

In the Environment Court at Christchurch

I Mua I Te Kooti Taiao

I Ōtautahi Rohe

In the matter of	the Resource Management Act 1991
And	an application for a private plan change - plan change 72 to the operative Selwyn District Plan (PC72)
And	an appeal under Clause 14 of Schedule 1 to the Act

Between	G M & J Drinnan
	Appellants
And	Selwyn District Council
	Respondent

Notice of appeal

Dated: 17 June 2022

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AJS-908851-2-14-V1

To The Registrar
 Environment Court
 Christchurch

G M & J Drinnan (**Drinnans**), appeal against part of the decision of the Selwyn District Council (**Council**) on the following plan change:

- Plan Change 72 to the Operative Selwyn District Plan (**PC72**).

The Drinnans made a submission on PC72. They reside at a rural property adjacent to the site of PC72.

The Drinnans are not a trade competitor for the purposes of section 308D of the Act.

In any event, the Drinnans are *directly affected* by an environmental effect of PC72 that would adversely affect them.

The Drinnans received notice of the decision on 11 May 2022 (via email).

The decision was made by the Selwyn District Council on the recommendation of an Independent Hearings Commissioner (**Commissioner**) who heard the private plan change application.

The Drinnans appeal the parts of the decision to grant PC72 that they submitted on, namely:

- The issue of stormwater drainage. The applicant assumed it had the right to discharge over the Drinnan land in accordance with *natural servitude* (which the Drinnans refute) and offered no suitable alternative method for dealing with stormwater emanating from the PC72 site; and
- The inclusion of part of the Drinnans property fronting Hamptons Road (**the Drinnan land**¹, see: plan in original submission) in PC72. Specifically, the Commissioner's ruling that the Drinnans request to include the Drinnan land, was out of scope, and consequently declining to formally consider its inclusion on the merits.

The reasons for the appeal are as follows:

Re Stormwater drainage:

1. The Drinnans appeal the decision to leave the consideration of an effective stormwater drainage solution for PC72, to subsequent subdivision applications.

¹ The Drinnan land comprises of a2.2ha 'finger of land on the opposite side of Hamptons Road (a *cul de sac*) from the 28.7ha PC72 site, and lying between the PC72 site and the Council owned Birches Reserve.

2. Having determined that the stormwater drainage solution the applicants proposed under PC72 was not an available solution, the Commissioner erred in failing to require the applicant to detail how stormwater from any future development on the PC72 site would be dealt with given that:
 - (a) no agreement existed with the Drinnans, who advised the Commissioner of the fact; and
 - (b) the Commissioner found that given the change of use of the land represented by PC72, there was no basis for the applicant to claim rights under *natural servitude*.
3. Given the known drainage issues within the PC72 site and the surrounding area, it was unacceptable that the applicant be allowed to defer this important consideration to future subdivisions based on a requirement that whatever solution was eventually formulated was made “in collaboration with the Council” and needed to be “lawful” (under ODP narrative at page 41 of decision). In doing so the Commissioner gave the applicants the go-ahead with no solution in mind and provided the Drinnans with no certainty that their land will not be adversely affected by the rezoning.
4. This issue may be even more important now given that any development is likely to be affected by the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021, which could intensify the land use and, therefore, the extent of impervious surfaces that result in stormwater run-off.
5. The Drinnans consider that it is inappropriate to leave this issue until subdivision stage given the issues that already exist for stormwater drainage in this area and the perceived reliance on their property as part of the solution but in the absence of either the legal right to do so or the agreement of the Drinnans.

Re Rezoning:

6. The Drinnans appeal the decision not to include the Drinnan land in PC72.
7. The Drinnans consider that the Commissioner erred in finding that the addition of the Drinnan land to PC72 would be beyond scope.
8. The extension of PC72 to the Drinnan land is a *logical consequence* of the change to the status quo that PC 72 will bring about. The current rural zoning will become an anomaly as that ‘finger’ of land will then sit between residential zoned and reserve land and will likely be subject to reverse sensitivity effects from the rural activities that the Drinnans have previously carried out on that land.
9. The Council’s section 42A report supported the inclusion of the land, subject to there being the scope to do so. The Commissioner, while finding against the Drinnans on the issue of scope, indicated (at para 97) that the inclusion of the land would not

offend natural justice², and (at para 99) that “there is merit in principle for residential zoning” but noted that there is “additional information required”. That additional information can be provided as part of this *de novo* appeal.

10. The Drinnans accept that scope cannot be conferred but consider that the inclusion of their land can be considered a consequential extension to PC72 and is, therefore, within scope.
11. The existence, or otherwise, of scope to include the Drinnans land is identified as a *preliminary issue* for the Environment Court’s determination.
12. The Drinnans also request that, if possible, given the current planning landscape within Selwyn District, which is changing rapidly in the face of legislative imperatives and the review of the District Plan that is in its hearings stage, this preliminary issue be addressed on an urgent basis. The Drinnans would have no objection to the issue being considered on the papers, if the Court considered that an appropriate course.

Mediation.

Whether or not scope is confirmed, the Drinnans support referring this appeal to mediation with an Environment Commissioner presiding.

The Drinnans seek the following relief:

1. That stormwater is suitably addressed, and appropriate solutions and mechanisms included, prior to it being determined whether PC72 can be confirmed;
2. That the Environment Court confirm, subject to its preliminary determination, that scope exists to include part of the Drinnan property in PC72;
3. If scope exists, that the Drinnan land be included as part of PC72 In the Selwyn District Plan (operative and/or proposed³);
4. Any consequential or incidental relief necessary to achieve the outcome sought by this appeal; and
5. That costs be reserved.

² The second of the *Clearwater* and *Motor Machinists* tests as to scope.

³ The District Council are currently considering a variation to the proposed District Plan that may include PC72, either by a decision of the Council or as a result of the submission on the variation by the applicants.

We attach the following documents to this notice:

- (a) a copy of the Drinnans original submission:
- (b) a copy of the Commissioner's decision/recommendation on PC72:
- (c) a list of names and addresses of persons to be served with a copy of this notice.

Date: 17 June 2022

Signature:



A J Schulte
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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Act.

You may apply to the Environment Court under section 281 of the Act for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not have attached a copy of the appellant's submission and (*or or*) the decision (*or* part of the decision) appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.