

PROPOSED ASHBURTON DISTRICT PLAN

Section 6: Open Space Zones

Report No 17

Prepared by

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For

Ashburton District Council

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1.0 INTRODUCTION

- 1.1 This report has been commissioned by the Ashburton District Council (ADC) in accordance with Section 42A of the Resource Management Act 1991 (RMA) to consider all submissions received on Section 6: Open Space Zones, of the proposed District Plan, following the public notification of the proposed Ashburton District Plan including Planning Maps, and to make recommendations on those submissions.
- 1.2 The evaluations and recommendations presented in the report are based on the information available prior to the hearing, including that contained in the submissions and further submissions. The purpose of this report is to bring to the attention of the Hearings Panel the relevant information and issues regarding this section of the proposed District Plan. It must be emphasised that the conclusions and recommendations made in this report are my own and are not binding upon the Hearings Panel. It should not therefore be assumed that the Hearings Panel will reach the same conclusion following consideration of all the evidence to be presented at the hearing. The recommendations in this report are made on the basis of the information available at the time of writing. It should be noted that subsequent reports prepared on other topics may include recommendations that differ due to additional information becoming available during the course of hearings.
- 1.3 This report has been prepared by Stephanie Styles. Please refer to the Section 42A Preface Report for more information on the report author, along with background to the development of the proposed District Plan.

2.0 HOW TO READ THIS REPORT

- 2.1 This report is structured as follows:
- Background to the plan section
 - Analysis of submissions, including recommendations and reasons
 - Statutory considerations
- 2.2 Appendices attached to this report include:
- **Appendix One:** Summary of Recommendations on Submissions and Further Submissions
 - **Appendix Two:** District Plan Amendments

3.0 BACKGROUND

- 3.1 This report relates to part of Section 6: Open Space Zones, of the proposed District Plan. This section deals with areas of public open space throughout the District, which serve a wide variety of functions and provide areas for:
- Visual amenity (such as garden and tree plantings).
 - Children's play (such as play equipment and neighbourhood parks).

- Active sports (such as team sports and running).
- Passive use (such as sitting and picnicking).
- Linkages (such as walking tracks and cycle ways).
- Built facilities (such as clubrooms and toilets).

4.0 ANALYSIS OF SUBMISSIONS

- 4.1 A range of submissions and further submissions were received on this section of the proposed District Plan. Consideration of these submissions has been undertaken by topic or issue with submitters grouped as appropriate. The following analysis focuses on those parts of the submissions that seek specific outcomes and does not discuss any parts of submissions that comment on aspects of the Plan in passing or provide general discussion. My analysis of submissions below is generally in relation to broad issues or topics raised, with some specific relief sought being mentioned where necessary. Based on this analysis, included in Appendix One to this report are my specific recommendations on each submission point (accept, accept in part, or reject).
- 4.2 Many aspects of this section did not attract submissions and therefore these aspects of the District Plan have not been discussed below, and I recommend that they be accepted as notified.

Section 6: General Issues

- 4.3 The submission from Silver Fern Farms¹ supports this chapter and seeks no changes to it. This support is acknowledged.
- 4.4 The submission from Ashburton District Council² notes that changes may be required to the structure of rules in all Zones to provide clarification and avoid any contradiction/confusion over the interpretation of rules. I consider that the scope of this submission provides for rules under Clause 6.8 to be revised and amended in order to clarify their intended meaning but does not permit the addition of new rules.
- 4.5 The Open Space zone chapter is set up slightly differently from the other zone chapters, in that only one type of activity is specified as being a restricted discretionary activity. Permitted activities that do not meet site standard/s, but do meet zone standard/s, are a discretionary activity (where they would be restricted discretionary in other zones). Due to this, there are some differences in the layout of clause 6.8 from other chapters and I therefore recommend some minor changes to the wording of clauses 6.8.2, 6.8.3 and 6.8.4 to clarify the relationship between permitted, restricted discretionary and discretionary activities. These text amendments will assist to prevent confusion as to which rule applies to Restricted Discretionary or Discretionary Activities and how discretion is restricted.

¹ Submission 240, point 55.

² Submission 639, point 74 (supported by further submissions F65 from the Ashburton Licensing Trust, F71 from Electricity Ashburton, and F80 from Federated Farmers, and opposed by further submissions F3 from the Oil Companies, F5 from Transpower, and F16 from TrustPower).

- 4.6 Submissions were received from five groups based at the Tinwald Family Sport and Recreation Facility³. Each of these submissions is essentially the same. The concern expressed by the submissions is related to the zoning of the land (proposed to be Open Space B) with the submitters wanting a Business E zoning. However, as part of the relief sought, the submitters seek that the “*Open Space B Zone Issues, Objectives and Policies, rules and reasons for the Zone Standards be rejected*”. It is my understanding from the content of the submissions that the submitters are not actually asking for these Open Space zone provisions to be deleted or removed from the Plan or rejected by the Hearings Panel in general, only that they not apply to the submitter’s land. A recommendation on the zoning of the land will be considered as either part of the reporting on the Business zone chapter and/or on zoning/mapping generally. On the basis that these submission points are not related to the Open Space zone provisions generally, I recommend that they be rejected, with determination on the zoning of the land to form part of later considerations.

Section 6.8: Rules

- 4.7 The submission from Ashburton District Council⁴ seeks an amendment to rule 6.8.2 c) in the list of permitted activities, to simply permit recreational activities in the Open Space A zone. The reasoning behind this request is that the Open Space A zone covers a range of sites including some that have playing fields currently and thus the restriction in the rule as notified (*limited to passive activities such as playgrounds, walking, jogging and cycling facilities*) would unduly affect such sites. I agree that this change is appropriate and I also note that the report on the Definitions Chapter (Hearings Report 7) addressed the issue of defining recreational activities such that this is not an inappropriately wide definition.

Section 6.9: Site Standards

- 4.8 The submission from Electricity Ashburton⁵ raises concern over the interaction between the setback rules in the Open Space zone chapter and the rules relating to setbacks of utility buildings in Chapter 14. The submission seeks that small utility buildings be excluded from the setbacks in the Open Space zone.
- 4.9 Chapter 14 makes it clear that for buildings meeting the definition of a utility, rules in other zones do not apply except that the rules in the Open Space zone are not overridden (clause 14.7.5, notes, page 14-23). This was a specific decision by the Council to ensure that Open Space areas are protected from potential effects of utilities, and I understand this was based on some historical community concerns.
- 4.10 The intent of the setback rules in the Open Space zone is primarily about ensuring that any building does not unduly impact on the amenity of neighbouring sites or on visual amenity of the space as viewed from the street. The setbacks for buildings are currently set at 5m from road or internal boundaries and 10m from residential zone

³ Submission 115 from the Tinwald South Netball Club, submission 147 from the Tinwald Rugby Football Club Inc, submission 295 from the Tinwald Family Sport and Recreation Association, submission 296 from the Tinwald Softball Club, and submission 359 from the Tinwald Family Sport and Recreation Association and Tinwald Cycling Club.

⁴ Submission 639, point 35.

⁵ Submission 635, point 1.

boundaries for the Open Space B zone (where buildings are likely to be larger). I agree with the submitter that small utility buildings could often be located within the setbacks without causing significant effects and I consider that the restrictions on scale proposed by the submitter are sufficient to ensure such buildings are very small in scale. I recommend that changes be made to the setback provisions in rules 6.9.1 and 6.10.1 accordingly.

Section 6.10: Zone Standards

4.11 The submission from Electricity Ashburton⁶ seeks a change to zone standard 6.10.5 c). This standard currently states:

c) no construction of any building or laying of any overhead or underground utility within 10m of the base of any tree, whether on the same site or not, but excluding the maintenance and replacement of existing buildings and utilities;

4.12 The submission raises concerns over what would be defined as a tree and seeks clarification of this; it also seeks the removal of application of the rule to trees on adjoining sites. I agree that this clause is confusing and would benefit from clarification.

4.13 It is my understanding that this set of provisions is seeking to protect large trees located in open space areas and which provide a high level of amenity to these areas. This is reinforced by the first part of the standard (6.10.5 a)) which relates to no removal of trees over 10m in height. I consider that it would be appropriate to also reference this clause to trees of such a height to avoid confusion over whether it should apply to small trees. I also agree that this rule is not intended to protect trees on properties adjacent to open space zones (albeit that trees listed in chapter 12 would be protected through other rules) and thus I agree that the terminology needs to be changed to reflect this.

4.14 I note that this submission point is specific to part c) of this clause, however the same level of clarification should also be provided to parts b) and d) of the clause. Legal advice was sought on the ability to make amendments to parts b) and d) of the clause as consequential changes based on this submission. The advice received was that this is directly connected and can be done at this time.

4.15 As part of the provision of legal advice, it was also alerted that the wording of the rule is not as clear as is necessary in the restriction of the rule to only being applicable on Open Space zoned land which is either a Reserve (as defined in section 2(1) of the Reserves Act), or is subject to a conservation management plan or conservation management strategy (under the Conservation Act 1987 or Reserves Act 1977). This restriction is required under section 76(4A) of the Resource Management Act which seeks to ensure that Plans do not contain unfettered general tree protection rules. The legal advice is that this may be remedied as part of addressing this submission and ensuring clarity of the rule. I recommend that the additional wording be inserted into the rule at this time to correct this situation.

4.16 The submission from Electricity Ashburton⁷ also raises a concern with zone standard 6.10.5 d) in relation to whether the reference in the exception for “public safety

⁶ Submission 635, point 2.

hazard” would relate to trees interacting with a live power line. The submission suggests defining a “public safety hazard”. This issue was addressed in the report on the Definitions Chapter (Hearings Report 7) which stated:

The submission from Electricity Ashburton Ltd notes that within clause 6.10.5 d) reference is made to “public safety hazard” and suggests that this could be defined. The submission notes that this could include trees that have interfered or continue to interfere with live powerlines which are very dangerous for the public. I agree that a situation where a tree is caused to touch an existing live power line e.g. through wind damage, would definitely fall within the term public safety hazard. Situations such as this would also be captured by the Electricity (Hazards from tree) Regulations 2003 requiring the tree to be made safe.

It would not be easy however to completely define the term as there are a range of ways in which a tree could cause a public safety hazard e.g. being unstable due to weather (lightning strike, high winds or heavy rain), becoming diseased, or growing into an unstable form. My preference would be to keep this term general with the circumstances of the situation dictating whether a tree fits this description, however I acknowledge that defining the term could be useful. I recommend that if a definition is to be added, a definition that is not limited⁸ be used.

- 4.17 I consider that any ordinary reading of the clause would be such that a tree interfering with a live power line would be included in the exception and I do not consider there is a need to be more explicit in the rule. However, should the decision on the definition chapter introduce a definition, this too would further clarify the situation.

Section 6.11: Assessment Matters

- 4.18 The submission from Electricity Ashburton⁹ supports assessment matters d)-k) as being practical. This support is acknowledged.

5.0 STATUTORY CONSIDERATIONS

- 5.1 The relevant statutory considerations in relation to these submissions are whether the outcomes will be consistent with sections 31 and 32 of the Act, along with Part II of the Act. I consider that the recommendations above are both effective and efficient and will ensure that the methods contained in this section are the most appropriate method for achieving the objectives of the Plan. I consider that this section of the Plan is appropriate under Part II of the Act in achieving sustainable management within the Ashburton District.

6.0 RECOMMENDATIONS

- 6.1 Based on the discussion above, I consider that, subject to the recommended changes to text set out below, this section of the proposed District Plan should be accepted.

⁷ Submission 635, point 4.

⁸ A definition that is descriptive but not complete and exclusive, using the term “includes” rather than “means”.

⁹ Submission 635, point 6.

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SECTION 6: OPEN SPACE ZONES

APPENDIX ONE: SUMMARY OF RECOMMENDATIONS ON SUBMISSIONS

Submission Number	Submitter Name	Point Number	Decision Sought	Recommendation
S115	Tinwald South Netball Club	1	That the Open Space B Zone Issues, Objectives and Policies, rules and reasons for the Zone Standards be rejected as stated above.	Reject (para 4.6) Refer also to Business and Mapping / Zoning reports.
S115	Tinwald South Netball Club	3	Such further or other relief, including consequential or alternative amendments to these and other relevant provisions of the Proposed Ashburton District Plan, that may be required to give effect to this submission.	Reject (para 4.6) Refer also to Business and Mapping / Zoning reports.
S147	Tinwald Rugby Football Club Incorporated	1	That the Open Space B Zone Issues, Objectives and Policies, rules and reasons for the Zone Standards be rejected as stated above.	Reject (para 4.6) Refer also to Business and Mapping / Zoning reports.
S147	Tinwald Rugby Football Club Incorporated	3	Such further or other relief, including consequential or alternative amendments to these and other relevant provisions of the Proposed Ashburton District Plan, that may be required to give effect to this submission.	Reject (para 4.6) Refer also to Business and Mapping / Zoning reports.
S240	Silver Fern Farms	55	No change required to Section 6.	Accept in part (para 4.3)
S295	Tinwald Family Sport and Recreation Association	1	That the Open Space B Zone Issues, Objectives and Policies, rules and reasons for the Zone Standards be rejected as stated above.	Reject (para 4.6) Refer also to Business and Mapping / Zoning reports.
S295	Tinwald Family Sport and Recreation Association	3	Such further or other relief, including consequential or alternative amendments to these and other relevant provisions of the Proposed Ashburton District Plan, that may be required to give effect to this submission.	Reject (para 4.6) Refer also to Business and Mapping / Zoning reports.
S296	Tinwald Softball Club	1	That the Open Space B Zone Issues, Objectives and Policies, rules and	Reject

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Submission Number	Submitter Name	Point Number	Decision Sought	Recommendation
			reasons for the Zone Standards be rejected as stated above.	(para 4.6) Refer also to Business and Mapping / Zoning reports.
S296	Tinwald Softball Club	3	Such further or other relief, including consequential or alternative amendments to these and other relevant provisions of the Proposed Ashburton District Plan, that may be required to give effect to this submission.	Reject (para 4.6) Refer also to Business and Mapping / Zoning reports.
S359	Tinwald Family Sport and Recreation Association	1	That the Open Space B Zone Issues, Objectives and Policies, rules and reasons for the Zone Standards be rejected as stated above.	Reject (para 4.6) Refer also to Business and Mapping / Zoning reports.
S359	Tinwald Family Sport and Recreation Association	3	Such further or other relief, including consequential or alternative amendments to these and other relevant provisions of the Proposed Ashburton District Plan, that may be required to give effect to this submission.	Reject (para 4.6) Refer also to Business and Mapping / Zoning reports.
S601	New Zealand Railways Corporation (KiwiRail)	7	That the Council adds the following new rule into Section 10 Transport as a new rule to Section 10.8 Site Standards in the Proposed Plan, or alternatively separately in each of the Open Space, Rural, Residential, and Business sections which reads: <u>Noise Sensitive Activities in Close Proximity to the Railway</u> <u>Every noise sensitive activity or extensions to those activities, located within 40 metres of the closest railway track or where there is no track in place, 50 metres from the nearest boundary of the rail designation: shall be designed, sited and constructed to ensure external noise will not exceed 40dBA Leq 24 hours. Within bedrooms external noise shall not exceed 35dBA Leq 24 hours.</u> <u>a. An acoustic design report prepared by a suitably qualified and experienced engineer shall be provided. demonstrating compliance with (this) Rule:</u> <u>b. Sound levels shall be measured in accordance with NZS 6801:2008 Acoustics - Measurement of Sound and assessed in accordance with NZS 6802:2008 Acoustics - Environmental Noise, or any superseding codes of</u>	Dealt with in the Transport Report.

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Submission Number	Submitter Name	Point Number	Decision Sought	Recommendation
			<p><u>practice and/or standards:</u> <u>c. Vibration: Applicants should be aware that vibration within this area may cause annoyance and possibly damage to buildings. Vibration is very site specific and applicants are advised to undertake a vibration assessment to determine whether it will be an issue for their particular development.</u> An alternative relief would be a variant of the wording as expressed in Site Standards 4.9.18 Reverse Sensitivity, but applying to rail and containing the clauses above; or similar.</p>	
S635	Electricity Ashburton Limited	1	Exclude small (10m2 and 2m high) utility buildings from the Open Space setback standard.	Accept (para 4.8 - 4.10)
S635	Electricity Ashburton Limited	2	Change the phrase 'whether on the same site or not' to 'on the same site' in Standard 6.10.5 c)	Accept in part (para 4.11 - 4.13)
S635	Electricity Ashburton Limited	4	Possibly define 'Public Safety Hazard' to include all of the known risks that this standard is intended to cover.	Reject (para 4.16 - 4.17) See also Definitions report.
S635	Electricity Ashburton Limited	6	Retain Assessment Matters as proposed under Open Space Zones.	Accept (para 4.18)
S639	Ashburton District Council	35	Amend Rule 6.8.2 as follows: Rule 6.8.2 Permitted activities c) Recreational activities, limited to passive activities such as playgrounds, walking, jogging and cycling facilities in the Open Space A.	Accept (para 4.7)
S639	Ashburton District Council	74	Changes may be required to the structure of rules in all Zones to provide clarification and avoid any contradiction/confusion over the interpretation of rules.	Accept (para 4.4 - 4.5)
F3	Greenstone Energy Ltd, BP Oil NZ Ltd, Mobil Oil NZ Ltd, Chevron NZ	74	Oppose	Reject (para 4.4 - 4.5)
F5	Transpower New Zealand	74	Oppose	Reject (para 4.4 - 4.5)
F16	TrustPower Limited	74	Oppose	Reject (para 4.4 - 4.5)

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Submission Number	Submitter Name	Point Number	Decision Sought	Recommendation
<i>F65</i>	<i>Ashburton Licensing Trust</i>	<i>74</i>	<i>Support</i>	Accept (para 4.4 - 4.5)
<i>F71</i>	<i>Electricity Ashburton Limited</i>	<i>74</i>	<i>Support</i>	Accept (para 4.4 - 4.5)
<i>F80</i>	<i>Federated Farmers</i>	<i>74</i>	<i>Support</i>	Accept (para 4.4 - 4.5)

APPENDIX TWO: DISTRICT PLAN AMENDMENTS

Section 6: Open Space Zones

Amend 6.8.2 as follows:

6.8.2 Permitted Activities

The following activities shall be Permitted Activities, provided that they are not listed as a Prohibited Activity and comply with all of the relevant Site and Zone Standards below and all relevant District-Wide Rules:

...

c) ~~Recreational activities, limited to passive activities such as playgrounds, walking, jogging and cycling facilities~~ in the Open Space A zone.

...

Section 6: Open Space Zones

Amend 6.8.3 as follows:

6.8.3 Restricted Discretionary Activities

The following activities shall be Restricted Discretionary Activities, provided that they comply with all of the relevant zone standards:

a) Retail activities limited to those selling only food and beverages, in both the Open Space A and B Zones.

The exercise of the Council's discretion being restricted to effects associated with noise, traffic and access, hours of operation, lighting, and impacts on neighbouring properties.

Section 6: Open Space Zones

Amend 6.8.4 as follows:

6.8.4 Discretionary Activities

The following activities shall be Discretionary Activities, provided that they comply with all of the relevant zone standards:

a) Any Activity which is listed as a Permitted or Restricted Discretionary Activity and which complies with all of the relevant Zone Standards, but does not comply with any one or more of the relevant Site Standards;

Section 6: Open Space Zones

Amend 6.9.1 as follows:

6.9.1 Buildings and Structures in the Open Space B Zone

Buildings in the Open Space B Zone shall:

...

d) be setback at least 5 metres from road boundaries, except for utility buildings up to 10m² in area or 2m in height.

e) be setback from internal boundaries as follows:

- 10 metres where the site adjoins a Residential Zone
- 5 metres where the site adjoins any other Zone

except for utility buildings up to 10m² in area or 2m in height.

Section 6: Open Space Zones

Amend 6.10.1 as follows:

6.10.1 Buildings and Structures in the Open Space A Zone

Buildings in the Open Space A Zone shall:

...

b) be setback at least 5 metres from road boundaries, except for utility buildings up to 10m² in area or 2m in height.

c) be setback at least 5 metres from internal boundaries, except for utility buildings up to 10m² in area or 2m in height.

Section 6: Open Space Zones

Amend 6.10.5 as follows:

Within the areas zoned open space A or open space B that are Reserves (as defined in section 2(1) of the Reserves Act), or are subject to a conservation management plan or conservation management strategy (under the Conservation Act 1987 or Reserves Act 1977), there shall be:

a) no removal of any trees over 10 metres in height;

b) no significant trimming of any tree over 10 metres in height, being the removal of any branches (other than dead or broken branches):

- From the top two-thirds of the total height of the tree; and/or
- Greater than 50mm in diameter below this level (i.e. a level at one-third of the total height of the tree);

c) no construction of any building or laying of any overhead or underground utility within 10m of the base of any tree that is over 10m in height and is located within an Open Space zone, whether on the same site or not, but excluding the maintenance and replacement of existing buildings and utilities;

d) no paving or earthworks carried out within 5m of the base of any tree over 10 metres in height.

Except that this rule shall not apply to any dead tree or any tree which is causing a public safety hazard, or to give effect to a Reserve Management Plan under the Reserves Act or a similar Management Plan that has been approved by the Council.