

REPORT

TO: Chief Executive
FOR: Council meeting - 14 July 2010
FROM: Craig Friedel, Policy Planner
DATE: 18 June 2010
SUBJECT: Decision on how to consider the Selwyn Plantation Board Limited (SPBL) Holmes and Skellerup Block Private Plan Change Requests (PC8 & PC9)

1. RECOMMENDATION

That Council;

- i. Confirm the Independent Commissioners recommendation to accept for notification the Private Plan Change requests by the SPBL (PC8 & PC9) pursuant to Clause 25 (2)(b) of the RMA91

2. PURPOSE

This report includes a recommendation from an Independent Commissioner (Attachment 1) to accept for notification the private plan change requests being advanced by the SPBL. The Commissioner was appointed to make a recommendation on this matter to avoid the potential for a perceived conflict of interest arising in relation to Selwyn District Council's interest in the SPBL.

The recommendation, and officer report provided to the Commissioner, have assessed the SPBL plan change requests (PC8 and PC9) against the relevant RMA91 provisions and Councils Private Plan Change Policy. These assessments have been undertaken to assist Council with its decision on how to process the requests.

3. SIGNIFICANCE ASSESSMENT/COMPLIANCE STATEMENT

This report has been assessed against the Significance Policy and the following is noted:

The plan change requests do not –

- Affect all or a large portion of the community in a way that is consequential.

The plan change requests may -

- Have a potential impact or consequence on the affected persons that is substantial.

The financial implications for the Council's resources are limited to any Environment Court appeal of a Council decision to reject the plan change request. The plan change requests may generate a high degree of controversy should they be publicly notified. However, the recommendation to accept the requests will result in public notification, which in turn will afford any interested parties the opportunity to lodge submissions, attend hearings and pursue appeal proceedings to any subsequent decision.

In my view this proposal does not meet the criteria for significance under the policy.

4. HISTORY/BACKGROUND

Two requests for private plan changes were lodged by the SPBL on the 20th April 2009. These requests seek to rezone 164 hectares of land in two different locations referred to as the Holmes (PC8) and Skellerup (PC9) Blocks. These sites are located on the south western side of Rolleston's Urban Limit and seek to rezone the land from Rural Outer Plains to a proposed Living 3 zone. The zoning and related objectives, policies and rules will facilitate the development of a combined total of 225 rural residential allotments over the first two development stages prescribed in Proposed Change 1 to the Regional Policy Statement (PC1).

Attachments 2 and 3 include the current set of Outline Development Plans, preliminary scheme plans and landscape concept plans for each of the plan change requests.

Council staff have liaised with the applicant's representatives since the requests were lodged, which has resulted in a number of changes to the initial requests and iterations to the design and proposed planning provision. The conclusion of the Commissioners recommendation is that all the information necessary to understand the applications has been provided and that a decision should be made on how to process the requests.

5. PROPOSAL BODY

Statutory Requirements

The process for a local authority to consider a private plan change is set out in Clause 25 of the First Schedule of the RMA91. Any person may request a change to a District Plan and Council must consider that request. Council can reject, accept or adopt the plan changes, or deal with them as a resource consent.

These matters are considered in detail in the Commissioners recommendation and the Officers report.

6. OPTIONS

Option 1 - Reject the Plan Change

The grounds for rejecting PC8 and PC9 are: (a) That the requests are frivolous or vexatious; (b) The substance of the requests has been dealt with by the Council or the Environment Court in the last two years; (c) The requests are not in accordance with sound resource management; (d) The requests would make the District Plan inconsistent with Part 5 of the RMA91; or (e) The District Plan has been operative for less than two years.

The grounds for rejection have been considered in full in both the Commissioners recommendation and the accompanying Officers report. The conclusions are that there are no sound reasons to reject the requests under the current set of circumstances.

Rather than reject all private plan changes for two years after operative status, Council's Plan Change Policy provides criteria to assist in deciding whether or not to reject a plan change. The Officer report has assessed the relative merits of the requests against the criteria of Council's Plan Change Policy and concluded that the requests generally align with the wider strategic direction of Rolleston's township growth.

Concerns have been identified with the timing of the private plan change requests and the risks in advancing PC8 and PC9 ahead of Council's PC17. However, these concerns are deemed to be insufficient to warrant rejection under the above tests. These matters will be relevant when the opportunity is provided to assess the extent to which the substantive merits of the requests are sound.

Option 2: Adopt the Plan Change requests

The recommendation and Officer report conclude that there are insufficient grounds to adopt the requests. Adopting the requests assumes that Council is supportive of the proposals. This is not the case under the current set of circumstances given the uncertainty behind the rural residential component of PC1 and the work being undertaken to inform PC17.

Option 3: Accept the Plan Change requests

The acceptance of PC8 and PC9 is the preferred option as it enables the requests to be publicly notified and for interested parties to lodge submissions. Importantly, accepting the requests enables Council to preserve a neutral position on the substantive merits of the proposals. It also reserves Council's right to lodge submissions and/or further submissions to address specific matters and provides an opportunity to register the aforementioned concerns with the timing of advancing PC8 and PC9 ahead of Council's PC17.

Option 4: Convert to a Resource Consent Application

The final option enables Council to process the plan change requests as resource consents in accordance with Part 6 of the RMA91. The recommendation concludes that this approach is not viable given: (a) The scale of the changes; (b) That PC1 requires Council to formulate a rural residential zone and related provisions; and (c) That this approach would be unfair to the applicant as the current set of objectives and policies do not foresee the type of development proposed.

7 RECOMMENDED OPTION

The recommendation of the Commissioner is that there are no grounds to reject the plan change requests and that the most appropriate course of action is to accept the PC8 and PC9 for notification under Clause 25 (2)(b) (accept the request, in whole or in part, and proceed to notify the request, or part of the request, under Clause 26). The recommendation supports the Officers conclusions.

It is acknowledged that there is a risk in enabling the private plan change requests to proceed to public notification in advance of Council's PC17, particularly in light of the fact that this review and planning framework remains subject to ongoing consultation, review and amendment. However, the RMA affords the opportunity for the applicant to request changes to the District Plan and prescribes the timeframes that Council must adhere to in processing the requests. Furthermore, the requests generally align with the principles set out in Council's Rural Residential Background Report and the criteria for selecting the 'preferred' locations in the District.

The consideration of the requests under Clause 25 of the First Schedule is limited to a coarse scale merits assessment of the contents of the applications to ensure a general understanding of the proposals can be made and to ensure that the requests are not in direct conflict with other planning processes and statutory instruments.

The recommended option to accept the plan changes will enable the requests to be publicly notified, submissions and further submissions received and for the substantive merits of the proposals to be considered at a public hearing. Accepting the requests for notification does not signal that Council supports the proposals and the opportunity remains for Council to recommend that the requests are supported, amended or opposed at the subsequent hearing through a formal submission. The benefit in accepting the requests is that public input can be received to inform the overall assessment of the merits of the proposals.

8 VIEWS OF THOSE AFFECTED/CONSULTATION

The SPBL has consulted with Selwyn District Council, the New Zealand Transport Agency, Ngai Tahu, Environment Canterbury and the Ministry for the Environment.

The future provision of rural residential development, either by way of a council initiated plan change, private plan change request or individual resource consent, is subject to the statutory consultative provisions of the Resource Management Act where opportunity for public involvement is mandatory.

To the best of my knowledge there are no implications for Maori in these private plan change requests and the recommendation to accept the requests will afford Tangata Whenua the opportunity to lodge submissions, further submissions and to present their views to the decision makers.

9 RELEVANT POLICY/PLANS

Private Plan Change Policy adopted by Council on 26 February 2008. PC8 and PC9 have been formulated to give effect to the UDS and are generally consistent with the relevant objectives, policies and methods of PC1.

10 LEGAL IMPLICATIONS

The private plan change request process is set out in the RMA91. Council's decision can be appealed to the Environment Court.

11 FUNDING IMPLICATIONS

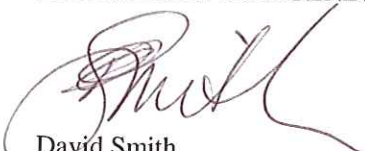
The applicant is responsible for the costs associated with processing a private plan change request. Council would be responsible for the cost of defending its decision should it be appealed to the Environment Court.

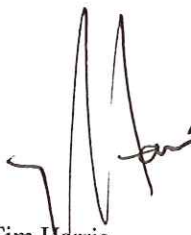
12 HAS THE INPUT/IMPACT FROM/ON OTHER DEPARTMENTS BEEN CONSIDERED?

The contents of requests, and the preferred option to accept the requests for processing, have been discussed with Asset Managers, and their comments incorporated.


Craig Friedel
POLICY PLANNER

ENDORSED FOR AGENDA


David Smith
TEAM LEADER: POLICY
AND STRATEGY


Tim Harris
PLANNING MANAGER

ATTACHMENT 1

**INDEPENDENT COMMISSIONERS
RECOMMENDATION**

BEFORE THE SELWYN DISTRICT COUNCIL

**IN THE MATTER OF
AND**

The Resource Management Act 1991 ("The Act")

IN THE MATTER OF

Two private district plan change requests by Selwyn Plantation Board Limited to provide for rural residential development at Rolleston (Plan Changes 08 and 09)

**RECOMMENDATION BY HEARINGS COMMISSIONER DAVID MOUNTFORT UNDER
CLAUSE 25 OF THE FIRST SCHEDULE TO THE ACT ON PUBLIC NOTIFICATION OF
THE PLAN CHANGES**

INTRODUCTION

1. By letter dated 10 June 2010 from the Selwyn District Council I was appointed to consider two applications by the Selwyn Plantation Board to change the Selwyn District Plan, and to make a recommendation to the District Council about how it should proceed under Clause 25 of the First Schedule to the Act. The applicant has liaised extensively with the Council and consulted with other parties. Earlier processes under the Act including requests for further information under Clause 23 have been completed. The stage has been reached where the Council must make a decision under Clause 25 on how to proceed with the applications. I was appointed as an independent Hearings Commissioner to consider and make a recommendation because of the District Council's interests as a part owner of the applicant company.

THE APPLICATIONS

2. The applications have been numbered as PC8 and PC9 by the Council. In both cases the proposal is to change the zoning of the subject land to Living 3 to enable their development for rural residential purposes. Both sites are near Rolleston on Dunns Crossing Rd. I was provided with a full set of documents including the applications, Assessments of Environmental Effects, Section 32 reports, legal submissions from Counsel for the applicant and recent case law on Clause 25, and a report from the Council's Planning Officer Craig Friedel.

CLAUSE 25 OF THE FIRST SCHEDULE OF THE ACT

3. Under Clause 25 there is a mandatory decision that the Council must make. At its simplest this is whether to accept or adopt the applications, deal with them as resource consents or reject them (subclauses (2), (3) and (4) of Clause 25. If it accepts or adopts the applications then they will be publicly notified and proceed through submissions, a hearing and a decision on the merits as to whether or not to approve them. If it rejects them the applications will be at an end unless the applicant appeals that decision to the Environment Court. At this stage I am not generally considering the merits of the applications, unless they become relevant to one of the grounds for rejection.
4. Dealing first with the rejection option, there are five grounds set out in Clause 25(4). They are a mixture of factual and opinion-based matters. Applications may be rejected if:
 - a) They are frivolous or vexatious. I cannot see that this applies. The applications are for a land use that is relatively common and accepted in the district, and anticipated by the District Plan and relevant regional planning documents, although not necessarily on these sites. The applicant is entitled to make the applications and to have them taken seriously by the Council. I interpret this ground as referring to something that either serve no useful purpose, or be so misguided that it could not possibly succeed. Clearly that is not the case here.
 - b) The substance of the change has been dealt with by the Council or the Environment Court in the last two years. That is a factual matter and does not apply here. The Council has a plan change in preparation dealing with Rural Residential matters, but this is still in its early drafting stages and has not reached the point where this ground could apply. There appears to have been no other relevant process within the last two years. The Council has prepared a Rural Residential Background report to inform

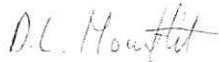
its plan change, but that is not sufficient to trigger this ground, and in any case the applications are broadly in conformity with the conclusions of that report.

- c) The change is not in accordance with sound resource management practice. The applications are for a relatively standard form of land use that is common in the district and anticipated by the District Plan and regional planning documents. I have reviewed the applications briefly and they appear to be competently prepared and deal with the matters one would expect to see in such applications. This should not be taken as an endorsement of the merits of the applications or an indication that I believe they should be ultimately approved. At this stage I have no view on that. That will need to await a more in-depth examination of the merits at a later stage. However, there is nothing in the applications at this preliminary stage that appears to be unsound practice.
 - d) The change would make the District Plan inconsistent with Part 5 of the Act. This refers to the Council's duty to give effect to operative national or regional planning documents and have regard to proposed ones. Again this is a factual matter. There are no such documents that would require the Council to reject this application at this stage. Proposed Change 1 to the Canterbury Regional Policy Statement is certainly relevant to rural residential development in the Selwyn District, but arguably this application is consistent with its provisions and at least is entitled to be considered under it in greater depth.
 - e) The District Plan has been operative for less than two years. The case law reveals that this Council has some history with this subclause. However at the present date the relevant parts of the plan have been operative for more than two years so there is no need to go into that.
- 4. I have therefore concluded that there is no reason to reject the applications under clause 25(4) of the Act.
 - 5. I consider next whether the applications could be considered under clause 25(3) as resource consents. I consider this would be unfair to the applicant. The applicants would be for non-complying activities. They raise enough objective and policy considerations that they may have little chance of being approved under section 104D of the Act. The applications raise issues that are significant for the district plan itself and therefore are best considered under plan change processes.
 - 6. The last decision is whether the applications should be adopted by the Council under subclause (2)(a) or accepted under (2)(b). The difference is that if the Council adopts them, they become the Council's proposals. The Council would have to make at least a preliminary decision that the changes were its preferred course of action and represented the best course of action under section 32 of the Act. It would then assume the responsibility of promoting the changes, no doubt supported by the applicant. I am not prepared to recommend to the Council that it does that. The Council is in no position to give preliminary support to the applications. It is developing its own plan change for rural residential issues, which is still at an early stage. The matter is complicated by the processes surrounding Proposed Change 1 to the Regional Policy Statement in which the District Council is a major player. The alternative is to accept the plan change. Under that option the Council has a more neutral position at this stage. It would publicly notify the applications, call for submissions and further submissions while reserving its own position at this stage. Later it would consider and decide the applications on the merits. The applicant would have the primary responsibility to support the applications at the

hearing. The Planning Officer Mr Craig Friedel recommends this option and I am satisfied that it is the appropriate course for this application.

RECOMMENDATION

I recommend that the Selwyn District Council accept the applications by the Selwyn Plantation Board for Plan Changes 8 and 9 to the Selwyn District Plan pursuant to Clause 25(2)(b) of the Resource Management Act 1991.

A handwritten signature in dark ink, appearing to read 'D.L. Mountfort', with a stylized flourish at the end.

David Mountfort

Accredited Hearings Commissioner

14 June 2010

ATTACHMENT 2

SELWYN PLANTATION BOARD

PC8 HOLMES BLOCK PRIVATE PLAN CHANGE
OUTLINE DEVELOPMENT PLAN AND SCHEME PLAN

APPENDIX 34

OUTLINE DEVELOPMENT PLAN - LIVING 3 ZONE AT ROLLESTON: HOLMES BLOCK



Species List for Clustered Street Trees:

Acer pseudoplatanus	Sycamore
Alnus rubra	Alder
Fagus sylvatica	Beech
Ginkgo biloba	Ginkgo
Platanus orientalis	Plane
Prunus sp.	Flowering Cherry
Aesculus hippocastanum	Horse Chestnut
Sophora microphylla	Kowhai
Tilia sp.	Lime
Ulmus procera	Elm

Species List for Shelter Belt Planting:

Chamaecyparis lawsoniana	Lawsons Cypress
Cryptomeria japonica	Japanese Cedar
Cupressocyparis leylandii	Leyland Cypress
Liriodendron tulipifera 'Helleri'	Tulip Tree
Podocarpus totara	Torata
Quercus robur 'Fastigiata'	Upright Oak
Taxus baccata 'Fastigiata'	Irish Yew

Species List for Buffer Planting:

Coprosma robusta	Karamu
Cordyline australis	Cabbage Tree
Dodonaea viscosa	Akeake
Griselinia littoralis	Papauma
Hoheria angustifolia	Lacebark
Melicytus ramiflorus	Mahoe
Myrsine australis	Mapou
Pittosporum eugenioides	Lemonwood
Pseudopanax crassifolius	Horoeke

APPENDIX 34

OUTLINE DEVELOPMENT PLAN - LIVING 3 ZONE AT ROLLESTON: HOLMES BLOCK

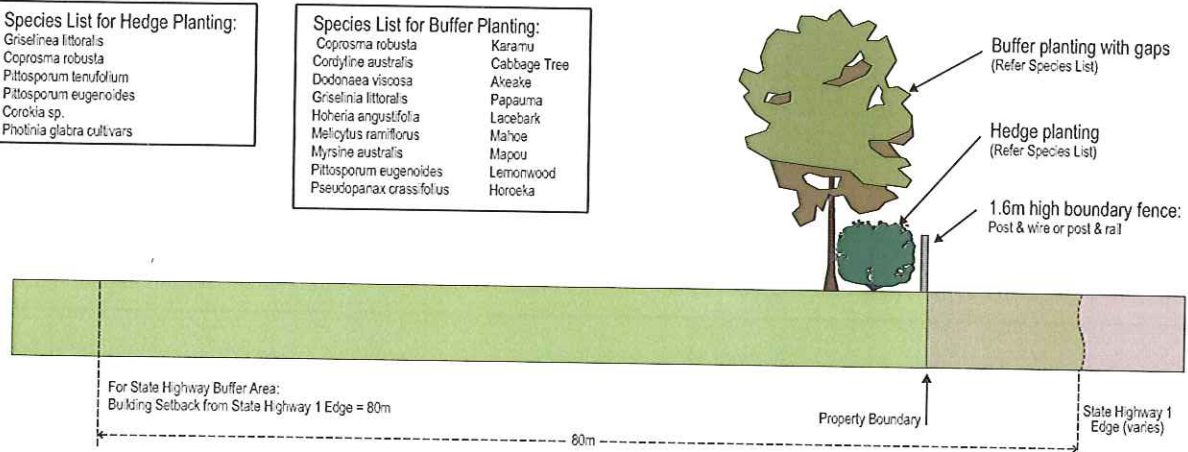
State Highway Buffer Area and State Highway Treatment:

Species List for Hedge Planting:

Griselinia littoralis
Coprosma robusta
Pittosporum tenuifolium
Pittosporum eugenioides
Corokia sp.
Photinia glabra cultivars

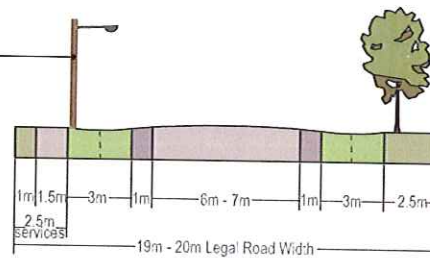
Species List for Buffer Planting:

Coprosma robusta
Cordyline australis
Dodonaea viscosa
Griselinia littoralis
Hohleria angustifolia
Melicytus ramiflorus
Myrsine australis
Pittosporum eugenioides
Pseudopanax crassifolius
Karamu
Cabbage Tree
Akeake
Papauma
Lacebark
Mahoe
Mapou
Lemonwood
Horoeke



Local Road Cross Section:

Streetlight selected to maintain rural character



Local Road Plan:

Alternative shelter belt treatment to be provided in short lengths on all roads generally adjacent to large lots (5000m²+) (refer Species List for Shelter Belt Planting)

Road marking kept to a minimum

Grass Strip

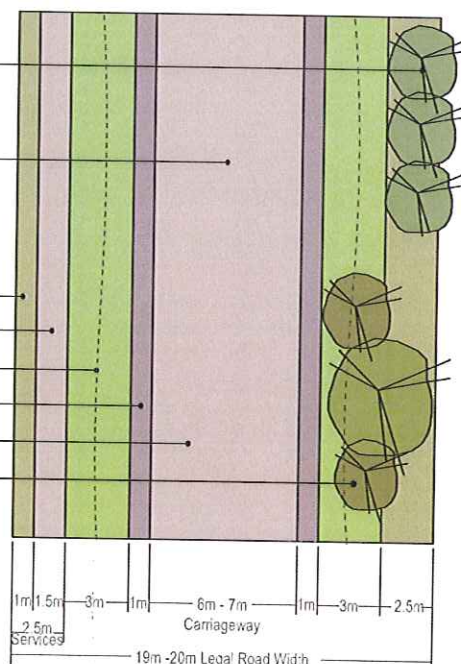
Footpath

Swale (with groundcover planting)

Gravel Edge (or Concrete Edge Strip and further grass area)

Sealed Carriageway

Street Trees to be provided in irregular clusters on local roads (refer Species List for Clustered Street Trees)





- Countryside Area
- Community Focal Point / Reserve
- Rural Buffer Planting
- Shelterbelt
- Street Tree Planting
- Public Walkway

Scale: 1:5000@A3



Gross Area: 92.0ha
Total Lots: 125
Minimum Lot Size: 4000m²
Average Lot Size: 5349m²
Net Area: 66.87ha (72.7%)

PRELIMINARY SUBDIVISION AND LANDSCAPE PLAN

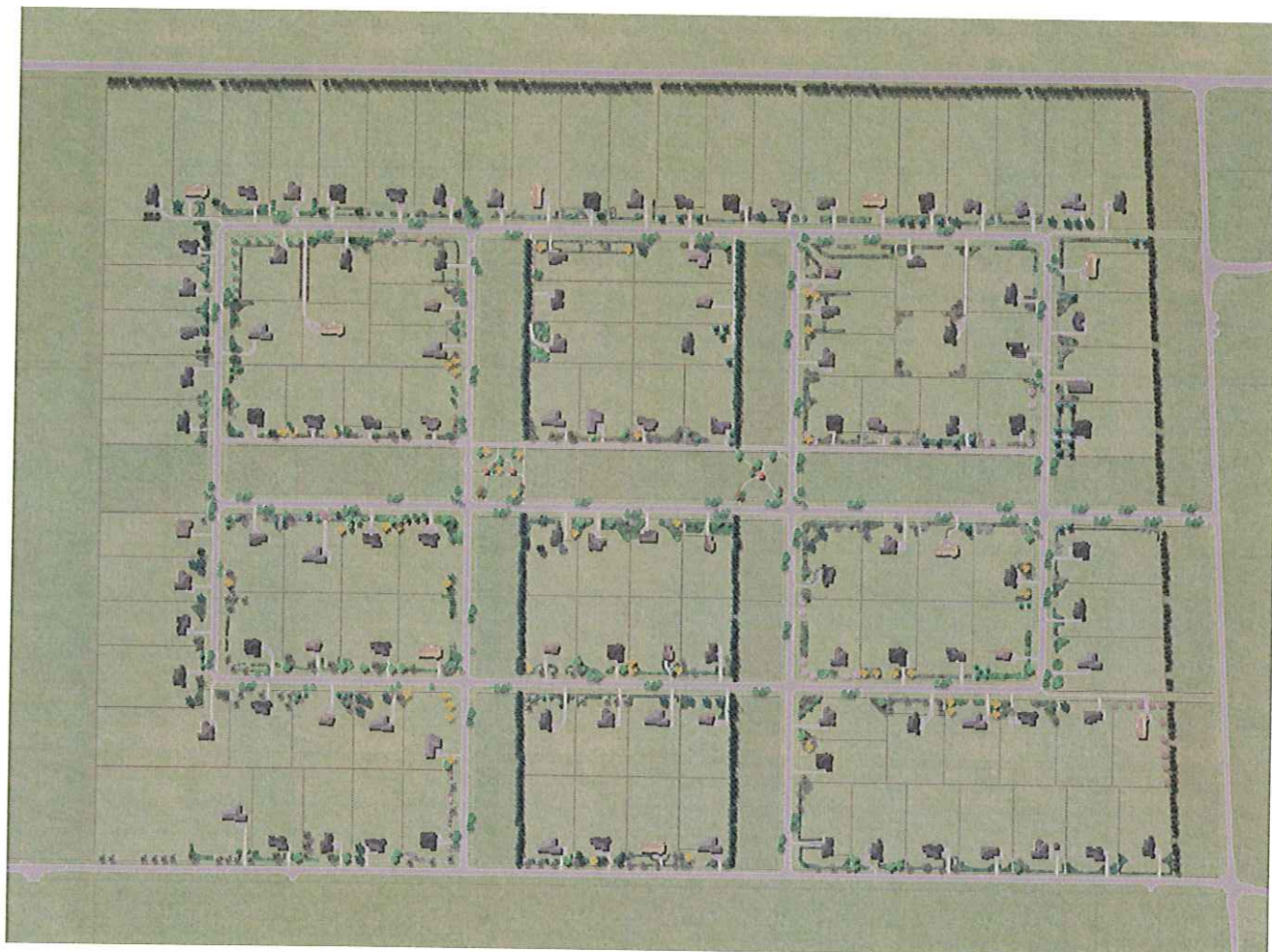
Holmes Block
20 January 2010



Selwyn Plantation Board Limited
Land at Dunns Crossing Road, Rolleston

HG Ref: 1021422337 Preliminary Subdivision and Landscape Concepts/Holmes and Selwyn v5.0

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-  Countryside Area
-  Community Focal Point / Reserve
-  Rural Buffer Planting
-  Shelterbelt
-  Street Tree Planting
-  Public Walkway

Scale: 1:5000@A3



Gross Area: 92.0ha
Total Lots: 126
Minimum Lot Size: 4000m²
Average Lot Size: 5307
Net Area: 66.87ha (72.7%)

PRELIMINARY SUBDIVISION AND LANDSCAPE PLAN RENDERED VERSION

Holmes Block
20 January 2010
Selwyn Plantation Board Limited
Land at Dunns Crossing Road, Rolleston

HG Ref: 1021-127337 Preliminary Subdivision and Landscape Concepts Holmes and Skelton Rendered v3 p

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ATTACHMENT 3

SELWYN PLANTATION BOARD

**PC9 SKELLERUP BLOCK PRIVATE PLAN CHANGE
OUTLINE DEVELOPMENT PLAN AND SCHEME PLAN**

APPENDIX 35

OUTLINE DEVELOPMENT PLAN - LIVING 3 ZONE AT ROLLESTON: SKELLERUP BLOCK



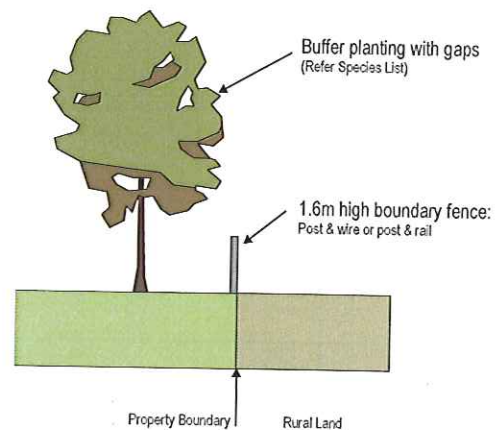
APPENDIX 35

OUTLINE DEVELOPMENT PLAN - LIVING 3 ZONE AT ROLLESTON: SKELLERUP BLOCK

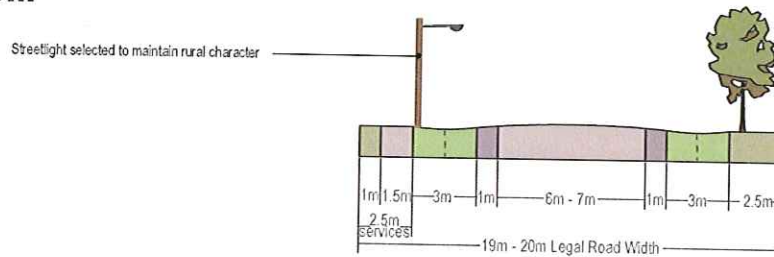
Rural Buffer Treatment:

Species List for Buffer Planting:

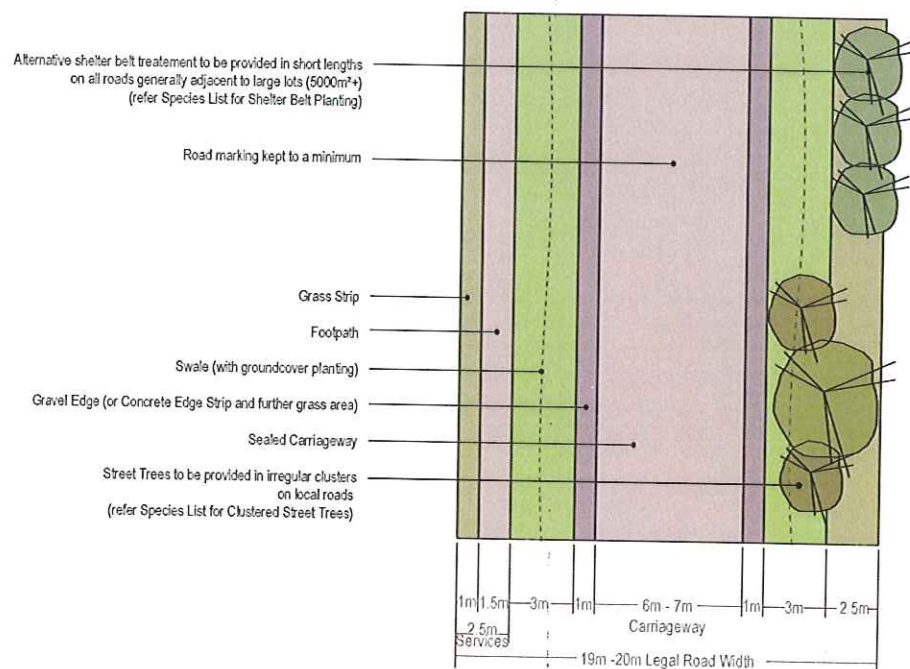
Coprosma robusta	Karamu
Cordyline australis	Cabbage Tree
Dodonaea viscosa	Akeake
Griselinia littoralis	Papauma
Holera angustifolia	Laobark
Meloytus ramiflorus	Mahoe
Myrsine australis	Mapou
Pittosporum eugenoides	Lemonwood
Pseudopanax crassifolius	Horoeke



Local Road Cross Section:



Local Road Plan:





- Countryside Area
- Community Focal Point / Reserve
- Rural Buffer Planting
- Shelterbelt
- Street Tree Planting
- Public Walkway

Scale: 1:5000 @ A3

Gross Area: 72.7ha
 Total Lots: 100
 Minimum Lot Size: 4000m²
 Average Lot Size: 5113
 Net Area: 51.13ha (70.3%)

PRELIMINARY SUBDIVISION AND LANDSCAPE PLAN

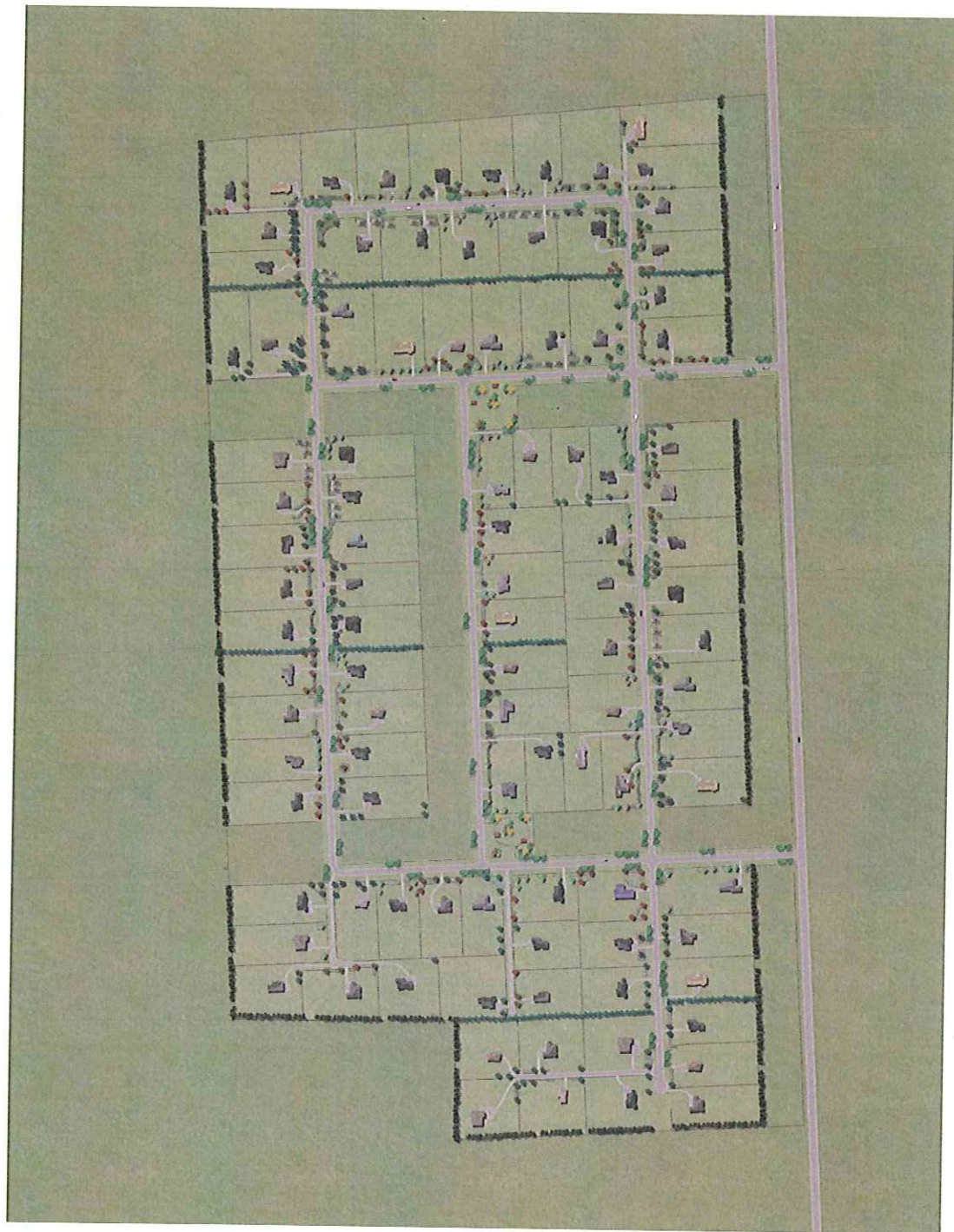
Skellerup Block
 20 January 2010

Selwyn Plantation Board Limited
 Land at Dunns Crossing Road, Rolleston

HG Ref: 1021427337 Preliminary Subdivision and Landscape Concepts Holmes and Skellerup v5.0

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**HARRISON
GRIERSON**



-  Countryside Area
-  Community Focal Point / Reserve
-  Rural Buffer Planting
-  Shelterbelt
-  Street Tree Planting
-  Public Walkway

Scale: 1:5000 @ A3



Gross Area: 72.7ha
 Total Lots: 100
 Minimum Lot Size: 3500m²
 Average Lot Size: 5113
 Net Area: 51.13ha (70.3%)

PRELIMINARY SUBDIVISION AND LANDSCAPE PLAN RENDERED VERSION

Skellerup Block
20 January 2010
Selwyn Plantation Board Limited
Land at Dunns Crossing Road, Rolleston

H2 Ref: 1021127337 Preliminary Subdivision and Landscape Concepts/Homes and Skellerup Rendered v3.0

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