the south of the township currently zoned Rural Inner Plains. The Rolleston Structure Plan shows that this area will form part of a 42 hectare Recreation Precinct developed by the Council.



Submission	Further Submission(s)
[S91] Foster Holdings Limited	[F31] New Zealand Transport Agency (Oppose)
[S22] Selwyn Central Community Board	
[S79] Rolleston Residents Association	

- 227 Issues raised in submissions are

- (a) Combining ODP 5 and ODP 6
- (b) Extending the recreational precinct to the north

- 228 Mr Wood confirmed that Council has now purchased the land involved with ODP 5 and its development will be authorised by way of a designation. ODP 5 and 6 are therefore distinct in that one is solely for recreational development and the

other for integrated residential development. We do not see any merit in combining the ODPs for these areas of land and consider that section 32 is best served by keeping them separate.

- 229 Foster Holdings Ltd has suggested that ODP 5 be expanded to include all of the proposed recreation precinct rather than part of it. This involves the adjacent land to the north east. Mr Wood did not fully support this change and Mr Pedley for Foster Holdings clarified that as a result of concluding the sale of the land to Council it was no longer pursuing this part of its submission.

Recommendation No 22

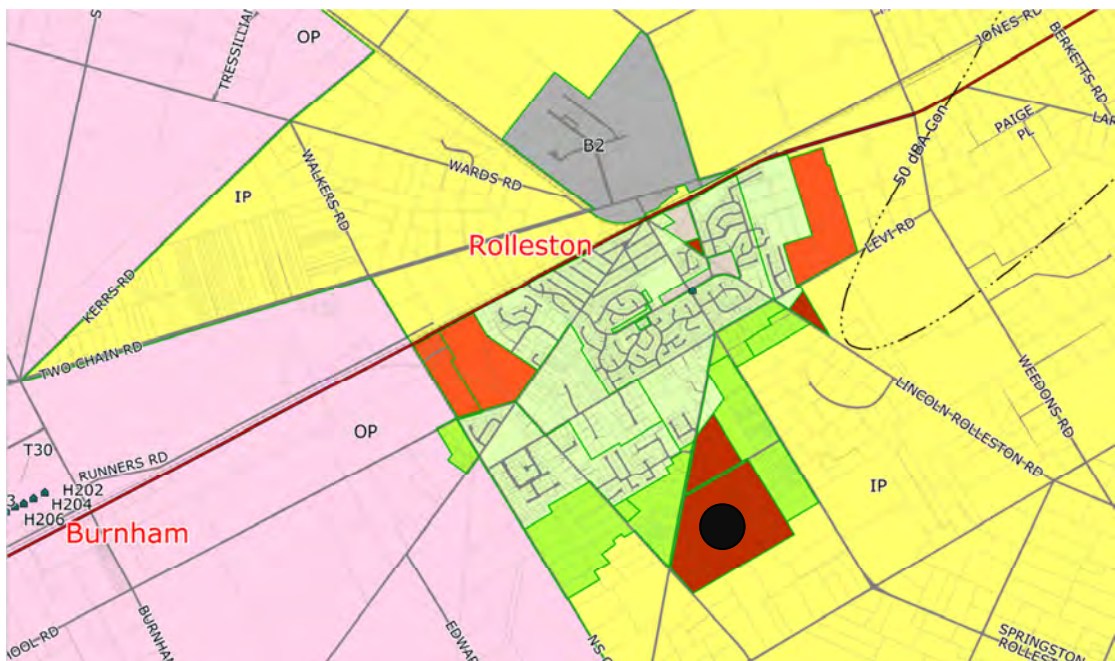
Submission 22 (Decision D6) and 79 (Decision D6) seeking to join together ODP Area 5 and 6 should be rejected

Submission 91 (Decision D1, D2 and D4) seeking rezoning of ODP Area 5 be accepted in part and (Decision D3) seeking that additional land within the Recreation Precinct should be rezoned to Living Z Deferred should be rejected

15. ROLLESTON ODP Area 6

230 ODP Area 6 covers approximately 82 hectares of land in the south of the township currently zoned Inner Plains. The Rolleston Structure Plan indicates an intended housing density of 13 households per hectare for this area (incorporating a mix of density from 10 to 20 households per hectare), and as a result it has the capacity to provide for some 1100 new households.

231 The location and submitters are shown below.



Submission	Further Submission(s)
[S91] Foster Holdings Limited	[F31] New Zealand Transport Agency (Oppose) [F82] Rolleston Square Ltd (Oppose) [F83] Rolleston Retail Ltd (Oppose) [F84] RollTen Investments Ltd (Oppose) [F22] Selwyn Central Community Board (Oppose)
[S22] Selwyn Central Community Board	[F91] Foster Holdings Limited (Oppose) [F31] New Zealand Transport Agency (Oppose)
[S79] Rolleston Residents Association	[F91] Foster Holdings Limited (Oppose) [F31] New Zealand Transport Agency (Oppose)

- 232 Foster Holdings Ltd lodged an ODP for this area by way of submission and presented extensive evidence in relation to that ODP. Mr Wood reported that after some modifications the officers are satisfied that the ODP now meets the criteria to be included within the PC 7 policy provisions.
- 233 As indicated earlier we consider this ODP to be a suitable model for others and asked the officers to adjust the other ODPs to be more consistent with the detailed approach provided for this one.
- 234 One of the issues discussed at the hearing was the neighbourhood centre proposed on the intersection of Goulds Road and East Maddisons Road. The ODP states that this will be a centre of 2,000 m² gross retail floor area. Officers have recommended in response to submissions from Rolleston town centre interests, that neighbourhood centres be limited to 2,000 m² with any development above that being classed as a non-complying activity.
- 235 We note however the Rolleston Structure Plan does not envisage the entire neighbourhood centre being located within ODP 6. Mr Wood has recommended that this be recognised through amended wording for the Policy B4.3.68 criteria to *"Provision of one partial neighbourhood centre in the vicinity of the intersection of Goulds Road and East Maddisons Road."* However, this does not specify how much of neighbourhood centre should be provided within this ODP. We consider that the ODP should be amended so that the neighbourhood centre does not exceed 1000m² gross floor area and we recommend that the ODP be amended accordingly with any other consequential adjustments. We also refer

back to our section on Rolleston Town Centre for further assessment and recommendations on neighbourhood and local centre issues.

- 236 The only other issue of significance was in relation to open space provision which Council has indicated is in excess of what may be acquired through reserve contribution. This has been accepted by Foster Holdings which has acknowledged that some of this area may remain in private ownership. We also note that Council has not made any commitment to retention of the water races around which the north south green corridors are based. While it is desirable that these be retained we agree with Nicole Lauenstein for Foster Holdings Ltd that this is not fatal to the merits of these green corridors.
- 237 One further matter arose in reply from Ms Greenup for the Council in regard to the ODP proposal to retain an existing 500 m long shelter belt as a rural feature. Ms Greenup considered the scale of these pines to be inappropriate and even their replacement to be inappropriate. We agree that retention or replacement of this shelterbelt is inappropriate and recommend that this reference be removed from the ODP.
- 238 We are comfortable that we have scope to recommend approval of the amended ODP 6 through this decision making process.

Recommendation No 23

Submission 91 (Decision D5 and 6) seeking to include an ODP within PC7 be accepted (subject to new ODP submitted as part of the pre hearing meetings) and rezoned ODP area 6 to Living Z (Decision D7 and 8) should be accepted.

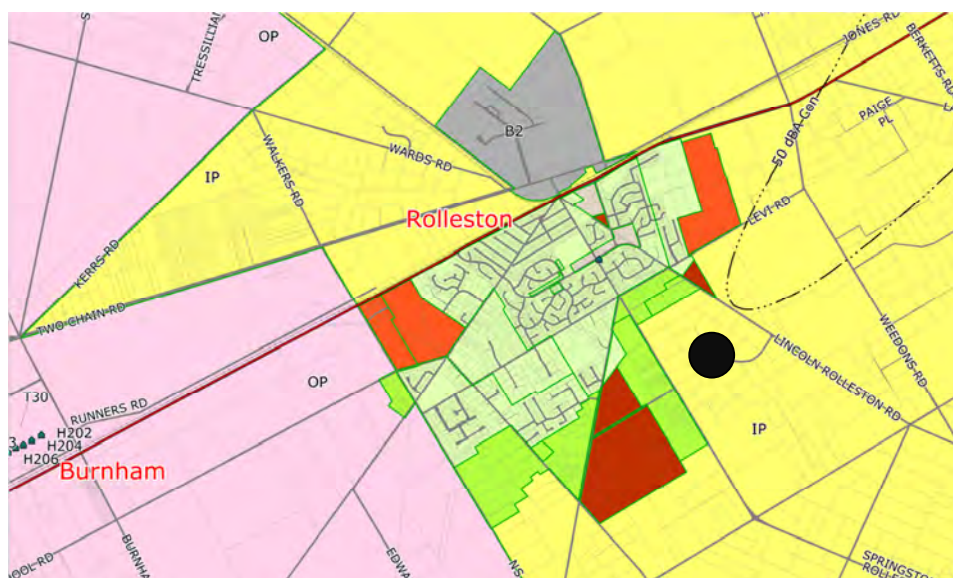
16. ROLLESTON: ADDITIONAL AREAS REQUESTED

239 A number of submitters sought that additional areas of land be zoned Living Z. In the case of Rolleston these are all within the PC 1 Metropolitan Urban Limit but not all are “Greenfield”. Mr Wood advised that it was the Council’s intention to promulgate a further plan change for areas with intensification potential. He considered that these are more complex because of the multiple land ownership involved.

240 We indicated at an early stage that we considered that all new growth areas were potentially within scope of PC 7 and we sought a further supplementary section 42A report on those area not considered in the initial report. We consider each of these areas below.

Branthwaite Drive

241 This is a large area of flat land totalling some 146 hectares and located between 1 and 2 kilometres of the centre of Rolleston. It has been developed almost entirely as rural residential 4 hectare blocks and the landowners agree that it has potential for intensification in accordance with the Living Z zone provisions. The area is shown on the Plan below.



242 The land has the potential to provide 2137 households and Mr Wood has concluded that this level of land provision is not required for Stage 1 growth in Rolleston to 2020, however he does support its inclusion for release for development after 2021. Mr Blake-Manson for the Council confirmed that wastewater services would be available for this area in the future but not in

Stage 1. There are also roading network advantages if this land is developed early in the stage 2 period, since it will contribute to the wider roading network development for Rolleston.

- 243 Ms Aston presented evidence for the residents which stated that their preference was for Stage 1 development of the land, but if it was to be deferred, she sought an interim regime to allow for lots down to 2 hectares with on site waste disposal in order to accommodate individual land owners needs. She considered that this would not compromise future more intensive development provided that a roading and servicing plan for the whole area was agreed at the outset.
- 244 Mr Wood considered that two ODPs would be necessary to be satisfied that interim development of the land would not compromise ultimate Living Z objectives and policies. His recommendation was that a Deferred Living Z zone be applied and that any interim development be the subject of a separate plan change process in the event that issues and risks can be resolved.
- 245 Although Ms Aston proposed some additional rules to provide for interim development, we have concluded that the need for the early development of this land has not been demonstrated, such that it outweighs the risk of inefficient servicing and development of this large and important area. We do not have any ODP material in front of us to consider. Nevertheless, we are satisfied that the location and character of this area does provide significant potential for intensification in a manner that is consistent with PC 1 and the Rolleston Structure Plan. We note that all notified PC7 growth in Rolleston is for the first period to 2021 only. However, as this is an intensification area we consider that it is appropriate to apply a Deferred Living Z zone so that it becomes part of the Stage 2 growth. This will provide the owners with the certainty to progress an ODP for this area which will then be incorporated into the Plan as part of a future Plan Change. Notwithstanding our conclusion on interim low density development of the area, we consider that providing for interim low density development is beyond the scope of relief available to us even if we wished to pursue it. That is because PC7 is concerned with development that achieves a density of 10 households / hectare. We are also mindful that rural residential development is specifically the topic of a separate Plan Change which has been proceeding through the decision making process in parallel with PC 7.
- 246 Ms Aston sought that in the event that we recommend in favour of deferred zoning, that our decision be expressed as "*no later than 2021*", in order to

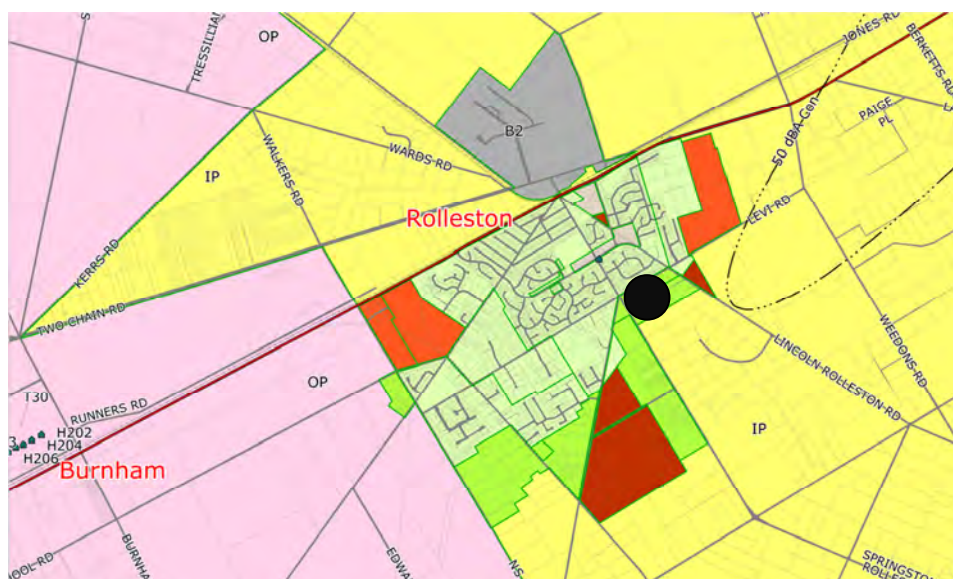
provide more flexibility to respond to growth needs. We are conscious that extensive monitoring of development will be undertaken and that this would be able to be reviewed when an ODP is included in the Plan. In the meantime, we consider that a clear signal that this area is planned for Stage 2 intensification is appropriate and sufficient.

Recommendation No 24

Submission 42, 56-63, 65-76, 81 and 92 (Decision D1 and 2) seeking Living Z zoning for Branthwaite Drive be accepted in part in that land be zoned Living Z Deferred pending approval of an ODP and development not before 2021.

Helpet Park

- 247 This area has already been developed as 0.5 ha lots and is located north west of the Branthwaite Drive Area with the existing wastewater treatment plant separating the two. It is shown as on the Plan below.



- 248 Like Branthwaite Drive this is considered an intensification area and in his Supplementary Report Mr Wood changed his recommendation to one of supporting Living Z Deferred.
- 249 This change in position arose largely because of a re-interpretation of PC 1 policies following discussions with Environment Canterbury. The effect is that intensification growth is considered to be permissible as being additional to the PC 1 growth allocations. Representatives of the owners of this area appeared before us and provided information that showed that existing landowners largely support intensification and redevelopment of the area. However, no Outline

Development Plan has been prepared. The area has the potential to provide 245 households. It is closer to the centre of Rolleston than Branthwaite Drive and therefore there is some logic to its early redevelopment.

250 A further Plan Change will be required to authorise redevelopment in accordance with an ODP. However, we do see merit in formalising a deferred zoning as part of PC 7 which will provide some momentum to that process. As a result, we recommend that that Living Z Deferred be applied to this area.

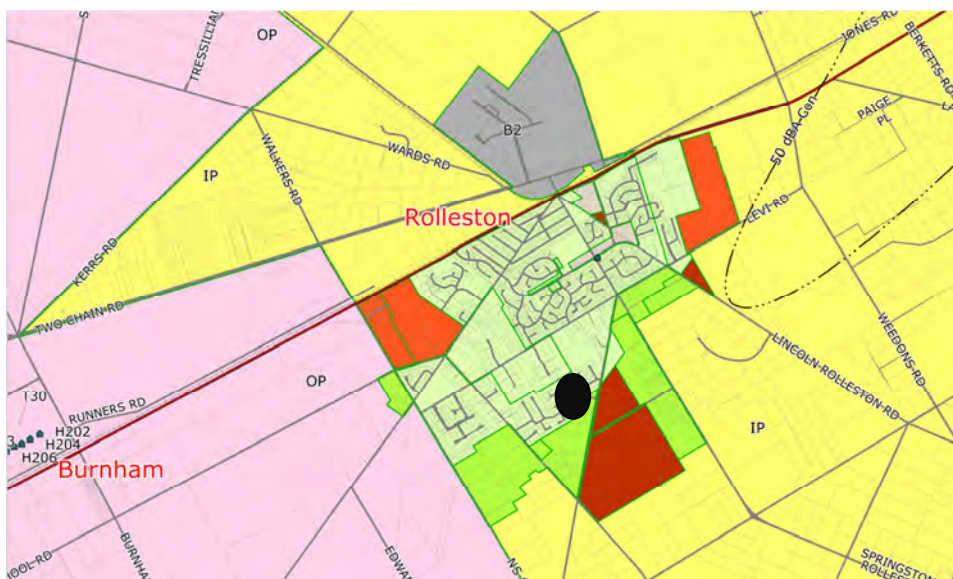
251 Mr Wood has subsequently proposed ODP policy provisions for inclusion in B 4.3.68 that address roading connections, pedestrian and cycle links , infrastructure and density. We recommend these be adopted.

Recommendation No 25

Submission 33 (Decision D1 and 2) and submission 64 (Decision D1, D2 and D3) seeking Living Z zoning for Helpet Park be accepted in part in that land be zoned Living Z Deferred pending an ODP only.

Oak Tree Lane

252 South of Rolleston and west of Goulds Road is a residential area based around Oak Tree Lane. The land in the vicinity of the access point onto Goulds Road was previously affected by Christchurch Airport Noise Contours. As a result four properties were excluded from the standard Living 1B zone and were zoned the lower density Living 2A Zone. This provides for lots of 1 hectare.



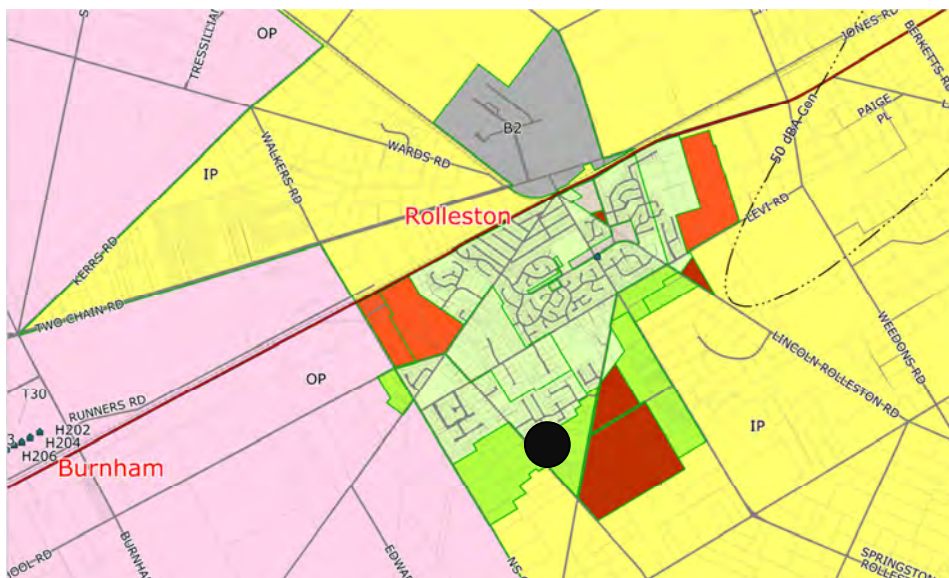
- 253 Mr Russell of 7 Oak Tree Lane appeared on behalf of the four landowners associated with this issue. Their submission is that PC 7 should address the anomaly caused by the revised Noise Contours formalised through Plan Change 23. This Plan Change was heard by us in 2010 and is now operative.
- 254 While we acknowledge that PC 7 is dealing principally with Living Z land it does also alter the rules applying to all Living Zones. We do not consider that this small area should be zoned Living Z as the form of development is well established through the existing development and an appropriate standard of development can be achieved simply by further subdivision of the 1 hectare lots without the need for an ODP. We, therefore, recommend that the area of land shown on the Figure below consisting of 2, 3, 7 and 15 Oak Tree Lane be zoned Living 1B.

Recommendation No 26

Submission 17 (Decision D1 and 2), submission 18 (Decision D1, D2 and D3), submission 19 (Decision D1, D2 and D3) and submission 77 (Decision 1 and 2) seeking Living 1B zoning for 4 properties in Oak Tree Lane be accepted.

East Maddisons Road / Gould Road

- 255 This is a much larger 30 hectare area which is considered an intensification area. It is 30 hectares of land developed to its existing zoned density being part Living 2 and part Living 2A. It is located south west of Oak Tree Lane area and is shown on the Plan below.



- 256 There are some 21 landowners involved and only 2 submitted to PC 7 seeking Living Z. However, this area is clearly signalled for intensification in the

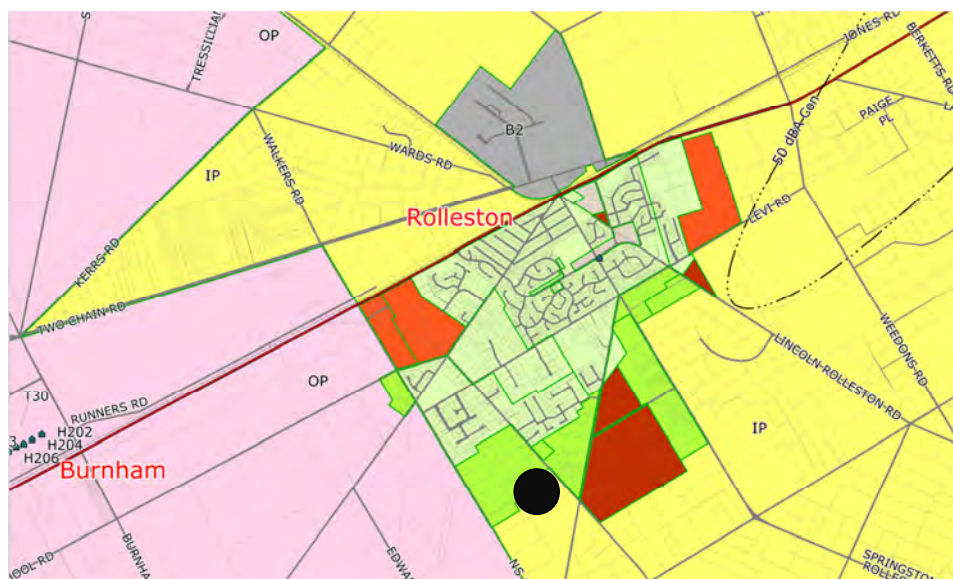
Rolleston Structure Plan. An Outline Development Plan is critical to the successful intensification of the area and may take some time to resolve. This area is similar in circumstances to Helpet Park and Mr Wood's revised recommendation is to zone the land Living Z Deferred. We agree with this recommendation.

Recommendation No 27

Submission 21 (Decision D1 and 2) seeking Living Z zoning for East Maddisons Road / Goulds Road be accepted in part in that land be zoned Living Z Deferred pending an ODP only.

620 Maddisons Road

- 257 This is an area further south and on the west side of East Maddisons Road. It is currently zoned Inner Plains and therefore is not considered to be an intensification area. It is an area that has been identified for longer term greenfield development but is not planned for Stage 1 growth.



- 258 Angeline Holton one of the landowners attended the hearing and argued against the more detailed planned approach to urban growth and sought that this land be included in Stage 1 and developed at the same time as ODP 5 and 6. Clearly not all land planned for in the Rolleston Structure Plan can or should be zoned for development at one time. The staging of development is a key component of the managed growth approach.
- 259 Mr Blake-Manson did not support early development of this area as it could lead to inefficient development of wastewater infrastructure. Monitoring of growth may lead to advancing this area earlier if growth is faster than predicted in the

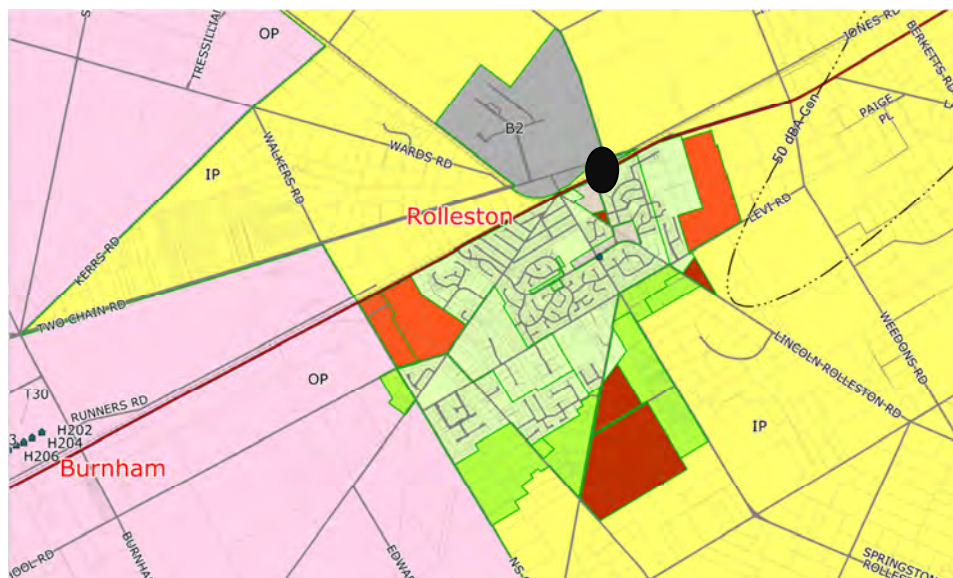
aftermath of the earthquakes however at this point we are not satisfied that there is justification for such a move. This area will therefore be addressed as part of a future Plan Change for Stage 2 growth.

Recommendation No 28

Submission 25 (Decision D1, D2, D3, D4, D5 and D6) seeking Living Z zoning for 620 Maddisons Road be rejected.

Park Grove

- 260 This is a 3.5 ha area of land adjacent to State Highway 1. The site has resource consent for a 67 unit lifestyle village on 2.2 ha of the area. However, the owners no longer wish to proceed with this project and wish to develop the land for medium density residential in accordance with Living Z provisions. There were no further submissions opposing this relief.



- 261 A draft ODP was tabled at the last hearing session and we invited further discussion with officers to determine if the ODP for this area could be agreed and therefore incorporated into the Plan as part of this Plan Change. As a result we have recently been provided with an agreed ODP which seeks to provide for 19 households per hectare across the site which is included in Appendix 5 to this report. Our understanding is that the medium density provisions would apply to the area and we note that the ODP shows land within 40 metres of the State Highway where noise abatement requirements will apply. The ODP incorporates a small central green space.

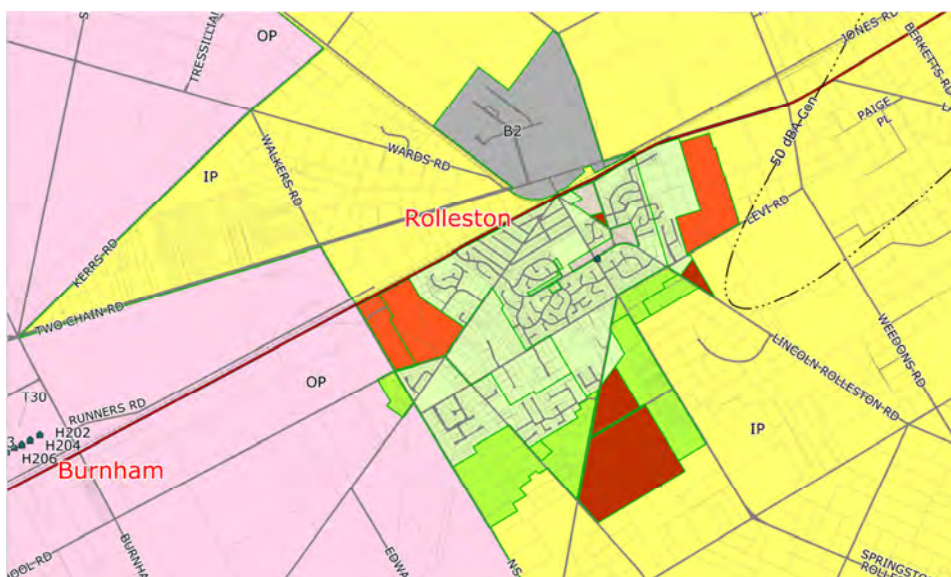
- 262 The ODP is consistent with the draft development proposals presented to us at the hearing and we consider that there is scope to include the ODP into PC 7 given that a large part of the site is currently consented for a higher density development. We have considered whether it would be more appropriate to leave the finalisation of this ODP to a separate Plan Change process as we have recommended in relation to ODP Area 5 for Lincoln. We have concluded that unlike that situation we do now have a sufficiently developed ODP before us to approve. We do not consider that any potentially affected persons will be disadvantaged by this approach. Accordingly we recommend that this ODP be included in the Plan as Rolleston ODP 7.
- 263 Finally, we note that Policy criteria for any future ODP changes have been proposed which include the main road connections, the 40 m noise abatement zone and pedestrian and cycle links. We consider those to be appropriate.

Recommendation No 29

Submission 53 (Decision D1, D2, and D3) seeking Living Z zoning for Park Grove be accepted and the Policy Criteria and ODP 7 included in the Plan.

Park Lane

- 264 Park Lane is east of Park Grove and consists of 33 ha of land in 8 titles and has 8 landowners. It adjoins ODP Area 3 to the east. This site also has an existing resource consent for a staged development of 185 lots in accordance with the Living 1B zoning. However, development has not occurred because the density is considered too low and the owners wish to provide for a higher density development.



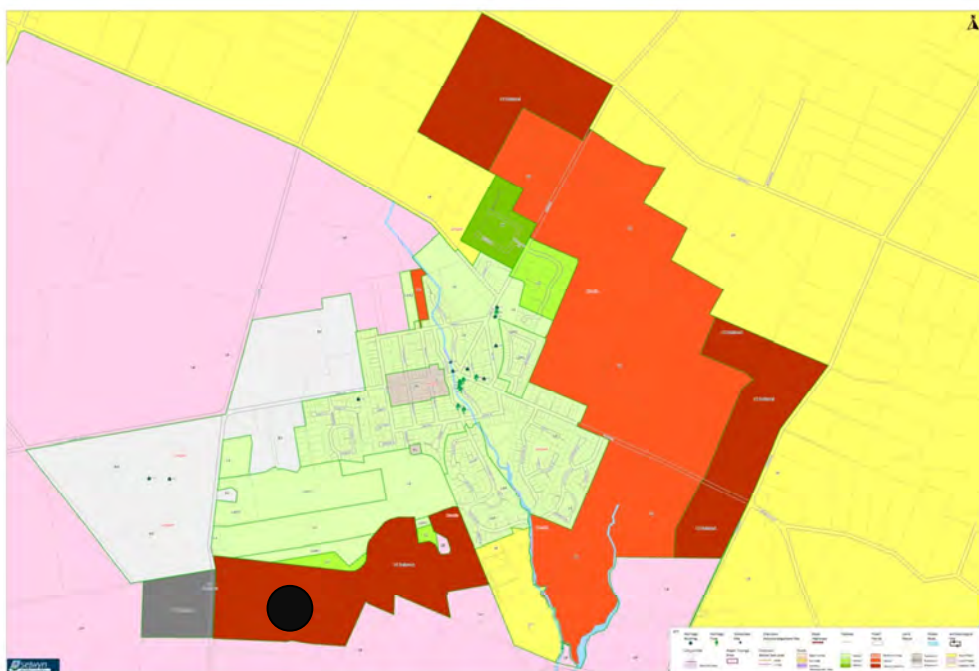
- 265 This area is located between Rolleston and ODP 3 and in all respects there is logic to enabling the development of this area without delay. There were no further submissions opposing the rezoning of this land. As with Park Grove we provided the opportunity for the submitter to advance an ODP for this area in a manner that appropriately integrates with ODP 3. The criteria/standards proposed by officers for this ODP include:
- (a) A main north-south primary road connection from Marlowe Place to Beaumont Drive.
 - (b) Three east west secondary road connections to ODP 3
 - (c) 40 m set back from SH 1
 - (d) No direct access to SH 1
 - (e) Connecting pedestrian and cycle links
 - (f) Local neighbourhood parks
- 266 We are satisfied that the ODP submitted achieves these outcomes and can be included in the Plan as ODP Area 8. The ODP is attached in Appendix 5.

Recommendation No 30

Submission 40 (Decision D2) seeking Living Z zoning for Park Lane be accepted and the Policy Criteria and ODP be included in the Plan.

17. LINCOLN ODP Area 1

- 267 We emphasise at the outset of this section that PC 7 seeks to zone land for growth of Lincoln for all of the planned growth arising from the Lincoln Structure Plan through to 2041. PC 7 seeks to pursue this in a manner consistent with PC 1 of the RPS which provides for two states of growth, Stage 1 being to 2020 and Stage 2 being to 2040.
- 268 ODP Area 1 covers the southern part of the "Dairy Block" south of Lincoln. The majority of the site is currently zoned Living 2 which enables subdivision down to 3,000 m² per lot. An ODP for this area was included with PC 7 which is designed to achieve 10 hh/ha or 495 households and this includes some provision for medium density housing. The ODP as notified included a stormwater management area to the south east. We were advised at the initial hearing that further investigations have shown that this land is no longer required for stormwater management and as it was not proposed for built development it should be excluded from the ODP Area accordingly. We did not receive any evidence challenging this but we did receive supplementary legal submissions from Lincoln Land Development confirming that their position was that this land should be removed from the ODP. Mr Wood confirmed that this was also his recommendation and we accept this and recommend accordingly. The location is shown below.



Recommendation No 31

Submission 89 (Decision D12) seeking deletion of the stormwater management area from ODP Area 1 be accepted.

- 269 The principal issue at contest at the hearing for this ODP was that it was proposed for Stage 2 development (post 2020) and the proponent of this development Lincoln Land Development Limited considers that development should be enabled without any deferment. By way of context we note that Stages 1 and 2 of the Dairy Block development were consented in December 2009 for 400 sections and Mr Schwartfeger told us that developments works are well underway.
- 270 We received extensive legal submissions and technical evidence on this matter for which we are grateful. At the hearing the Council did not contest the merits of developing this area but wished to comply with PC 1 household allocations and as a result allocated this area to Stage 2 in accordance with sequencing established in the Lincoln Structure Plan.
- 271 In terms of technical evidence Dr Jan Kupec told us that his geotechnical investigations have confirmed that the site is suitable for the intended development. Mr Schwartfeger, Mr Kerr and Mr Dasler told us of the inefficiencies in stormwater management and wastewater infrastructure which would arise from deferment of ODP 1. Finally Jason Jones explored his assessment of the implications of amended staging to enable early development of this area from a broader planning perspective.
- 272 We have not gone into the detail of these arguments because subsequent events make that unnecessary. However, we do observe that we were impressed with the analysis presented and the overall merits of enabling a smooth progression from existing consented northern development to ODP Area 2 This makes sense in terms of infrastructure efficiency and also in terms of a potential increase in demand following the earthquakes.
- 273 At our final hearing week we were advised that the UDS Partners including Selwyn District Council had reached agreement with Lincoln Land Development in relation to its appeal on the staging provisions of PC 1 and have now agreed to include ODP 1 in the first stage of growth allocation in PC 1 in response to the dramatic change of circumstances arising from the Canterbury earthquakes. Although that settlement has not been confirmed by the Court, we take it into account in terms of the weight we provide to PC1.

- 274 Mr Wood formerly changed his recommendations on this matter in his Supplementary 42A report relying on the PC 1 agreement and without reference to the merits presented in evidence by the submitter's witnesses. We were however provided with a copy of a consent memorandum to the Environment Court requesting that the appeal be disposed of through the moving of this allocation into Stage 1. We were told that none of the three s274 parties to this appeal had indicated any opposition to this relief.
- 275 We note that the Court in its 4th Interim Decision on PC 1 has expressed some concerns regarding aspects of PC 1 and its compatibility with the settlements that have been reached. We have previously come to the conclusion that PC 1 should in the current circumstances be given only modest weighting in our evaluation. Accordingly we have focussed on the merits of proposal.
- 276 After having heard and considered LLD's and the Council officer's evidence on the deferment/staging issue, we had already reached the preliminary view that the deferment was not necessary or efficient. We reached that view prior to being informed of the intended settlement and accordingly we have no difficulty recommending that removal of the deferred status as is now proposed by all parties. We have addressed the wider merits of the staging process outlined in PC1 and reflected in PC7 earlier in this report.

Recommendation No 32

Submission 85 (Decision D2, D3 and D4) seeking removal of Deferred status for ODP 1 be accepted. Decision D1 be accepted in part. Decision D5, D9, D10 and D11 be rejected as D2, D3, and D4 has been accepted.

- 277 A further issue in relation to ODP 1 is the reference to a "*Potential By Pass Road*" along the southern boundary buffer to ODP 1. The inclusion of this indication was opposed by LLD and was also opposed by Lincoln University for both this ODP area and ODP Area 5. This matter is discussed in greater detail in relation to ODP Area 5 but in summary we have found that on the evidence put in front of us that the route has some "potential". No detailed investigations have been undertaken on specific alignments and the Council is not in a position and does not seek to lodge a Notice of Requirement for a designation.
- 278 Nevertheless, we agree that an intended strategic road should not be ignored in planning terms. While it may be a long term prospect only, it does have some level of assessment from previous studies and was built into the spatial logic of

the Lincoln Structure Plan. In our view it is appropriate to take into account in the structuring of this ODP and in the future detailed design of relevant stages of development. This will protect the corridor and keep this option available for further investigation. We therefore find that an indicative alignment of a potential future by pass road is appropriate for inclusion on the ODP subject to some clearer wording as to the status of that indication.

Recommendation No 33

Submission 85 (Decision D13, D20, D21 and D23) seeking deletion of the reference to "Potential By Pass Road" on ODP 1 be rejected but that additional wording be included by way of explanation as detailed in our recommendations in relation to ODP Area 5. Decision D12 be accepted.

- 279 Issue 3 in the section 42A report relates to the existing wastewater treatment plant. This site is now to be removed from ODP 1. Mr Blake-Manson explained to us that plans for a new waste water treatment plant at Rolleston that will also serve Lincoln and other centres called Pines II are now well advanced. As a result the Lincoln oxidation pond will be decommissioned but will remain capable of use in emergency circumstances. However, also on the site are aerators which will remain an important operation part of the new wastewater system going forward. In Mr Blake-Manson's opinion a risk of odour from these facilities will remain on an ongoing basis and therefore it is important that the existing rule requiring any dwelling to be set back 150 metres from the boundary of the designated site remain in force.
- 280 Lincoln Land Developments sought initially that this rule be deleted and later in evidence from Mr Jones that it be amended so that it does not apply if the risk of reverse sensitivity has been removed. The additional wording proposed was *"Except that this set back is not required in the event that the Sewerage treatment Plant is fully or partially decommissioned such that the risk of reverse sensitivity effects from the plant affecting adjoining Living 1A or Living Z land has been removed."*
- 281 We note that this issue also affects land to the east which submitters sought to be included in the Living Z zone and we address this in a later section.
- 282 As far as ODP 1 is concerned we are now in a position where the parties agree and we recommend that this Area be included in Stage 1 enabling development to proceed in an orderly manner following the Dairy Block. We recall Mr Dasler in answer to a question indicating that the path of development would most

likely progress from east to west. This means that the area in the vicinity of the waste water treatment plant is likely to be developed earlier rather than later.

283 Given Mr Blake-Manson's position that aerators will continue to operate on the site with some odour risk, we consider that there is a low probability that this will have changed at the time of detailed design of this stage and that it is prudent and appropriate that this be taken into the detailed planning for this area. The buffer set back should therefore be shown and described on the ODP.

284 While there is some possibility that design of the new wastewater facilities may change we do not consider that the wording proposed by Mr Jones is justified nor does it provide sufficient certainty in its application. We note that in the event that the site was fully decommissioned a resource consent could be sought and, while it would be a non complying activity, if the reason for the rule no longer existed all other things being equal it would be capable of consent. Furthermore deletion of the rule could be addressed through a future plan change.

285 Our recommendation therefore is that the rule remains.

Recommendation No 34

Submission 85 (Decision D14) seeking removal or amendment to the Lincoln Sewage Treatment Plant setback rule be rejected.

286 LLD also sought that the ODP be amended to refer to a "key open space" within the western part of the ODP. The Councils recommendation was that this be reduced in extent to an "open space linkage". Mr Jones in his evidence recommended a notation of "indicative location for future linear park". In reply Ms Greenup confirmed that Council is unlikely to have vested more than 1.2 ha per 1000 new residents and that open space in excess of this is likely to remain in private ownership. She recommended that this be reflected in the ODP text and we agree that ODP text should signal this likely outcome.

Recommendation No 35

Submission 85 (Decision D25) seeking to change a 'key open space linkage' to 'key open space location' be accepted in part.

287 Finally Ngai Tahu requested that the ODP be amended to include a riparian margin adjacent to L1 (Liffey Creek) and a spring reserve on the southern

boundary of ODP 1. During the hearing we heard from Andrea Lobb General Manager of Mahaanui Kurataiao Ltd who accepted that the springs of concern are not within the ODP area. Mr Wood supported the submitters concerns about the need for an esplanade reserve along that part of the Liffey within ODP 1 but noted that this area is identified in the ODP for stormwater purposes and not urban development. As a result of the changes to the stormwater management areas this land is now to be excluded from ODP Area 1. Similarly the wetland area is outside of the ODP Area. ODP 1 therefore does not now have scope to address these matters.

288 The statutory mechanisms for esplanade reserve rely on subdivision of the adjacent land which may not occur. We were advised that the Council is developing a riparian management plan as part of the global stormwater consent application and that extensive consultation with iwi is underway as part of that process.

289 We agree with the officers that in these circumstances this matter is best addressed through a riparian management plan.

Recommendation No 36

Submission S87 (Decisions D4 & D5) seeking inclusion of a riparian margin adjacent to the Liffey Creek and spring reserve on the southern boundary of the ODP area be rejected in part.

Therefore submission S85 (Decision D22, D24, D26 and D27) seeking the retention of ODP Area 1 be accepted in part.

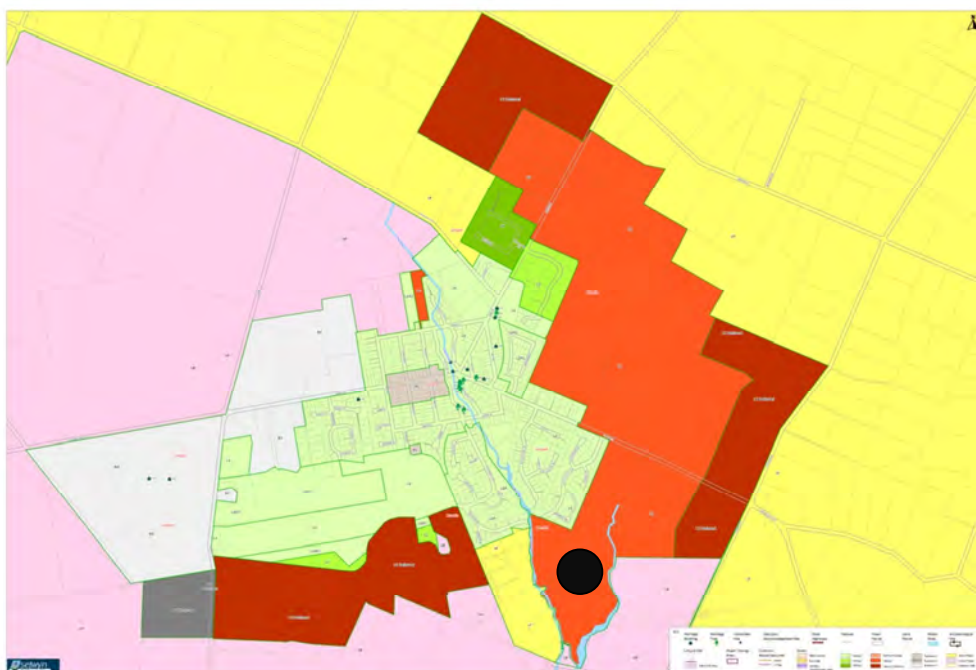
18. LINCOLN ODP Area 2

290 ODP Area 2 involves 78 hectares of land to the south east of Lincoln. 28 hectares of this has been zoned Living 1 Deferred through a private plan change (PC 4) by Broadfield Estates. The zoning was deferred because of a lack of capacity in the Councils reticulated sewerage treatment facility. We were advised that removal of the deferred status was imminent and this has now been implemented.

291 The ODP for the whole area provides for 440 households split over 2 periods. The section 42A report deals with a number of minor matters that were not contested at the hearing and with which we concur.

292 These are:

- (a) Deletion of text on page 48 of PC 7 referring to the preferred growth path.
- (b) Deletion in policy B4.3.56 of the reference to provision of wells and water pumping facilities.
- (c) Updating of table E12.2 to include reference to the L2 river as being subject to assessment for a 20 m esplanade reserve



293 We note Mr Blake-Manson's advice that a spring waterway concept is being developed to address Ngai Tahu's concerns regarding the mixing of stormwater and spring water and we agree with the recommendation to update the ODP to refer to this.

- 294 We also note that the ISMP seeks to protect the existing springs which is a matter of significance to iwi. While this is being addressed through a separate consent process we consider that reference to protection of the springs, by way of springs reserve if necessary, should be made within the ODP so that this is a matter that is considered at the time of subdivision. To this extent we recommend in favour of these submissions.
- 295 We have also considered the issues raised by Ngai Tahu in regard to the location of the Stormwater Treatment Area, protection of Existing Drain/ Race and Riparian Planting and the location of swale rules and alternative stormwater treatment. We have accepted the recommendations of the officers contained in the Section 42a report.
- 296 Broadfield Estates, which now has a development zoning in place, albeit deferred at the time of the hearing, wishes to proceed under that zoning rather than be caught up in the PC 7 process which if appealed could delay development of this area. The issue as discussed at the hearing is one of timing. We heard from Mr Evatt that consent has been sought for 234 residential lots and this was on hold pending the deferral being uplifted which has now occurred. We were also pointed to an issue with the minimum lot size in PC 7 when compared with the subdivision consent sought which has a few lots smaller than 550 m² and would result in the consent being non complying.
- 297 We note that Mr Wood in his reply changed his recommendation in this regard to one that retains the Living 1 Deferred on this land and that the land is shown as a shaded area on the ODP showing that this land is zoned Living 1 Deferred.
- 298 We have some sympathy for the position faced by Broadfield Estates and we were not pointed to any particular improved standard of development that would arise if Living Z provisions were applied. We understand that the consent is sought is consistent with the ODP as proposed. In the current circumstances where there is a particular short term demand for residential land arising from the earthquakes it would be particularly inappropriate to put in place unnecessary hurdles or risk to making progress.
- 299 We therefore agree with the approach suggested by Mr Wood which leaves the Living 1 zoning applying to this land.

Recommendation No 37

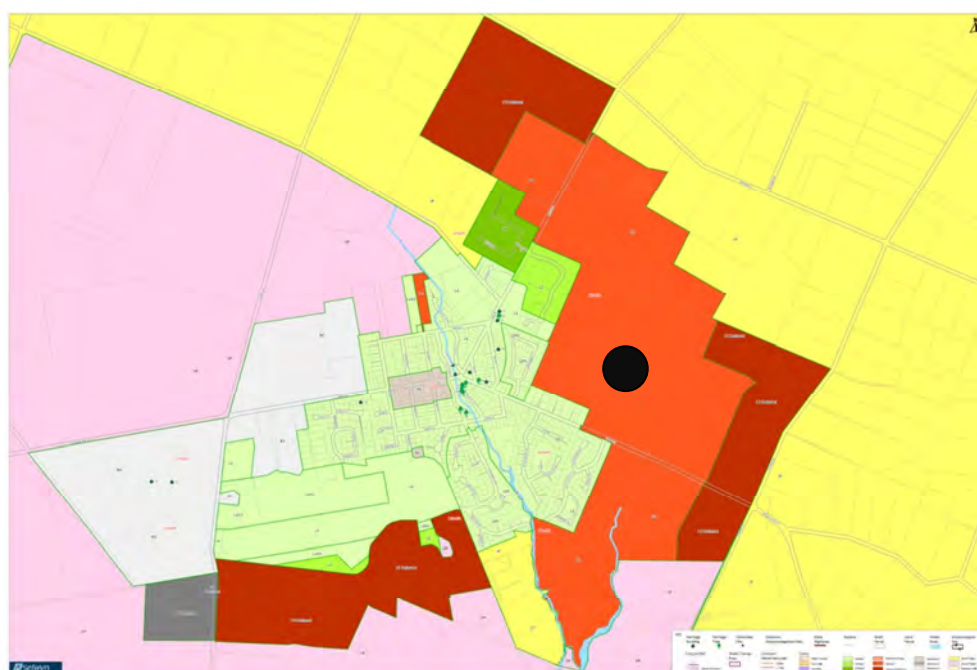
Submission 15 (Decision D15 and D16) seeking an amendment to Specific Policies for Townships – Lincoln and Policy B4.3.56 be accepted.

Submission 87 (Decision D7) seeking an amendment to ODP Area 2 be accepted. Decision D8 be accepted in part. Decision D6 and D9 be rejected.

Submission 49 (Decision No D1) seeking to remove the submitter's land from ODP Area 2 be accepted.

19. LINCOLN ODP Area 3

- 300 This is the largest ODP within Lincoln and consists of 155 ha with the ability to accommodate 1480 households. Part of the area is currently zoned Living 2. The ODP includes 6.5 ha of medium density and has two catchments with the northern area discharging to the Halswell River and the southern half to Lake Ellesmere.
- 301 Agreement was reached between Plant and Food and officers regarding the first issue which relates to security risks associated with the Browns Lane pedestrian and cycle route while the Duncans Block remains operational. The agreement is that this facility not be developed until the Duncans Block is developed for residential purposes and we are comfortable that the ODP be amended to clearly indicate this.
- 302 Plant and Food also argued that non compliance with the ODP in relation to infrastructure should also be a restricted discretionary activity rather than a full discretionary activity. We have discussed earlier in this report our concerns with application of the generally in accordance test which does in itself import a degree of flexibility. If as Ms White for Plant and Food suggest infrastructure changes are unlikely to result in adverse effect than it is likely to pass the test for non notification and possibly service.



- 303 Clearly this issue is one that is relevant to a number of ODPs although Ms White does point to this ODP having multiple landowners and staged infrastructure. However, on balance we consider that the framework of this Plan Change is best

served by retaining a clear distinction in class of consent between all matters that are in accordance with the ODP and those that are not.

- 304 Fulton Hogan Ltd also sought that three medium density areas in the ODP as notified be removed on the basis that the extent of provision is excessive. Mr Wood told us that 6.5 ha of land in this ODP is shown for medium density development which is only 4.4% of the total net area available for development. Mr Dewe who gave evidence for Fulton Hogan is no longer opposed to this provision because of changing market trends. We understand that Fulton Hogan are happy to proceed on the basis of the ODP notified and we do not see any justification for density reductions. Our recommendation is therefore that this submission be rejected.
- 305 Mr Dewe did provide extensive evidence on the Fulton Hogan submission seeking that the minimum average lot size for the Living Z zone in Lincoln be reduced from 650 m² to 600 m² and the minimum individual allotment size be decreased from 550 m² to 500 m². Mr Hattam for the Council reported in detail on this issue and we agree with Mr Hattam that as sites get smaller the ability to control the effects of development through traditional rule mechanisms is reduced and there is more reliance on building design to achieve good environmental outcomes. The average site density manages the overall spaciousness and density character of the area and prevents dominance of smaller lots. His recommendation as a result was that the minimum lot size be reduced to 500 m² but there be no change to the average lot size.
- 306 Mr Dewe in his evidence compared the existing and proposed lot size rules and argued that the existing opportunity to create allotments in the 450-500 m² range will disappear while the average lot size remains the same. In his opinion this will result in inefficient use of land and inferior urban form.
- 307 He considers that better building design will be able to be achieved if more resources are able to be spent on the building and less on the land.
- 308 We were generally impressed with the basis of this evidence and it was apparent that Council officers could also see the merits in the evidence presented. As a result Mr Wood confirmed in his reply that he accepted the changes proposed by Fulton Hogan as they relate to the Living Z Zone in Lincoln. We accept this recommendation and note that this will likely have the result of increasing the yield in Lincoln which Mr Wood estimated in his supplementary section 42A report to be 772 households.

- 309 A further issue with this ODP is the identification of a “possible school location”. The Ministry of Education lodged a submission but did not appear at the hearing seeking that this site specific notation be removed. The Ministry does intend to proceed with a school in this part of Lincoln but does not wish at this stage to be committed to a particular site.
- 310 We concur with Mr Woods that schools are important part of the fabric of our urban areas and their location within a new Greenfield area and relationship to road network pedestrian and cycle links and open space is important. He referred to policy B3.4.7 which requires ODP to consider such issues. However, we also recognise that provision of school facilities is at the discretion of the provider and is often authorised by way of designation. Fulton Hogan has noted that if the site is not reserved for a school it will be developed for residential purposes. We consider that community facilities such as schools are an important ingredient and as with Rolleston ODP 1 we consider reference should be made in the text to the ODP that the Council and other parties will continue to work with education providers to ensure that school provision is integrated into the ODP in a manner that ensure good environmental outcomes. We recommend accordingly.
- 311 We have also considered the issues raised by Ngai Tahu in regard to the location of Springs Reserves / Riparian Planting and Planting of Streets and Reserves. We accepted the recommendations of the officers contained in the Section 42a report.
- 312 Finally we note that there were submissions seeking that paths within the Liffeyfields stormwater reserve should be restricted to the margins and not cross the reserve. Mr Mazey confirmed for us that existing paths will be used and new paths will be limited to the perimeter unless connectivity to adjoining properties is limited. We also agree with Mr Wood that this level of detail is not appropriate for the ODP but the principal of minimising paths crossing the reserve should be referred to in the ODP text. We recommend accordingly.

Recommendation No 38

Submission 29 (Decision D1 and D2) seeking the removal of a pedestrian and cycle route via Browns Lane from ODP Area 3 be accepted in part.

Submission 29 (Decision D3) seeking text changes to ODP Area 3 to allow greater flexibility to allow for minor amendments which may arise as a result of detailed design at subdivision be rejected.

Submission 47 (Decision D2) seeking the removal of three Medium Density areas from ODP Area 3 be rejected and Decision (D1 and D4) seeking to amend the site size in the Living Z zone be Accepted in Part. Decision D3 be accepted.

Submission 27 (Decision D1, D2 and D3) seeking to remove the school site from ODP Area 3 be accepted.

Submission 12 (Decision No D1) seeking to alter cycle and pedestrian routes on ODP Area 3 be rejected in part.

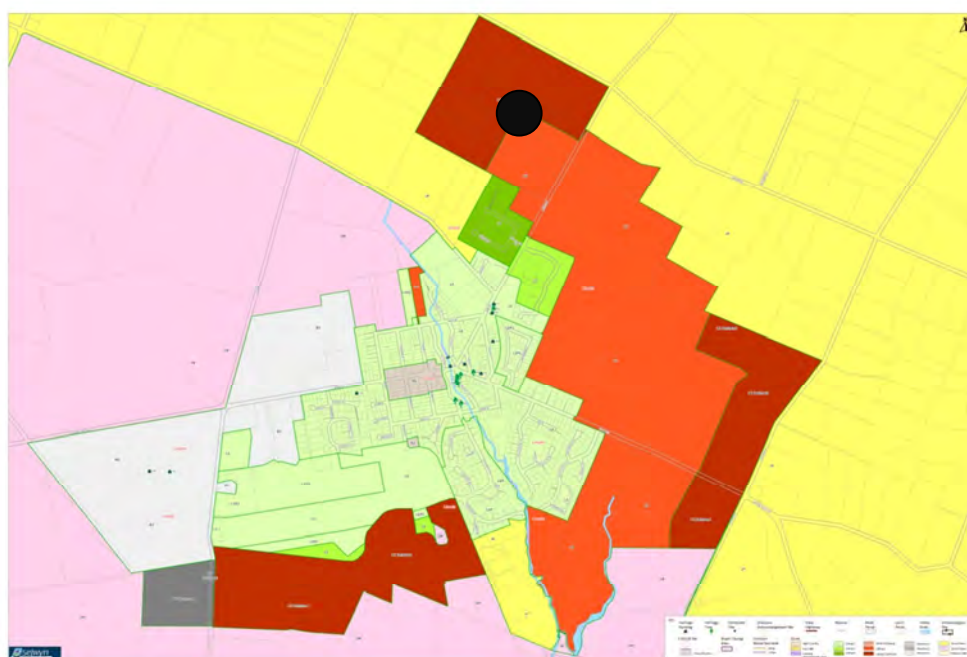
Submission 87 (Decision D10 and D11) seeking to amend ODP Area 3 be rejected.

20. LINCOLN ODP AREA 4

313 ODP 4 is an area of 61 hectares to the north of Lincoln adjoining ODP 3 and bounded by Tancred's Road and Birch Road. To the southwest is the New Zealand Institute for Plant and Food Research Ltd known as the Smith's Block.

314 A number of submission matters were resolved between the parties either prior to the hearing or at the hearing and we recommend in support of those changes. These are:

- (a) Including a 20 m wide buffer within ODP 4 where it adjoins the Smiths Block incorporating the proposed road link to Boundary Road where appropriate
- (b) Removal of the western second arrow for the road link so that it does not route through Plant and Food property.



315 Craig Thompson sought to amend the position of the primary road where it connects to Birchs Road to reduce impacts on that particular property. No evidence was presented in support of this relief but Mr Mazey explained the importance of the primary road linking ODP Areas 3 and 4 to establish a collector ring route through the new development areas. He considered that there were important traffic safety reasons to provide a cross roads connection at this point and that there was little opportunity to move the overall road system north or south without having greater effects on existing activities. The proposed road will pass through an undeveloped corridor of the Claridges

property some 50 metres wide. We concur with this assessment and do not recommend any changes to this aspect of the ODP.

- 316 Ngai Tahu has concerns regarding riparian planting and springs in this area, however in their evidence did not substantiate the existence of springs in this ODP Area. We note that in reply officers agreed that riparian planting should be noted in the text of the ODPs and we support that position and recommend accordingly.
- 317 Evidence was presented by Patricia Harte for Early Property Holdings and BHL Trust. She expressed concern about the application of the net density which has been carried forward from PC 1 and refers to esplanade reserves or access strips that form part of a larger regional or sub regional reserve network. The request is that the latter part of this definition be deleted because it is not clear what reserves form part of the regional or sub regional network. Mr Wood told us this definition is contained within PC 1 and indicated that it would be inappropriate for PC 7 to amend a definition in a higher order document. He also noted that his understanding was that Selwyn did not have any regional or sub regional reserves. We agree that the definition should cross reference to a specified list of reserves however if there are no such reserves in the district this is not a matter we need determine here. We also agree that this matter is best resolved through the process of finalising PC 1 which is with the Environment Court. We therefore do not recommend that any changes are made to PC 7 in this respect.
- 318 Ms Harte also sought a change to the boundary within the ODP between Stage 1 and the deferred Stage 2. In her opinion her proposed change is more logical as it includes all rather than part of the key linear reserve and also includes a secondary internal link road and land fronting that road. The implications of this change on household numbers is an increase of 19 in Stage 1. Mr Wood supported the change proposed and we agree that it is more logical and in terms of section 32 more efficient and effective.

Recommendation No 39

Submissions S29 (Decision No D5) and S30 (Decision No D3) seeking the inclusion of a landscape buffer and setback from the Smiths Block be accepted. Submission S29 (Decision No D4) and Submission S30 (D1 and D2) be rejected.

Submissions S29 (Decision No D6) and S30 (Decision No D4) seeking the removal of a main road connection through the Smiths Block be accepted.

Submission S40 (Decision No D1 and D3) seeking the realignment of the primary road within ODP Area 4 be rejected.

Submission S87 Decision No D12 be rejected in part and Decision No D13 be rejected relating to amendments to ODP Area 4.

Submissions S50 and S51 (Decisions D2) seeking amendment of the definition of Net Density be rejected.

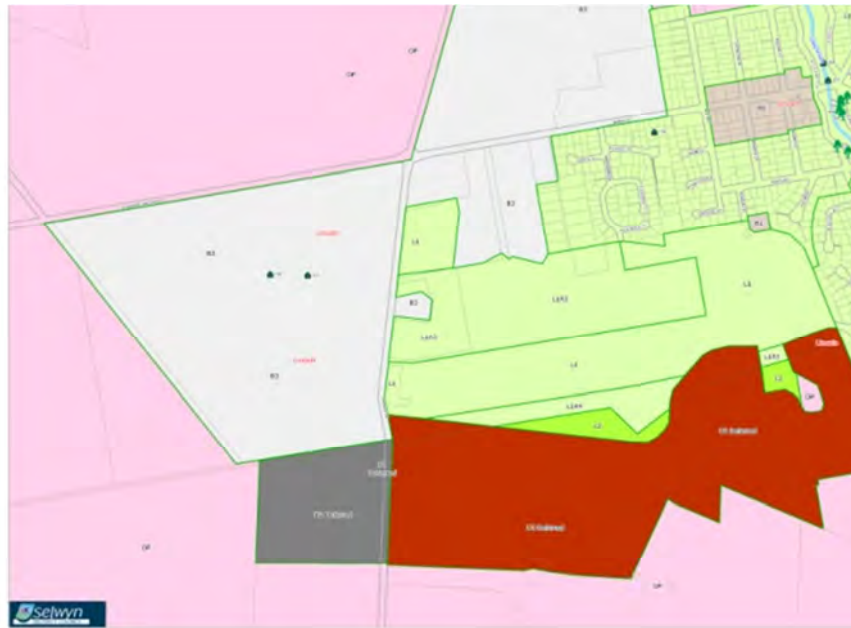
Submission S1 (Decision D1), Submission S9 (Decision D1), Submission S20 (Decision D1), Submission S50 (Decision D1, D3, D4 and D5) and Submission S51 (Decision D1, D3, D4 and D5) be accepted.

21. LINCOLN ODP Area 5

- 319 ODP Area 5 is located on the western side of Springs Road to the south of Lincoln University and comprises approximately 11 hectares (the grey area on the plan below). PC7 as notified zoned this land *Business 2* to provide for light industrial/commercial activities such as automotive workshops and the like. No ODP had been formulated for this area and accordingly, it was identified as B2 deferred until an ODP has been approved by the Council either via the current process or a future plan change. PC7 puts the urban limit at the edge of this proposed Business 2 area which is consistent with the Lincoln Structure Plan and the MUL contained in PC1. PC7 does not provide for any residential land in this area.
- 320 PC7 provides policy direction on the matters that an ODP should address, being: ODP Area 5 to align with ODP Area 1;
- Provision of an (indicative) main road link originating from Weedons Road, linking to Springs Road aligning with the southern most east-west main road from ODP Block 2;
 - Provision of main pedestrian and cycle links to university;
 - 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. (Policy B4.3.56)
- 321 With the exception of four residential properties (1.1 ha) in the south east corner of this 11ha block, the land is owned by Denwood Trustees. Denwood also owns the adjoining rural land to the west and the south. Its total land holding including most of the 11ha block is 82 ha. Under proposed Plan Change 7 as notified the balance of the Denwood land is proposed by the Selwyn District Council ("the District Council") to remain Rural Outer Plains.
- 322 Lincoln University owns the land to the North of the block. The University has a residual concern regarding the requirement in PC7 for an ODP to show an indicative arterial road at the southern end of the block curving around to the north to the boundary of the University land to eventually link to a former legal road that has now been closed, through the University (the private road follows the green diagonal line on the left of the plan below). It also sought the removal of the requirement for an ODP to show a proposed cycle way along its southern boundary on the old railway line. This was supported by officers but the removal of the bypass road was opposed.
- 323 The land on the east side of Springs Road is known as the Dairy block and is being developed by Lincoln Land Developments. As noted earlier, the Council

officers have now recommended that the LLD land be zoned as Living Z rather than Living Z deferred and we accept that recommendation. Stage 1 of the Dairy Block is currently being developed and Stage 2 will now proceed in the next year or so. Stage 1 provides 402 residential lots and Stage 2 will provide a further 495 households. (Stage 1 counts as existing growth and is not included in the Policy 6 Table 2 as proposed to be amended by the parties to LLD's PC1 appeal).

Plan showing ODP Area 5 and the Dairy Block



- 324 A submission by Denwood Trustees sought that the deferred status be removed from the Lincoln proposed B2 Zone at Springs Road. Denwood's submissions proposed two alternative ODPs with the preference for Option 1 which does not show the potential Southern Bypass. These options would both zone the whole of the Denwood land (82ha) for a combination of B2 and Living Z (not deferred). The submission also opposes the additional ODP criteria in Policy 4.3.56 which it claims to be too restrictive.
- 325 The submission includes two alternative ODPs, a revised set of Business 2 zone rules for Lincoln, an associated s32 assessment and a noise report from Marshall Day Acoustics supporting the proposed noise rules. The proposed District Plan amendments sought by the submitter (contained in Attachment B to their submission) outline the additional rules proposed to address potential adverse amenity effects on adjoining zones. In brief, these relate to:
- The inclusion of a restricted discretionary rule status for a number of listed heavy industries, due to the small size of the B2 zone and relative proximity to neighbouring boundaries;
 - The inclusion of building setback, landscaping and noise requirements that apply to the boundaries of the ODP area.
 - Compliance with ODPs inserted into the Plan;
 - Consistency with other Business 2 zone provisions.
- 326 In summary the Denwood submission seeks to add 70.8 ha of land to the proposed 11ha ODP Area 5 block. Under its preferred option the land which it seeks to zone as Living Z would comprise 53.2 ha and at 10 households per hectare (as required by PC7 and Proposed Change 1 to the Regional Policy Statement) would accommodate approximately 665 households. The land which it seeks to have zoned as Business 2 would comprise 20.1 ha.
- 327 Consistent with its submission, Denwood has also appealed PC1 and seeks that the Metropolitan Urban Limit be moved to encompass the whole of its land rather than stopping as it does at the edge of the PC7 ODP Area 5. We assume that it also seeks changes to Policy 6 and/or Table 2 to reflect the change to the MUL.
- 328 Submissions by GJ & SP Worner and Lincoln University opposed the proposed ODP Area 5 and seek that the B2 (Deferred) zone be deleted. Notably, the Regional Council did not submit in opposition to Denwoods proposals. The New Zealand Transport Agency (NZTA) is a submitter in opposition although it did

not provide evidence in relation to Denwood's proposal or participate in the subsequent discussions relating to modified proposals.

329 The Worners have a house and well landscaped grounds within the south east quadrant of proposed ODP Area 5. They are opposed to commercial development close to their land. Mr & Mrs Worner raise the following concerns with respect to ODP Area 5:

- *No indication of the sort of business activities that would be permitted within the B2 zone;*
- *No rationale as to why ODP Area 5 is the best possible location for future industrial premises;*
- *No consideration as to why premium agricultural land should be used for industrial complexes;*
- *Industrial zoning is incompatible with the adjoining activities of Lincoln University, being a place of higher learning and economically valuable research;*
- *Potential for adverse effects on water and air quality;*
- *Difficulties in monitoring noise levels of possible 24hr/day industrial activities;*
- *Loss of amenity and enjoyment of their own property if surrounded by industrial activities.*

330 The Worners indicated that they would be accepting of residential development and preferably rural residential development on the Denwood Land surrounding them. We note that the amenity values which the Worners enjoy are largely a result of their own efforts on their property. The adjoining amenity provided by the Denwood land is rural and does not have any particularly high value beyond providing a pleasant outlook and a buffer for the Worner's and their 3 Residential neighbours (who have not submitted). We also observe that given the location of the Denwood land and the development of the Dairy Block that some residential, rural residential or commercial development seems highly likely in due course. The key issue is whether such development should occur sooner (as proposed by Council and Denwood Trustees) rather than later. We note that the Worners made it clear that their opposition was primarily in relation to commercial development of this land rather than opposition to residential development.

- 331 Lincoln University's original submission opposed ODP Area 5 adjacent to its main campus, on the grounds that the establishment of light industrial activities in this location could lead to an unpleasant working environment for University employees and students, as well as adversely affecting the character, amenity and efficient operation of the University. The University also sought to have the reference to a proposed arterial road removed from the ODP Area.
- 332 Although the University sought to delete all reference to the proposed Business 2 (Deferred) zone (D1), it also proposed alternative relief as follows:
- *The ODP Area 5 site be given an alternative business zoning to the Business 2 zone, which will not carry a risk of compromising the amenity, character, or efficient operation of the University; or*
 - *The ODP Area 5 site be given a 'split' zoning whereby an alternate business zone to the Business 2 zone is established at the northern portion of the site which will not carry a risk of compromising the amenity, character or efficient operation of the University; or*
 - *If the Council decides that the Business 2 Deferred zoning is the most appropriate zoning of the land, that the requirement in Policy B4.3.56 to include a landscaped buffer area between the ODP Area 5 site and the University be strengthened to require a minimum setback of no less than 20m between industrial activities and University land with additional requirements for the mitigation of potential adverse noise and visual impacts created by industrial activities (i.e. via planting, fencing, bunding, etc); or*
 - *That specific restrictions on land uses be applied to ODP Area 5 (and as needed in the relevant Business 2 provisions) to ensure that the amenity, character, and efficient operation of the University are not compromised by future activities which establish on the ODP Area 5 site. This could include, but not be limited to, a provision controlling maximum site size.*
- 333 Lincoln University also lodged a further submission in opposition to the Denwood Trustees' proposal, however at the hearing it withdrew both its further submission and original submission and indicated its support for the Denwood proposal. We did express some surprise at this approach, since it meant that the University could not formally participate in relation to subsequent proposals to narrow the relief Denwood seeks. The University did however maintain its separate submission in opposition to the inclusion of the proposed indicative bypass route which we discuss below.
- 334 The officers' report concluded firstly that the relief sort by Denwood Trustees was beyond the scope of the current process. As discussed earlier we have reached a different conclusion. In terms of the merits of the proposal the report

recommended against the Denwood Trust proposals and in support of retaining the deferred B2 zoning on the 11 ha block as notified.

335 The officers express the view that 11 ha of B2 land would be sufficient to meet foreseeable demand for B2 land and any extension would be contrary to the MUL. They did not see the need for any further residential land and concluded that such an extension would be contrary to policy 6 of PC1. There were some other concerns relating to efficiency of provision of infrastructure. The report quotes from the PC1 decision as follows.

336 *"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.*

337 *For the reasons outlined in many other sections of this decision as to restricting the supply of further Greenfield 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 limit."*

338 In summary Mr Wood concluded as follows:

I refer to the Lincoln Structure Plan (LSP), which identified a need to provide for industrial activities to service the population of Lincoln and its environs out to 2041. I note that Lincoln does not currently contain a Business 2 zone, unlike other major townships within the District, including Rolleston, Leeston and Darfield.

The types of industrial uses envisaged by the LSP included:

- Vehicle servicing premises;
- Agricultural related businesses and services;
- Service trade premises;
- Small scale industries;
- General industries;
- Utility and builders yards.

As to the location of proposed ODP Area 5, I understand that one of the key drivers for determining an appropriate location for industrial activities was finding a site that was on the 'edge' of the township, where it was unlikely to be encroached by residential activities in the future. It was also considered important that the site had easy access to main transportation routes that did

not require access through residential areas. The LSP process determined that the location of ODP Area 5 satisfied this criteria, while still providing continuity with both existing and future urban zonings.

Given that not all landowners within the ODP Area support the proposed zoning, I remain of the view that an ODP cannot be incorporated into the District Plan until these matters have been adequately addressed. On this basis I recommend that ODP Area 5 be retained as Business 2 (Deferred).

In saying this, I recognise that ultimately it may not possible for all affected landowners to agree on an ODP for the location shown as ODP Area 5. In these circumstances, the Council may revisit the provision of industrial land in Lincoln as part of a plan change considering wider business-related issues. I note that this approach is similar to that provided for urban growth RPS Change 1 in circumstances where a Greenfield Area does not develop within the anticipated phasing period. The Commissioners may therefore be of a mind to delete ODP Area 5 in its entirety until all affected landowners reach an agreed set of provisions and an associated ODP.

To summarise, I recommend the following amendments to any ODP inserted into the Plan for ODP Area 5:

- (a) That the ODP contains the potential bypass road that aligns with the same potential roading link on ODP Area 1;*
- (b) That a pedestrian and cycle link to the University be located within the boundary of the Denwood Trustees property, rather than within the 'old Railway line' owned by the University; and that that the boundary of ODP Area 5 be amended accordingly;*
- (c) That a range of "light" industrial activities be listed as a permitted activity, with other potential land uses defaulting to either a (full) discretionary activity or a non-complying activity in the same way that activities are managed within the B3 zone. In saying this, I acknowledge that there are likely to be issues of scope in making such amendments in the context of the current submissions;*
- (d) That a building setback of at least 15m apply to the boundary of the B3 Zone, together with the imposition of Recession Plane A on this common boundary;*
- (e) That a building setback of at least 10m building apply to the Springs Road frontage;*
- (f) That a daytime noise limit of 60 dBA L_{10} applies to the B3 Zone boundary.*

339 The officers opposed the Denwood proposal for the following reasons:

- Reverse sensitivity issues in terms of Lincoln University
- Outside the urban limit for Lincoln
- Inconsistent with PC1 decision (Metropolitan limit and Policy 6)
- On their interpretation, further residential development would be inconsistent with Policy 6 of PC1.
- There is no established need for an increase in Business 2 zoned land.
- There is no established need for an increase in residential zoned land.
- Inefficient provision of infrastructure due to the inclusion of an orphan sewer and water services line. (As compared to other locations within the urban limit of Lincoln)

The Case For Denwood Trustees

340 At the hearing Council for Denwood summarised the slightly amended relief which it seeks as follows:

Supports part of the Denwood land being zoned Business 2 but seeks that the deferred status of the zoning be removed, so that the land simply be zoned B2.

Seeks amendments to the B2 Zone rules as they affect the Lincoln B2 Zone; and

Seeks that the balance of the Denwood land (approximately 71ha) be rezoned partially LZ and partially B2 and included in ODP Area 5 as a greenfield development area able to be developed immediately.

Denwood has prepared two Outline Development Plans which give effect to the Denwood submission¹. These provide for 25 hectares of B2 land and the balance as LZ. The ODPs show two alternative locations for the B2 land. They have been refined since being lodged with the submission, having taken into account submissions from Denwood's neighbours, and to address the issues raised in the Officers' Reports.

Under the preferred ODP Option 1, the 25 hectare B2 area is located along the southern boundary of the site, and the area around the five existing houses on Springs Road (proposed to become B2 (Deferred) in PC7 as notified) would become Living Z. This would address the concerns of one of the owners of those five houses, Mr and Mrs Worner, who have lodged a submission in opposition to the B2 zone as notified.

Under ODP Option 2, the 25 hectare B2 area remains in the same location as in PC7 as notified, and in addition, land facing Springs Road to the south of the proposed bypass, and the balance of the site would become Living Z.

Denwood has been in discussions with Mr and Mrs Worner, and the University, about options which could address their concerns. To that end, Denwood has devised ODP Option 1, which is strongly preferred by the University and also by Mr and Mrs Worner. This option is also Denwood's preferred option.

- 341 Counsel for Denwood; Mr Christensen, also addressed the question of scope/jurisdiction. Citing the Environment Court decision in *Woodvale Limited v Christchurch City Council* C56/2004, he concluded as follows:

I have considered whether a LZ zone on the 11 ha is within your jurisdiction to impose. The Denwood submission sought removal of Deferred status from the B2 zone, and that the balance 70 ha become Living or Business, or a mix. Denwood seeks an LZ zoning for the 11 ha area as part of ODP Option 1 on the basis that the LZ zoning is an equivalent or lesser relief than B2 zoning, is consequential upon the request for an urban zoning, and therefore it is within scope of the Denwood submission and PC7. Both are urban zonings, and the effects of a Living zoning will be less than a Business zoning.

The effects of zoning the land LZ lies on the spectrum between the effects of the underlining zoning (Rural) and the proposed zoning in PC7 (B2). Therefore it is within scope of the Denwood submission.

If, on the other hand, you decide that the most appropriate zoning of the 11 ha is a business zoning, the ODP does not need to be agreed to by all landowners to be approved and included in the Plan. If that were the case, one landowner could hold the other landowners to ransom. I accept that the ODP could not be given effect to until all of the owners agreed, and this may be more likely to occur once commercial benefits of a rezoning hit home. It is still appropriate that the land is rezoned Business and its Deferred status removed.

- 342 The areas covered by Denwoods ODP Option 1 are shown on the plan below.

Issues

- 343 The following are the principal issues raised by the Denwood, University and Worner submissions:

- Scope to make the changes proposed by Denwood.
- Consistency with RPS Plan Change 1 and weight to be given to that.
- Whether additional Business 2 land is warranted.
- Whether any additional Living Z or L2 land is warranted and if so how much.
- Reverse sensitivity issues in terms of the University and relationship to potential future University needs.
- Maintaining and enhancing amenity values and in particular those valued by the Worners and presumably their neighbours.

- Pedestrian and cycle linkages through the Denwood land to the University. (Opposed by the University).
- Wastewater infrastructure provision.
- The inclusion of the indicative arterial route in the Plan against the University's wishes.

Scope, Consultation and the Need for Agreement

- 344 For reasons we have discussed earlier, we accept the submissions on behalf of Denwood on this point. We have concluded that the Council does have jurisdiction to make either the Option 1 or Option 2 changes as sort by Denwood Trustees or some lesser version of those. Both of those options relate to Greenfield extensions to the MUL for the purpose of urban development and in our view that relief is within the scope of the Plan Change which deals with all urban development on the outskirts of Lincoln. Any affected persons could have lodged a further submission and indeed the University and the Worners have done so. Other developers might potentially have been disadvantaged by not being able to lodge a further submission in opposition to the Denwood submission, however that is intended by the legislation (clause 8 of the first schedule). In any event such opposition would likely have been based on trade competition concerns which we must disregard. Accordingly we do not think that any person will be prejudiced if the Council grants relief within the scope of Denwood's submission.
- 345 We also accept that there is no necessary barrier to inclusion of another person's land within an ODP without that person's agreement. Whether that is desirable, efficient and effective is another matter. In the present case, the alternatives would be to either obtain agreement or develop an ODP which excludes the three residential properties currently included in the ODP. We appreciate however that it may be inefficient to leave a small pocket of rural zoned, but residentially used land, surrounded by B2 or LZ land.
- 346 The preferable outcome would be an agreed ODP, but we did not rule out the possibility of recommending the acceptance of a non agreed ODP provided that this addressed the amenity issues raised by the Worners. As discussed below, we provided Denwood Trustees with the opportunity to develop an amended much smaller ODP during and following the hearing. Denwood Trustees did not advance an ODP at the hearing which addressed our concerns about the large amount of Living Z or Living 2 land proposed by it. However, with some encouragement from us it did advance a proposal after the hearing which we have recommended be developed into an ODP for Business 2 land. We discuss this proposal later.

PC1 Issues

- 347 We have discussed the weight to be given to various parts of PC1 earlier. We have concluded that we should put moderate to high weight on the objectives of

PC1. We think that we should also put moderate to high weight on the location of the MUL, except where it is under challenge by an appellant. Given that Denwood Trustees appeal seeks to have the MUL extended to include all of its land, we consider that we should put little weight on the MUL location and focus more on the merits of the proposed boundary to ODP Area 5 and the merits of extending that boundary.

- 348 Counsel for Denwood submitted that its proposal for including a substantial portion of new Living Z land on the outskirts of Lincoln would not be contrary to Policy 6 of PC1. The officer's and counsel for the District and Regional Council had a different view. For reasons we have discussed elsewhere we have decided not to put much weight on Policy 6 at least so far as it relates to Lincoln ODP Area 5. There is considerable debate regarding the interpretation of the Policy and in particular how Table 2 is intended to work. The policy and the MUL in this area are subject to appeals. In our view it is highly likely that the Policy and/or the table will be reworded by the Court to make their intent clearer. It is also quite possible that if PC1 and Policy 6 are confirmed by the Court, the numbers in Table 2 may be amended particularly in light of the earthquakes. We also note if Denwood Trustees succeed in having the MUL shifted, that may require consequential changes to Table 2. This is the approach which the Councils have agreed to in relation to the Lincoln Land Developments block on the other side of Springs Road from ODP Area 5.
- 349 For all of these reasons we have decided in this particular case, to focus on the merits of what Denwood Trustees on the one hand and the Council on the other, are proposing, rather than to place much weight on the MUL and Policy 6. We also asked the Council officers to focus on those merits issues (in their supplementary reports) rather than on endeavouring to "give effect" to PC1.
- 350 Notwithstanding that position we have discussed possible interpretations to Policy 6 and Table 2 earlier. We do not need to reach a firm conclusion as to the interpretation of these provisions however we do think that there is some force in the submission made for Denwood. Ms Thomas noted that Policy 6B requires that residential development be "provided for in general accordance with the locations and numbers set out in Table 2".
- 351 As discussed earlier we have concluded that the focus of Table 2 are distribution targets and as such import a degree of flexibility. However Denwood's Option 1 and 2 proposals for increased residential development go well beyond those distribution targets and may on one interpretation be considered to be contrary to Policy 6 in its present form. In any event if we are wrong on this matter we

do not put much weight on Policy 6 and Tables 1 and 2 and focussed on the merits of all options considered.

Whether Additional Business 2 Land is Warranted

- 352 The Worners and initially the University challenged the provision of any B2 zoning in this area on the grounds of effects on their amenity values.
- 353 Mr Wood explained why the Council supported this area for Business 2 land based upon the Lincoln Structure Plan, (his views are summarised earlier).
- 354 Denwood Trustees seek additional B2 zoning. Under its preferred Option (1) this would increase the B2 land zoned land from 11ha to 29.7 ha and under Option 2 it would increase to 22.6ha. Ms Aston provided planning evidence for Denwood and relying on the evidence of Mr Radovonich expressed the opinion that the size of the proposed zone was "clearly not practicable or viable".
- 355 We did not hear any evidence on practicality or viability however Mr Radovonich addressed supply and demand. He was of the view that 36 to 48ha of B2 land would be appropriate for of Lincoln as a whole if the town grows to the projected size of 12000 by 2041. He pointed out that currently only 1.1 ha of land is being used for B2 type activities. His estimate of 36 to 48 ha was based upon the area of land taken up by B2 type activities in Darfield, Rangiora, Kaiapoi, Kaikoura, Ashburton and Oamaru. These towns utilise an area of between 3 to 36ha per 1000 of population for this type of light industrial activity. Mr Radovonich applied what seems to be a conservative multiplier of 3 to 4 per 1000 to derive his estimate.
- 356 We note that Lincoln is served to some degree by the Council owned Izone industrial park at Rolleston which is within easy driving distance and of course by the areas such as Hornby and Sockburn. Nevertheless a multiplier of 3 does not seem unreasonable. Accordingly the suggestion of a need for around 40ha of land by 2041 or perhaps earlier given the Earthquakes, seems plausible. Within that context the proposal by Denwood for 23 to 30 ha rather than 11ha (or less if the residential properties remain) does not seem excessive but has not been entirely substantiated. Equally, however, the Council's evidence on demand was rather sketchy.
- 357 Mr Wood in his supplementary report responded by quoting the PC1 Commissioner decision as follows:

.....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.

- 358 We also note that the Draft Lincoln Structure Plan (Issues and Options Report) for Lincoln included the following statement:

"Industrial Activities

Also located in the south western corner of the intersection of Springs Road and the southern boundary road a mixture of 'less attractive' industrial activities and a specific range of non-retail uses on business land that are functionally compatible including:

Vehicle servicing premises (1ha)

Service trade premises (2.8ha)

Small scale industries (1ha)

General industries (2.2ha)

Utility and builders yards (0.5ha)

= demand of 7.5 ha"

- 359 It is not apparent how these "demand" figures were derived. The Council did not call the author of this part of the Structure Plan and the section 32 report does not shed any light on the demand calculations. We also note that to some extent the Council's I-Zone at Rolleston is a competitor to any B2 development at Lincoln. It is not for us to discourage competition from Lincoln, particularly if that is intended to service local Lincoln and Rolleston needs.

- 360 We have concluded that provision for some Business 2 land is desirable and that the amount proposed may well be insufficient during the planning horizon. The Council has not provided any clear justification to limit this provision to the amount of land proposed in PC7. Equally however Mr Radovonich has not provided any compelling evidence to suggest that 36 to 48 ha will be required. We do, however, accept his point that there are efficiencies to be gained by amalgamating the types of activities allowed in the B2 zone. The officers also appear to accept this point. Denwood argued that 11 ha of Bus 2 may not be

viable to develop, however, no convincing evidence was presented to support that point.

- 361 We have concluded that it would not be inefficient to provide for additional B2 zoning of up to around 23-30 ha as originally proposed by Denwood. If additional land is not required, then presumably it will not be developed. We do not see this as any significant threat to the objectives of PC1 and although it would be contrary to the current location of the MUL, and arguably contrary to Policy 6, those are both subject to appeal by Denwood and may well be amended either by consent or following the hearing of the appeals.
- 362 The difficulty we have with providing for a larger B2 zone, is that Denwood has not advanced an ODP which develops such a proposal, without also including Living Z or Living 2 for the balance of its land. We do not accept this “all or nothing” approach is appropriate. For reasons we will come to we do not think that there is sufficient justification to zone the balance of the Denwood land as Living Z or Living 2 land and therefore do not recommend in favour of either Options 1 or 2. We did explore a further option with Denwood, the Worners and officers which we will return to shortly.

Location Of The Business 2 Land And Effects On Amenity Values

- 363 We accept the Council officers’ and Denwood’s evidence that there is a need for Business 2 land and that notwithstanding the Worner’s concerns, that the Denwood land to the West of Springs Road is appropriate for such development and can be serviced adequately and efficiently.
- 364 We also accept that the Worners enjoy a pleasant rural amenity to their north and west and this should so far as is practicable be maintained. However, we do not think that it is realistic for the Worners to expect that this area will remain undeveloped. This land adjoins the University and the outskirts of the township. It is just over the road from the Stage 2 of Lincoln Land Development Dairy Block’s development which will proceed over the next few years. There are already three residential sites (including the Worner’s) on this side of Springs Road.
- 365 We do accept that it would be preferable from the Worner’s and the other residential owner’s perspectives to have the adjoining Denwood land developed as residential or rural residential. The Worner’s would prefer the latter but are content to live with the former.
- 366 We have concluded that the amenity issue could be adequately addressed by way of an appropriate buffer around the three residential properties. However,

for reasons we will come to we are recommending that the B2 zoning be shifted to the south of the indicative arterial road.

Option 3

- 367 We reached an initial conclusion after hearing from Denwood, the officers and the Worners, that it would be preferable to shift the Business 2 zoning south of the four existing houses and the indicative arterial road. That would address the amenity issues raised by the Worners and from an infrastructure perspective, does not appear to give rise to any significant issues. This option would also allow for the area adjoining the university to be left free for potential future residential development rather than zoned for a B2 use for which it seems less appropriate at least from a reverse sensitivity perspective.
- 368 Following the first hearing week, we issued a Minute asking the officers and Denwood and Worners to consider what became known as *Option 3*. We asked the officers, Denwood the Worners and the University to comment on this option at the resumed hearing.
- 369 Option 3 showed the 11 ha block plus another 2 ha as Living Z deferred (approximately 122 additional lots) and shifted the B2 zoning to the Denwood land to the South of the proposed "indicative" arterial road. It would have resulted in a slightly larger B2 area of 13.4 ha, which is well within what we consider to be a reasonable allowance for B2 land and close to what the Council has currently proposed. As pointed out by Council officers if this amount of land proved insufficient then Denwood could request an extension of the zone at a later date either as a council initiated plan change or as a private plan change.
- 370 Although *Option 3* would have moved the B2 zone outside of the MUL, we did not see that as being a major issue given our conclusion as to the weight to be given to this part of PC1. Nor did we see a modest increase in the provision of Living Z zoning as necessarily being problematic. This option was acceptable to the Worners since the B2 zone would move away from them and be separated from the southern existing residential property by a buffer. Although concerned about the implications in terms of PC1, the Council officers expressed an open mind towards this option. We requested the officers to focus on the merits of the option rather than on its obvious non compliance with PC1.
- 371 Denwood's representatives and Council officers met to discuss the option prior to the resumed hearing. After the discussions, Denwood formalised its response in a letter dated 3 June. It was accepting of the relocation and extension of the B2 zone and the size of that zone. However, it rejected the *deferral* of Living Z

zoning for the 13.4 ha area. That of itself may not have defeated this option. The difficulty from the officer's perspective (and ultimately ours) was that Denwood at this stage insisted that all of the balance of its land also be zoned as Living Z (not deferred). This would have added up to a further 499 lots to the 122 proposed by us, bringing the total to 621 lots.

- 372 At the resumed hearing Counsel for Denwood submitted that deferral of Living Z *"could not be justified on resource management grounds and is strongly opposed"*. However, we were not provided with any evidence as to why removal of the deferral would be appropriate in terms of section 32 of the Act. The fact that no submitters oppose this option is not of itself sufficient to satisfy our obligations in terms of section 32. Furthermore, the Environment Court has not yet determined PC1 appeals in relation to the policies relating to staging of residential development.
- 373 At the resumed hearing, counsel for Denwood requested that we approve *Option 3A* (which is our Option 3 with the balance of the site zoned Living Z.) However, while that was clearly Denwood's preferred option she requested that if we do not approve options 1 or 2 that we approve either option 3 or 3A. We note that this was a less adamant position than had been advanced in the 3 June letter. While we were still attracted to option 3 we had no ODP before us for that option.
- 374 In their June letter and in further submissions at the resumed hearing, Counsel for Denwood, supported by Ms Aston maintained Denwood's argument that an extension of Living Z would not be breach of Policy 6 The officers supported by the Counsel, advanced a different interpretation.
- 375 We remained confused by Policy 6 and Table 2, however we consider that Policy 6 does import a degree of flexibility that could accommodate the ODP 5 area as notified being developed as Living Z. We doubt that the much more extensive residential zoning proposed by Denwood would be consistent with that policy however that is not our reason for rejecting the Denwood proposal.
- 376 Whether or not option 3A is contrary to Policy 6, it is clearly contrary to PC1 in that it proposes extensive urban development outside of the MUL. We are not convinced that there is any justification for zoning this much additional land as Living Z (even as deferred). As outlined above we considered that in light of the earthquakes a further 122 lots might be sustainable at least if deferred until 2020. However, we simply do not have evidence to support a further 621 lots (Option 3A) or the 665 proposed under Option 1. We discuss this below.

Council Officer's Response in Relation to Option 3

377 In his closing report, Mr Wood recommended that we confirm the ODP Area 5 boundaries as originally notified (no residential zoning and 11 ha of B2). In summary his reasons were as follows:

- *Increase in Living Z would on his interpretation be contrary to Policy 6 of PC1.*
- *The Council relies on the growth model and the structure plan not just PC1.*
- *There was widespread consultation regarding the structure plan.*
- *There is no evidence of any need to rezone more land than has been provided for in PC7.*
- *The lifting of the deferral in terms of the Dairy Block stage 2 provides further significant supply in the short term.*
- *The monitoring and review program required by PC1 provides an appropriate mechanism to decide whether additional residential land is necessary.*
- *Springs Road provides a logical boundary for the residential urban limit for the time being.*
- *It would be unfair on owners of land with a living Z deferred zoning if Denwood were to jump the queue via the current process, without having provided any evidence that there is an immediate need further living z.*
- *Denwood has provided no section 32 justification for additional living Z (options 1,2, 3 or 3A).*

Denwood's Evidence in Relation to Living Z Zoning

- 378 Mr Radovonich's evidence for Denwood related to the potential demand for B2 land and did not address demand for residential land. Nor did Ms Aston's planning evidence address current or likely future supply and demand for residential land at Lincoln. At paragraph 8.16 of her initial evidence she expressed the view that Options 1 and 2 would provide for a "*highly desirable residential neighbourhood immediately adjoining the University and the proposed Dairy Block development, and with ready access to the growing range of community facilities and services proposed for Lincoln.*" However, she does not go so far as to suggest that there is likely to be a demand for additional lots in this area beyond what will be provided by the Dairy Block development.
- 379 At paragraph 8.17 Ms Aston opines that as a result of the earthquakes there will be a greater demand for residential land around Christchurch. She offers the view that that the Trust's land "*is ideally suited to meet this need. The restrictions on land supply (both in terms of quantum and sequencing) contained in Change 1 are now of little relevance. The SDC should now look beyond the constraints of C1 as it is entitled to do given that C1 is not operative.*"
- 380 This is the only evidence the Trust presented to support the immediate rezoning of most of its property as Living Z. We have looked beyond the constraints of PC1 and focussed on the merits of Denwood's evidence, but we have no evidence to suggest that the District Council's growth projections as reflected in the Lincoln Structure Plan and in PC1 and PC7 are this far wrong. We fully accept that the earthquakes will lead to some increased demand over the next 9 years. That is part of the reason we and the officers have recommended removal of the deferred status for Stage 2 of Lincoln Land Development's Dairy Block. However, it is simply speculative to suggest that this provision will be inadequate and a further 600 or more lots will be required before 2020.
- 381 We note that the ODP 1 adds a further 495 households in close proximity to the University. This is in addition to the 402 lots recently developed but not fully taken up under Stage 1. Other developments allowed for under PC7 as recommended by us will add a further 1618 lots at Lincoln prior to 2020 and another 1289 after that. In terms of PC1 there is a process of monitoring supply and demand which will allow for the Denwood land (and the MUL) to be reconsidered before demand outstrips supply. It is also open for Denwood to request a private plan change or apply for a subdivision consent. We simply do

not have sufficient basis to amend the Council's Plan change to accommodate Denwood's requests (its options 1, 2 and 3A).

382 We also note that Denwood has submitted on Plan Change 17 which relates to rural residential provision. It is possible that some of the non business zoned portion of the Denwood land might be appropriate for rural residential development. However, that is the subject of a separate Plan Change (17) and our views on this matter are tentative and are not intended to influence that process. We do, however, note, that the case for rural residential will need to be reviewed if part of the site is zoned for Living Z or Living Z deferred as a result of Council's decision on PC7. It may be more efficient to leave the balance of the land available for long term residential development, however that is not a decision for us.

383 We emphasise that our conclusion in relation to Denwood's requests is not based on PC1. Our conclusion is based firstly upon the lack of any compelling evidence of a foreseeable need for all of this land to be developed this intensively and secondly (but less compellingly in light of the earthquakes) on the fact that Denwood's proposal would be inconsistent with the Lincoln Structure Plan and the Urban Development Strategy.

384 We accept that the land is suitable for development and that it may well be a very desirable location. We also accept that the development of this land for residential purposes will not have any significant adverse environmental effects and may well have positive effects. We accept that the ability to develop the entire site is likely to make it easier for Denwood to develop the Business 2 area. However, we do not consider it to be an efficient use and development of this land to zone all of it for residential development at this stage. There are a range of uses to which the land could be put and we do not think that the current plan change should prefer a use for which there is no demonstrable demand and which is outside of the MUL as it currently is. For current purposes, Denwood has not provided evidence to persuade us that the substantial extension of Living Z which it seeks, would better achieve the objectives and policies of the District Plan including those in PC7.

385 We also observe that there is a range of possible outcomes for Denwood's PC1 appeal. These range from leaving the MUL as it is, to shifting it to include all of the Denwood land and various intermediate options. We do not have sufficient evidence to support a significant shift of the ODP Area 5 limit (which reflects the MUL). We think that it is appropriate to leave the PC1 appeal process to deal with any significant shifts in the MUL. We do not consider the modest shift of

the ODP Area 5 boundary, which we will be recommending, as being so significant as to need to await that process.

Infrastructure provision

- 386 Council officers also expressed some concerns regarding the efficiency of infrastructure provision in relation to Denwood's Options 1 and 2 and 3A and to a lesser degree our suggested option 3. We do not need to canvas the concerns in relation to Denwood's preferred options because we have rejected those for other reasons. The officers' views are however relevant in relation to option 3 and the variations to that which emerged after the hearing.
- 387 Having considered all of the evidence we are satisfied that there are no significant issues with provision of infrastructure to a Business 2 zone in the area shown on our option 3.
- 388 The northern area currently zoned under PC7 for Business 2 could be serviced for stormwater and wastewater for that purpose or for residential purposes. Particularly given that the B2 area to the South will have to be serviced in any event.
- 389 In terms of roading provision, we note that this area would be enclosed on two sides by the CRETS Bypass if the Council is successful in obtaining a designation or Plan Change for that purpose and to the north by the University. (The Council officers oppose access off the indicative bypass route). Unless access to this block could be provided off that route, it would need to be via Springs Road. This was also the situation with the proposed B2 land and we do not see it as being an obstacle to the development of this area for residential purposes provided that appropriate criteria and standards are required to be included in any future ODP to deal with noise and reverse sensitivity issues. We accept that for pedestrians and cyclists the block would be somewhat of an island bounded by main roads. That could be addressed by way of cycle and pedestrian routes and a pedestrian crossing at Springs Road. PC7 already requires provision to be made for cycle and pedestrian access through this area to the University. In relation to the University's submission we note the following conclusion from the s42A report which we accept.

109 Overall, I support the inclusion of a pedestrian and cycle link to the university, however I agree with the University that this should be located within the boundary of the Denwood Trustees property, rather than within the 'old Railway line' owned by the University. This would therefore remove any maintenance requirements for the University and any potential impediment to

the use of their land. I therefore recommend that the University's submission (S28 D3) be accepted and that the boundary of ODP Area 5 be amended accordingly

390 In summary we do not see the roading, or other infrastructure issues as being a barrier to residential rather than Business development in this block.

Post Hearing Discussions

391 On the final day of the hearing, having heard from Denwood, Mr Worner and the officers in relation to our Option 3 and Denwood's options 1,2 and 3A, we made it clear that we would not be recommending in favour of the latter. We pointed out that although Denwood had implied that Option 3 might be acceptable as a last resort (our summation of paragraph 3.21 of Denwood's closing) we could not approve an ODP for option 3 or 3A because we did not have an ODP in front of us with either option in it.

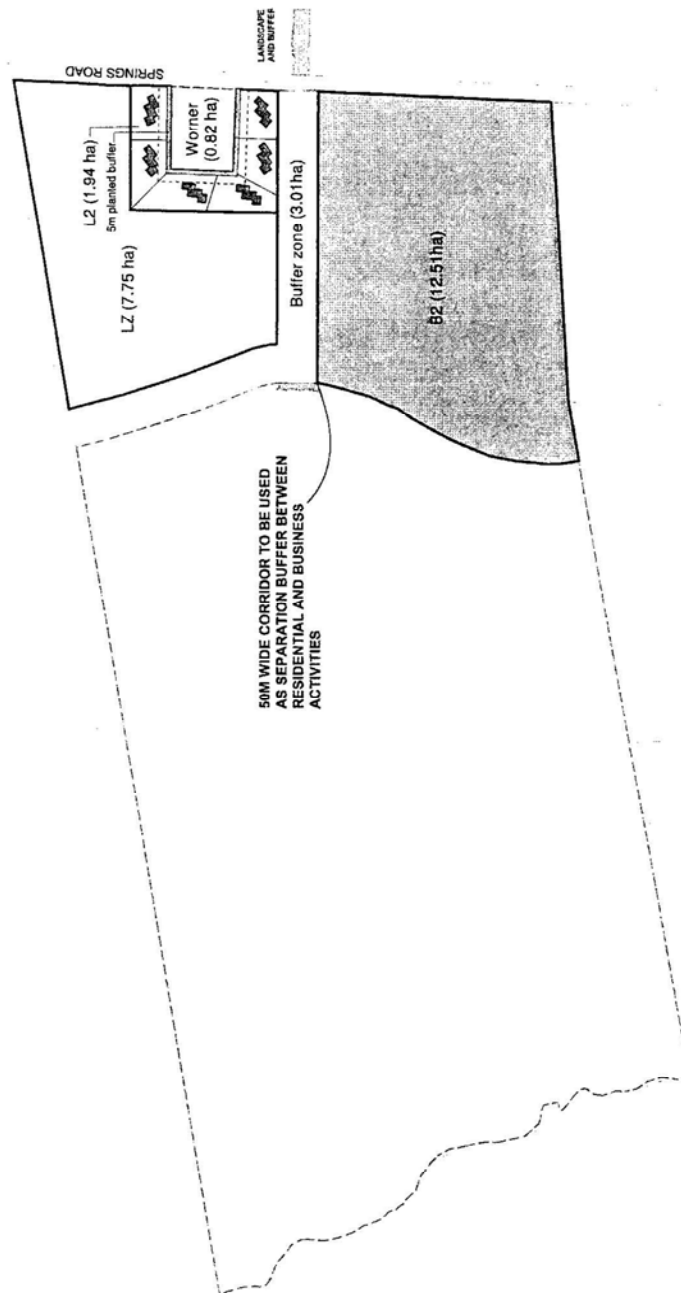
392 We indicated that in view of the lack of consensus for Option 3 and our view that Option 3A was not appropriate that we would be likely to approve the ODP Area 5 boundaries remain as notified, unless we had an acceptable agreed ODP place before us. Accordingly we asked Denwood Trustees, Mr and Mrs Worner and Council officers to meet to discuss the possibility of developing an ODP for Business 2 land only for ODP Area 5 in Lincoln. This meeting was held with all parties on 4 July 2011.

393 Counsel for Denwood reported back to us by letter dated 11 July. We summarise the contents as follows:

- It was reported that there "appeared to be" a level of agreement about shifting the B2 zoning to the South of the indicative road/buffer.
- All parties appeared to accept that it was illogical to leave the area to the North of the bypass (currently proposed as B2) as "rural outer plains".
- Council officers were still opposed to the area being living Z and accordingly Denwood has asked the officer to consider two compromise options as follows:
 - Option 3.1 being Living 2 (3000m² minimum lot size) for the 1.94 ha around the Worners (5 lots excluding the existing neighbours to the south of the Worners (and Living Z for the balance of this block being 7.75 ha (By our calculation around ** lots if one excludes an access road)
 - Option 3.2 being Living 2 for all of the 9.62 ha block. (By our calculation around 30 lots if one excludes access roads)
- Council officers did not support either option.

- Denwood Trustees and the Worners had nevertheless agreed and ODP for each of these options.
- The Worners prefer option 3.2 but we take are not opposed to option 3.1
- Denwood finds either option to be acceptable.
- Under option 3.1 Denwood would prefer LZ zoning to be immediate but would be accepting of deferral of LZ zoning until 2020.
- Under both options the Council's proposed arterial road would be shown as a "buffer" as we suggested at the hearing.
- Denwood says both proposals are within the scope of its submission.
- It asks us to make a decision accepting one or other option and to make a decision in relation to the originally requested LZ zoning for the balance of the site.

394 Option 3.1 is shown on the plan below:



DENWOODS TRUSTEE LIMITED – ODP OPTION 3.1

395 We asked Mr Wood to respond by way of a Memorandum which he did. In summary the response was as follows:

- *He had some reservations about shifting the urban limit to accommodate the shifting of B2.*

- *The draft ODPs do not include provisions to address policies B4.3.7 and B4.3.56 of PC7 and accordingly could not be approved.*
- *I agree that that if the Business 2 land is moved to the south, it would create an urban form issue. However as the northern part of the land would be outside of the urban limit, this would limit the rezoning of this land to either Rural Residential (via Council's PC17 or Denwood's private plan change PC28) or the existing Outer Plains zone.*
- *Additional Living Z zones were not supported by Council*
- *The potential use of Living 2 zonecould not be supported, primarily because a Living 2 zone essentially constitutes 'rural-residential' development and should therefore be dealt with via PC17 (or PC28).*
- *Neither of these options implement the Commissioners direction as outlined at the end of the hearing for PC7.*
- *As outlined at the hearing by both Environment Canterbury and myself, the case has not been made by Denwood for either increasing the urban limit to allow for more residential development, or the need for additional housing (at either Living Z – 600m², or Living 2 – 3000m² standard) in Lincoln.*
- *If the Business 2 land was moved to the south, the suggestion of using Living Z or Living 2 zoning on the northern part of the land is not appropriate as both zones need to be located within the urban limit. In addition, the Living 2 zone could not be used by itself (as stated in option 3.2) as it would not meet the density required in the Lincoln Structure Plan and PC1 of 10 households per hectare (a Living 2 zone would only reach 2.5 households per hectare). As stated earlier in this memo, the only zoning which could be used is either Rural Residential or the status quo zoning of Outer Plains. Both Council and Denwood Trustees Ltd have Rural Residential plan changes either lodged or notified, should the Commissioners consider that moving the Business 2 land to the south is an appropriate solution, these Plan Changes should be used as the method to implement a Rural Residential zoning for the northern area and not PC7.*
- *Both options 3.1 and 3.2 cannot be considered an ODP under Policy 4.3.7 and B4.3.56 under PC7 or Policy 8 of PC1. The diagrams only show the zoning of the different areas. It does not address any of the criteria listed under the Policies stated above or in a format used by other ODPs as notified in PC7 (including text explaining the ODP).*
- *No further information has been provided to justify these two options put forward by Denwood and Mr and Mrs Worner.*
- *I consider that option 3.1 and 3.2 are similar to what was suggested at the final two days of the hearing for PC7 by Denwood. I am unable to support these options for the reasons outlined above and therefore recommend that these options be rejected.*

396 Mr Wood went on to outline what he saw as being the options available to us:

As a result, I consider that there are four options left for the Commissioners to consider as a result of this letter and the difference in position between Council and Denwood Trustees Ltd.

- *Option 1 - Rezone the northern land area Business 2 as notified in PC7 (Northern Block).*

Council is prepared to work with both landowners to develop a suitable ODP for just the Business 2 land so that the land is not deferred. However Denwood outlined at our meeting that in order for the Business 2 land to be viable, they would need some sort of Living Z or Living 2 zone to be provided as well. If this option was not supported by Council, Denwood stated they were not prepared to develop an ODP for just the Business 2 area.

- *Option 2 - Rezone land to Business 2 Deferred as notified in PC7 (Northern Block).*

Would require an ODP to uplift the deferred status.

- *Option 3 - move the Business 2 Deferred Land to the south*

Would require an ODP and modifications to the ODP criteria in Policy B4.3.56 to reflect the change in location of the Business 2 land

- *Option 4 - do not rezone the Business 2 Deferred land as notified in PC7*

My preferred option would be Option 1, however this is subject to Denwood agreeing to develop an ODP for just the Business 2 land, which they have decided against. On this basis, I consider that Option 2 should prevail, which is consistent with my recommendation in my s42a and supplementary 42a report.

397 We agree that those options are all available to us. We also agree that Option 1 would require co operation from Denwood.

398 The other options which we have considered are as follows:

Option 5 – Reach a conclusion as to Options 3.1 or 3.2 or some variation of those and direct Denwood to develop an ODP to reflect our conclusion. (in consultation with the officers). Recommend that the Council delay its decision on this part of PC7 until we have made a final recommendation as to whether to approve that ODP and any changes to PC7 to address the Living Z zone.

Option 6- Invite Denwood to propose a finalised ODP for the Business 2 area as per our option 3 (and its options 3.1 and 3.2) with no provision for residential development in the northern block. (leaving that as Rural Outer Plains). Recommend that the Council delay its decision on this part of PC7 until we have

made a final recommendation as to whether to approve an ODP and any consequential changes to PC7.

(Denwood would of course be free to appeal the Council decision in relation to the Northern Block)

Option 7- Defer our recommendation on the northern block until such time as Denwood's appeals in relation to PC1 are resolved (by consent or otherwise).

Option 8- Reach a conclusion regarding options 3.1 and 3.2 and recommend that any resulting ODP be addressed via a Council initiated Plan Change over the course of the next 6 months or so.

Discussion and Conclusion

399 We now move on to address the officer's concerns and to decide between these options.

400 Firstly as will be apparent from our earlier discussion we reject Denwood's submission so far as it seeks Living Z or any other form of residential zoning on the balance of its land. (ie the land outside of the areas shown on its options 3.1 and 3.2). We do so for reasons which we have outlined earlier. Denwood's recent acceptance that the northern block could be living z deferred suggests that it appreciates that Living Z for the whole of the site (whether immediate or deferred) is unrealistic.

401 We agree that the options put forward by Denwood and the Worners are not what we had in mind at the close of the hearing. However we do not have a difficulty with that. Both options are a variation of our Option 3. In fact Denwood has come some considerable distance from the position outlined in its June letter. It is no longer making its proposal conditional on the balance of its land being zoned as Living Z and it is agreeable to deferred Living Z zoning under option 3.1.

402 In terms of the Business zoning, we are satisfied that the original 11ha proposal and the 12.5 ha proposals are appropriate in terms of likely initial demand. Indeed, as discussed earlier we think that it is likely that additional Bus 2 land may be required in the future with the level of growth now anticipated. Lincoln is currently under provided for in terms of this type of land. We think that it is preferable to encourage at least businesses servicing Lincoln residents to locate locally rather than in the Izone.

403 We remain of the view that the Bus 2 land would be better located to the South of the proposed by pass. The principle reason for that is that we think that the land closer to town and convenient to the University should be reserved for

future residential development. The second reason relates to the reverse sensitivity issues originally advanced by the University. Although it withdrew its submissions we think that the concerns are valid and still need to be considered by us. The University is a regionally significant resource. In our view, notwithstanding the University's revised position, a business park would be better separated from the University by residential use. We do not understand the University to be opposed to that.

404 The Bus2 zoning would also detract from the amenity values enjoyed by the Worner's. Although that could be addressed by way of a buffer, we think that it is better addressed by way of shifting the zone. Finally it seems to us that allowing a business park to develop here would foreclose future options. This is one possible direction for future urban growth whether sooner or later. In our view it is a logical extension of the development which the Council has approved on the Dairy Block and has now brought forward into phase 1.

405 We note that the Lincoln Structure Plan identifies that the land to the northeast of the township (i.e. extension of ODP Area 3) as the most suitable direction for further growth, however that conclusion is in effect under challenge via Denwood's appeal on PC1 and we are not convinced that that the Denwood land is unsuitable. It is not for us to choose between these options but we think that not zoning the north eastern block for Business 2 keeps those options open. It would be wrong however for Denwood to see these comments as encouraging in relation to its Private Plan Change request. We have no view on that or on its submission to PC17 seeking rural residential zoning. Our recommendation in favour of deferred zoning for the north eastern block is as far as we think we can go based on current evidence. However, we if the Council comes to a different view on the question of deferral we can also see some merit in developing both the Living Z and the Business 2 areas at the same time or in close proximity. Accordingly although we are not recommending lifting the deferral because we are not convinced regarding likely need, the Council is at liberty to reach a different view on this matter between now and when any Plan Change is proposed to approve the ODP.

406 We agree that in order for us to recommend the approval of an ODP there would need to be development controls in accordance with criteria in Policy B4.3.56. We have asked the officers to provide those for inclusion in our recommendation.

407 We are satisfied that although this option was not part of Denwood's submission it comes within the scope of the relief it sought. The option is contrary to PC1

because it would allow urban growth outside of the MUL. However, we do not place much weight on the location of the MUL so far as it relates to business development. The MUL would need to be extended to reflect the shifted Bus 2 zoning, however we expect that that could be readily accomplished by way of a settlement of this part of Denwood's appeal on PC1 (subject of course to the Court's views on that matter). The increase in amount of Bus 2 land involved is trivial.

408 Accordingly, we recommend that the south eastern block as shown on Denwood's Plans 3.2 be zoned for Business 2 and ODP Area 5 be amended accordingly. We cannot approve an ODP for this area because what has been provided by Denwood is not adequate for that purpose. We do not think it would be fair on other parties or the Council to delay our decision to provide further time for Denwood to develop an ODP. We will however recommend that the Council proceed with a Council initiated Plan Change (or variation as the case may be) within the next 6 months to finalise an ODP for this area ideally in close consultation with Denwood.

409 That leaves a number of options on the table in terms of the northern block:

- Leave as Rural Outer Plains
- Include as Living Z
- Include as Living Z deferred.
- Include as Living 2 around the Worners and the balance as Living Z deferred.
- All as Living 2
- Living 2 deferred conditional upon the outcome of Denwood's PC1 appeal.

410 The officers are strongly in favour of the first of these options. Leaving aside PC1, their opposition to a Living Z zoning is linked to what the Lincoln Structure Plan has outlined for the growth of Lincoln over the next 35 years and the fact that PC7 includes 360 hectares of land for residential growth. We accept that PC7 may well provide sufficient land, however we also accept that the Growth Model has not yet been revised in the light of the earthquakes. We think that it would do no harm to allow a further modest provision of land at Lincoln. We accept that Denwood has not made out a case to allow us to conclude that this land is likely to be required before 2020. Accordingly we reject immediate Living Z zoning. We have, however, recommended that the Council, in conjunction with the other Councils and NZTA review its position on deferral.

- 411 We also accept that Denwood has not made out a case that this land will inevitably be required beyond 2020. However, we do not think that it is required to do so. If the land is zoned as Living Z deferred and there is no demand in 2020, then Denwood or the then owners will presumably delay development.
- 412 Although Denwood has not presented a compelling case in favour of residential zoning, neither has the Council presented a strong case against rezoning this limited parcel of land for future residential development. We are satisfied that there are no significant infrastructure barriers to eventual development of this land as Living Z. The only opposition to the zoning of this block as Living Z, is from the NZTA which did not call evidence on the issue and did not take part in discussions regarding these much reduced options. (Its original opposition was in relation to Denwood's Options 1 and 2 and we do not know its attitude to this option). Although the Regional Council supports PC7 as notified we did not hear any evidence from it in relation to the reduced Denwood proposal.
- 413 With the shifting of the B2 southwards as recommended by us, and with the Council's desire to have the indicative arterial route (CRETs by-pass) shown on the plan and eventually designated, this block is somewhat of an orphan. If we left the land zoned as Rural Outer Plains this would allow its future residential or rural residential zoning to be determined at a later date. Although that is appropriate in relation to the balance of the Denwood land, in our view we have sufficient information before us to allow the decision to be made now in relation to this block.
- 414 We do not see the need for this decision to be deferred to be addressed via a possible appeal of the Council decision or by a further Plan Change. We and the parties have spent some considerable time and resources on this issue and we believe that it would be more efficient to finalise the matter now, rather than have years of future debate. This option provides certainty in relation to this part of the Denwood land. It is up to Denwood how it proceeds in relation to the remainder of its land.
- 415 We have concluded that this block should be zoned as Living Z deferred for the following reasons.
- The zoning is within the scope of Denwood's submission and in our view is within the scope of PC7.
 - Living Z development will not give rise to any significant adverse effects on the environment.

- There is no opposition to such development from any submitter apart from NZTA (we do not know its position in relation to this much reduced proposal).
- There are no significant infrastructure barriers to such development.
- With the removal of the deferred status from ODP Area 1 land this is the next logical development area and in our view it is appropriate to shift that deferred status to this land.
- The Council's proposed arterial road creates an anomaly and we consider that the resulting block is best zoned for residential development rather than its future being determined at a later date. This will minimise effects on the Worners and their neighbours and provide certainty.
- This option reduces the potential for amenity /reverse sensitivity effects on the University.
- The land is better suited in our view for residential than for Business development.
- The land is almost entirely within the proposed Metropolitan Urban Limit.
- Deferred Living Z zoning is not on our interpretation contrary to Policy 6 and the Table 2 targets.
- Although inconsistent with the Lincoln Structure Plan, that plan is not an RMA plan and is not binding on us.
- The urban growth study, PC1 and the Structure Plan will all need to be reviewed in the light of the earthquakes.
- The deferred zoning will still require a plan change prior to 2020 to introduce an ODP. The market will determine whether that occurs and if so whether the land is taken up.
- There is no unfairness to other owners of land with deferred residential status. (unlike immediate zoning which in our view would have needed much strong justification than was provided by Denwood.)
- The zoning of this land for deferred residential development is in our view a more efficient process than leaving the zoning as rural.
- Although we accept that it is not entirely consistent with those provisions within PC7 which are based upon PC1, we do not think that we should base our decision on those provisions.

416 We accept that this option is not entirely consistent with the Operative District Plan and in particular Policy B4.3.50 which states:

"Encourage rezoning of any land for new residential development at Lincoln to be in the area south of Gerald Street and east of Springs Road, if sites are available and appropriate for the proposed activity"

- 417 PC7 is comprehensive Plan Change dealing with all urban growth issues around Lincoln and Rolleston and seeks to delete that Policy. We have accepted that recommendation. Accordingly although the policy is currently operative we do not regard it as determinative. In any event with the removal of the deferred status from the Dairy Block land it is debatable whether there will be sufficient sites *available and appropriate for the proposed activity*, to the east of Springs Road beyond 2020.
- 418 We have considered whether we should make the Living Z deferred zoning conditional on the outcome of Denwood's PC1 appeal. We have concluded that this is unnecessary. The area concerned is within the MUL and the zoning is not on our interpretation inconsistent with Policy 6 even if we were to give that weight. The Regional Council has not submitted in opposition to Denwood's proposal and accordingly has not provided evidence in relation to this much reduced proposal.
- 419 We have considered Option 3.1 with Living 2 zoning around the Worner property and have also considered the option of zoning all of this area as Living 2. We are concerned that both of these options may not be within the scope of Denwood's submissions or indeed the Plan Change. The relief sought by Denwood focussed on Living Z. The Plan Change does not propose any Living 2.
- 420 There is a separate plan change dealing with rural residential. We accept that Living 2 may not be within the scope of that Plan change or may not be within the scope of what Denwood has sought. In any event we do not think that PC7 is the place to deal with low density development. Nor do we think that such development would be an efficient use of this land within the bounds of the proposed arterial and over the road from the Dairy Block which will be zoned Living Z.
- 421 In summary, we have concluded that the objectives and policies of the Plan will be adequately achieved by way of what we have indicated above. In so far as this proposal is not consistent with the location of the boundaries of ODP Area 5 we note that this boundary is based in large part on PC1 and we have concluded that we should not put much weight on this part of PC1 or on the underpinning growth predictions.
- 422 We have considered whether the deferral of Living Z until 2020 is necessary. We can see some merit in there being one plan change introducing one ODP for the whole of the area covered by option 3.2. We also accept that in terms of infrastructure provision it would be more efficient to develop both blocks together or within a few years of each other. However, we do not consider that

we have sufficient evidence before us to justify that approach. We also note that Denwood has indicated that it is accepting of the deferral.

- 423 If the Council sees some merit in removing the deferral then that could potentially be addressed via the Plan Change which will be required to introduce the ODP for at least the Business 2 land or ideally both blocks. We have made an informal recommendation that the Council consider that option following its decision on PC7.

The University's Submission in Relation to the Proposed CRETS Bypass

- 424 The University was strongly opposed to the future CRETS bypass road. It is also strongly opposed to the requirement that any ODP identify and protect the proposed route for a by-pass road which would join up to the now closed legal road through its land. It is concerned that such indication would pre judge the process of consideration of alternatives required for a designation over another person's land.
- 425 We asked for legal advice on this issue from the Council's solicitor. The advice concluded that indicating the route as indicative would not breach any legal requirement. Legal submissions in reply on behalf of the University argued that the proposal had not been adequately justified in terms of section 32 of the Act. Counsel submitted that the most appropriate way of preserving the corridor would be by way of a Notice of Requirement for a designation.
- 426 The land in question is owned by Denwood. Although Denwood was supportive of the University's position it was also agreeable to having the route set aside by way of a buffer. This is shown on its proposed Options 3.1 and 3.2. We were initially encouraging of the approach of showing the proposed route a buffer rather than an indicative road so as to address the University's concerns. Having reflected upon the matter we have concluded that it would be more effective and appropriate to show proposed future use of the buffer for a bypass road. This provides a clear signal in the District Plan as to the Council's intentions whilst also ensuring that the land remains available for that purpose.
- 427 The change from a reference to "buffer" to "proposed road" does not place any restrictions on the Denwood. Given that the land is not owned by the University that indication will have no direct effect on the University. The Council will still be required to demonstrate that it has adequately considered alternatives if it seeks to designate land which it does not own.
- 428 We also note that given that we have not recommended in favour of changing the zoning on the land to the west of the proposed route, the Council still has

options other than connecting to the previous road. It will need to demonstrate that it has adequately considered those options. We have concluded that it would be more effective and efficient in terms of achieving the objectives and policies of the plan, for the route through the Denwood land to be clearly shown as indicative future road. We also agree that any ODPs for the area should protect this route from development. We are of the view that with the future use of this land for residential use it is important that the Council's intentions are clearly indicated.

Recommendation No 40

We recommend that the Council:

- Rezone the entire northern block (13 hectares) as shown on the attached map (Denwood's Option 3.2) as Living Z Deferred (including the Worner's and other existing residential land).
- Rezone the entire southern block (13.4 hectares) as shown on the attached map (Denwood's Option 3.2) as Business 2 Deferred.
- Amend Policy 4.3.56 to include the following ODP Criteria for new ODP Area 5 which includes both the Living Z Deferred and Business 2 Deferred areas.

Outline Development Plan Area 5

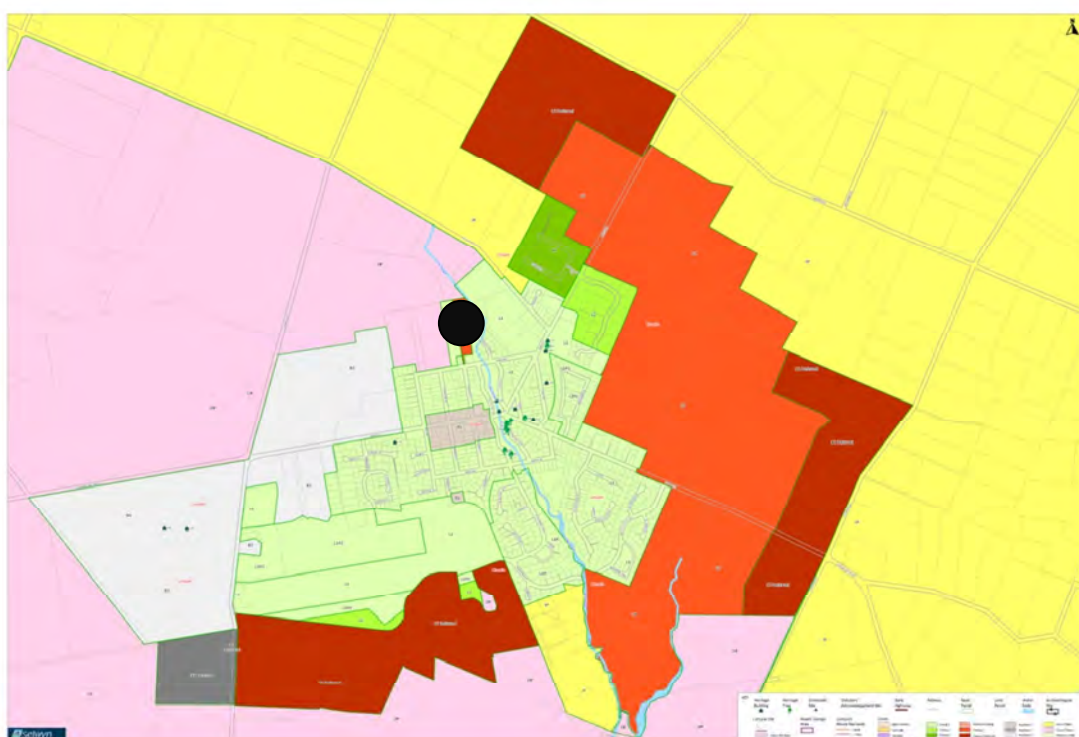
- ODP Area 5 to align with ODP Area 1;
- For the Living Z Zone, provision of one roading connection off Springs Road to service the residential development only;
- For the Business 2 Zone, provision of one roading connection off Springs Road to service the business development only;
- No roading access between the Living Z and Business 2 zones;
- Provision of a 50m buffer between the Living Z and Business 2 zones to be used as a landscape buffer with the potential to become a limited access bypass road (subject to confirmation by the Selwyn District Council)
- Provision of pedestrian and cycle links within the ODP area that could connect with the adjoining urban area to the north and the east;
- Provision of a reticulated wastewater system with capacity to accommodate necessary flows;
- Provision for an integrated stormwater management system (Recommendation from Reconvened Hearing);
- Provision of wells and water pumping facilities to provide sufficient capacity for all future growth in this area, including main trunk connections where necessary;
- Provision of a minimum net density of 10 households per hectare averaged over the Living Z zone.

Recommendation No 40 (Continued)

- Uplift the Deferred status for the Business 2 land via a Council initiated Plan Change or Variation to be notified by 1 April 2011, which shall include:
 - A suitable ODP for the Business 2 area that addresses the ODP criteria in Policy B4.3.56 for ODP Area 5
 - An appropriate rule/standard package for the Business 2 Area
 - Appropriate provision for the buffer zone between the Living Z and Business 2 Area including any required policies or rules for the buffer (including the use of the buffer as a possible by-pass road in the future)
- If Denwood is agreeable, extend that Plan Change to provide a single ODP for both the North Eastern and South Eastern Blocks.
- We also make an informal recommendation, that subsequent to its decision regarding PC7 the Council consult with the other Urban Growth Partners and make a decision as to whether to leave the deferred Living Z zoning on the Northern block or lift that deferral as part of the further Plan Change or variation referred to above.

22. LINCOLN ODP AREA 6

- 429 ODP Area 6 is a small strip of land owned by the Council, comprising the eastern half of what is known as the 'Vege Block', adjoining the Lincoln Domain and the new Lincoln Event Centre. The ODP area is approximately 0.75 hectares in size, which is to be developed for medium density housing, providing for 20 households within the first phasing period.
- 430 The submissions raised various issues which were addressed in the officers' report and we will use the same headings.



Opposition to Medium Density housing

- 431 Submissions by Diana McDrury & Others, Kevin & Penny Zygmant, Patrick & Helen Aldwell, Margaret & David Hannan, Margery Baker & Margaret McDrury all oppose the use of ODP Area 6 for medium density housing purposes. The reasons for opposition relate to potential adverse effects on privacy, views and outlook, shading, and on the general enjoyment of their properties arising from the design and subsequent use of the proposed dwellings within the medium density area. Some of the submitters also suggest that the site should be retained as Living 1 and should contain a maximum of 12 dwellings. Concerns were also raised with respect to a loss of "rural outlook" (S23) and the loss of

trees within the Vege Block associated with the development of the new Lincoln Event Centre (S78).

432 ODP Area 6 is currently zoned Living 1A2, which has a minimum average subdivision allotment size of 650m². The officers estimate that the current zoning would enable 11-12 dwellings to be erected within this 0.75ha site, whereas a medium density classification would enable 18-19 dwellings.

433 Mr Kevan Zygmant provided written evidence at the hearing on this ODP. He argued that this land should be left as reserve because its development would significantly affect the amenity of existing residents of Roblyn Place.

434 However, we agree with Mr Wood that the establishment of an additional 7 dwellings on smaller section sizes, is unlikely to give rise to any more than minor impacts on neighbours. We do not consider it to be efficient to keep the existing zoning or similar.

435 Mr Hattam's evidence for the Council concludes:

However, I would support a restriction that prevented two storey development within 12m of the boundary with Roblyn Place, to give the neighbours more certainty. Likewise, I would support a provision that required a 5m setback for all houses (including single storey), as has been recommended in ODP Area 2 in Rolleston. The 12m dimension is related to the minimum width of a section added to setbacks, to give some design flexibility, but is a larger setback than that proposed in the MDH rules.

I consider that these measures would provide mitigation for the perception of the effects of cramped development on neighbours without unduly affecting the development potential of the site. The site is 32m deep and these restrictions would still allow for a two storey house with a depth of 17m to be built. I consider that these restrictions would give increased protection to neighbours compared with the Living 1 baseline but that given the dimensions of the site such a large setback is not onerous.

436 We note that two storey houses could be built adjacent to the boundary of Roblyn Place residents under the current Living 1A2 zone rules, albeit fewer dwellings overall. We agree with Mr Hattam and Mr Wood, that the inclusion of additional setback requirements will go some to alleviating the submitters' concerns regarding privacy, shading and outlook.

437 Mr Wood recognised that, although the medium density rule package proposed in PC7 contains a comprehensive set of provisions to address such effects; the

establishment of medium density housing within an existing low density environment is more sensitive than an entirely greenfields area.

- 438 We recommend that ODP Area 6 be amended by including compliance standards for both a 5m building setback and a 12m setback for two-storey development from the eastern boundary of ODP Area 6, adjacent to Roblyn Place residents.

Recommendation No 41

Our recommendation is that submissions S23 (Decision No D1-5), S78 (Decision No D1-8), S80 (Decision No D1-7), S94 (Decision No D1-7), S95 (Decision No D1-7), S96 (Decision No D1-7) and S97 (Decision No D1-7) opposing ODP Area 6 be accepted in part.

Ngai Tahu request a 20m wide buffer and riparian margin adjacent to the L1 (Liffey) Creek within this ODP area.

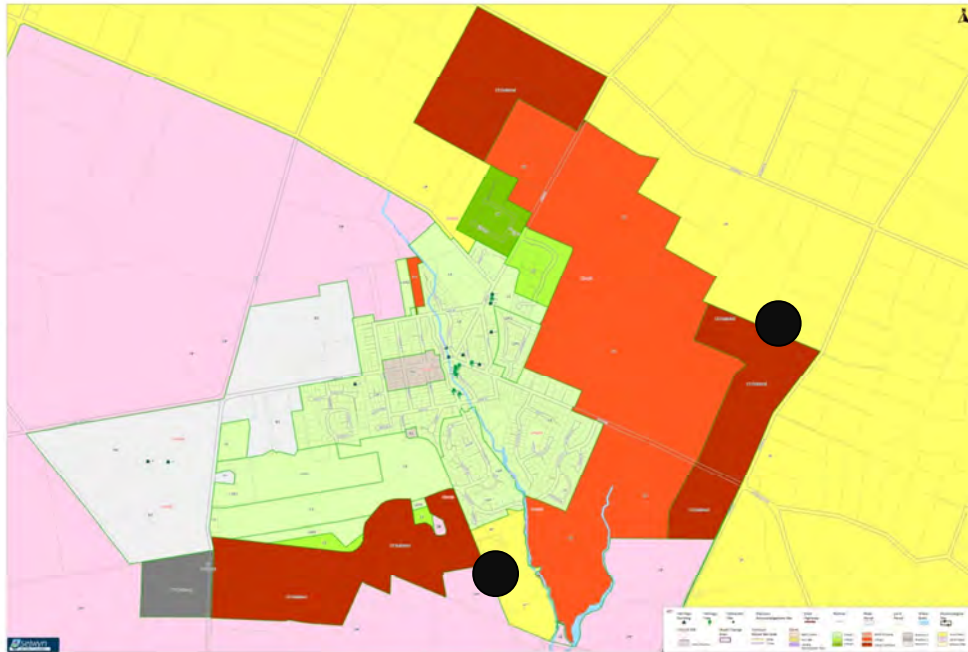
- 439 A joint submission from Mahaanui Kurataiao Ltd, Te Runanga o Ngai Tahu, Te Waihora Management Board & Te Taumutu Runanga (hereon referred to as "Ngai Tahu") oppose the lack of protection of Liffey Stream and seek a 20m planted buffer and riparian margin, including indigenous plantings, adjacent to the L1 (Liffey) Creek.
- 440 The Subdivision chapter of the District Plan contains an assessment matter (12.1.4.28) and associated appendix (Appendix 12) relating to provision of esplanade reserves. In particular, Appendix 12 contains a table (table E12.1) which outlines the waterbodies on which the Council would like to create esplanade reserves or strips when land in townships is subdivided. Table E12.1 identifies that the L1 Creek (Lincoln Township) will be subject to an assessment for the provision of an esplanade reserve with a minimum width of 20m on any sized subdivision.
- 441 We agree with Mr Wood, that the concerns raised by Ngai Tahu will be addressed through the existing esplanade provisions already in the Plan. We also agree that it would be useful to identify the expectation of an esplanade reserve on both sides of the Liffey on the ODP for Area 6, the details of which will be determined at the time of subdivision.

Recommendation No 42

The recommendation is that submission S87 (Decision No D14) seeking a riparian buffer adjacent to the L1 (Liffey) Creek on ODP Area 6 be accepted in part.

23. LINCOLN OTHER ADDITIONAL AREAS REQUESTED

- 442 Two submitters have sought that additional areas of land in Lincoln be zoned Living Z, a Ms Edna Earnshaw and two adjoining owners Mr McIntosh, and Mssrs Jang and Lee. These are shown below.



- 443 Mrs Earnshaw wishes to rezone 4 hectares of land that she owns which abuts the northern edge of ODP Area 3. Mr Wood noted that the land adjoins part of ODP Area 3 which is deferred to Stage 2. PC 7 provides for over 2600 households over the next nine years and a further 1700 households in Stage 2. At this point in time we do not consider there any strategic advantage or planning logic to the additional of Mrs Earnshaw's land at this time. Nor were we presented with any planning evidence in support of her submission. We acknowledge that this area may be required for further growth in the long term but on going monitoring will determine the timing of further land zoning in this part of Lincoln taking into account post earthquake demands. We therefore recommend that this submission be rejected.
- 444 The second area is located south of Lincoln between ODP Area 1 and ODP Area 2. The land involves two 4 ha blocks and four 1 hectare blocks which are zoned Inner Plains. Access is via a 10 m wide right of way which runs along the western boundary of the land to the north which consists of six rural lifestyle blocks and links to Allendale Lane which is an existing residential cul-de-sac. The two four hectare blocks have no buildings on them and are currently farmed while the one hectare blocks each have a dwelling. Ms Fiona Aston presented

evidence in support of this submission and argued that farming the 4 ha properties was problematic because of reverse sensitivity issues. The site is affected by the wastewater treatment plant buffer which as discussed earlier will remain in place going forward because the aerators will continue to be operational.

445 A resource consent application for subdivision to four 2 ha blocks was previously refused on grounds of effects on the amenity of the properties to the north. A more recent application for 8 1 ha lots, taking into account the changed status of land to the west and east as a result of PC 7, is reported to be on hold pending consideration of servicing options. The site is not within the PC 1 metropolitan urban limit and the submitter has not appealed that decision. The Lincoln Structure Plan shows that site as part of a storm water management area but it is accepted that this is no longer required.

446 We also heard from submitters opposing this change of zoning being Alan Belcher, Rhonda Jacques, Terry Hopkins. Two of these are owners of the 1 ha properties, while a third Mr David Pringle was in support. Those opposed to Living Z zoning did so on the basis of the effects of traffic using the right of way and other amenity effects on the low density development.

447 Ms Aston broadly explored alternative access options to the Allendale Lane access from the proposed network for ODP Areas 1 and 2 or a new access onto Southfield Drive. This is in response to the situation that irrespective of the resource management merits approval of all right of way parties would be required for additional access to Allendale Lane. Mr Mazey for the Council did not oppose the northern or western options but was opposed to a connection to ODP Area 2 across the Liffey Stream. We note however that an access to ODP 1 would require use of at least part of the right of way and some parties remain opposed to this. We also note that the Council is opposed to an access to Moirs Lane to the south although that has not been proposed by the submitters.

448 During the hearing we questioned Mr Mazey as to whether a secondary road link connecting ODP Area 1 and 2 had any network connectivity advantages and his opinion was that it did not. Access to this area of land therefore remains problematic although we acknowledge that at some time in the future that position of certain parties could change. We agree with Mr Wood that the wastewater treatment plant setback which will continue to be required places a significant constraint on any future development of this land. Mr Wood provided, as part of his reply, a plan showing the area affected by the rule which shows that the area for buildings would be limited to a strip of land alongside

the stream. We do not consider that this is unlikely to result in an appropriate form of development even if access can be resolved.

449 We note that the land owners have lodged submissions to PC 17 dealing with rural residential land and this may be an appropriate way forward for the parties as noted by Mr Wood in his reply. However, that is a matter for a separate decision making process. While we have some sympathy for the submitters we conclude that the land is not suitable for Living Z form of development.

450 We therefore recommend that the submissions seeking zoning of this land as Living Z be declined.

Recommendation No 43

Submission 13 (Decision D1 and D2) seeking land at 624 Ellesmere Road to be rezoned to Living Z be rejected. Submission 89 (Decision D1, D2, D10, D11, D12, D13, D14, D15, D16 and D17) seeking additional land to be included as new ODP area 7 be rejected.

24. RECOMMENDATION

- 451 PC 7 is a very major change for the Selwyn District and we have endeavoured to consider all the material issues put before us. We are satisfied that the provisions now proposed are in accordance with the Act and we have addressed all the matters of consideration identified. We note that some submitters sought that PC 7 be withdrawn on the basis that it is not consistent with the Act, although we did not receive evidence to substantiate those submissions. We are satisfied that this is not the case and recommend those submissions be rejected accordingly.
- 452 Consequently, for the reasons expressed above and after taking into account all of the evidence received and all relevant submissions, it is our recommendation that the plan change be approved with amendments as detailed and that submissions are determined accordingly as set out in the report and also scheduled in Appendix 2.
- 453 We would like to thank the officers and in particular Mr Wood for the hard work they have put into this Plan Change, the hearing process and post hearing discussions. We are also grateful to the submitters for participating in what we hope has been a constructive process.



.....
P. N Thomas

Hearing Commissioner



.....
P Milne

Hearing Commissioner

APPENDIX 1 – List of Appearances

- Alan Belcher
- Graeme Worner
- Rhonda Jacques
- Terry Hopkins
- Edna Earnshaw
- New Zealand Guardian Trust
- Plant and Food Research
- Environment Canterbury
- Worthwhile Ltd
- CDL Land New Zealand Ltd
- Rolleston Park Residents Assn
- BHL and Early Property Holdings
- Neil Russell
- McIntosh, Jung and Lee
- David Pringle
- Denwood Trustees Ltd
- Fulton Hogan
- Lincoln University
- Lincoln Land Development
- Foster Holdings Ltd
- Rolleston Square Ltd, Rolleston Retail Ltd, RollTen Investments Ltd
- Broadfields Development Ltd
- Dene Christensen
- MKT
- Ivan Court and Jack O'Donnell

APPENDIX 2 – Plan Change 7 as Amended by Decisions

APPENDIX 3 – Schedule of Recommended Decisions

APPENDIX 4 – Change 1 to the Canterbury Regional Policy Statement as Amended by Commissioners Decisions