
**PROPOSED PLAN CHANGE 79 TO THE OPERATIVE
SELWYN DISTRICT PLAN
EVIDENCE TIMETABLE
MINUTE 3**

Introduction

- [1] On Thursday 11 May I received the written legal submissions in reply for Birchs Village Limited. This includes attachments that consist of some amendment to the Outline Development Plan (ODP) and the District Plan provisions largely in response to matters I raised during the hearing. In addition, there is reply evidence from Nicole Lauenstein which considers most of the areas identified in Mr Clease summary of his section 42A report on pages 7 and 8.
- [2] I have now considered that material and before closing the hearing there are a couple of matters arising that I consider need to be addressed to ensure I have all the information required to make my recommendation.

The Proposed Plan Provisions

- [3] I understand that Clause 5 of Schedule 3A on the Medium Density Residential Standards (MDRS) requires subdivision where the MDRS applies to be provided for as a Controlled Activity.
- [4] The proposed provisions that deal with this are found in proposed clause 12.1.A1. As part of this rule there is a requirement to comply with the standards and terms that apply to Restricted Discretionary Activities. While awkward in terms of structure I understand the reasoning for this but feel that greater clarity could be achieved by simply amending the sub heading at “12.1.3 Standards and Terms” to “Standards and Terms for Controlled Activities and Discretionary Activities.” While clearly I can address this as part of my report, I would like comment from Mr Clease and Ms Elford as to whether there is any reason why this should not be altered in this manner.
- [5] I also note that existing rule 12.1.3.58 headed “Outline Development Plans” will apply to the proposed ODP. This requires general compliance with the ODP and compliance with any “standards” referred to in that ODP.
- [6] The Birchs Road Development Area ODP narrative is something of a mix of descriptive explanation, design principles, information requirements and standards. Some of those standards are separately expressly addressed in the proposed provisions at 12.1.3.48X.
- [7] However, my assessment is that there are additional standards in the ODP that need to be addressed in terms of specific compliance, but these are mixed in with other explanatory material. I consider that these Standards need to be more clearly identifiable in the ODP text under a heading of “Standards” with a specific cross reference to Rule 12.1.3.58. The minimum density requirement is perhaps one example. I therefore request that the ODP is re formatted by the requester to be consistent with this and is provided with the response to this Minute.
- [8] Other questions relating to provisions that I also request to be considered by Mr Clease

and Ms Elford are as follows.

- In proposed 12.1.3.6A should the word “vacant” be replaced with “proposed”?
- In proposed 12.1.3.6A (b) does the term “building area” require a definition?

National Policy Statement for Highly Productive Land Clause 3.6(1)(b).

[9] In Mr Clease summary statement he identified the areas of Prebbleton that he considers are feasible options for development capacity and meet the requirements of Clause 3.6(1)(b) of the NPS HPL.

[10] The “Area in red” is described as “a greenfield area identified in the Proposed Plan as having an urban growth overlay (and therefore is not HPL).” Ms Lauenstein’s supplementary evidence considers all the other areas identified by Mr Clease in terms of their development potential but does not consider the “Area in red” in any detail.

[11] Ms Booker further addresses this area in paragraphs 48 to 51 of the legal submissions in reply. These submissions do not challenge Mr Clease’s opinion that NPS HPL does not apply. The status of this land is important to the NPS HPL assessment and I would, therefore, like further information on two specific matters.

[12] Firstly, Clause 3.5(7) of the NPS HPL sets out the interim status of highly productive land. This includes an exclusion for land that, at the commencement date was subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.

[13] Ms Booker at para 49 of her reply submission states that the land has been notified as General Rural subject to an urban growth overlay in both the Proposed Selwyn District Plan and Variation 1. Both predate the commencement of the NPS HPL. The question is whether in terms of Clause 3.5(7) an urban growth overlay which requires a further plan change to establish an urban zone is sufficient to meet the requirements of the exemption which requires a plan change to rezone to urban or rural lifestyle.

[14] Before raising this matter, I have looked at the legal opinion from Adderley Head dated 14 February 2023 which is referenced in Mr Clease s42A report. This considers the status of the Rural Inner Plains but does not go as far as considering the Urban Growth Overlay.

[15] I, therefore, request a legal opinion from the Council on this matter and I will then allow further reply on that opinion from Ms Booker.

[16] The second matter is whether the “Area in red” can reasonably be expected to meet the requirements of a well-functioning urban environment as defined by the NPS UD. As it has been identified as an urban growth overlay in the SPDP, then it can reasonably be expected that evaluation of the potential of the site has been undertaken and cleared of any “fatal flaws”. This matter may therefore be able to be responded to by Mr Nicholson for the Council with existing reports and/or evidence.

[17] As per the legal issue I will provide opportunity for further reply from the requestor.

Timetable and Process

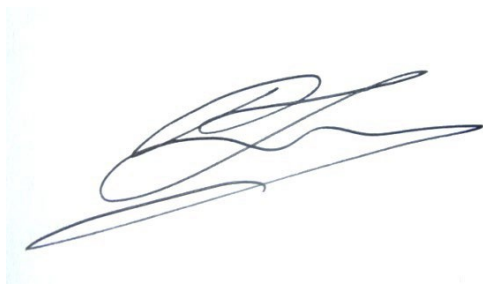
[18] In terms of timetable and process I consider that the matters raised in relation to the provisions should be capable of being addressed by way of joint statement from Mr

Cleese and Ms Elford.

[19] The matters relating to the “Area in red” require a responses from Council in areas of law and urban design followed by reply from Birchs Village Ltd. The scope of matters to be addressed is quite limited and I do not expect this to take very long. However, to fomalise this I request that the Council and Ms Booker consider when responses can be provided and provide me with a Minute advising of that timetable. I will then confirm acceptability of that.

[20] All information provided will be available from the Council web site on PC 79.

[21] A further minute will be issued closing the hearing once these matters have been addressed.

A handwritten signature in blue ink, appearing to read 'Paul Thomas', is written over a light blue rectangular background.

Paul Thomas

Independent Commissioner

Dated: 18 May 2023