Sections 95A-E

Resource Management Act 1991

Notification Report

Report pursuant to section 42A of the Resource Management Act 1991 recommending whether or not an application for resource consent should be:

- Publicly notified, limited notified or non-notified
- Granted or declined, and, if granted, the conditions of consent

Decision pursuant to section 113 of the Resource Management Act 1991

APPLICATION NUMBER:	**RC225687 and RC225736**
APPLICANT:	Selwyn District Council
BRIEF DESCRIPTION OF APPLICATION:	This is a joint application for land use consent and land use under the NES-CS: Land use consent RC225687 is sought for works associated with the establishment, operation and maintenance of the Leeston Stormwater Flood Bypass scheme Land use consent RC225736 is sought to undertake soil disturbance and potential removal in accordance with the regulations of the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protection Human Health (NES-CS)
SITE DESCRIPTION:	Addresses: 178 Harmans Road; 60 Leeston Dunsandel Road; and 2 Leeston Dunsandel Road Legal Descriptions: Lot 2 DP 494752 and Lot 2 DP 44961, as contained in Record of Title 727181; Part Lot 3 DP 33419, as contained in Record of Title CB16F/1078; and Lot 2 DP 365379, as contained in Record of Title 264986.
ZONING / OVERLAYS	**Operative Selwyn District Plan (2016), Township Volume and Rural Volume** Living XA Zone, Living 1 Zone and Outer Plains Zone **Partially Operative Selwyn District Plan (Appeals Version – released 27 November 2023)** General Rural Zone, General Residential Zone and Large Lot Residential Zone Plains Flood Management Overlay and Urban Growth Overlay
OVERALL ACTIVITY STATUS:	**Discretionary**

The Application

1. The application was formally received by the Selwyn District Council on 4 October 2022. Since the application was lodged the applicant has provided a replacement application dated 26 October 2023 which replaces previous versions of the application.

2. The application proposes to construct, operate and maintain the Leeston Stormwater Flood Bypass Scheme. The proposed works are described in detail in Section 4 of the Assessment of Environmental Effects (AEE). In summary, the proposed works include a stormwater bypass channel, the construction of a new bypass channel and flood control gate, the Leeston Creek upgrade and the raising of bank heights adjacent to the drainage network. The extent of the proposed drainage scheme is shown in **Figure 1** below.

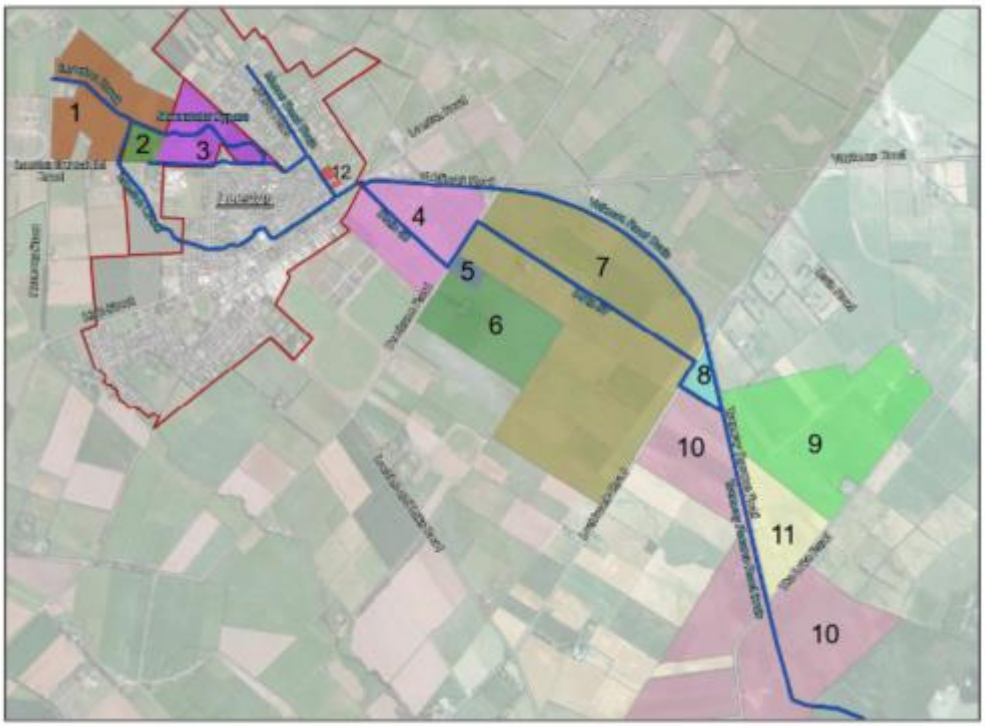

Figure 1: Site Location Map (source: AEE)

Stormwater Bypass Channel

3. A new stormwater bypass channel is proposed to convey high flows diverted from Leeston Creek to the upgraded drainage channels and will cross the properties at 2 and 60 Leeston Dunsandel Road, before connecting to the existing drainage network at the corner of Pound Road and Cunningham Street, as detailed in **Figure 2** below.

Figure 2 Location of Leeston Creek Upgrade and Proposed Bypass Channel

4. The design flow of the bypass is anticipated to be approximately 1.3% Annual Exceedance Probability (AEP), and is approximately 1,100 metres in length.

Diversion between Leeston Creek and Bypass Channel

5. The upstream section of the new bypass channel will connect to Leeston Creek. A new flood control gate is proposed to control the diversion of high flows from Leeston Creek into the bypass channel.

6. The flood control gate will allow water to continue to flow downstream along Leeston Creek, up to 0.6m^3/second. When flows exceed this level, water will build up behind the flood control gate and excess flow will be diverted over a new weir wall and into the bypass channel. Rock rip rap is proposed to be laid both upstream and downstream of the weir to prevent scouring. A concept plan of the proposed diversion structure is provided in **Figure 3** below:

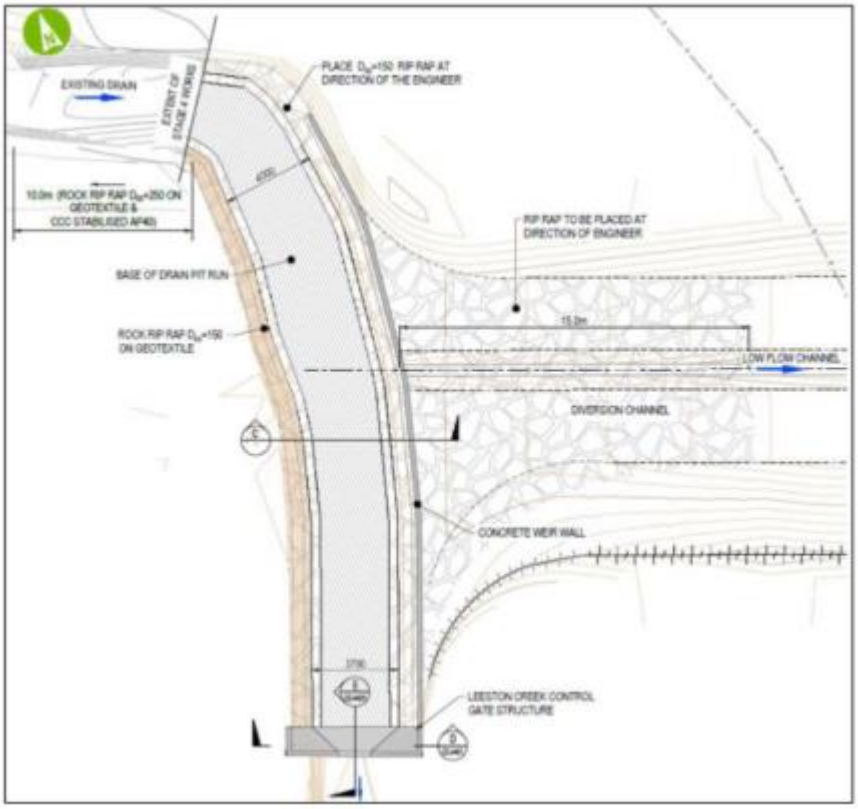

Figure 3 Concept Plan of the Proposed Diversion Structure between Leeston Creek and the Stormwater Bypass Channel

Leeston Creek Upgrade

7. The proposal seeks to upgrade the carrying capacity of Leeston Creek between Harmans Road to the west and 60 Leeston Dunsandel Road to the east, to convey a design flow of 3.8m^3/second. The location of this work is detailed in **Figure 2** above.

8. The works associated with the Leeston Creek upgrade include channel deepening and widening, reforming the batters of banks, and the removal and replacement of an existing culvert. Rock rip rap is also proposed to be installed on either side of the culvert to prevent scouring.

Raising of Bank Heights adjacent to Drainage Network

9. The proposal also seeks to undertake bank raising at several points adjacent to the existing network south of Leeston, as identified in **Figure 1** above. The increased bank heights are proposed to accommodate peak flood levels and are generally in locations where breakouts may occur due to land falling away from the drains or historic braid paths.

Background

10. The background to the proposal is described in detail in Section 2 of the AEE.

11. Leeston and the surrounds are relatively low-lying environment and have been affected by flooding. Flood hazard mapping has demonstrated that there is a wider risk of flooding to Leeston and the surrounding area from overland flows and sources beyond that of the Leeston Creek sub-catchment. The current proposal is Stages 4 and 5 of a six stage construction package for the Leeston Stormwater Bypass Scheme, as detailed in **Figure 4** below.

12. The stages are summarised as follows:

Stage 1 – Connection of the Ellesmere Hospital drain to Manse Road and widening of the High Street Drain (complete 2016);

Stage 2 – Upgrade of Manse Road Drain and Reids Culvert (complete 2017);

Stage 3 – Upgrade of drainage channels, including the new High Street Culvert (complete 2020); Stage 4 – Establish new stormwater bypass channel connecting to previously completed stages and a new diversion structure from Leeston Creek;

Stage 5 – Upgrade capacity of Leeston Creek upstream of the bypass channel (between Haran Road and the bypass diversion structure); and

Stage 6 – Extend existing stormwater 'wetland' facility. This stage is primarily to treat stormwater from the new residential subdivision (Karumata Oaks, RC215689) at 2 Leeston Dunsandel Road (to be undertaken by developer).

Figure 4: Design and construction stages (source: AEE)

13. A number of consents from Environment Canterbury have been granted for works, including dewatering and temporarily damming the waterway, land excavation, vegetation removal and the placement of structures (CRC212191, CRC212192, CRC212193, and CRC212194). The decision documents for these regional council consents are provided in Appendix 9 of the application.

14. The wider drainage network has and continues to be subject to a substantial amount of drain clearance and regular inspections and maintenance to ensure that the drainage network is maintained and the risk of flooding reduced.

The Existing Environment

15. The proposed bypass is proposed to be located on a site that includes 2 Leeston Dunsandel Road, 60 Leeston Dunsandel Road and 174 Harmans Road.

2 Leeston Dunsandel Road

16. The applicant for the Karumata Oaks subdivision was granted resource consent (RC215690 and 215689) to subdivide 2 Leeston Dunsandel Road (Part Lot 3 DP 33419) on 25th January 2022. The consents are subject to a number of conditions, including stormwater management.

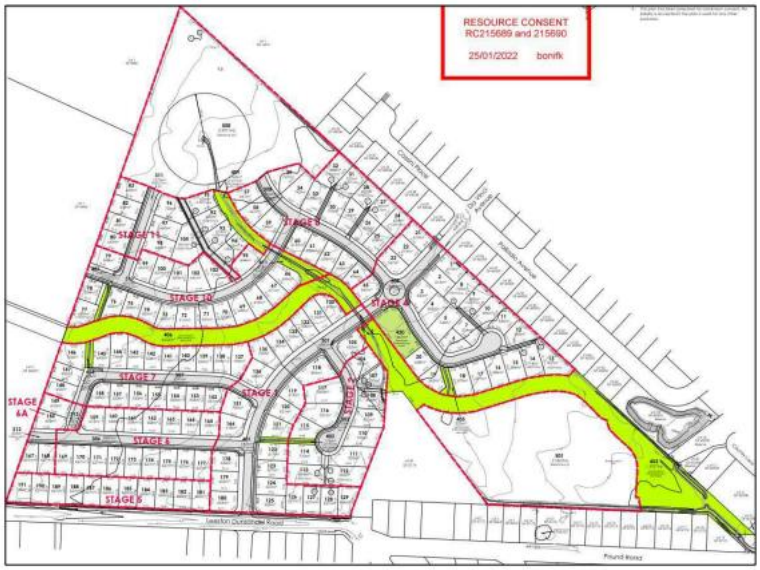

Figure 5: Approved Subdivision for RC215689 and RC215690

17. Works associated with the subdivision are currently being undertaken on site. These works have included the partial construction of the stormwater swale running west to east across the site.

60 Leeston Dunsandel Road

18. 60 Leeston Dunsandel Road was re-zoned to Living 1 and subject to ODP 51 under the provisions of Plan Change 62 (PC62), on 17 February 2022. The proposed bypass channel that is located along the northern boundary of this property is denoted by blue dashed lines within the ODP, and described as "*Indicative Stormwater Management Area / Local Drainage Reserve to be confirmed at Subdivision".*

19. 60 Leeston Dunsandel Road has previously contained two contractors yards. A resource consent to undertake earthworks of contaminated soils at 60 Leeston Dunsandel Road was granted on 14 June 2022 (RC225368). The consent is limited to the area of the site immediately adjacent to the northern boundary and enables the disturbance and removal of approximately 300-375m^3 of contaminated soils to a depth of 200 – 250mm below ground level.

174 Harmans Road

20. 174 Harmans Road is characterised by predominantly rural activities, with shelterbelts located in close proximity to Leeston Creek.

21. Leeston Creek currently flows southeast through the project area, before flowing under a culvert under the Leeston Dunsandel Road. The Leeston Creek continues south past Ellesmere College before entering the Leeston stormwater drainage network.

22. Martins Spring Drain and Dunsandel Drain are also located within the project area.

23. The subject site is bounded to the south and northeast of the site by residential properties. These residential properties have frontages to Palladio Avenue and Pound Road and are zoned Living XA and Living 1 respectively.

Downstream Properties

24. The application site also includes a number of properties located along the Volckman Road Drain and the Tramway Reserve Road Drain, including 483 Volckman Road, 143 Lochheads Road, 159 Beetham Road, 206 Lochheads Road, and 1171 and 1247 The Lake Road. These properties are rural in character located on flat topography, leading to Lake Ellesmere.

25. I have visited the sit on a number of occasions and an generally familiar with the site subject to the proposed works and the downstream properties and the surrounding environment.

Activity Status

Operative Selwyn District Plan (2016), Township Volume and Rural Volume

26. The application site is zoned Living XA Zone, Living 1 Zone and Rural Outer Plains Zone.

27. The Council notified its decisions on the Proposed Selwyn District Plan, Variation 1 and Notices of Requirement on 19 August 2023, with all provisions having legal effect from that date. The appeals closed on 6 October 2023; however, the Council is still currently working through the appeals, and the consequential implications of those, in order to identify which rules of the Partially Operative District Plan can be treated as operative and which rules of the Operative Plan can be treated as inoperative. Therefore, a conservative approach has been adopted at this point and the rules of both Plans have been assessed where relevant.

28. As the application was lodged prior to 19 August 2023, the following assessment includes an assessment of the rules that were operative at the time of the application:

Relevant Definitions

29. The application identifies two definitions relevant to the proposal, being "utility" and "waterbody".

30. Utility is defined in the Operative District Plan as follows:

"includes the use of any structure, building or land for any of the following purposes:

(a) The generation, transformation and/or transmission of energy;

(b) Any telecommunication facility or telecommunication line;

(c) Any radio communication facility;

(d) *The conveyance, storage, treatment or distribution of water for supply, including (but not limited to) irrigation and stockwater;*

(e) *The drainage, reticulation or treatment of stormwater, waste water or sewage;*

(f) *Transportation infrastructure, including (but not limited to) roads, accessways, railways, airports and navigational aids;*

(g) *Work to mitigate potential natural hazards, including (but not limited to) stopbanks, groynes and gabions; or*

(h) *Meteorological facilities for the observation, recording and communication of weather information."*

(my emphasis)

31. Therefore, it is considered that the proposed works are a utility under the definition of the Operative District Plan.

32. Waterbody is defined in the Operative District Plan as follows:

"means fresh water or geothermal water in a river, lake, stream, pond (but excluding any artificial pond), wetland or aquifer or any part therefore that is not located within the coastal marine area."

33. Therefore, it is considered that Leeston Creek is a waterbody under the definition of the Operative District Plan.

Land Use

34. The proposed land use activity does not meet the following rules:

RULE	TOPIC	COMPLIANCE	STATUS
Rural Volume			
1.7.1.1	Earthworks on the edge of a waterbody	Earthworks are to be set back a minimum of 20m from the edge of a waterbody. The proposed earthworks will be undertaken within Leeston Creek.	**Discretionary** (Rule 1.7.6)
1.7.1.2	Earthworks – volume	A maximum volume of 5000m^3 per project is permitted. Approximately 1277m^3 of soil disturbance is proposed.	Permitted
5.13.2.3	Utility Structures on the edge of a waterway	A utility structure is permitted where it is located a minimum of 10m from a waterbody. The proposed structure will be within the setback of Leeston Creek and Martins Spring Dam	Discretionary (Rule 5.13.3)
Township Volume			
2.1.1.4	Earthworks on the edge of a waterbody	Earthworks are to be setback a minimum of 10m from a waterbody. The proposed earthworks will be within the setback of Leeston Creek and Martins Spring Dam	Discretionary (Rule 2.1.8.2)
2.1.1.6	Earthworks - volume	A maximum volume of earthworks is 2,000m^3 per project. The proposal seeks to undertake approximately 16,980m^3 of earthworks	Discretionary (Rule 2.1.8.2)
6.6.1.2	Utility Structures on the edge of a waterway	A utility structure is permitted where it is located a minimum of 10m from a waterbody. The proposed structure will be within the setback of Leeston Creek and Martins Spring Dam	Discretionary (Rule 6.6.2)

35. Therefore, the land use proposal is a Discretionary activity under the Operative Selwyn District Plan.

Partially Operative Selwyn District Plan (Appeals Version – released November 2023)

36. The application site is zoned General Rural Zone, General Residential Zone and Large Lot Residential Zone. The site is also subject to Plains Flood Management Overlay and Urban Growth Overlay.

37. The Council released the Appeals Version of the Partially Operative Plan on 27 November 2023. Many provisions are beyond challenge and are operative/treated as operative (pursuant to cl 103 of Schedule 1 and s 86F of the Act). Those subject to appeal continue to have legal effect pursuant to s 86B.

Relevant Definitions

38. The definition of "infrastructure" is relevant to the application, and is defined as meaning the same as in section 2 of the RMA, noting that this includes:

"f. a drainage or sewerage system"

39. The proposal seeks to provide for an upgrade to the drainage system for Leeston township and therefore is considered to be "infrastructure" for the purpose of this assessment.

Land Use

40. The proposed land use activity does not meet the following rules.

Operative/treated as operative:

RULE	TOPIC	COMPLIANCE	STATUS
Earthworks (EW)			
EW-R2	Earthworks	Earthworks are permitted where they comply with the following rule requirements: EW-REQ1 Volume of earthworks EW-REQ2 Maximum slope gradient EW-REQ3 Excavation and filling EW-REQ4 Rehabilitation and Reinstatement EW-REQ5 Bunding NH-REQ4 Natural hazards and earthworks ECO-REQG Earthworks and ecosystems and Indigenous Biodiversity NFL-REQ9 Earthworks on ONL and VAL CE-REQ5 Earthworks in the Coastal Environment	
EW-REQ1	Volume of Earthworks	The volume of earthworks shall not exceed the threshold outlined in EW-TABLE1: All residential zones: 150m^3 per site The proposal involves approximately 16,980m^3 of earthworks	Restricted Discretionary (Rule EW-REQ1.2)
NH-REQ4	Natural Hazards and Earthworks	The activity shall not exacerbate flooding on any other property by displacing or diverting floodwater on surrounding land	Restricted Discretionary (NH-REQ4.2)
Natural Character (NATC)			
NATC-R1	Earthworks and earthworks stockpiles	Compliance is determined in the NATC-Rule Requirements	
NATC-REQ1.1	Setbacks from waterbodies	All earthworks and earthworks stockpiles are to be located at least 10m from the bank of any other surface water body (b) Earthworks are proposed to be undertaken within 10m of Leeston Creek and Martins Spring Dam	Restricted Discretionary (Rule NATC-REQ1.2)
Energy, Infrastructure and Earthworks (EI)			

EI-R26	Artificial watercourse and associated structures	The construction, expansion maintenance or repair of an existing artificial watercourse or associated structure is a permitted activity, subject to meeting EI-REQ3 Notable Trees EI-REQ4 Vegetation Clearance EI-REQ5 Earthworks in Special Areas EI-REQ8 Historic Heritage EI-REQ12 Structures in Special Areas NH-REQ5 Natural Hazards and Infrastructure ECO-REQG Earthwork and ecosystems and indigenous biodiversity	
EI-REQ5	Earthworks in Special Areas	All earthworks shall comply with NH-REQ4 Natural Hazard and earthworks	Restricted Discretionary (Rule NH-REQ4.2)

Earthworks - EW

41. Earthworks are a permitted activity subject to meeting a number of rule requirements. The application site is not located on land with a slope gradient greater than 1 in 4 and therefore will comply with EW-REQ2. The application states that the maximum depth of excavation will be 1.7m and therefore will comply with EW-REQ3. Further, the proposal seeks to rehabilitate and reinstate the site in accordance with EW-REQ4.

42. No bunding is proposed and therefore EW-REQ5 is not applicable. The application site is not located in a Significant Natural Area, an ONL or VAL, or the Coastal Environment and therefore ECO-REQG, NFL-REQ5 and 9 are not applicable.

43. EW-R2 requires compliance with EW-REQ1. EW-REQ1 limits the maximum volume of earthworks in Residential Zones to 150m^3 in accordance with EW-TABLE1: Earthworks. The proposal seeks to undertake 16,980m^2 of earthworks and is therefore a restricted discretionary activity, with the matters of discretion limited to EW-REQ1.3.

44. EW-R2 requires compliance with NH-REQ4. NH-REQ4 seeks to ensure that the activity does not exacerbate flooding on any other property by displacing or diverting floodwater on surrounding land. It is understood that the proposed works may result in exacerbate flooding on downstream properties. Therefore the proposal is restricted discretionary, with the matters of discretion restricted to NH-MAT1.

Natural Character (NATC) – Setbacks from Surface Water Bodies for Earthworks

45. All earthworks and earthworks stockpile are permitted subject to being located a minimum of 10m from the bank of any other surface water body. The proposal seeks to undertake earthworks within 10m of Leeston Creek and Martins Spring Dam. Therefore the proposal is a restricted discretionary activity, with the matters of discretion restricted to NATC-MAT1 and SASM-MAT3.

Energy, Infrastructure and Earthworks (EI) – Artificial Watercourse and Associated Structures

46. The construction and operation of artificial watercourses and associated structures are a permitted activity subject to meeting a number of rule requirement. The application site does not contain any notable trees or historic heritage and does not seek to undertake any indigenous vegetation clearance and therefore meets the requirements of EI-REQ3, EI-REG4 and EI-REQ8. The application site is not located in any of the areas identified in EI-REQ12 and therefore this provision is not applicable. Further the site is not located in any of the Natural Hazard Overlays identified in NH-REQ5 nor does it have any of the characteristics of a Significant Natural Area for ECO-REQG and therefore these provisions are not applicable.

47. The site is located within the Plains Flood Management Area and therefore earthworks and structures are required to comply with EI-REQ5.

48. EI-REQ5 requires compliance with NH-REQ4. NH-REQ4 seeks to ensure that the activity does not exacerbate flooding on any other property by displacing or diverting floodwater on surrounding land. It is understood that the proposed works may result in exacerbate flooding on downstream properties. Therefore the proposal is restricted discretionary, with the matters of discretion restricted to NH-MAT1.

49. Therefore, the land use proposal is a Restricted Discretionary activity under the Partially Operative Selwyn District Plan.

National Environmental Standards

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS)

50. The NES manages activities which involve the disturbance of land which may be contaminated. This is determined by whether activities have or are likely to have occurred on the site, which are listed in the Hazardous Activities and Industries List (HAIL).

178 Harmans Road

51. No HAIL activities are identified as having occurred on this site.

2 Leeston Dunsandel Road

52. Bell Consulting prepared a Preliminary Site Investigation (PSI) for 2 Leeston Dunsandel Road in 2013, with Davis Ogilvie preparing a Detailed Site Investigation (DSI) in October 2021 and EHS Support New Zealand preparing a Remediation Action Plan (RAP) in November 2021).

53. These investigations identified HAIL activities having occurred within 2 Leeston Dunsandel Road, but outside the area proposed for the bypass channel.

60 Leeston Dunsandel Road

54. As has been noted, the land owners for 60 Leeston Dunsandel Road has obtained a resource consent to excavate and remove approximately 300- 375m^3 of contaminated sold under the NES-CS, subject to a number of conditions (RC225368).

55. The maximum volume of earthworks associated with the construction of the bypass channel within the property of 60 Leeston Dunsandel Road is estimated to be approximately 2,500m^3 with a maximum depth of 1.2m.

56. The applicant has provided a memorandum from Louise Wilson, a suitably qualified and experienced environmental consultant (SQEP) at Collaborations to assess the proposal. Ms Wilson has determined that given the depths of excavation proposed for the bypass channel, that a new DSI should be undertaken.

57. The proposal is therefore a Discretionary activity in terms of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health.

Overall Activity Status

58. This application was lodged on 4 October 2022, i.e. prior to the relevant provisions becoming effective/operative at the notification of decisions on 19 August 2023. As such, pursuant to s 88A, the application continues to be processed, considered and decided as an application for the type of activity that it was for, or was treated as being for, at the time the application was lodged.

59. In this case, the status under the Partially Operative District Plan is less restrictive than the status under the Operative District Plan at time of lodgement. Therefore, taking guidance from case law, it is appropriate that the applicant receive the benefit of that less restrictive status.

60. However, as the activity has discretionary status under the NES-CS, and as such, this proposal is being considered as a **Discretionary** activity.

Written Approvals (Sections 95D(e), 95E(3)(a) and 104(3)(a)(ii))

61. The provision of written approvals is relevant to the notification and substantive assessments of the effects of a proposal under sections 95D, 95E(3)(a) and 104(3)(a)(ii). Where written approval has been provided, the consent authority must not have regard to any effect on that person. In addition, that person is not to be considered an affected person for the purposes of limited notification.

62. No written approvals have been provided.

Notification Assessment

Assessment of Adverse Environmental Effects (Sections 95A, 95B, 95D and 95E)

Existing consented environment and 'permitted baseline'

63. As has been noted, a resource consent has been granted on 25th January 2022 to subdivide a portion of the subject site (being Pt Lot 3 DP 33419) to create 163 residential lots. This consent forms part of the consented environment.

64. In terms of 'permitted baseline', the Partially Operative District Plan provides for earthworks located a minimum of 10 metres from waterways and earthworks are limited to a maximum volume of 150m^3.

Assessment

65. As discussed above, this application was lodged on 4 October 2022, i.e. prior to the relevant provisions becoming effective/operative at the notification of decisions on 19 August 2023. As such, pursuant to s 88A, the application continues to be processed, considered and decided as an application for the type of activity that it was for, or was treated as being for, at the time the application was lodged.

66. In this case, the status under the Partially Operative District Plan is less restrictive than the status under the Operative District Plan at time of lodgement, that being Restricted Discretionary. Therefore, taking guidance from case law, it is appropriate that the applicant receive the benefit of that less restrictive status.

67. However, as the activity has discretionary status under the NES-CS, and as such, this proposal is being considered as a **Discretionary** activity.

68. While it is noted that the status of the application is discretionary, given the nature of the activity for which the resource consent is being sought, and the matters that trigger the need to seek the land use consents, it is considered appropriate to use the matters of discretion as a guide to assessing the proposal. Therefore, the applicant has been assessed using the matters of discretion from the non-compliances with the following rules of the Partially Operative District Plan:

- Earthworks - Volume of Earthworks;
- Natural Hazards; and
- Setbacks from Surface Water Bodies

Earthworks

69. The maximum volume of earthworks permitted in the Residential Zones is limited to 150m^3. Non-compliance with this limit is a restricted discretionary activity in accordance with EW-REQ1.2. As a restricted discretionary activity, the matters of discretion are assessed as follows:

a. any adverse effects from the earthworks in terms of visual amenity, landscape context and character, views, outlook, overlooking and privacy from raising ground levels;

70. The proposed works associated with Stage 4 of the proposal are located on the boundary between 178 Harmans Road and 60 Leeston – Dunsandel Road and bisects the adjacent property 2 Leeston – Dunsandel Road. These works include the construction of a new stormwater bypass channel, including side batters, the construction of a new culvert, concrete diversion weir and flood control gate with rip rap, as well as associated vegetation removal and trimming. The proposal will result in new structures across all properties, including creating a new conveyancing channel across the subject site.

2 Leeston – Dunsandel Road – Karumata Oaks

71. Since the application was lodged, a resource consent has been granted creating 163 residential lots on 2 Leeston Dunsandel Road, within the subject site (see **Figure 5** above) called Karumata Oaks. The residential development of this portion of the subject site therefore forms a part of the consented environment. The subdivision plan identifies a swale running west to east through the development, that is currently under construction. The pathway of the Drainage Chaneel through Karumata Oaks is identified in **Figure 6** and **Figure 7** below.

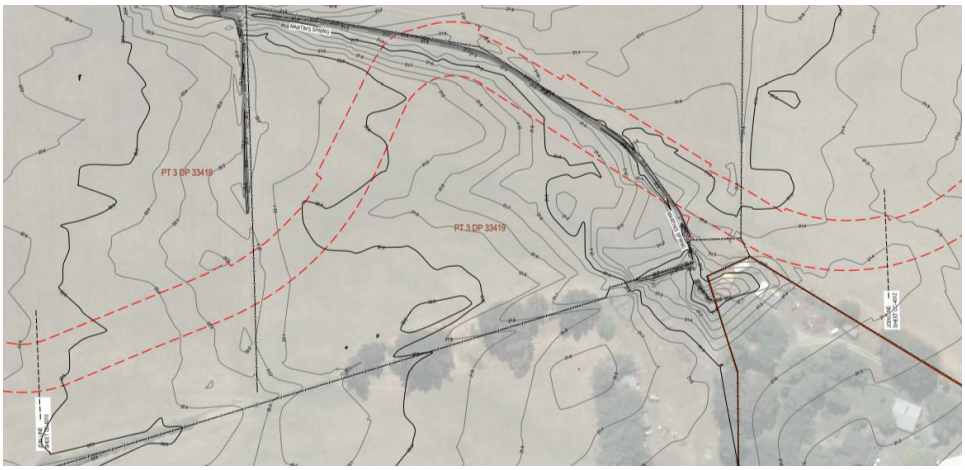

Figure 6 Pathway of Drainage Channel through Karumata Oaks (western portion)

Figure 7 Pathway of Drainage Channel through Karumata Oaks (eastern portion)

72. A number of the lots created by the subdivision of 2 Leeston Dunsandel Road / Karumata Oaks have already been sold, including lots on Da Vinci Avenue, Tauhou Place and Piwakawaka Place that share a boundary with the conveyance drain[1] as detailed in **Figure 8** below. It is not clear if the documents available to potential purchasers included references to a connection to an up gradient drainage channel or overland flow path, or that this swale is a significant 100 year event conveyance drain. However, the width of the conveyance channel was identified on the subdivision plan, and therefore the built scale of the proposed swale (as detailed in **Figure 9** below) is likely to have been anticipated by purchasers of these sites prior to construction.

[1] The properties that have been issued with s224 and share a boundary with the conveyance drain are 30, 32, 24, 38, 40 and 42 Da Vinci Avenue, 1, 3, 5 and 7 Tauhou Place and 6, 8, 10 ,12, 14, 16 and 18 Piwakawaka Place.

Figure 8 Lots created by s224 as part of the Karumata Oaks subdivision (as of 8 November 2023)

Figure 9 Photos of Constructed Swale west of Da Vinci Avenue (left) and east of Da Vinci Avenue (right)

(photos taken 7 November 2023)

73. On balance, it is considered that the potential adverse effects on the character and amenity associated with the proposed works for properties along Da Vinci Avenue, Tauhou Place and Piwakawaka Place that share a boundary with the conveyance drain, and the wider site of 2 Leeston Dunsandel Road will be less than minor.

60 Leeston – Dunsandel Road Lot 2 DP 365379

74. The extent of works proposed for 60 Leeston Dunsandel Road is identified in **Figure 10** below. The works also include the construction of the confluence diversion structure, control gate structure, hard stand areas, as detailed in **Figure 14.**

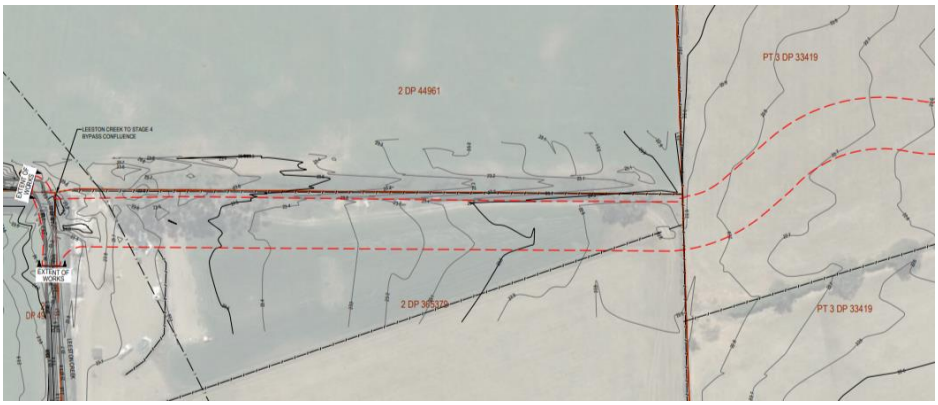

Figure 10 Pathway of Drainage Channel at 60 Leeston – Dunsandel Road

75. The proposed structures will be raised only slightly above the height of the surrounding land. Further, it is noted that there are a number of trees providing screening of the proposed works for owners / occupiers of 60 Leeston – Dunsandel Road.

76. The application states that the existing trees on the southern side of Leeston Creek between 60 Leeston – Dunsandel Road and 178 Harmans Road are proposed to be retained. Further, the application states that an arborist will be on site during works within the root zone of these trees to monitor and avoid effects on their health.

77. It is considered that subject to conditions requiring the protection, maintenance and retention of these trees, that any adverse effects on 60 Leeston – Dunsandel Road will be less than minor.

178 Harmans Road

78. The proposed works associated with Stage 5 of the proposal are located on the property 178 Harmans Road within the Leeston Creek. These works include channel deepening and widening, the reforming of side banks, and the removal and replacement of an existing culvert, as detailed in **Figures 11 – 13** below. The works also include the construction of the confluence diversion structure, control gate structure, hard stand areas, as detailed in **Figure 14.**

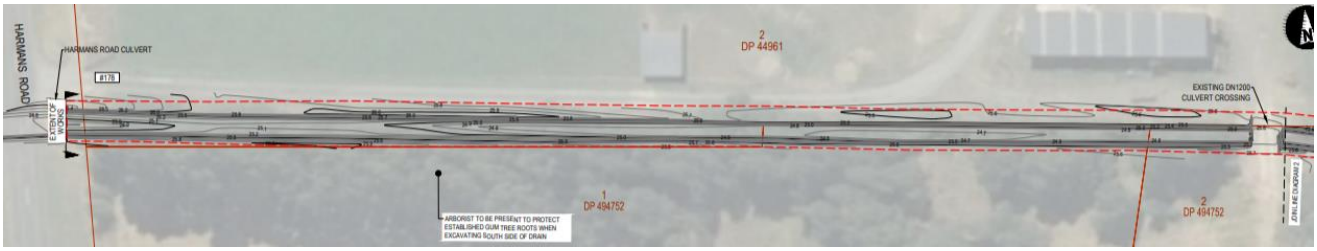

Figure 11 Pathway of Drainage Channel at 178 Harmans Road (Diagram 1)

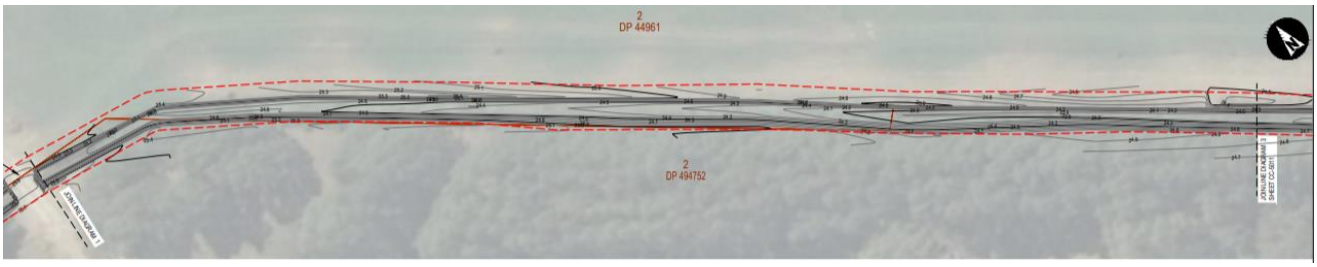

Figure 12 Pathway of Drainage Channel at 178 Harmans Road (Diagram 2)

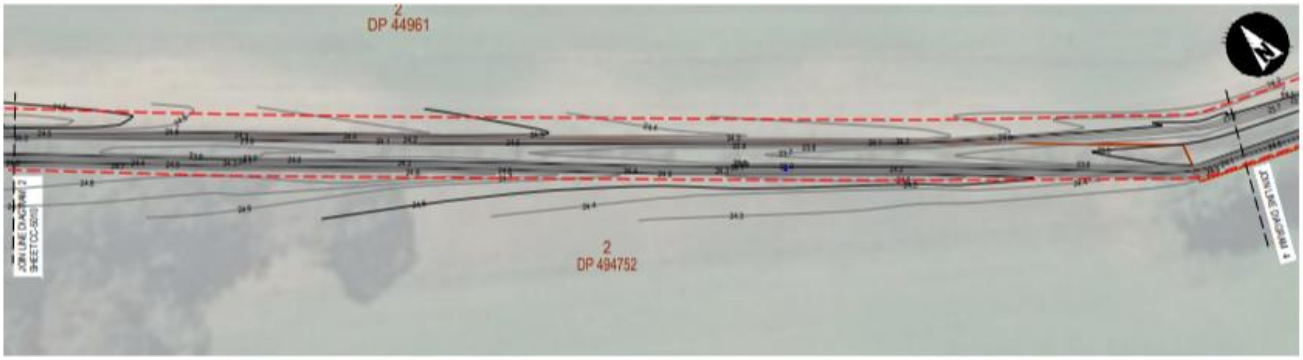

Figure 13 Pathway of Drainage Channel at 178 Harmans Road (Diagram 3)

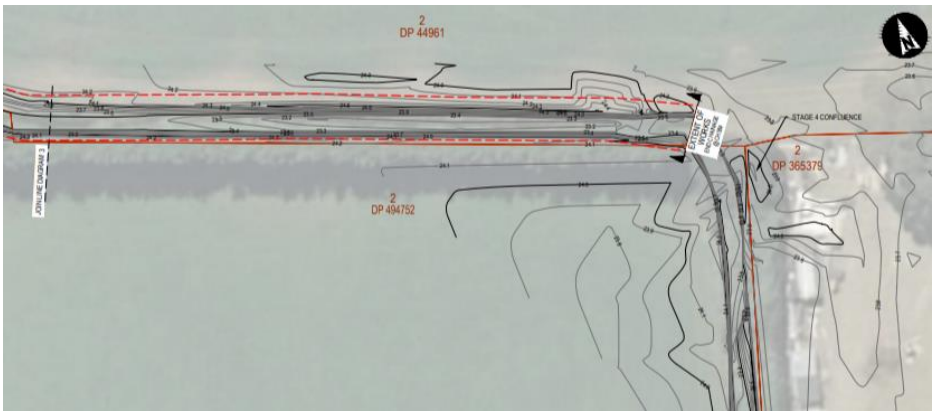

Figure 14 Pathway of Drainage Channel at 178 Harmans Road / 60 Leeston-Dunsandel Road (Diagram 4)

79. The proposed structures will be raised only slightly above the height of the surrounding land. However, a bund of approximately 1 metre may be required along the drainage channel to reduce the risk of the channel overtopping in a design event..

80. The application states that the existing trees on the southern side of Leeston Creek between 60 Leeston-Dunsandel Road and 178 Harmans Road are proposed to be retained. Further, the application states that an arborist will be on site during works within the root zone of these trees to monitor and avoid effects on their health.

81. It is considered that subject to conditions requiring the protection, maintenance and retention of these trees, that any adverse effects on 178 Harmans Road will be less than minor.

82. It is considered that any potential adverse effects on any other parties will be less than minor given the distance from the development to receivers on other properties and from the adjacent road network.

b. the extent to which any potential dust nuisance, or wind erosion effects can be avoided or mitigated;

83. The construction works will occur within the riparian margins and on land over the unconfined or semi-confined aquifer, resulting in disturbed surfaces and the potential for adverse effects associated with erosion, sedimentation and dust.

84. The applicant has proposed Erosion and Sediment Control (ESC) measures to manage the effects of earthworks, noting that the ESC will include:

- *Stabilising site access, entrance ways, haul road;*
- *Staging soil disturbance to minimise excavation areas open at any one time;*
- *Stabilising disturbed areas as soon as practicable following works;*
- *Avoiding stockpiling near waterways and drains;*
- *Preventing vegetation or debris from entering the waterway;*
- *Monitoring weather conditions and the performance of the erosion and sediment control measures during and following the completion of works.*

85. The applicant also acknowledges the importance of the ESC measures in the riparian margins of Leeston Creek to control the risk of discharging sediment into this waterbody. The applicant notes that the upgrade is proposed

to take place between September and April to take advantage of low flow conditions, and to stage the works to ensure that divert flows do not enter the newly constructed channel until sufficient stabilisation and grass coverage have been achieved.

86. It is considered that subject to consent conditions relating to the staging of construction works in accordance with an Erosion and Sediment Control Plan, and restrictions on when the construction can be undertaken, that any potential adverse effects associated with dust nuisance or wind erosion will be less than minor.

c. the extent to which the amenity effects on neighbouring properties, and on the road network, of heavy vehicle and other vehicular traffic generated as a result of earthworks can be avoided or mitigated;

87. The applicant has proposed a condition of consent to provide a traffic management plan to manage the effects of the works on the road network. This condition is as follows:

"All works on site shall be subject to a Traffic Management Plan (TMP) prepared by a suitably qualified person and approved by the relevant Road Controlling Authority. The TMP must comply with the Waka Kotahi NZTA Code of Practice for Temporary Traffic Management (CoPTTM) and the relevant Road Controlling Authority's Local Operating Procedures."

88. In consideration of the amenity effects of the heavy vehicles and other vehicular traffic generated as a result of the works, the applicant notes that the works are generally well set back from public roads, reducing sensitivity to these effects by distance.

89. Further, the applicant considers the potential impacts on dwellings located within close proximity of the upgrade works, and proposes to manage the amenity effects by:

- *Limiting working hours to between 7am and 7pm on weekdays and limited hours on Saturday (if required)*
- *Construction noise being managed to comply with the relevant Construction Noise Standards in NZS 6803:1999.*
- *Achieving adequate setbacks for any temporary stockpiles, warming up machinery (such conditions were included on the Karumata Oaks land use consent (RC215690) and have been volunteered for consistency (Section 12).*
- *Implementing a communications plan and reporting procedures within the EMP.*

90. The applicant notes that there "*remain to be uncertainties regarding how the physical construction of the Leeston Bypass scheme will be integrated with the construction of Karumata Oaks; this will depend on a number of matters including project timing/consent conditions, contractual obligations*".

91. It is considered that any adverse construction related effects can be adequately managed through conditions of consent.

d. the extent to which any changes to the patterns of surface drainage or subsoil drains would result in a higher risk of drainage problems, inundation run-off, flooding, or raise the water table;

92. The flooding effects of the proposal are detailed in the Summary of Stormwater Flood Modelling and Assessment, Appendix 8 of the application and summarised in section 11.5 of the AEE, and **Figure 15** below. The report provides a detailed outline of the existing "pre-project" scenario, noting that Leeston Creek overtops its banks north of the Leeston township, resulting in flooding of roads and overland paths through residential properties in the immediate vicinity, as well as flooding through the township and to the south of the township.

93. The results of the 'post project' scenario modelling is summarised as indicating:

- The redirecting of flows via the stormwater bypass channel will eliminate major breakouts from Leeston Creek and Manse Road Drain in a design event.
- It will however increase flow through the High Street culverts to Drain 58, Drain 57 and Volckman Road Drain. This may increase risk of overtopping of the Beethams Road culvert and flood breakout in the upper reach of the Volckman Road Drain.
- Six properties are identified as potentially experiencing an increase of more than 20mm in flooding in a design event, compared with the pre-project condition, including:
    - 483 Volckman Road
    - 143 Lochheads Road
    - 159 Beethams Road/206 Lochheads Road
    - 1171 The Lake Road / 1247 The Lake Road

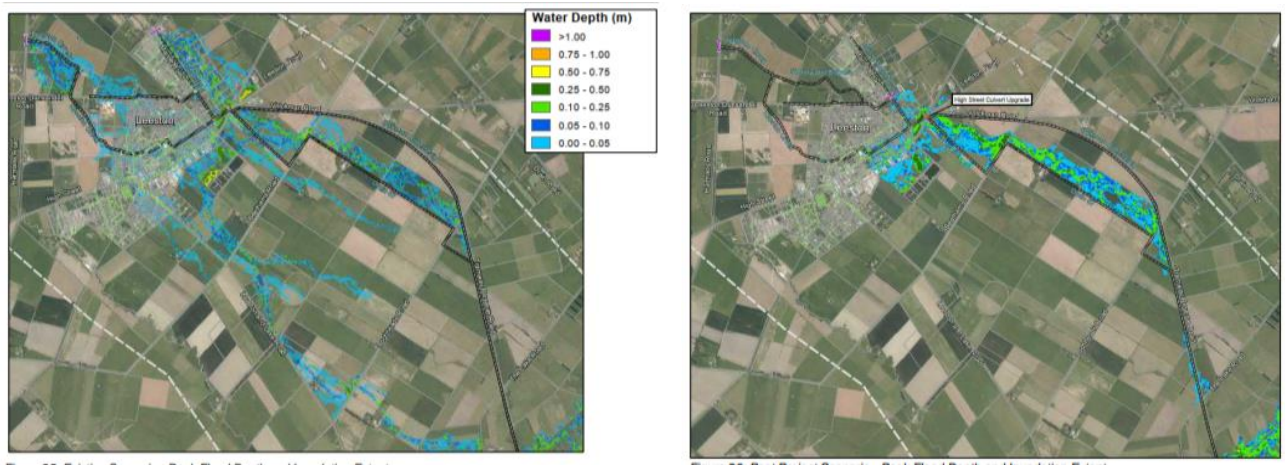

Figure 15 Pre Project Scenario (left) and Post Project Scenario (right) – Peak Flood Depth and Inundation Extent (source: Figures 11 and 12 of Appendix 8 of the AEE)

94. The assessment notes that the modelling identifies that existing inhabited structures will maintain their freeboards, being the height difference between finished floor level and anticipated flood levels. However, the assessment notes that modelling does show other potential impacts, including increased flooding extents and depths for the rural zoned properties that adjoin the scheme to the south of Leeston. To determine the level of effects, the design engineers developed a significance criteria, and through this process identified the six affected properties identified above.

95. Mr Sean Finnigan of Fraser Thomas has been engaged by the Council to peer review the stormwater modelling and assessment of the proposed development. A copy of his report is attached as **Appendix 1**. Mr Finnigan report provides a useful summary of the full extent of the proposal and the various documents and discussions undertaken to clarify the proposal.

General Flooding Effects

96. The existing drainage within the Leeston township has insufficient capacity for a 1%AEP event peak flow, this results in floodwater exceeding the capacity of the network and travelling overland flow paths. Proposed Stages 4 and 5 seek to eliminate the overtopping of Leeston Creek to the northwest of the township and hence significantly reduces flooding from this source. However, as Mr Finnigan notes:

"the bypass increases flow through the High Street culverts from 5.0m^3/s to 8.3m^3/s. This causes increased overtopping of the Beethams Road culvert and flood breakout in the upper reach of the Volckman Road drain, which results in increased flooding of adjacent paddocks – up to 100mm within the existing drainage path to east of Drain 58 and up to 500mm increase within rural properties between Beethams Road and Lake Ellesmere."

97. The proposed bypass will reduce peak flows, with flows spilling from the channel upstream of the diversion point and into the southern channels.

98. Mr Finnigan's assessment of the potential adverse flooding effects for the properties within the project site and the downstream properties, being Sites 1 – 11 in **Figure 1** above are summarised as follows:

178 Harmans Road (Site 1)

99. As has been noted, the applicant is proposing to construct bunds along the channel to reduce the risk of the channel over topping in a design event. Mr Finnigan has assessed the potential flooding effect on 178 Harmans Road and notes that the proposed bunding will affect localised overland flows into the stream. Mr Finnigan considers that the proposal may result in adverse flooding effects on this site.

100. I accept Mr Finnigan's assessment and consider the owners / occupiers of 178 Harmans Road to be an affected party.

60 Leeston Dunsandel Road (Site 2)

101. Mr Finnigan supports the applicants proposal to remove the northern and southern bund, noting that the most recent construction drawings show water level during a 1% AEP event and this never overtops the surrounding ground level. Although Mr Finnigan notes that this is on the proviso that the drains are well maintained. . On this basis, it is considered that the adverse flooding effects on 60 Leeston - Dunsandel Road will be less than minor.

2 Leeston – Dunsandel Road – Karumata Oaks (Site 3)

102. As has been noted, Karumata Oaks subdivision is currently under construction. Parts of the swale has been constructed, as detailed in **Figure 9** above. In his report, Mr Finnigan has raised issues regarding the integration

of the subdivision design with the bypass channel. It is considered that these matters can be addressed through conditions of consent.

483 Volckman Road (Site 4)

103. In consideration of the potential flooding effects of 483 Volckman Road, Mr Finnigan has provided an explanation of the pre-project flood depths and anticipated flood effects as a result of the construction and operation of the project, as detailed in **Figure 16** below.

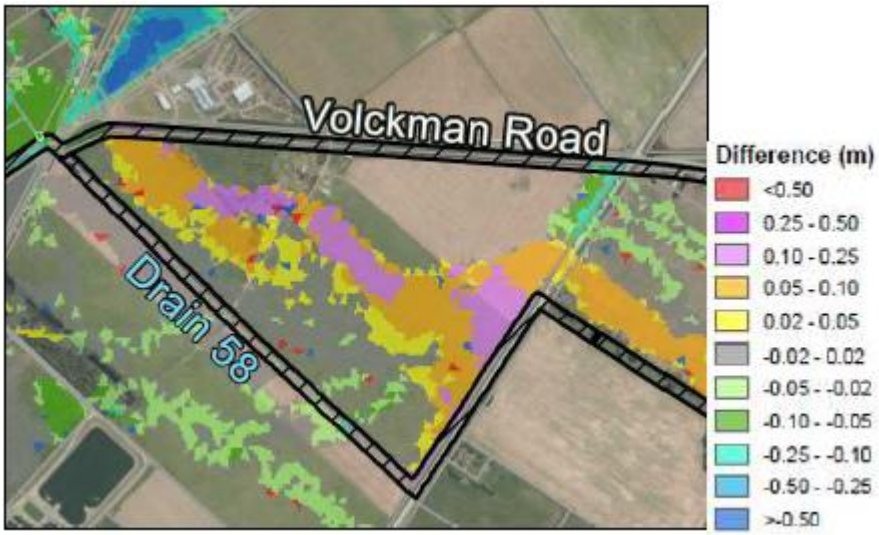

Figure 16 Changes in flood depth at 483 Volckman Road (source: Figure 16 of Appendix 8 of the AEE)

104. The Summary of Stormwater Flood Modelling and Assessment in Appendix 8 identifies the modelled change in flood extents for 483 Volckman Road as follows:

- The flooded area reduces by 4.8% from 187,904m^2 to 178,720m^2.
- The maximum flood depth increases by 57 mm from 468 mm to 525 mm.
- The average flood depth increases by 36 mm from 66 mm to 102 mm.
- Once active flow has ceased, modelling shows no significant differences in drain time.

105. Mr Finnigan notes that the above analysis shows that while the flooded area decrease slightly, the average and maximum flood depths increase.

106. I accept Mr Finnigan's assessment and conclusions for 483 Volckman Road, and consider, on balance that the potential flood effects on this properties may be potentially more than minor. Therefore, the owners / occupiers of 483 Volckman Road are considered to be an affected party.

189 Beethams Road and 211 Beethams Road (Site 6)

107. Mr Finnigan has reviewed the model results for 189 Beethams Road and 211 Beethams Road, and notes that 189 Beethams Road is unaffected by the proposed works. 211 Beethams Road is anticipated to benefit from the proposal as the works are anticipated to eliminate the overland flow path through the site. I accept Mr Finnigan's assessment and consider that the proposal will not result in potential adverse flooding effects on the owners / occupiers of 189 Beethams Road and 211 Beethams Road.

159 Beethams Road / 206 Lochheads Road (Site 7)

108. The modelling of the current flowpaths identifies that there are three overland flowpaths crossing 159 Beethams Road / 206 Lochheads Road. Mr Finnigan notes that post-project there is a small increase in the flood area of the site associated with the main overland flowpath, as detailed in **Figure 17** below.

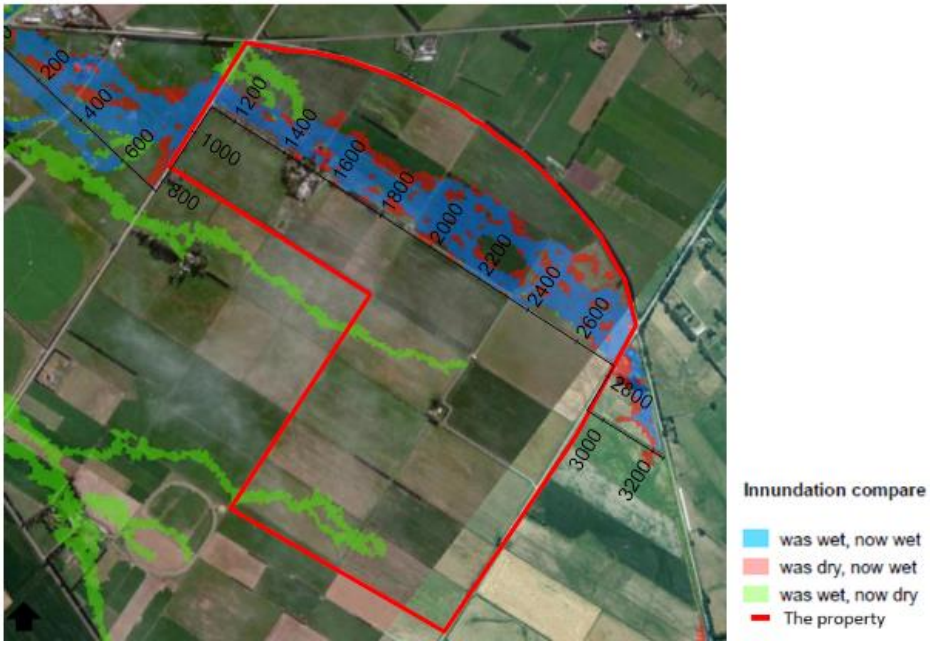

Figure 17 Predicted Changes in Flood Extent (source: Figure 17 of Appendix 8 of the AEE)

109. The applicant has subsequently advised that they would have to raise the bank heights as needed in their revised model to accommodate the peak flood levels in the drains

110. In consideration of the raising of bank heights, Mr Finnigan notes that:

"*The majority of locations where the bank heights are proposed to be raised are in locations where significant overland breakouts occurred due to land falling away from drains, generally in locations of historic braid paths. In these areas, it is unlikely that local overland flow would be cut off. However, it is possible that subdrains will be identified that intersect the main drains in these areas. As the bund raising is undertaken, any such drains will be identified and non-return vale gate structures installed to accommodate the flow."*

111. Mr Finnigan concludes that the proposed works will affect the land at 159 Beethams Road / 206 Lochheads Road and change the way that it will flood. Mr Finnigan also notes that "*the drain bank raising and possible non-return valve gate structures at critical locations is a direct effect on this land which the owner / occupier needs to be aware of and agree to"*.

112. I accept Mr Finnigan's assessment and consider that the potential adverse effects on 159 Beethams Road / 206 Lochheads Road may be potentially more than minor.

143 Lochheads Road (Site 8)

113. The results of the modelling of the changes in flooding for 143 Lochheads Road is identified in **Figure 18** below, and are summarised in Appendix 8 of the AEE as follows:

- The flooded area increases 88% from 12,096m^2 to 22,832m^2.
- The max flood depth increases by 67 mm from 534 mm to 601 mm.
- The average flood depth increases by 6 mm from 68 mm to 94 mm.
- Once active flow has ceased, modelling shows no significant differences in drain time.

114. Mr Finnigan considers that the increase in flooded area is significant, being an additional 88% of the land, representing 10,736m^2 of the site. Further, he notes that increases in drain bank height are proposed along the true left bank of Drain 57 and a short section of Tramway Reserve Road drain to prevent breakout from these drains.

115. I accept Mr Finnigan's assessment and consider that the potential adverse effects on 143 Lochheads Road may be potentially more than minor.

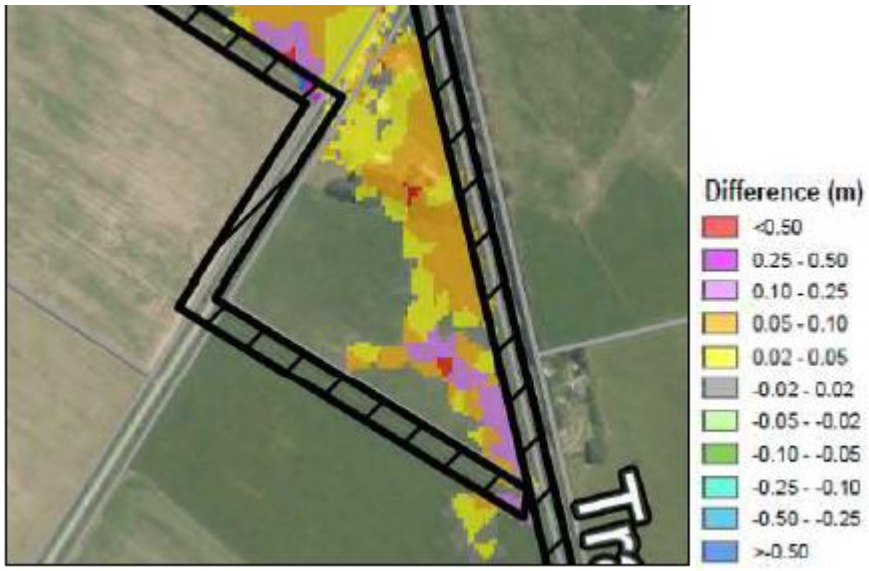

Figure 18 Changes in Flood Depth at 143 Lochheads Road (source: Figure 20 of Appendix 8 of the AEE)

141 and 143 Drain Road (Site 9)

116. Mr Finnigan states that this site is not shown as being affected by flooding both pre and post works. I accept Mr Finnigan's assessment and consider that the proposal will not result in potential adverse flooding effects on the owners / occupiers of 141 and 143 Drain Road.

1171 / 1247 The Lake Road (Site 10) and 293 Tramway Reserve Road (Site 11)

117. The results of the modelling of the changes in flooding for *1171 / 1247 The Lake Road (Site 10) and 293 Tramway Reserve Road* is identified in **Figure 19** below, and are summarised in Appendix 8 of the AEE as follows:

- The flooding area is reduced by 81% from 109,168m^2 to 20,320m^2 (this is due to the removal of a large flow path across the southern portion of the site).
- The max depth is reduced by 172 mm from 493 mm to 321 mm.
- The average depth increases by 2 mm from 53 mm to 55 mm.
- Once active flow has ceased, modelling shows significantly reduced drain time

118. Mr Finnigan notes that there is a small amount of increased flooding of up to approximately 50 -100mm depth alongside the Tramway Reserve Road where it meets Drain 57 and just upstream of the intersection with The Lake Road, and within the property boundaries of on 1171 / 1247 The Lake Road and 293 Tramway Reserve Road, as identified by the red circles in **Figure 19** below. Mr Finnigan notes that this is likely to be due to the increased flows being conveyed within the upgraded upstream drains, which now exceed the drain capacity and/or culvert capacity under The Lake Road at this point.

119. Mr Finnigan concludes that these overflows are localised, small in extent, of shallow depth and likely to be of short duration. Further, he states that it is likely that further localised drain and/or culvert upgrade works could be undertaken in this vicinity to eliminate this overflowing if requested by the landowners, and has recommended further consultation with the landowners for this reason.

120. I accept Mr Finnigan's assessment of the potential flooding effects of 1171 / 1247 The Lake Road and 293 Tramway Reserve, and consider that the proposal will not result in potential adverse flooding effects on the owners / occupiers of these properties. I consider that further consultation with the landowners in relation to localised drain and / or culvert upgrade works should be undertaken outside of the resource consent process.

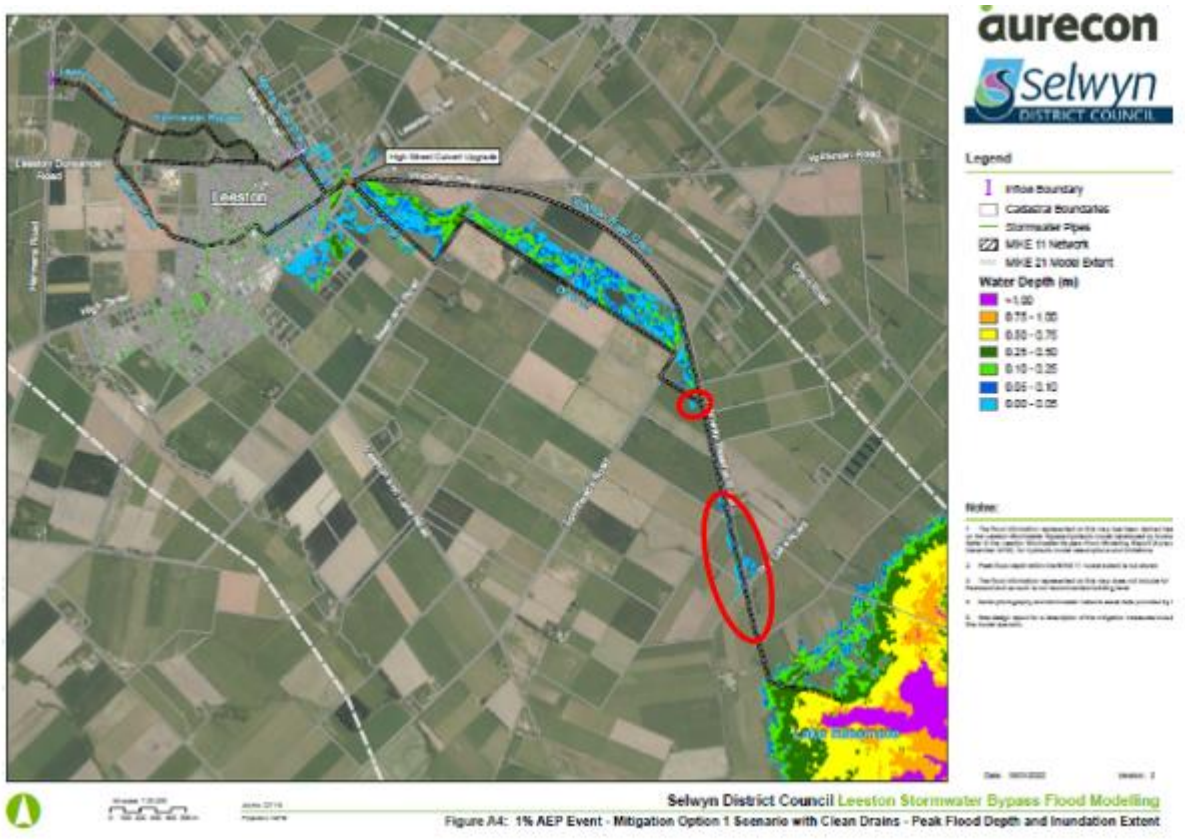

Figure 19 Floodplain extent map with Bypass (source: Fraser Thomas Peer Review, Figure 22, page 30)

2 Showground Place

121. The original application documentation identified 2 Showground Place as an affected party. Subsequent communication from the applicant advised that affected party approval was no longer required. On review of the modelling and the post modelling development of the site, Mr Finnigan notes that "*it is clear that significant fill has been placed on the 2 Showground Place site, and it is likely that this fill has cut off this flow path entirely".* Mr Finnigan also notes that the indicated change in surface elevations is small (at less than 10mm), and changes of this level are generally considered to be within the model tolerance on coupled 1D-2D models.

122. I accept Mr Finnigan's assessment, and consider that the potential effects at 2 Showground Place are less than minor.

Properties on Palladio Avenue, Country Lane and Pound Road directly adjacent to Site 3

123. There are a number of residential properties that are located immediately adjacent to the eastern and south boundary of the Bypass project (Site 3), being 1, 3 and 5 Palladio Avenue, 11 and 15 Country Lane, and 1, 3, 5, 7, 9, and 11 Pound Road. The modelling provided by the applicant identifies no overtopping of the drain in these locations, as detailed in **Figure 15** above. On this basis it is considered that any adverse flooding effects on these properties will be less than minor.

e. any alteration to natural ground levels in the vicinity and, consequently, to the height and bulk of buildings that may be erected on the site;

f. the degree to which the resultant levels are consistent with the surrounding environment;

124. The proposal will result in minimal changes to the natural ground levels and are considered to be consistent with the surrounding environment.

g. *the need for a Construction Management Plan (including a Dust Management Plan), containing procedures, which shall be implemented, that establish management and mitigation measures for the activity that ensure that any potential adverse effects beyond the property boundary are avoided, remedied, or mitigated.*

125. As has been noted, an ESCP is proposed to manage erosion and sediment. The ESCP will be prepared and provided to Council prior to any construction works occurring on site, and will include procedures for the management of construction-phase stormwater discharges arising from the site.

126. Construction is proposed to be restricted to weekdays between the hours of 7.30am and 6.00pm, Monday to Friday, and limited hours on Saturday. It is considered that any potential adverse effects associated with noise and vibration can be managed through conditions of consent for construction activities.

Natural Hazards

(Energy, Infrastructure and Earthworks (EI) – Artificial Watercourse and Associated Structures and Earthworks (EW))

127. Rule EI-R26 and EI-REQ5 requires compliance with NH-REQ4. Further, EW-R2 requires compliance with NH-REQ4. NH-REQ4 seeks to ensure that the activity does not exacerbate flooding on any other property by displacing or diverting floodwater on surrounding land. It is understood that the proposed works may result in exacerbate flooding on downstream properties. Therefore the proposal is restricted discretionary, with the matters of discretion restricted to NH-MAT1, assessed as follows:

1. *The extent of any adverse effects of natural hazards on people and property.*

2. *The potential for the location and design of proposed sites, buildings, vehicle access, earthworks and infrastructure to increase or exacerbate natural hazard risk.*

128. The potential adverse effects of flooding resulting from the proposed Leeston Bypass is discussed in detail in paragraphs 93 to 125 above. It is considered that the proposal may result in adverse flooding effects on 178 Harmans Road, 483 Volckman Road, 159 Beethams Road / 206 Lochheads Road and 143 Lochhead Road. It is considered that the potential adverse flooding effects for the remaining properties identified in **Figure 1** above, and those properties located to the eastern and southern side of the Bypass (Site 3) will be less than minor.

3. *The clearance or retention of vegetation or other natural features to mitigate natural hazard risk.*

129. The majority of the subject site subject to the construction of the Bypass structures are set in highly modified landscapes, influenced by the existing rural activities, or consented residential developments.

130. No indigenous vegetation is proposed to be removed. It is noted that the Cultural Advice Report prepared by Mahaanui Kurataiao, on behalf of Te Taumutu Rūnanga highlights the importance of indigenous biodiversity and proposes conditions of consents requiring indigenous vegetation plantings along the bypass channel and in the riparian margins of Leeston Creek.

131. These matters are discussed in further detail below.

132. The applicant is proposing to maintain a number of trees located with 178 Harmans Road and 60 Leeston Dunsandel Road, and has proposed the following consent condition to ensure the ongoing retention and maintenance of these trees:

"The consent holder shall appoint a suitable experienced and qualified Arborist, to monitor and supervise all earthworks located within the root zones of existing trees to be retained."

133. It is considered that this condition is appropriate to ensure the ongoing retention and maintenance of these trees.

4. *The timing, location, scale and nature of any earthworks in relation to natural hazard risk.*

134. As has been noted, the applicant has proposed Erosion and Sediment Control (ESC) measures to manage the effects of earthworks. Of relevance to the earthworks in relation to the natural hazard risk, the ESC will include avoiding staging soil disturbance, stockpiling near waterways and drains, and monitoring weather conditions and the performance of the erosion and sediment control measures during and following the completion of works.

135. The applicant also acknowledges the importance of the ESC measures in the riparian margins of Leeston Creek to control the risk of discharging sediment into this waterbody. The applicant notes that the upgrade is proposed to take place between September and April to take advantage of low flow conditions, and to stage the works to ensure that divert flows do not enter the newly constructed channel until sufficient stabilisation and grass coverage have been achieved.

136. It is considered that subject to conditions, these matters can be adequately managed.

5. *The potential for the proposal to exacerbate natural hazard risk, including transferring risk to any other site.*

6. *Any adverse effects on the environment of any proposed mitigation measures.*

137. As has been discussed above, the proposal has the potential to exacerbate the natural hazard risk for properties downstream of the Bypass, being 483 Volckman Road, 159 Beethams Road / 206 Lochheads Road and 143 Lochheads Road.

7. *The effectiveness of any proposed mitigation measures.*

138. The applicant has provided a suite of conditions in Section 12 of the AEE, including an Environmental Management Plan, tree protection, rehabilitation of construction areas and maintenance of the drain network. It is considered that these consent conditions and those recommended by Te Taumutu Rūnanga will be further considered at the substantive stage.

Setbacks from Surface Water Bodies

139. In accordance with Rule NATC-REQ1, the minimum setback of earthworks from surface water bodies is 10m. The proposal seeks to undertake earthworks within the 10m setback and is therefore a restricted discretionary activity (Rule NATC-REQ1.2). As a restricted discretionary activity, the matters of discretion are restricted by NATC-REQ1.3(a) NATC-MAT1 Natural Character and NATC-REQ1.3(b) SASM-MAT3 Nga Wai, these are assessed as follows:

SASM-MAT3 Nga Wai

1. *The potential adverse effects of the proposed activity on Ngāi Tahu values as identified by engagement with the relevant Papatipu Rūnanga and the appropriateness of any mitigation measures including new planting and improved access for customary use;*
2. *The outcome of any consultation with the relevant Papatipu Rūnanga and whether the proposal responds to, or incorporates the outcomes of that consultation;*
5. *Whether the proposal will remove indigenous vegetation and any effects on mahinga kai and other customary uses;*
6. *The extent to which the proposed activity will affect the natural character of the waterbody and its margins, or Te Tai o Mahaanui / the coastal environment;*
7. *The provision of information on Ngāi Tahu history and association with the area;*
8. *Whether wastewater disposal and stormwater management systems recognise the cultural significance of ngā wai, and do not create additional demand to discharge directly.*

140. Mahaanui Kurataiao Ltd have provided a Cultural Advice Report on behalf of Te Taumutu Rūnanga in December 2023 (attached as **Appendix 2**). The report provides a detailed summary of the cultural values to be avoided, remedied and mitigated, these are summarise as follows:

141. The report notes that the earthworks proposed involves disturbance of land with the potential to *"uncover or damage previously unrecorded Māori archaeology or wāhi taonga"* and seeks that an archaeological discovery protocol is in place during earthworks to manage any finds and protect the interests of mana whenua. Further to this, the report notes the role of earthworks in erosion and sedimentation of waterways, and proposes conditions to mitigate potential adverse effects associated with these activities.

142. Indigenous biodiversity is identified as a fundamental part of culture, identity and heritage of Ngāi Tahu, particularly with regard to mahinga kai and the connection between people and place through resource use. The Cultural Advice Report seeks to protect and restore mahinga kai species and indigenous biodiversity with consent conditions relating to a fish passage and indigenous vegetation plantings along the bypass channel and in the riparian margins of Leeston Creek.

143. The report also notes the potential adverse effects associated with contaminated land, including the potential for contaminants to leach into groundwater and effects on land adjacent to mahinga kai, wāhi tapu or historical associations. The Cultural Advice Report seeks to ensure that any contaminated land is appropriately managed through proposed consent conditions.

144. The Cultural Advice Report concludes that if the recommended consent conditions are provided for, the Rūnanga will not consider themselves to be an adversely affected party. These recommended consent conditions are as follows:

1. *All erosion and sediment controls installed must in accordance with Environment Canterbury's Erosion and Sediment Control Toolbox for Canterbury.*
   - *(a) Where measures prove to be inadequate, works must cease until appropriate and effective measures are in place.*
   - *(b) The erosion and sediment control measures must be inspected daily.*
   - *(c) Any earthworks near waterways must have appropriate measures in place to avoid contaminants (including dust, sediment run-off or any hazardous substance) from entering waterways that may cause contamination, discolouration, or siltation.*
   - *(d) All contractors working on-site must be made aware of the Erosion and Sediment Control Plan (ESCP) and strictly adhere to it.*

2. *Fish passage must be maintained at all times.*

3. *An accidental discovery protocol (ADP) must be in place during all earthworks to deal with archaeological finds and protect the interests of mana whenua. This condition does not constitute a response under the Heritage New Zealand Pouhere Taonga Act (HNZPT 2014).*

4. *Indigenous vegetation must be planted along the bypass channel (where appropriate) and along the riparian margins of Leeston Creek.*

   (a) Any indigenous vegetation removed to facilitate works must be replaced.

5. *The proposed bypass channel must include appropriate wetland planting to help filter contaminants and increase the resilience of the waterway.*

6. *Due to HAIL site status at 60 Leeston Dunsandel Road, any soil that is planned to be removed from the site should be sampled and analysed for heavy metals to confirm an appropriate offsite disposal location.*

7. *An accidental contamination discovery protocol must be in place for all earthwork activity.*

   (a) In the event that soils are found to have visible staining, odours and / or other conditions that indicate soil contamination different from that identified by the DSI, then work shall cease until a Suitably Qualified and Experienced Practitioner (SQEP), engaged by the consent holder, has assessed the matter and advised of the appropriate remediation and/or disposal options for these soils.

   (b) A SQEP shall prepare a Site Validation Report (SVR) to report on whether the remediated area is now suitable for the intended land use.

145. In an email of 5 December 2023, the applicant has advised that they accept the proposed conditions, *"provided that they are worded accordingly and reflect the below:*

- *C.1(b) - If the consent condition could read the same/similar to those of the ECan consent (applicant already bound by these), that would be ideal: "Erosion and sediment control measures shall be inspected at least once per day, as well as following any rainfall event that results in more than five millimetres of rainfall at the site."*
- *C.4 - SDC seeks to incorporate native plantings where possible above the modelled 100-year flood level.*
- *C.5 - The Karumata Oaks wetland is now fully constructed, connected to the existing wetlands to the east. SDC does not have as-builts yet, but this wetland has been planted according to the 'draft' planting plan attached.*

146. Noting that the applicant generally accepts the proposed conditions and that the final wording of these will be considered at the substantive stage, I consider that Te Taumutu Rūnanga are not affected parties.

3. *Effects on sites of archaeological value including consideration of the need to impose an Accidental Discovery Protocol or have a cultural monitor present;*

147. There are no sites of cultural significance identified in the vicinity of the proposed works. However, Te Taumutu Rūnanga have recommended that an Accidental Discovery Protocol is included as a condition of consent. It is considered that an Accidental Discovery Protocol as a condition of consent is an appropriate mechanism to manage any potential discovery as a result of the proposed development.

4. *In respect of utilities, or important infrastructure, the extent to which the proposed activity has functional or operational needs for its location*

148. As has been outlined within the application document and above, the proposed Leeston Bypass has been identified by the applicant as an appropriate mechanism for managing upstream flows to reduce flooding within the Leeston township.

NATC-MAT1 Natural Character

1. *The extent to which the proposed activity will affect the natural character qualities (as set out in NATC-SCHED4 - Natural Character Qualities of Surface Water Bodies) of the surface water body and its margins;*

149. NATC-SCHED4 – Natural Character qualities of Surface Water Bodies seeks to:

"Recognise that the following natural elements, patterns, processes and experiential qualities contribute to the natural character qualities of surface water bodies:

1. *areas or surface water bodies in their natural states or close to their natural state;*
2. *coastal or freshwater landforms and landscapes;*

3. *coastal or freshwater physical processes, including the movement of water and sediment;*
4. *biodiversity, including the extent of indigenous biodiversity.*
5. *biological processes and patterns;*
6. *water flows and levels, and water quality; and*
7. *the experience of the above elements, patterns and processes."*

150. The application will result in an alteration to the natural state of the Leeston Creek at the bypass location. In terms of water flows and levels, the proposal seeks to only divert 'excess' flows from the Leeston Creek through the bypass channel when the flow exceeds 0.6m^3/sec. A base flow of 0.6m^3 along the existing Leeston Creek waterway will be maintained.

151. During construction, the quality of water will be managed though an Erosion and Sediment Control Plan.

152. Subject to the consent conditions relating to maintaining minimum flow in the Leeston Creek and the Erosion and Sediment Control Plan, it is considered that any adverse effects on the natural character qualities of Leeston Creek will be less than minor.

2. *The effects of the proposed activity on any indigenous vegetation and any effects on mahinga kai and other customary uses and habitat of indigenous fauna;*

153. As discussed above, the Cultural Advice Report Te Taumutu Rūnanga Mahaanui Kurataiao Ltd seeks to protect and restore mahinga kai species and indigenous biodiversity with consent conditions relating to a fish passage and indigenous vegetation plantings along the bypass channel and in the riparian margins of Leeston Creek. It is considered that any adverse effects of the proposed activity on indigenous vegetation, mahinga kai and other customary uses and habitat of indigenous fauna can be managed through the proposed consent conditions.

Contaminated Land

154. The applicant has provided a memorandum from Louise Wilson, a suitably qualified and experienced environmental consultant (SQEP) at Collaborations to assess the proposal. Ms Wilson has determined that given the depths of excavation proposed for the bypass channel, that a new DSI should be undertaken.

155. The proposal, background documents and Ms Louise Wilson's memorandum has been peer reviewed by the Contaminated Land Officer at Environment Canterbury. The Officer confirms that the assessment / review provided by Ms Wilson generally covers what is required by the consent, noting that these matters are captured in Section 11.3.1 of the application. The Officer confirms that the conditions for the management of contained soils provided in Section 12 are satisfactory, these are listed below:

1. *Any soils removed from the site during the course of the remediation process shall be disposed of to a facility authorised to accept the material. The consent holder shall submit evidence (i.e. weighbridge receipts) of the disposal of surplus soils from the site to an authorised facility to the Team leader Compliance, Selwyn District Council within 5 working days following completion of the earthworks.*
2. *In the event that soils are found to have visible staining, odours and / or other conditions that indicate soil contamination different from that identified by the DSI, then work shall cease until a Suitably Qualified and Experienced Practitioner (SQEP) engaged by the consent holder has assessed the matter and advised of the appropriate remediation and/or disposal options for these soils.*
3. *A SQEP shall prepare a Site Validation Report (SVR) on behalf of the consent holder in accordance with the current edition of Contaminated Land Management Guideline No. 1 – Reporting on Contaminated Sites in New Zealand, Ministry for the Environment, to report on whether the remediated area is now suitable for the intended land use. The SVR shall include but not be limited to:*

   a) Details of the project works completed

   b) A site plan showing the location and volume of the completed earthworks and drawing of the 'as built' state of the site;

   c) Documentation of any incidents and how they were resolved

   d) The results of sampling undertaken

   e) Records of the disposal of material

   The report shall be submitted to Council, attention compliance@selwyn.govt.nz, no later than 3 months following completion of the earthworks.

156. I accept the assessment and conclusions of Ms Wilson and the Contaminated Land Officer, and consider that subject to the proposed consent conditions that any adverse effects associated with contaminated land will be less than minor.

Positive Effects

157. Positive effects are not relevant to the consideration of notification and will be considered as part of the s 104 assessment later in this report.

Conclusion

158. I conclude that the adverse effects of the proposal will be more than minor on the owners / occupiers of the following properties:

- 178 Harmans Road;
- 483 Volckman Road;
- 159 Beethams Road / 206 Lochheads Road; and
- 143 Lochheads Road.

159. I conclude that the adverse effects on the wider environment will be less than minor.

Public Notification (Section 95A)

160. Section 95A states that a consent authority must follow the steps in the order given to determine whether to publicly notify an application for resource consent.

Step 1: mandatory public notification in certain circumstances (sections 95A(2) and 95A(3))	Y	N
Has the applicant requested that the application be publicly notified?	☐	✓
Is public notification required under section 95C (no response or refusal to provide information or agree to the commissioning of a report under section 92)?	☐	✓
Has the application has been made jointly with an application to exchange recreation reserve land under section 15AA of the Reserves Act 1977?	☐	✓

*If the answer to any of the above criteria is yes**,** the application must be **publicly notified**, and no further Steps are necessary.*

*If the answer is no, continue to **Step 2**.*

Step 2: public notification precluded in certain circumstances (sections 95A(4) and 95A(5))	Y	N
Are all activities in the application subject to one or more rules or national environmental standards that preclude public notification?	☐	✓
Is the application for one or more of the following, but no other types of activities: • A controlled activity?	☐	✓
• A boundary activity only (as per the definition of "boundary activity" in s 87AAB of the Act)?	☐	✓

*If the answer to any of the above criteria is yes, continue to **Step 4**.*

*If the answer is no, continue to **Step 3**.*

Step 3: public notification required in certain circumstances (sections 95A(7) and 95A(8))	Y	N
Is the activity subject to a rule or national environmental standard that requires public notification?	☐	✓
Will the activity have, or is it likely to have, adverse effects on the environment that are more than minor?	☐	✓

*If the answer to any of the above criteria is yes**,** the application must be **publicly notified**, and no further Steps are necessary.*

*If the answer is no, continue to **Step 4**.*

Step 4: public notification in special circumstances (section 95A(9))	Y	N
Do special circumstances exist in relation to the application that warrant public notification?	☐	✓

*If the answer is yes, the application must be **publicly notified**.*

If the answer is no, do not publicly notify the application, but determine whether to give limited notification of the application.

161. In conclusion, in accordance with the provisions of section 95A, the application must not be publicly notified and a determination on limited notification must be made, as follows.

Limited Notification (Section 95B)

162. Section 95B states that a consent authority must follow the steps in the order given to determine whether to give limited notification of an application for resource consent, if it is not publicly notified under section 95A.

Step 1: certain affected groups and affected persons must be notified (sections 95B(1)-(4))	Y	N
Are there any affected protected customary rights groups, as defined in s 95F?	☐	✓
Are there any affected customary marine title groups, as defined in s 95G (in the case of an application for a resource consent for an accommodated activity (as defined in the Act))?	☐	✓
Is the proposed activity on or adjacent to, or may it affect, land that is the subject of a statutory acknowledgement made in accordance with an Act specified in Schedule 11; and is the person to whom that statutory acknowledgement is made an affected person under s 95E?	☐	✓

*If the answer is yes, **notify the application to each affected group/person** and continue to Step 2.*

*If the answer is no, continue to **Step 2**.*

Step 2: limited notification precluded in certain circumstances (sections 95B(5) and 95B(6))	Y	N
Are all activities in the application subject to one or more rules or national environmental standards that preclude public notification?	☐	✓
Is the application for a controlled activity only and not a subdivision of land?	☐	✓

*If the answer is yes, continue to **Step 4**.*

*If the answer is no, continue to **Step 3**.*

Step 3: certain other affected persons must be notified (sections 95B(7)-(9))	Y	N
In the case of a "boundary activity", is an owner of an allotment with an infringed boundary an affected person?	☐	✓
For any other activity, are there any affected persons in accordance with section 95E of the Act (as assessed in the Assessment of Adverse Environmental Effects above)?	✓	☐

*If the answer is yes, **notify the application to each affected person** and continue to **Step 4**.*

*If the answer is no, continue to **Step 4**.*

Step 4 – Limited notification in special circumstances	Y	N
Do any special circumstances exist in relation to the application that warrant notification to any other persons not already determined to be eligible for limited notification (excludes persons assessed under section 95E as not being affected)?	☐	✓

*If the answer is yes, **notify the application to those persons**.*

If the answer is no, do not notify anyone else.

163. In conclusion, in accordance with the provisions of section 95B, the application must be limited notified. As concluded above in the Assessment of Adverse Environmental Effects, the following are affected persons; therefore, they must be served notice.

- The owners / occupiers of:
  - 178 Harmans Road;
  - 483 Volckman Road;
  - 159 Beethams Road / 206 Lochheads Road; and
  - 143 Lochheads Road.

Notification Recommendation

164. I recommend that the application (RC225687 and RC225736) is **limited notified** in accordance with sections 95A-E of the Resource Management Act 1991.

Reported and recommended by:	Date: 5 December 2023
Jane Anderson, Consultant Planner	

Commissioner Note:

[1] I have been appointed by the Selwyn District Council (Council) to make the s.95 notification decision on the landuse resource consent applications for works associated with establishing, operation and maintaining the Leeston Stormwater Flood Bypass (bypass), and for disturbing potentially contaminant soil. The Applicant is the Selwyn District Council.

[2] After reviewing the application and supporting information along with the s.95 report prepared by Ms Anderson for Council, I issued a Minute on 1 December 2023 seeking further information/clarification to better understand the nature and scale of adverse effects. Specifically, I directed that Ms Anderson provide a list of all properties where the bypass will be located and any downstream properties where work is required to enable the operation of the bypass. Further, I directed that Ms Anderson provide a brief summary of what work will be required on each of these properties to enable the construction and operation of the bypass, and any upgrades required on the downstream properties.

[3] A response was received on 7 December 2023. Helpfully, Ms Taylor (for the Applicant) also provided an excel spreadsheet in response to the Minute which identifies what work will be undertaken on each property. I record that the additional information received in response to Minute 1 is considered to form part of the application and accordingly is taken into account in the following decision.

[4] I also record receipt of a Cultural Advice Report prepared by Mahaanui Kurataiao, on behalf of Te Taumutu Rūnanga. This was received on 4 December 2023. On 7 December 2023, Ms Anderson provided an updated s.95 report reflecting the information contained in the response to Minute 1 and the cultural advice.

[5] I visited the site on 13 December 2023.

[5] I am satisfied that I have been provided with all necessary information to make an informed decision. I also record that I do not have any conflicts of interest and am able to objectively and fairly reach a view on the merits of the proposal and treat all parties evenly.

Discussion

[6] Having reviewed all relevant information, I adopt the assessment and conclusions of the s.95 report prepared by Ms Anderson, except in respect to 2 Leeston Dunsandel Road and 60 Leeston Dunsandel Road. I record the following in respect to these two properties:

[7] To provide context, I record that even if the Applicant is required to obtain separate landowner approval to undertake the work on these two properties, an assessment of the actual and potential adverse effects in respect of s.95 of the Act is still required. Disregarding the requirements of s.95 of the Act because a separate landowner approval is needed would result in a perverse outcome whereby greater environmental protection is afforded to persons who do not directly own affected land, than to those persons where the work will take place.

[8] Within this context I record:

[9] First, in respect to 60 Leeston Dunsandel Road, the maximum volume of earthworks needed to construct the bypass channel within this property is estimated to be approximately 2,500m^3 with a maximum depth of 1.2m. Notwithstanding any separate landowner approval the Applicant is required to obtain, I find the nature and scale of physical work on this site will have at least minor adverse effects in respect to s.95 of the Act.

[9] Next, 2 Leeston Dunsandel Road. The evidence before me confirms the stormwater channel constructed through this site was designed to accommodate the bypass, however, final 'as-built' drawings to confirm the channel has the required capacity are not available at this time. The Applicant's offer of a consent condition to address any remediation (in respect to capacity) once the 'as-built' drawings are finalised is noted, although a consent condition does not address the effects of the proposal in respect of s.95 of the Act, and the written approval from this owner has not been provided. Similarly, I record that Rule 6.1.1.1 of the Operative District Plan enables utilities to be upgraded and maintained, however, this is on the proviso that any effects (from the

upgrade or maintenance) '…*shall be the same or similar in character and scale to those which existing before such upgrading, maintenance*…'[2].

[10] As such, there is a possibility that work will be required at 2 Leeston Dunsandel Road to increase the capacity of the existing stormwater channel to accommodate the bypass, and if work is required, it is not known whether it would meet Rule 6.1.1.1. Given this uncertainty, and notwithstanding any separate landowner approval the Applicant is required to obtain, I find that it is not possible to conclude that *potential* adverse effects on 2 Leeston Dunsandel Road will be less than minor in terms of s.95 of the Act.

Decision

[12] For the reasons detailed in the s.95 report prepared by Ms Anderson along with the additional comments herein, I find the application must be limited notified to the following affected persons in accordance with the provisions of section 95B:

- The owners / occupiers of:
  - 178 Harmans Road;
  - 483 Volckman Road;
  - 159 Beethams Road / 206 Lochheads Road;
  - 143 Lochheads Road;
  - 2 Leeston Dunsandel Road; and
  - 60 Leeston Dunsandel Road

Commissioner O'Connell

22 December 2023

[2] Rule 6.1.1.1 Township Volume, Operative District Plan