

SELWYN DISTRICT COUNCIL
UNDER THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER OF application RC 205014

APPLICANT	Johnston Civil Ltd
APPLICATION	Undertake a 4 lot subdivision (one additional lot)
LOCATION	28 Manse Road, Leeston
LEGAL DESCRIPTION	Lots 1, 2 and 3, DP69318
ZONING	Living 2
HEARING DATE	15 July 2020
APPEARANCES	Applicant Michael Vincent, Planner Paul Johnston, Applicant Council Jane Anderson, Consultant Planner

Background

1. I have been appointed by the Selwyn District Council as a Commissioner to consider and make a decision on an application by Johnston Civil Ltd for a subdivision to modify a subdivision to create 4 lots where currently 3 lots have been approved, which will create one additional lot.
2. As background, the Applicant previously applied for a 9 lot subdivision of a 2.67ha block of land at 28 Manse Road in Leeston. Eight of the lots ranged from 2045m² to 2214m², plus a balance lot of 6544m², with an average of 2588m². That application was publicly notified, with one submission received in opposition.
3. That application was put on hold by the Applicant, and a further application was lodged to create a 7 lot subdivision, with lots ranging from 2539m² to 3942m² and an average of 3286m². That application was approved by the Selwyn District Council.

4. The current application is to replace Lots 1 (3300m²), 2 (3389m²) and 3 (3402m²) of that 7 lot subdivision with 4 new lots, Lot 1 (2000m²), Lot 2 (3050m²), Lot 3 (3042m²) and Lot 8 (2000m²). That creates one additional lot, and reduces the smallest size lots to 2000m².
5. The property is zoned Living 2 in the Selwyn District Plan, which is a zone that provides for more “spacious” lots around some of the rural townships, and providing a transition between urban and rural areas. Rule 12.1.3.7, and Table C12.1 provides for a minimum average allotment size of 5000m² in the Rural 2 Zone at Leeston, and subdivisions with an average allotment size of less than 5000m² are a non-complying activity.
6. The application was publicly notified, and notice was served on the owners/occupiers of 7 adjoining properties. Submissions were received from two of those properties. Mr Craig Perkins, 6A Friars Lane, opposed the application because of potential adverse effects of the proposed smaller lots on the character and amenity of the surrounding environment. He considered that the reduced lot sizes will result in increased site coverage that is out of character with the area, will impact on their enjoyment of amenity values, and could set a precedent. Mr Andre Goldsmith, 34 Manse Road, lodged a neutral submission requesting speed bumps on the new lane, and raising questions about stormwater flows.

Summary of the Evidence Heard in the Hearing

The Applicant

7. Michael Vincent, Planner, spoke to his pre-circulated evidence. He described the subdivision, including the additional proposed Lot 8 and modified lots 1 to 3, as providing a variety of lot sizes, with good road and turning head access, that still provided for a spacious and rural character. He emphasised that while the Selwyn District Plan provided for a minimum average lot size in the Living2 zone, it did not provide any minimum lot size. He considered that although the rule (minimum average lot size) was not met, the Policy framework did allow for the proposed section size mix.
8. He identified Objective B4.1.1, which seeks to provide for a range of living environments in the townships, while maintaining the overall “spacious” character of the Living zones. He also identified Policy B4.1.2 which seeks to maintain Living 2 (and Living 3) Zones as areas with residential density which is considerably lower than in the Living 1 Zones. He identified that the explanation to that policy suggests that average density would need to remain 3 to 6 times lower in the Living 2 Zone than in the Living 1. Based on the minimum section size of 650m² in Leeston, he considered that the revised subdivision would reflect that range.
9. Mr Vincent considered that achieving a spacious sense of open space did not require a rural use, and that the Living 2 Zone is part of the urban area of a township. He considered that having a range of section sizes provides a more gradual progression from urban to rural. He identified that the adjoining Leeston A&P Showgrounds were in the rural area, and do not reflect a typical Rural Outer Plains environment. The historical development of lots in the Leeston Living 2 Zone at around 5000m², and at around 1000m² in the Living 1 Zone, could be a reflection of two chicken farms that used to be in the area (one of the site of this subdivision development).
10. Mr Johnston advised that he had so far only sold one of the 7 lots available from the approved subdivision, and that there is a consistent demand for smaller lots around the 2000m² size.

Council

11. Ms Jane Anderson, consultant planner for the Selwyn District Council, spoke to her pre-circulated planning report. She considered that the application needed to be considered in the context of Leeston. The Living 1 zone on the eastern side of Manse Road has sections that are generally about 1000m² in area (rather than the 650m² permitted minimum size), and has a low density rural township feel. This side of the road has kerb and channel and a footpath. The Living 2 Zone on the western side of Manse Road generally has larger lots around the 5000m² size, and this side of the road has no kerb and channel or footpath. This area is a transition from the Living 1 township area to the outer plains rural area, although she acknowledged the adjoining activity is the A&P Showgrounds. Policy B4.1.2 promotes a sense of open space and spaciousness for the Living 2 Zone, although she accepts that it is part of the township rather than part of the rural area.
12. Ms Anderson considered that there needs to be a visually discernible difference between the Living 1 and Living 2 areas, and that the difference from 1000m² to 2000m² does not achieve that. She also repeated that the assessment should be based on the actual situation in each township, rather than on the mathematical calculations from minimum section sizes.
13. Ms Anderson described the history of the subdivision applications on this site. The Council was not comfortable with the first application to create 9 lots, most of which were in the 2000m² range. That led to the application being publicly notified. The second application for 7 lots, with a range of section sizes from 2539m² to 3787m² was the very lowest range that the Council was comfortable with, and reflected the 3 to 6 times lower indication in the District Plan explanations. She considered that the current application that would result in 8 lots, with two sections close to 2000m², was a step too far.

Submitters

14. Neither of the submitters attended the hearing. I have summarised above the submissions lodged, and I will take those into account in my consideration of this application.

Environmental Effects

15. Ms Anderson in her planning report concluded that the establishment of considerably smaller allotments in this location would have significant adverse effects on the character and amenity of the existing environment by creating a more intensive residential density than anticipated by the District Plan. She considered that the proposed lots would create an isolated pocket of higher residential living, creating a more urban character within a Living 2 Zone. She concluded that the adverse effects of the proposed subdivision would be more than minor.
16. Mr Vincent, planner for the Applicant, noted that the Plan provides for an average of section sizes across the zone, and does not have a minimum section size, and therefore the lots cannot be considered as undersized. He considered that the addition of one additional lot will not result in a more urban character, nor will it have adverse effects on the rural interface, particularly as the adjoining rural use is the A&P Showgrounds. He considered that there would be positive effects that would provide a wider range of allotment sizes, while still maintaining an open and spacious environment. He considered that any adverse effects would be no more than minor.
17. Mr Craig Perkins in his submission was concerned about the effects of the smaller lots on the character and amenity of the Living 2 area, and was not what is anticipated in the Zone.

18. Mr Andre Goldsmith in his submission raised questions about stormwater drainage, and traffic speeds on the new lane leading to the development on the application property.
19. Considering the application from an environmental effects perspective, I have concluded that environmental effects will be minor rather than more than minor. The proposed revised section layout, with one additional lot, will have some effect on the spaciousness of this part of the Living 2 Zone, but I agree with Mr Vincent that it would be minor rather than more than minor. I also agree that the location adjacent to the A&P Showgrounds reduces impacts on the Rural Outer Plains Zone area.
20. The drainage concerns of Mr Goldsmith have been dealt with in the existing 7 lot subdivision approval, and any speed restrictions on the Lane is the developers responsibility.

Objectives and Policies

21. The Selwyn District Plan uses a Minimum Average net site area as a rule for section sizes in the Living Zones in the Townships (it does also on occasions use a minimum section size). For many of the Living 2 Zones, including Leeston, that minimum average is set at 5000m². Subdivision developments at less than that standard are a non-complying activity. The use of a non-complying activity would normally imply that there is a higher hurdle than say if the application was for a discretionary activity.
22. The objectives and policies, however, provide greater clarity around the intentions of the Selwyn District Plan, and an analysis of those objectives and policies (to follow) indicates that subdivisions of less than the minimum average are anticipated. I intend to be guided by these objectives, policies, and explanations of the Selwyn District Plan.
23. The Selwyn District Plan uses the Living 2 Zone in locations around or on the edge of most of the Townships in Selwyn. The Plan also uses a Living 3 Zone, generally for rural residential zones that are in the vicinity, but separate from, the metropolitan urban areas.
24. The Living 2 Zone is provided as a transition between the more urban areas of the townships and the rural areas beyond. They are recognised, however, as part of the urban area of the townships rather than being part of the rural areas.
25. Policy B4.1.2 provides;

“Maintain Living 2 and 3 zones as areas with residential density which is considerably lower than in the Living 1 zones”.

26. The explanation to this Policy state;

“Living 2 Zones replaced rural-residential zones in the Transitional District Plan, where these zones adjoin townships. Average section sizes in these zones vary from 0.5 to 1 hectare. Roads and other utilities have been designed for a population of that density to reflect the sense of open space and ‘spaciousness’ anticipated by persons wishing to live in a low density residential environment”.

Policy B4.1.2 retains Living 2 and Living 3 Zones areas with lower residential density than Living 1 Zones. The policy refers to ‘considerably lower’ which acknowledges that low density zones be spacious and reflect something of the rural characteristics in which they are located. Currently they are from are from 6 to 12 times lower. The Council suggests average section sizes would need to remain 3 to 6 times lower in the Living 2 Zone, and between 6 and 10 times lower in the Living 3 zone than that of the Living 1

Zones, to have a visually discernible difference in residential density. If more intensive residential density than this is desired in Living 2 and 3 Zones, the area should be rezoned to another Living zone.”

27. The over-riding theme is that the Rural 2 zones should reflect the sense of open space and “spaciousness” and also reflect something of the rural characteristics in which they are located.
28. To achieve that, residential development needs to be “considerably lower” than in the Living 1 Zones. The explanation goes on to quantify what is meant by considerably lower. It reflects that current density (at the time of the Plan) is from 6 to 12 times lower. Based on the minimum section size in the Living 1 Zone in Leeston of 650m², current section sizes would be in the range of 3900m² to 7800m². Looking at the information provided to me in the planning report, that range seems about right, with most existing lots within that range.
29. The explanation goes on to suggest that section sizes in the Living 2 Zone should be from 3 to 6 times lower than the living 1 Zone in order to have a “discernible difference”. Again, based on a minimum site area of 650m² that would produce an average section size of between 1950m² and 3900m².
30. The 7 lot subdivision already consented has section sizes ranging from 2539m² to 3787m², with an average of 3286m², which is a density that is approximately 5 times lower than the Living 1 Zone.
31. The (now proposed) 8 lot subdivision proposes section sizes ranging from 2000m² to 3787m², with an average of 2875m², which is a density that is approximately 4.4 times lower than the Living 1 Zone.
32. The application is actually presented as a 4 lot subdivision replacing 3 of the current sections in the 7 lot subdivision already approved. Those 4 lots will range from 2000m² to 3050m², with an average of 2423m², which is a density that is approximately 3.9 times lower than the Living 1 Zone.
33. Those mathematical calculations would tend to suggest that the approved 7 lot subdivision, and the current application to create an additional lot (resulting in an 8 lot subdivision) would fit within the guidance proved in the explanation to Policy B4.1.2. While the current application would result in 2 lots of 2000m², there is no minimum lot size stipulated in the Selwyn District Plan.
34. Ms Anderson contended that a mathematical calculation and approach does not take into account the circumstances and character of each particular township. Leeston, at least in the area west of Manse Road, has section sizes around 1000m² rather than the minimum 650m². This results in a more spacious and open township character. She considered that section sizes of as low as 2000m² in the Living 2 Zone does not provide a discernible difference, and does not sufficiently create a comparable increase in spaciousness. If a base of 1000m² is used as a starting point, then the average section size in the Leeston Living 2 Zone should be between 3000m² and 6000m².
35. I have some sympathy for the approach of Ms Anderson. I am not sure that lots as low as 2000m² reflect the character of Leeston, or provide for a discernible difference in open space and spaciousness. However, I have some difficulty in reaching that conclusion based on the wording of the explanation to Policy B4.1.2.
36. That explanation also carries on to make the following statements;

“In recent years the Council has received applications from landowners in Living 2 zones to subdivide their sections. The information supplied in those applications and in response to the Council’s township surveys (November 1998 and April 1999) suggest that 1 hectare or even 0.5 hectare allotments are larger than necessary to meet at least some of the demand for larger residential sections. However some proposals for further subdivision of allotments in Living 2 Zones have been opposed by surrounding residents, who have purchased properties in that area because the residential density is one house per hectare or 0.5 of a hectare.

Subdivision of land into smaller allotments in the Living 2 Zones may be desirable if it:

- Makes more efficient use of land*
- Enables people to provide for their economic well-being by selling surplus land; or*
- Improves the amenity values of the area because allotments are easier to maintain*

When considering adverse effects on amenity values the consent authority should consider that a change in residential density per se, is not necessarily an adverse effect. For example, if people are having difficulty maintaining larger allotments, drains or water races or vehicular access, increasing residential density may improve the amenity of the area.

37. It would appear that the information behind those statements is relatively old (1998/99), and it contains factors both in favour and opposed to smaller sites. It also comes from a point of view of landowners who already occupy subdivided sites rather than new subdivisions. Mr Johnston did comment that there is some demand for smaller sized properties, and that the larger sections come with maintenance and cost issues such as water charges. I do note that the statements inform me as a decision maker that a change in density should not necessarily be considered an adverse effect on amenity values.
38. Overall, Ms Anderson concluded that the proposed subdivision will not provide a residential density that is considerably lower than that in the Living 1 Zone, and that it will not maintain the overall spacious character of the Manse Road Living Zone in Leeston. She concluded that the application is contrary to the Objectives and Policies of the Selwyn District Plan.
39. Mr Vincent concluded that there is sufficient support in the District Plan’s policy framework for a subdivision development of this nature. He concluded that it is consistent with Policy B4.1.2 (maintain residential density which is considerably lower than in the Living 1 zones) and that the average section size in this application falls within the expected range described in the explanation to this Policy. He accepted that the proposal is inconsistent with the minimum average allotment sizes in table C12.1, but overall he concluded that the application is not contrary to the Objectives and Policies in the Selwyn District Plan.
40. My conclusion is that notwithstanding the non-complying activity status of subdivisions to create lots less than the minimum average allotment size, the Objectives and Policies, and explanations, clearly anticipate some subdivisions that are less than that minimum average, while still achieving a spaciousness that differentiates the Living 2 Zone from the Living 1 Zone. What I have taken from this consideration is that the Plan gives me license to consider the particular proposal and circumstances of a subdivision application. On that basis I consider that it would be difficult to conclude that the application is contrary to those objectives and policies.

Section 104D Non-Complying Activity Consideration

41. I am not entirely sure why the Selwyn District Plan has chosen to use a non-complying activity for subdivisions in the Rural Townships that do not meet the minimum average allotment size. Given my discussion above on the objectives and policies, it seems that there is a dis-connect between the objectives and policies and the use of a non-complying activity. However, I must now consider this application under the hurdles of Section 104D of the Resource Management Act,
42. As a Non-Complying Activity I must be satisfied that either;
- a) The adverse effects on the environment will be minor, or
 - b) The application is for an activity that will not be contrary to the objectives and policies of ...the relative Plan
43. I have already concluded that the effects of this application would be minor, and that it would be difficult to conclude that application would not be contrary to the objectives and policies of the Selwyn District Plan. On that basis, the application passes both limbs on Section 104D, and I can proceed to consider the application under Section 104.

Section 104 Consideration

44. Under Section 104, I must have regard to
- a) Any actual and potential effects on the environment of allowing the activity; and
 - b) Any relevant provisions of...any plan or proposed plan
45. In order to reach my decision I have weighed the following factors.
46. In favour of the application;
- From a mathematical calculation, encouraged by the explanation in the Selwyn District Plan, the application is within the range identified (3 to 6 times lower density than the permitted minimum lot size in the Living 1 Zone in Leeston)
 - Changes in density should not necessarily be considered an adverse effect on amenity values of the Living 2 Zone
 - The two 2000m² lots are in the middle of the Living 2 Zone, rather than being on the residential or rural boundaries
 - The rural area adjoining is occupied by the A&P showgrounds rather than being a more traditional rural use
47. In opposition to the application;
- The Leeston township area adjoining has larger residential lots (around 1000m²), and lots as low as 2000m² do not provide a considerably lower comparison with that residential area
 - Given the larger residential lot sizes in Leeston, perhaps any approval should be towards 6 times lower in density rather than 3 times. This application seeks a 3.8 times lower density (based on the creation of 4 lots), or 4.4 times based on the overall 8 lots that would be created
 - The dominant feel of the Living 2 Zone in Manse Road is of sections around the 5000m² area. The nearby more recent subdivision in Showground Place has section sizes all above 3000m². This current application would create lots significantly smaller than other lots in this Living 2 area
 - This application follows two previous applications on the site which eventually resulted in a 7 lot subdivision with an average section size of 3286m² and a smallest section of 2539m², and a 5 times lower density than the Living 1 area based on the

minimum section size. To some extent this current application is a re-visiting of that application decision.

48. In reaching my conclusion I have considered the matter of precedent. Given the anticipation in the explanations to the Policies of the Plan of lower densities than the minimum average of 5000m² I do not consider it likely that there could be precedent effects from individual subdivision application consideration, particularly if they are within the range identified (3 to 6 times lower) in the Plan.
49. I have also considered the matter of Plan Integrity. I do think that the Selwyn District Council needs to re-visit the density and section size provisions of at least the Living 2 Zone. There is currently a dis-connect between the rules and the objectives and policies. Perhaps this decision, and my difficulties in balancing the issues, will provide some input to any review.
50. In the end I have decided that the balancing is more opposed than in support of the application. I consider that given the larger lot size in the Leeston township Living 1 Zone (around 1000m²), new subdivisions in the Leeston Living 2 Zone should have towards 6 times rather than 3 times lower density than the Living 1 Zone. The lot sizes and density approved for the Showgrounds Place subdivision, and the 7 lot subdivision already approved on the application site, are more appropriate.
51. I have therefore decided that I should refuse consent to this application. I record that my conclusion was finely balanced.

Decision

52. Pursuant to Sections 104, 104B and 104D of the Resource Management Act, and for the above reasons, the application to create a 4 lot subdivision (resulting in one additional lot) at 28 Manse Road is refused



Ken Lawn
Independent Commissioner
27 July 2020