
SUPPLEMENTARY POST ENGAGEMENT PREFERRED OPTION UPDATE REPORT TO DISTRICT PLAN COMMITTEE

DATE: 13 March 2019

TOPIC NAME: Rural Zone/ Outstanding Natural Landscape (ONL)/ Visual Amenity Landscape (VAL)

SCOPE DESCRIPTION: Port Hills density, and ONL/VAL land classification

TOPIC LEAD: Robert Love

PREPARED BY: Robert Love

EXECUTIVE SUMMARY

<i>Summary of Preferred Options Endorsed by DPC for Further Engagement:</i>	<i>To amend the Port Hills Outstanding Natural Landscape/Visual Amenity Landscape (ONL/VAL) areas and link residential density provisions to the ONL/VAL areas. VAL areas would have a density of one dwelling per 40 hectares, and ONL areas would have a density of one dwelling per 100 hectares.</i>
<i>Summary of Feedback Received:</i>	<i>Three landowners are opposed to the preferred option. No comment was received from the other 23 potentially affected landowners.</i>
<i>Recommended Option Post Engagement:</i>	<i>The Preferred Options for the Port Hills ONL/VAL Area that have previously been endorsed by DPC progress to the 'Drafting and Section 32 Evaluation Phase'.</i>
<i>DPC Decision:</i>	<i>'That the Committee requests that Council Staff do further work on the impact of the density provisions below the 60m contour line on the Port Hills within the Selwyn District.'</i>



1.0 Introduction

1.1 Overview of Preferred Option Endorsed by DPC

As explained in previous reports, the Port Hills area has undergone a landscape character assessment as part of the District Plan Review. This assessment recommended an amendment to the existing Outstanding Natural Landscape/Visual Amenity Landscape (ONL/VAL) areas with an enlargement in some areas and a retreat in others. To date this recommendation has been endorsed for further assessment and consultation (with the remainder of the Landscapes workstream progressing to the 'Drafting and Section 32 Evaluation Phase').

As a result of the movement of the ONL/VAL areas, and a change from the status quo approach which links residential density to elevation contours towards a more defensible approach that reflects the actual landscape character, some properties would be subject to a density change, reducing their development potential.

In summary these changes would be:

- Inner Plains (4 ha.) > Port Hills VAL (40 ha.)
- Inner Plains (4 ha.) > Port Hills ONL (100 ha.)
- Port Hills VAL (40 ha.) > Port Hills ONL (100 ha.)

These proposals were endorsed, subjected to further consultation, with the results of this consultation presented to DPC on 28 November 2018. As a result of the discussions held by the DPC on the Post Engagement Report for Outstanding Natural Landscapes, it was determined that further consultation with the affected landowners in the Port Hills area would be required.

A letter was subsequently sent to the landowners of 26 properties to advise that the property was potentially affected by the options endorsed to date (copy attached as **Appendix A**). Feedback to Council was sought prior to 25 January 2019.

This report is to inform the DPC of the results of this consultation. Additionally it is to provide the potential options for this now integrated workstream, and to ultimately seek an endorsement for one option from the DPC to be further developed and included in the Proposed District Plan.

2.0 Summary of Feedback Received

2.1 Landowner Feedback

Jim McCartney of 833 Christchurch Akaroa Road made contact with the Council to discuss the potential changes, and arranged a meeting between himself and the Council.

This meeting also included Peter Graham of Ahuriri Farm, and Councillor Miller.

These three parties expressed opposition to the re-classification of their land as VAL or ONL, and any related density changes as a result of these classifications. They did not believe their land warranted classification as either a VAL or ONL, and if it did then the underlying density should not change, as this

should remain tied to the 60 metre contour. There were also concerns about the potential loss of economic value of their land as a result of reducing the subdivision potential.

When discussing the potential development loss as a result of the proposed changes, the McCartney's stated that it was not so much the amount of potential allotments lost, but the location of where these allotments could be developed. In this instance the McCartney's expressed a desire to retain the ability to either subdivide and/or erect a dwelling on land between the foot of the hill and the 60 metre contour (currently designated Inner Plains). The proposed changes would render any subdivision proposal to create new 4ha lots within an ONL/VAL difficult, as the activity status would increase from controlled to non-complying.

Councilor Miller enquired about the potential for some form of middle ground hybrid approach between the two options (status quo or proposed amendments) to make allowances for people in this situation. Councilor Miller suggested an approach that the ONL classification could remain, but have a reduced restriction on development up to the 60 metre contour.

Additionally, it was suggested that if the endorsed options progress, that the following occur:

- That any subdivision consent triggered by the potential district plan changes have their development contribution deferred until the allotment is developed; and
- That any grandfather clause either be in perpetuity, or to have the sunset component extended from the proposed 10 years to 25 years.

It was requested that the McCartney's provide written feedback to accompany this report, and this has been attached as **Appendix B**.

3.0 Analysis of Feedback Received

Hybrid approach

This approach hinges on the determination and interpretation of the word 'inappropriate' within section 6(b) of the Act. It was suggested by the parties at the meeting that what forms 'inappropriate' development can change throughout an area classified as an ONL. For instance a density may be appropriate in one part of the ONL but not in another.

As part of the DPR process the Council has engaged the services of an experienced expert in the field of Landscape Architecture to assess the extent of the proposed VAL/ ONLs, which takes into account existing land uses (and any consented baseline). The balance of the ONL workstream has been endorsed by DPC to progress to the s32 and drafting phase. As such, there is a risk that any action which leads to the potential compromising of certain areas of the proposed ONL will undermine the overall integrity of the ONL provisions.

Additionally, the purpose of the VAL is to reflect those areas which have some visual significance but have been heavily modified or are not of such significance to be classified as an ONL. These areas would therefore have a higher allowable density to reflect the underlying land status.

In the absence of expert evidence to support a hybrid planning approach to that applies to different parts of the same ONL/VAL Area, the s32 evaluation will be open to legal challenge, which could lead to the integrity of the plan being severely compromised.

In other words, if the Council were to have different land restrictions across the same ONL area, property owners would then use this as a precedent that a certain degree of development is acceptable in the ONL, and therefore should be allowed on their property.

If an area is classified as an ONL, and therefore covered by section 6 (matters of national importance) then the Council is required to protect these areas from inappropriate subdivision, use and development.

For these reasons, any hybrid approach to the management of the Port Hills ONL/VAL Area would not represent best practice.

Development Contributions

The Project Team has not formed any opinion on this matter to date. However, if the DPC wishes, a provision can be made within the District Plan to provide guidance on when a development contribution should be deferred, but this discretion would ultimately lie with Council on a case by case basis.

Grandfather Clause

The purpose of the grandfather clause is to alleviate some of the potential consequences of a district plan review and the associated changes where a 'non-compliance' already exists. They provide an avenue for people to develop their land after a plan change despite the new provisions requiring a resource consent or triggering a higher level activity classification.

On review of the recommendation to include a 10 year sunset clause at which any ability to carry out development through the grandfather provision would expire, it was deemed that this part of the provision could be removed without causing a significant issue within the Proposed District Plan. Therefore, any grandfather clause would exist for the time the Proposed District Plan remained operative. It would then be a case for the next district plan review process to assess its appropriateness which will occur within 10 years of the Proposed Plan becoming operative.

An example of how a grandfather clause would work would be if a landowner had a vacant allotment which has a legal right to build a dwelling either as a permitted/controlled activity under the existing district plan then this right will be maintained. For example, a six hectare parcel (undeveloped) within the now Inner Plains Area has a permitted right for one dwelling. If this parcel was subjected to a density reclassification by way of becoming a VAL (1/40ha) the parcel would retain its permitted development right.

4.0 Recommended Option Post Engagement

The Project Team recommends that:

- The Preferred Options for the Port Hills ONL/VAL Area that have previously been endorsed by DPC progresses to the 'Drafting and Section 32 Evaluation Phase'.

Appendix A – Affected Landowner Letter

14th December 2018

Dear Sir / Madam

DISTRICT PLAN REVIEW: UPDATE ON OUTSTANDING NATURAL LANDSCAPES AND FEATURES

As part of the current District Plan Review, Selwyn District Council recently held public consultation on key proposed changes to the current plan. The consultation included proposed changes to how outstanding natural landscapes and features are managed within the new District Plan.

This letter is to inform you, as an owner of land in the Port Hills which has been identified as having outstanding landscapes values, about what has happened as a result of the feedback and what the next steps are for the District Plan Review.

Background

Following the review of the current rules for managing outstanding landscapes in the District Plan, the following key changes have been proposed for the new District Plan:

- All protected areas with high landscape value are assessed on a district-wide basis and have to meet relevant regional criteria.
- Areas and features with landscape value that merit protection in the Proposed District Plan are grouped into one of two classifications: Outstanding Natural Landscapes (ONL) or Visual Amenity Landscapes (VAL).
- Resource consents may be required for a wider range of activities to better protect landscape values from adverse effects. For example, resource consents may be required for buildings in the Te Waihora/Lake Ellesmere, Rakaia River and Waimakariri River outstanding landscapes, where currently there is no restriction on this.
- Intensification of pastoral farming in the High Country may also be subject to a resource consent.

Compared to current landscape areas identified in the District Plan, the proposed landscape areas for the new District Plan are broadly similar in location. However, it is now proposed to include additional land into the ONL and VAL areas. In the Port Hills area there has been some refinement of mapping of the ONL and VAL areas to remove overlap and confusion, along with changes to the area and extent of both the ONL and VAL in various parts of the Port Hills.

With the proposed changes to the ONL and VAL areas, it is important to note that the predominant effect on some properties in the Port Hills will be the change in the underlying residential density of the area, which can ultimately affect the ability of the landowner to either subdivide or build a dwelling.

The rule for density or minimum lot sizes in the current District Plan for the Lower Slopes area of the Port Hills is one dwelling per 40 hectares and for the Upper Slopes area of the Port Hills it's one dwelling per 100 ha. However, the proposed change for the proposed District Plan is to remove reference to the Upper and Lower slopes areas, and realign the boundaries between the two Port Hill's areas and the Inner Plains area to follow the landscape lines, as set by the proposed ONL and VAL areas.

The proposed change to these provisions for the Port Hills areas will assist in maintaining the landscape values of the Port Hills. The proposed changes would mean that the VAL area would have a housing density of one dwelling per 40 ha, and the ONL area would have a housing density of one dwelling per 100 ha.

There would be no effect on owners of land that has already been subdivided to below these standards, but not yet developed, as it is proposed that a 'grandfather' clause would apply to these situations. The 'grandfather' clause would give the owner of the property 10 years to develop their land. This clause would not, however, apply to subdivision rights, meaning that these proposed changes would potentially restrict the ability of some landowners to subdivide their property in the future, even if they currently meet the minimum lot size requirements.

What happens now?

In response to the feedback received during the public consultation and site visits to affected properties, Selwyn District Council has agreed that before further work is done on the drafting of proposed policies and rules in relation to ONL and VALs in the Port Hills Areas, more engagement is required with affected landowners.

To let us know what you think about the above proposed changes or if you require any further information regarding the District Plan Review or ONL and VALs, please contact Robert Love, Strategy and Policy Planner, who is leading the review process for the Rural Character and Density topic. Robert can be contacted by phone on 03 347 1821 or email robert.love@selwyn.govt.nz. If you wish to submit feedback on the District Plan Review please have any comments back to above email address prior to the 25th of January 2019.

Next steps for the District Plan Review

Following further engagement with the affected Port Hills landowners, the Council will consider whether further amendments are required to the extent of ONL and VAL boundaries in the Port Hills, and whether this will require reconsideration of subdivision and land use standards for those areas. We will then work with our partners and key stakeholders on developing rules and policies for the Proposed District Plan.

It's expected the Proposed District Plan will be notified for formal public consultation in early 2020. At that stage you will again have an opportunity to make a formal submission on the proposed changes in relation to outstanding landscapes, including proposed boundaries of landscape areas and rules that manage them.

The longer timeframe for the notification of the Proposed Plan is due to the local government elections taking place at the end of 2019 and ensuring that the newly elected Council endorses the Proposed District Plan before it is notified for public consultation.

Anyone submitting their feedback on the Proposed District Plan will also have an opportunity to speak to their submission at a formal hearing. Following the hearing, the Hearing Panel will make recommendations on proposed amendments and the Council will then make final decisions.

We expect the new District Plan to become largely operative by March 2022, subject to any Environment Court appeals.

Yours sincerely

Jesse Burgess
Planning Manager
SELWYN DISTRICT COUNCIL

Appendix B – Feedback from the McCartney Family

Rosevilla Farm

R D 2

Christchurch

14.01.19

Robert Love

Strategy and Policy Planner

Selwyn District Council

Dear Robert,

Thank you for meeting with us on Tuesday the 8th January 2019.

As a farming family and business operator on the Lower Port Hills and Inner Plains, of fourth and fifth generation, we find the SDC consultation process very frustrating in regard to District Plan Review.

The Boffa Miskell planning in our view, has a very ideological view of the Port Hills which refuses to take into account contours, human activity and past assessments. Their consultation has been uncompromising. The 60-metre contour housing density was implemented as a practical solution to the desires of landowners and to those with a conservation concern regarding the Lower Port Hills and the Port Hills in general. With vegetation and appropriate plantings on the flats there would be very little visual impact. When all the Inner Plains are subdivided into 4-hectare blocks and with the usual shelter plantings that go with them there will be next to no visual impact below 100 metres.

SDC staff are frustrating because no matter who we talk to we get comments like: 'Not part of my expertise,' 'Couldn't comment on that' and 'Why are we worrying about two or three landowners'.

We as a farming entity aren't asking for plan changes to benefit us but ask that the status quo should remain. Changes are at the behest of the Council it appears.

The proposed 40 hectare and 100-hectare lot sizes have no relevance to the lot sizes that presently exist. Carrying on with the present 4 of hectare lot sizes below 60 metres allows a win win given the affected area is not large. In fact, the SDC would be promoting 'empty section in the street' effect if the change to VAL and ONL status went ahead. At present we have homes and development on all sides of us including a number of dwellings at the 200-metre contour with further subdivision and development all consented.

We as a farming entity value the hill blocks as essential grazing ground to balance the wetter and flood prone flats for winter grazing. Hence the reason we haven't subdivided to date. However, as discussed with you Robert, as the pressure of 'reverse sensitivity' comes from the 4 hectare blocks on the flats

in our area, which we don't necessarily support but are pragmatic enough to see the practicality of, farming surrounded by lifestyle blocks in time will become untenable. At present what becomes obvious is that owning our hill property and not being able to potentially build in the future below the 60 metre point leaves us with a hill of little productive value, in fact a considerable economic loss. Note the Economic Report bought out by Ford Baker which we noted the values along the CHCH Akaroa Rd of \$540,000 for 4 hectares which could be an economic loss for us in the order of \$2,000,000, surely this points out our frustration.

At the meeting we mentioned to you the lot sizes and the issue with fire. See also 'The Press' Saturday 12th January 2019. The plan changes to VAL- ONL and increase in land packages of 40 and 100 hectares will further inflame the issue due to taking away human activity to control dry grass growth and being proactive caretakers of hill blocks.

Another concern is as a business entity and regarding family succession planning, decisions had been made based on the present scenario with the confidence that issues regarding Plan Change 6 had been robustly debated over many years through hearing Submissions and Commissioner Reports. We are disappointed that Boffa Miskell and the present SDC through the Consultation Process have failed to recognise this. In fact, have totally disregarded all the time and effort of property owners and previous council staff in reaching a workable plan.

We remind you of our interest in attending the Council Meeting when the Density Issue is being discussed.

Sincerely

Thomas, Jim and Jenny Macartney