

BEFORE THE SELWYN DISTRICT COUNCIL

PLAN CHANGE 72

IN THE MATTER of the Resource Management Act 1991
("the Act")

AND

IN THE MATTER of an application for Plan Change 72 to the
Operative Selwyn District Plan

BETWEEN **TRICES ROAD REZONING GROUP**

Applicant

AND **SELWYN DISTRICT COUNCIL**

Respondent

EVIDENCE OF STEWART WILLIAM FLETCHER

On Behalf of G & J Drinnan

1 Qualifications

- 1.1 I am a Consultant Planner and have been practicing as a Planner for approximately 22 years. I have a Bachelor of Resource Studies from Lincoln University and am a full member of the NZ Planning Institute.
- 1.2 I have worked in a number of planning roles and have operated my own consultancy for the past 10 years.

2 Expert Witness Practice Note

- 2.1 I have read, and agree to comply with, the Code of Conduct for Expert Witnesses as required by the Environment Court's Practice Note 2014. In providing this evidence all of the opinions provided are within my expertise and I have considered and I have not omitted to consider any material facts known to me which might alter or qualify the opinions I express.
- 2.2 In preparing this evidence I have read the documentation provided as part of the plan change application including Council reports.

3 Scope of Evidence

- 3.1 The purpose of this evidence is to assist the Hearings Commissioner in their consideration of the application.
- 3.2 The Drinnan's lodged a submission in opposition (in part) to the plan change application. I assisted the Drinnan's' in the preparation and lodgement of the submission. The submission raises two issues, being stormwater disposal from the plan change area and secondly the inclusion of part of the Drinnan's' property as part of the plan change area. This evidence is limited to those two matters.
- 3.3 In my opinion there is no doubt that the recently established reserve and the change in zoning, if approved, will result in significant changes in amenity for the Drinnan's. Plans show higher density living adjoining their boundary, the outlook will change, it is likely that development will affect activities that can be undertaken. Grazing cattle is likely to give rise to reverse sensitivity effects and the way in which stock is moved between some paddocks will need to change.
- 3.4 The Drinnan's are accepting of the changes and the impacts on them and recognises that there will potentially also be positive impacts, particularly including a potential increase in land value. To this end they have only raised the two questions through their submission on the proposed plan change.

4 The Drinnan Property

- 4.1 The Drinnan's property is located at 2 Hamptons Road, is approximately 10 hectares in area and contains a dwelling, large shed plus a farm outbuilding. Grant and Jeanette Drinnan have owned the property since 2015. They previously owned a larger farm of approximately 140 hectares in area on the Port Hills. They reside at the property and farm it, which consists of predominantly grazing cattle. The dwelling was constructed in approximately 2008/2009 by the previous landowner.
- 4.2 The property is accessed from Hamptons Road and it is noted that this section of road is not maintained by the Council. The Drinnan property is 'L' shaped with a small section adjacent to Hamptons Road and the remainder being a rectangular shaped area running in a north south direction. The property is generally flat and there is a creek, including ponding area, adjoining the southeast corner of the site. I note that the site has not been identified as potentially contaminated in the Environment Canterbury Listed Land Use Register.
- 4.3 The property currently provides the enjoyment of a quiet rural environment while being close to Prebbleton and Christchurch. Other dwellings are located a reasonable distance from the Drinnan's and there is little traffic given the main entrance to the property is at the blind end of an unmaintained council road. It would be fair to describe the property as a lifestyle farm with the grazing of the cattle providing a modest return but providing the Drinnan's with an enjoyable lifestyle and keeping them active from an agricultural perspective.
- 4.4 On the south boundary is a 20 ha block of rural land, now being developed as local reserve, on the western and northern boundaries are lifestyle blocks and to the east is rural land.
- 4.5 It is also noted that, because of the reserve development and Plan Change 72, the Drinnan's have submitted on the Proposed Selwyn District Plan seeking that their land is residentially zoned. However, due to the significant financial commitment required by Council to proceed with rezoning requests, and the smaller size of their property it is not certain that they will proceed with the rezoning request. In addition, the Drinnan's are aware that the two properties to the rear (east) have also submitted on the Proposed Selwyn District Plan, seeking that their land is also rezoned residential.

5 Stormwater

- 5.1 Stormwater for the Drinnan's dwelling and other buildings is disposed of to ground. Generally, the site is flat with gentle slopes across large distances, such as towards Leadleys and Tosswill Roads.

- 5.2 There is an indentation in the location identified by the various reports. To suggest this is a ditch or drainage channel would be overstating its' size, form and function. It is a contoured and grassed low point that does not contain a consistent or regular water flow. The indentation is not a natural water channel. It was constructed in approximately the 1950's as is evident through the below historical aerial photography. The imagery was obtained from the Canterbury Maps Historical Imagery Database.



Figure 1: Historic Image of Site and Surrounding Area from 1940 to 1945



Figure 2: Historic Image of Site and Surrounding Area from 1955 to 1959



Figure 3: Historic Image of Site and Surrounding Area from 1980 to 1984



Figure 4: Current Aerial Image of Site and Surrounding Area

- 5.3 In more recent times works have been undertaken within the adjacent site, being part of the PC72 area, which has included the formation of a driveway across the area. It is estimated this was undertaken/constructed roughly 10 to 15 years ago. This driveway will have impacted the water flow across the area and is likely to have limited water flow through this area even further.
- 5.4 In consideration of the potential impacts on the Drinnan's from stormwater it is first noted that the Drinnan's were unaware of the proposed plan change until they were approached by representatives for the neighbours. At this point it was made clear that the lodging of the application was imminent, and the purpose of the meeting was focused on the question of stormwater. There was a general seeking of some form of assurance or agreement for stormwater to be discharged across the Drinnan's property. There were suggestions that an easement could be sought.
- 5.5 Since that time there has been no further discussions or consultation made by the applicant regarding the question of stormwater. This has left the Drinnan's in a position of attempting to understand what the potential impacts could be on them and their property.
- 5.6 Documentation provided by the applicant as part of their application to Council suggests there will be no change in water flow across the Drinnan's property.

- 5.7 Grant Drinnan is intimately familiar with their property, its' topography and drainage. While the minor indentation across the property is evident, water does not flow through it. In 2021 there were three heavy rainfall events, being 30 May (68mm), 3 August (36mm) and 15 December (72mm). These volumes of recorded rainfall are based on the records for the local Sparks Road rainfall measurement point. Grant Drinnan has viewed the indentation area across his property during these events and there has been no visible water flow. Photo's confirming this will also be available at the hearing.
- 5.8 On this basis, in order to achieve the outcome specified in the stormwater reports and evidence the current expectation of the Drinnan's is that the proposed stormwater control system would need to operate in such a manner that there is no resultant water flow across the Drinnan's property in heavy rainfall events. It is respectfully requested that the applicant confirms this.
- 5.9 Ultimately what the Drinnan's seek by their submission is an understanding of what the impacts are for them and their property. Currently there is the concern that the development of the plan change area will place requirements on them to enable stormwater disposal across their property. This could also introduce limitations on how they may choose to operate and maybe develop their property in the future. Despite the information in the application there appears to be a disconnect between the current on the ground environment, ie what actually happens, and the assumptions made in the reports.
- 5.10 It is recognised that significantly greater or more detailed investigations would be undertaken as part of the preparation of a subdivision design but the concern is that this issue appears to be being parked to be dealt with later. If the matter is not suitably addressed now there is the risk that later the matter will have been considered to have been suitably addressed at the time of the zoning of the area and consequently the Drinnan's will have less of an opportunity to control any discharge of stormwater across their property. In the very least it needs to be ensured that there is no assumption that the Drinnan's property is available for stormwater disposal, without due process being undertaken, that the appropriate mechanisms are put in place to ensure the Drinnan's are appropriately consulted with and potential impacts on them are suitably addressed.
- 5.11 This issue is reiterated through the report of Mr Murray England, at paragraph 42, where he states:
- "I am however concerned about the proposed stormwater outfall from this development. The response to Councils RFI discusses this matter and although I agree that easements are not required at this stage of the process, the ODP should show the legal stormwater outfalls from this development."*

6 Zoning Sought

- 6.1 The second point of the submission seeks that a section of the Drinnan's property is included as part of the plan change area. What is sought is a residential zoning that would align with the same zoning for the plan change area (Living Z - Prebbleton).
- 6.2 The shape of the Drinnan's property, the adjoining reserve and the proposed plan change area makes it readily apparent that the small section of land should be included as part of the plan change area. To not do so would be illogical. Comment of the same vein is made of this in the various reports on the plan change and appended legal opinion.
- 6.3 Naturally it is also recognised that it would only be appropriate to rezone this section of land if the rezoning of the wider plan change area is approved.
- 6.4 The part of the Drinnan's property sought to be included as part of the PC72 area is identified in the submission and is approximately 2.2 hectares in area. In very basic terms this would equate to the establishment of up to a maximum of 31 allotments (based on a required average allotment size of 700m² per allotment) but realistically the number would be less. For example, a pedestrian way could be established, stormwater management will be required and sections are likely to vary in size.
- 6.5 Given the wider directive of seeking 12 dwellings per hectare, it is suggested that a realistic number of allotments for the relevant part of the Drinnan's property would be 26.
- 6.6 On this basis the question of the inclusion of the area, as part of PC72, is commented on as follows:

Scope

- 6.7 The Council planners report is generally favourable regarding the inclusion of part of the Drinnan's land as part of the plan change area. This includes a preliminary consideration of whether the inclusion of the area would be within the scope of the plan change and the suggestion is made that a legal opinion should be sought to confirm this.
- 6.8 In my opinion, the question of scope is impacted by the details of a specific plan change. For example, a Council initiated plan change is more likely to include a series of processes, including public consultation, which would then feed into a section 32 analysis. In that situation the question of the area to which a plan change should apply has been robustly considered and the public has had the opportunity to participate in such a process prior to the plan change being notified.

That is not to say that the inclusion of additional land is not always appropriate instead it is likely that a detailed consideration of the matter has already occurred prior to the notification of the plan change.

- 6.9 In this instance the Drinnan's' were only aware of the plan change when they were approached by the applicant group and at that stage it was made clear that the lodgement of the application with Council was imminent. A review of the plan change application suggests the applicant was focused on the question of the zoning of their clients' properties which is both understandable and is also reflective of the 2014 Rural Residential Strategy.
- 6.10 Nevertheless, at some point some analysis needs to be given to the question of whether the location of the perimeter of the plan change area is appropriate. In part, this explains the opportunity given to other 'directly affected' parties – such as neighbours – to comment on the plan change including the question of inclusion of appropriate additional areas. In short, this is the Drinnan's' only opportunity to question whether the location of the plan change area is appropriate. To suggest scope may impact this needs to be balanced against the opportunity for other parties to also be consulted with and question whether the area of the plan change is appropriate.
- 6.11 In addition, and in consideration of the 2014 strategy an important change to the area since the strategy was established is the adjoining local reserve that is currently being constructed. The lodgement of the application to designate and establish the reserve was made in mid-2020. Confirmation of the designation status occurred in March 2021. Construction of the reserve has only recently commenced. Accordingly, there was no reserve when the strategy was prepared. Likewise, the original plan change application was lodged in November 2020 such that no decision was made on the reserve when the plan change application was lodged.
- 6.12 If an application was lodged today for PC72 there is the potential that the logical inclusion of the relevant part of the Drinnan's land may already have occurred.
- 6.13 The Council also correctly points out that the only parties potentially impacted by the inclusion of the Drinnan's land are the Council, the applicant and the Drinnan's. It is considered that all relevant parties have the opportunity to consider and comment on the inclusion of the land.
- 6.14 Therefore, in my opinion, the private plan change process needs to be carefully managed to ensure the public has the opportunity to comment on the plan change including whether the plan change area is in a logical location while ensuring the content of any submission is within the ambit of the plan change. I consider that the incorporation of the Drinnans land is within the scope of the proposal as the

property is more logical than not to be included, particularly given the changes to the surrounding area and that no other parties outside of the plan change process will be impacted by the inclusion of the land.

- 6.15 In addition, and based on the suggestion of the Council report, a legal opinion has been obtained and is appended to this evidence. The opinion confirms that the inclusion of the relevant part of the Drinnan's property is within the scope of PC72.

Water Supply and Wastewater

- 6.16 Detailed assessments have been provided as part of the plan change application and these have been reviewed by representatives for Council. Generally, with regards to water and wastewater connections no significant issues were identified as to connections to reticulated services.
- 6.17 With regards to water supply, as part of PC72 it is proposed to extend the Council reticulated water supply network for Prebbleton and this would include the establishment of a watermain on part of Hamptons Road. Council have previously confirmed the availability of water for the plan change area and the evidence of Mr Murray England has again confirmed a water supply will be available. The small addition of part of the Drinnan's property as part of the plan change area is considered to only result in a minor change in water demand.
- 6.18 With regards to wastewater, much the same arrangement applies whereby connections are available and pipelines would be installed on Hamptons Road.
- 6.19 It is recognised that engineering assessments regarding the provision of services have not been provided by the Drinnan's. Should Council deem this is necessary then the Drinnan's are comfortable to discuss this matter further with Council and arrange such information as considered necessary.
- 6.20 Beyond the above, and I note this is a matter for a later date, I am conscious that Prebbleton is continuing to grow and land to the rear (east of the site) has been purchased by known land developers in the local area. Those owners have also submitted on the Proposed Selwyn District Plan seeking the rezoning of their land. I mention this now because there is the potential that Council may elect to install oversize pipelines to provide for additional demand in the future.

Stormwater

- 6.21 Stormwater has been discussed earlier in this evidence but consideration has to likewise be given to how stormwater could be controlled and disposed of if the additional land was included as part of the plan change area.

- 6.22 I have discussed this issue with Grant Drinnan and in the first instance he would be of the opinion that stormwater would be first collected in a controlled manner, such as via a stormwater basin and then directed towards the local creek at the southeast corner of their property. This would be feasible from a topography perspective and would be directing water directly to the creek without needing to cross other people's properties or being connected to the proposed PC72 system on the opposite side of Hamptons Road. His understanding of the topography of his property suggests that it would be easier to direct water to the creek than across Hamptons Road to the PC72 area. Such an arrangement is considered both reasonable and feasible, subject to obtaining the necessary consents.

Roading

- 6.23 The relevant section of Hamptons Road has a legal width of approximately 20 metres and is currently of an 8m wide gravel formation. As part of the current plan change proposal Hamptons Road would need to be suitably formed. This includes up to the eastern end of the road based on indicative plans provided by the applicant. These also show that houses will potentially face out on to the road. I note there have also previously been discussions with Council that part of Hamptons Road may be sealed as part of the reserve development.
- 6.24 It has been recommended in the Council assessment that Hamptons Road is upgraded to an urban standard. The Drinnan's are comfortable with such an arrangement.
- 6.25 Again, no formal assessment by a roading engineer has been undertaken as part of seeking to include part of the Drinnan's property in the plan change area. This is not considered necessary but, should Council require this, it can be arranged.

Pedestrian Connections

- 6.26 It is noted that there has been some discussion around potential additional connections between the plan change area and the reserve which is currently being constructed. This could include in the southeast corner of the plan change area. The Drinnan's are open to discussing this with Council. The only question they ask is that it is first ensured that such a connection is what Council want, based on the designated and approved layout for the reserve area, which was included as part of the recent designation process.

Amendment to ODP

- 6.27 On the basis of the above it is respectfully suggested that a simple amendment could be made to the PC72 ODP area which identifies that the relevant portion of the Drinnan's property is included as part of the ODP area and is zoned Living Z.

- 6.28 Overall, it is reiterated that the inclusion of part of the Drinnan's property within PC72 is logical and makes more sense to include than not. Generally, it is not considered that there are any obvious reasons not to include the land and, as detailed in the appended legal opinion, the inclusion of the plan is considered to be within the scope of the plan change.

7 Summary

- 7.1 In summary, the Drinnan's have lodged a submission in opposition (in part) to PC72 which seeks to rezone an area for residential purposes. The reasons for the submission are limited to stormwater and the inclusion of part of the Drinnan's property as part of the ODP area including being zoned Living Z – Prebbleton.
- 7.2 It is sought that the applicant addresses the issue of stormwater outflow on to the Drinnan's property so that a clear understanding of the impacts and how they will be addressed can be ascertained.
- 7.3 The inclusion of part of the property within the plan change area is reflective of recent developments in the local area, particularly including the reserve, and leads to a more logical outcome, including the avoidance of potential effects, such as reverse sensitivity.
- 7.4 Overall, I am of the opinion that it is possible for stormwater and other services to be appropriately addressed and the inclusion of the area of land leads to positive outcomes for all parties. The Drinnan's hope to work with the applicants in a positive manner and we are also open to providing any further information or responding to any Council queries as is considered necessary.

Appendix 1

Legal Opinion

21 January 2022

Mr G & Mrs J Drinnan
2 Hamptons Road
RD 4
Christchurch 7674

By email: gibraltarfarm@xtra.co.nz

Dear Grant & Jeanette

Advice as to whether a submission on PC72 is 'on' the plan change

1. You have asked for a legal opinion on whether your submission on Plan Change 72 (PC72) to the operative Selwyn District Plan (Plan) is within jurisdiction.
2. The issue of jurisdiction, while raised in this case by the officer who prepared the section 42A report for the Selwyn District Council (Council), is always a live matter in plan changes where submissions need to be "on" the plan change.
3. Based on the discussion below it is our opinion that the amendment your submission seeks to PC72 can be considered within jurisdiction (or "on" the plan change) because:
 - 3.1. It is addressed to the effective change to the status quo sought by the plan change, which includes, amending rural zoning and extending the "urban edge" of Prebbleton to the logical extent of coinciding with Birches Road Park;
 - 3.2. Accordingly, while creating a modest extension to PC72, the amendment can be seen as a logical, and practical, consequential change;
 - 3.3. The alternative, of creating a rural enclave between urban zoned land the reserve that is intended for use as a community park, make little sense and may create consequential issues relating to reverse sensitivity and limits on use;
 - 3.4. The inclusion of your land in PC72 will not necessitate substantial further section 32 analysis given its proximity to the remainder of the PC72 land and that it raises no environmental issues that differ, in essence, from those already being considered; and
 - 3.5. The fact that Birches Road Park and the remainder of your property will be the only non-PC72 land nominally affected by the proposed amendment, means that there are no parties, not already party to the PC72 process, that could be

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directly adversely affected by the amendment and who ought to have been given an opportunity to take part in the process but have not.

4. Accordingly, in our view, there is no jurisdictional impediment to a consideration of the substantive merits of your submission by the Commissioner.

Background

5. PC72 is a private plan change application seeking, in essence, to build on the inclusion of this land in the rural residential strategy (Strategy) for Selwyn District in 2014. It is also framed as implementing the direction contained in the national Policy Statement on Urban Development 2020 (NPS-UD) for District Councils to consider plan changes that will create significant additional housing opportunities, even where those changes might be considered out of sequence.
6. The plan change has otherwise followed the standard process including acceptance by the Council, notification, the receipt of submissions that were then summarised to enable further submissions, the provision of a section 42A report by the Council and now, evidence exchange prior to a merits hearing.
7. You made a submission on PC72 that sought confirmation of the proposals for the disposal of stormwater under the plan change that may affect your land, and, relevant to this opinion, the addition of a 2.2 hectare (or thereabouts) part of the property at 2 Hamptons Road for consideration as part of PC72.
8. The additional land is on the opposite side of Hamptons Road from the notified PC72 land and was not part of the consideration of the hearing panel that deliberated on the Strategy. In the Strategy, Hamptons Road was identified as a logical southern urban edge to Prebbleton on the basis that there were no logical features south of Hamptons Road that might fulfil that role.
9. However, in the time since the strategy, the Council has purchased land to the south of Hamptons Road for the creation of a reserve (Birches Road Park). The creation of Birches Road Park provides a logical feature for the urban edge of Prebbleton, especially given the range of uses intended. These mean that Birches Road Park will service and be an integrated part of the Prebbleton urban area.
10. The only land abutting the southern side of Hamptons Rd (East of Birches Road) that is not part of Birches Road Park is the part of your land that you seek to be included in PC72.
11. That there are good arguments for the inclusion of this part of your land in PC72 is recognised in the section 42A report and also in the urban design comments on the submission that forms part of that report. However, the issue here is whether your submission can be considered 'on' the plan change as a matter of jurisdiction. In other words, is it within the scope of PC72.

Legal Framework

12. Clause 6 of Schedule 1 of the Resource Management Act (the RMA or the Act) relates to submissions in the case of proposed plans, which includes¹ plan changes. Clause 6 provides (relevantly):

Making of submissions

- (1) Once a proposed... plan is publicly notified under clause 5, the persons described in subclauses (2) to (4) may make a submission on it to the relevant local authority.
- (2) The local authority in its own area may make a submission.
- (3) Any other person may make a submission but, if the person could gain an advantage in trade competition through the submission, the person's right to make a submission is limited by subclause (4).
- (4) A person who could gain an advantage in trade competition through the submission may make a submission only if directly affected by an effect of the proposed... plan that –
 - (a) adversely affects the environment; and
 - (b) does not relate to trade competition or the effects of trade competition.
- (5) A submission must be in the prescribed form.

[underlining added]

13. For completeness, we note that we do not consider that your request to include part of your land in PC72 involves any aspect of trade competition.
14. The considerations regarding whether a submission can be considered “on” a plan change are settled. However, because the answer will depend on the circumstances and considerations at play, the question has been recognised as “not necessarily easy to answer in a specific case”².
15. The leading authority is *Clearwater*, which involved a variation rather than a plan change. In *Clearwater*³ the High Court identified a bipartite test:
- 15.1. A submission could be fairly regarded as “on” a variation “if it is addressed to the extent to which the variation changes the pre-existing status quo”; but
 - 15.2. If the effect of finding the submission “on” the variation would be to permit amendments to a planning instrument without any real opportunity for participation by those potentially affected, that is a “powerful consideration”

¹ Under section 43AAC(1)(a), RMA.

² *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003 at [56] (**Clearwater**)

³ *Ibid* at [66]

against finding that the submission was truly “on” the variation. It is important that “all those likely to be affected by or interested in the alternative methods suggested in the submission have the opportunity to participate”. So, a submission that “came out of left field” which “propos[ed] something completely novel” would be unlikely to be found to be “on” a variation.

16. The above was summarised in the more recent case of *Palmerston City Council v Motor Machinists Ltd*⁴ which confirmed the application of the *Clearwater* tests in the case of plan changes, and which rejected a gloss on those tests that had been applied by the Environment Court in *Naturally Best NZ Ltd v Queenstown Lakes District Council*⁵. That gloss was to endorse “fair and reasonable extensions” to a plan change.
17. The High Court’s rejection of the gloss appears, respectfully, to have been primarily motivated by the potential that persons directly affected by such amendments to a plan change would have limited, if any, further opportunity to participate. It also considered that the gloss relied on vague and unhelpful limitations, which was unsatisfactory.
18. In *Motor Machinists* the Court observed⁶ that the first *Clearwater* test was the “dominant consideration” and that the test itself involved two aspects:

“the breadth of alteration to the status quo entailed in the proposed plan change, and whether the submission then addressed that alteration.

In other words, the submission must reasonably be said to fall within the ambit of the plan change. ...”

19. The Court then suggested two means of analysing that question. The first is:

“... whether the submission raises any matters that should have been addressed in the section 32 evaluation and report. If so, the submission is unlikely to fall within the ambit of the plan change.”

20. The other suggestion is:

“...to ask whether the management regime in a district plan for a particular resource (such as a particular lot) is altered by the plan change. If it is not then a submission seeking a new management regime is unlikely to be “on” the plan change.”

21. However, the Court went on:

“Yet the *Clearwater* approach does not exclude altogether zoning extension by submission. Incidental or consequential extensions of zoning changes proposed in a plan change are permissible, provided that no substantial further s 32 analysis is required to inform affected persons of the comparative merits of that change. Such consequential modifications are permitted to be made by decision makers under schedule 1, clause 10(2). Logically they may also be the subject of a submission.

[underlining added]

⁴ [2013] NZHC 1290

⁵ Environment Court, Christchurch C49/2004, 23 April 2004

⁶ Fn 4 at [80]-[81]

22. But the ability to then consider the submission and make any such change is also subject to the second limb of the *Clearwater* test: whether persons directly or potentially directly affected by the additional changes proposed in the submission have been denied the ability to respond to the additional changes. The Court considered⁷ that the risks to such people are not avoided under the schedule 1 process and:

“...to override the reasonable interests of people and communities by a submissional (*sic*) side-wind would not be robust sustainable management of natural resources.”

Discussion

23. Your submission on PC72 has two components. The first, the treatment of stormwater in the plan change, is clearly within its ambit so requires no further comment here.
24. The second change you seek is the additional rezoning of part of your property that involves an extension of the land area for PC72.
25. Under the approach to the first *Clearwater* test, as discussed in *Motor Machinists*, such a change to the management regime for the resource (your land) would not be otherwise altered by PC72. Therefore, on its face the submission could be seen as unlikely to be “on” PC72.
26. However, in our opinion, the exception in the case of incidental or consequential changes applies in this case.
27. Clause 10(2)(b) of the first schedule provides that decisions on submissions:
- (b) may include—
 - (i) matters relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions; and
 - (ii) any other matter relevant to the proposed statement or plan arising from the submissions.
28. PC72 relates to the land identified as Area 8 in the Council’s 2014 Strategy but goes further than proposing the land be given a rural residential zoning. Part of the justification appears to be that the “edge” to residential development for Prebbleton will also be demarked by Birches Road Park and there seems little reason for enabling only rural residential development up to that edge⁸. That justification is amplified by reference to the NPS-UD.
29. This outcome, under PC72, would then leave your land adjacent to Hamptons Rd as a rural enclave sandwiched between the new residential zoning and Birches Road Park, which will then be the logical southern edge to Prebbleton.

⁷ Fn 4, at [82]

⁸ Though PC72 does suggest more than one option, in part to mark any transition.

30. That outcome makes limited sense, with respect to this part of your land. It raises issues of reverse sensitivity and potential limits on your use of the land as a direct outcome of both PC72 and the recreational developments intended for Birches Road Park, that have also been the subject of public consultation.
31. In these circumstances, the relatively modest amendment you seek to PC72, which in the words of the section 42A reporting officer will not “threaten or unduly expand the scope of the plan change”, can be considered incidental to and a consequence of the changes to the status quo that PC72 will result in, if approved.
32. The question then is whether the inclusion of this part of your land requires any substantial additional section 32 analysis.
33. Given that the issues that could arise from including this part of your land in PC72 are essentially the same as for the remainder of the land, including:
 - 33.1. The approach to any natural and physical hazards, including stormwater and geotechnical;
 - 33.2. Integration with the transport network and services generally; and
 - 33.3. The interface with Birches Road Park.

– no additional section 32 issues are being introduced and the further assessment that is required under section 32AA will need to go no further than it otherwise would have in assessing PC72.
34. Further, and in our view critically, considering the second limb of the *Clearwater* test, because you have identified only part of your land for inclusion in PC72, the result means that the only persons that might be considered *directly* affected by the additional change are yourselves and the Council (as owners of Birches Road Park). And, as identified by the s42A reporting officer, other parties with a more strategic interest in PC72 such as the Canterbury Regional Council, Christchurch City Council and Waka Kotahi NZ Transport Agency, are already party to PC72.
35. In any event, your submission is far from being “out of left field”. The issue of the appropriate zoning for your property is ongoing and you have indicated in your submission that you are also submitting on the current Selwyn District Plan review. While that is a separate process, it emphasises that the question of appropriateness of current zoning of your land is a live matter and is part of the public record.
36. This means that no natural justice issues arise in relation to the existence of directly affected or potentially directly affected persons being unable to participate in the PC72 process and comment on the additional change your submission proposes.
37. As a result, we consider that both limbs of the *Clearwater* test are satisfied by your submission.

Conclusion

38. Accordingly, based on the tests identified in *Clearwater* and confirmed in *Motor Machinists* and for the reasons set out above, we have concluded that your submission can be considered “on” PC72.
39. Therefore, there is no jurisdictional impediment to the Commissioner appointed by the Council from proceeding to consider the merits of the inclusion of your land as part of PC72.
40. Please advise if you require anything further.

Yours faithfully

**Andrew Schulte**

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