

**Before the Independent Commissioner
Appointed by the Selwyn District Council**

In the matter of the Resource Management Act 1991 (**RMA**)

And

In the matter of a hearing on Pan Change 79 to the Operative Selwyn
District Plan

**Joint Witness Statement – Planning Matters to address Minute 3
issued by Commissioner Paul Thomas**

Date: 30/05/2023

Introduction

- 1 On 23/05/2023, expert witness conferencing in relation to the planning matters raised in Minute 3 was undertaken in accordance with the Commissioner's directions.
- 2 The conference attendees were:
 - 2.1 Mr. Jonathan Clease; and
 - 2.2 Ms. Sally Elford.
- 3 This joint witness statement is a record of the outcomes of this session. It has been prepared in accordance with section 9.5 of the Environment Court Practice Note 2023.
- 4 In preparing this statement, the experts have read and have complied with the Code of Conduct for Expert Witnesses included in the Environment Court of New Zealand Practice Note 2023.

Agenda – issues considered at conferencing

- 5 The issues identified as forming the agenda for the conferencing are in response to the following questions posed by the Commissioner in Minute 3 as follows:
 - 5.1 Should the sub-heading of Rule 12.1.3 'Standard terms and Conditions' be amended to 'Standards and Terms for Controlled Activities and Discretionary Activities' (Para #4 of Minute 3)?
 - 5.2 Should the proposed Rule 12.1.3.6A reference to 'vacant' allotments be replaced with 'proposed' allotments? (Para #8 of Minute 3)?
 - 5.3 Should the proposed Rule 12.1.3.6B reference to the term 'building area' require that term to be defined? (Para #8 of Minute 3)?

5.4 In addressing the first question set out in para. 5.1 above, we identified several consequential amendments as being necessary to improve how the subdivision rules for PC79 integrate into the wider Operative Selwyn District Plan. In summary these consequential amendments seek the following:

5.4.1 The relocation of several PC79-related restricted discretionary rules to enable a controlled activity pathway for subdivision (as required in the MDRS), whilst retaining a restricted discretionary activity status where compliance is not achieved; and

5.4.2 Clarification that non-compliance with the ODP results in a fully discretionary activity status.

6 The following sections of this joint witness statement address each of these issues or questions, noting that we have reached an agreed position on each of the above matters.

7 Text changes to the District Plan provisions proposed through this Joint Witness Statement are shown in blue underline or strikethrough in Appendix 1.

Issue One – Query regarding renaming of 12.1.3 (Para #4 of Minute 3)

Matters of agreement

8 The heading that refers to “12.1.3 Standards and Terms” is an operative plan heading, used throughout plan. Its removal or renaming would have broader implications and result in inconsistencies with the rest of the plan. An alternative solution is offered to amend Rule 12.1.A1 to remove the phrase “the standard and terms set out in...”. Alternative wording of Rule 12.1.A1 is provided in Appendix 1 [JC and SE].

Issue Two – Proposed Rule 12.1.3.6A use of the word ‘vacant’

Matters of agreement

- 9 The use of the ‘vacant’ allotment/s terminology comes from the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (‘the Enabling Act’). The Enabling Act introduces a new ‘Schedule 3A’ which sets out the mandatory provisions for MDRS (and consequently the Living MD Zone). Schedule 3A, Clauses 7 and 8 relate to subdivision and seek to differentiate the approach taken to the creation of vacant allotments (allotments that do not contain any buildings), and allotments with existing buildings or approved land use consents. The relevant extract from the Enabling Act is set out below, with references to vacant allotments made at 8(a)(ii) and 8(b)(iii). As such we consider the use of the term ‘vacant’ allotment should be retained as proposed. [JC and SE]

<i>Subdivision requirements</i>	
7 General subdivision requirements	Any subdivision provisions (including rules and standards) must be consistent with the level of development permitted under the other clauses of this schedule, and provide for subdivision applications as a controlled activity.
8 Further rules about subdivision requirements	Without limiting clause 7, there must be no minimum lot size, shape size, or other size-related subdivision requirements for the following:
(a) any allotment with an existing residential unit, if—	
(i) either the subdivision does not increase the degree of any non-compliance with the density standards in the district plan (once incorporated as required by section 77G) or land use consent has been granted; and	
(ii) no vacant allotments are created:	
(b) any allotment with no existing residential unit, where a subdivision application is accompanied by a land use application that will be determined concurrently if the applicant for the resource consent can demonstrate that—	
(i) it is practicable to construct on every allotment within the proposed subdivision, as a permitted activity, a residential unit; and	
(ii) each residential unit complies with the density standards in the district plan (once incorporated as required by section 77G); and	
(iii) no vacant allotments are created.	

Issue Three – Proposed Rule 12.1.3.6A(b) definition of the term ‘building area’

Matters of agreement

- 10 The term ‘building area’ is an existing operative plan term and has been part of the subdivision rules framework for over a decade. In

practice use of this term has not caused any confusion as to how this term and associated rule is implemented. As such we do not consider it requires separate definition. We note that as it is an existing operative plan term, to provide a definition would have wider implications beyond the Living MD Zone as proposed. [JC and SE].

Consequential amendments – Clarity providing for subdivision of PC79 as a controlled activity

Matters of agreement

- 11 Through the PC79 hearing process, the need for various local roading improvements was identified, with caps on the number of dwellings prior to these upgrades taking place. The intention is that within the cap, subdivision can occur as a controlled activity, and if the cap is exceeded prior to the upgrades occurring the application would be a restricted discretionary activity.
- 12 In order to better articulate this outcome, the restricted discretionary matters (previously proposed as Rule 12.1.3.48X) have been duplicated into Rule 12.1.A.3 to provide for subdivision as a controlled activity below the threshold numbers (i.e. up to/less than) identified by Council. As a consequence, Rule 12.1.3.48X is triggered where more than the threshold numbers identified by council are sought or provided for. Wording has been updated in 12.1.A3 and 12.1.3.48X to reflect these two circumstances.
- 13 A second consequential amendment is necessary so that Rule 12.1.1 includes reference to 12.1.A1 (allowing for subdivision as a controlled activity in the Living MD); rather than its automatic inclusion as a restricted discretionary activity.
- 14 A third consequential amendment is necessary so Rule 12.1.5 clearly articulates when an activity that is otherwise controlled through 12.1.A1 triggers a restricted discretionary activity status,

noting the exclusion in 12.1.5.1 for activities breaching 12.1.3.2 is simply to enable non-compliance with corner intersection splays to be processed on a non-notified basis.

- 15 In the Operative Selwyn District Plan any subdivision subject to an ODP has not previously had the ability to be considered as a controlled activity, as the base activity status was restricted discretionary. Now under MDRS (where MDRS applies) subdivision has to be provided for as a controlled activity. Compliance with the ODP therefore needs to be referenced in 12.1.A1 as a controlled activity, with any application not in general accordance with the ODP becoming a fully discretionary activity under 12.1.6.10.
- 16 Consequential amendments are proposed to Rule 12.1.A2 to allow for non-notified approval if compliant with Rule 12.1.A1.

Joint Witness Statement Signatories

Date: 30th May

2023



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Jonathan Clease
Senior Planner
Selwyn District Council

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Sally Elford
Senior Planner
Birchs Village Limited