ASHBURTON DISTRICT COUNCIL

HEARINGS OF SUBMISSIONS ON DISTRICT PLAN CHANGE 1

REPORT AND RECOMMENDATIONS OF INDEPENDENT COMMISSIONER

COMMISSIONER

Robert Nixon

Contents

Terminology in this Report

Throughout this report, I use the following abbreviations:

The Council – Ashburton District Council;

"ODP" – the Operative District Plan for Ashburton District;

"PPC1" – Proposed Plan Change 1

"RPS" – the Operative Regional Policy Statement for the Canterbury Region

"Foodstuffs" – Foodstuffs South Island Ltd and Foodstuffs (South Island) Properties Ltd

"FFNZ" – Federated Farmers of New Zealand

"SRBOA" – South Rakaia Bach Owners Association

"NZFS" – New Zealand Fire Service Commission

Section 32AA

There are seven parts to PPC1. Subsection (1) (a) of section 32AA states that:

"(1) A further evaluation required under this Act –

> *(a) is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the changes); and*
> *……..."*

In the case of the seven parts to PPC1, I have only made minor changes to the notified text Parts A, B, E, F, and G, primarily in response to submissions, most of which were recommended in the officer's report. In the case of the other two parts of PPC1, I have recommended that the Council's amendments to the PPC be adopted without any amendment, and accordingly no further evaluation is required with respect to those amendments.

Attendances

1. The hearings on PPC1 were held on 21 February 2017 in the Council Chambers at Ashburton.

2. The parties heard from on Change 1 were as follows:

Ashburton District Council

Rebecca Whillans (Senior Planner)

Submitters

SRBOA

David Harford (Planning Consultant)

Noel Muckle

Brent Hobbs

3. In addition, written statements were tabled as follows:
   - a letter from Sarah Everleigh of Anderson Lloyd, on behalf of Foodstuffs:
   - a letter from Angela Johnston of FFNZ;
   - a letter from Martin Swaffield of Beca Limited on behalf of the NZFS.

4. I undertook a site visit to the South Rakaia Huts on the day of the hearing.

Background

5. The Ashburton District Plan became operative in 2014 as the "second generation" plan prepared under the RMA. As a result of the Councils review of the operation of the ODP since it became operative, it identified seven separate issues where it considered it was necessary that the plan be amended, particularly in circumstances where the provisions had resulted in "unintended consequences"[1].

6. These topic areas were as follows:
   - The definition of 'retail' and 'commercial activities'
   - Building density in the rural zones
   - Hut Settlement rules
   - Diesel storage rules in Business Zones
   - Firefighting water supplies
   - Acoustic treatment of dwellings adjacent to state highways
   - The definition of 'rural activity' and 'rural service' activity

Part A - the definition of 'retail' and 'commercial activity'

7. The definition of these two terms in the ODP is as follows;

   "Retail Activity means the use of land or buildings for displaying or offering goods for sale or hire to the public and includes, but is not limited to, food and beverage outlets, small and large scale retail outlets, trade suppliers, yard base suppliers, second hand goods outlets and food courts".

[1] Section 42 a report, paragraph 2.2

"Commercial Activity includes the use of land and buildings for the display, offering, provision, sale or hire of goods, equipment, or services, and includes, but is not limited to, shops, markets, showrooms, and restaurants, takeaway food bars, professional commercial and administrative offices, service stations, motor vehicle sales, the sale of liquor and associated parking areas; but excludes passive recreational, community activities, home occupations, and farming activities. This includes a business providing personal, property, financial, household, and private or business services to the general public. It also includes recreational activities where fee is paid to use facilities i.e. a commercial bowling alley. It does not include community sports facilities where membership fee may be paid".

8. The Council's proposed changes to the text of the ODP pertained to the rules in Section 5 (Business Zones), and are as follows:

   (text proposed to be added shown as <u>underlined</u>)

   Rule 5.8.2 k) – Permitted Activities, which would be amended to read as follows:

   k) Commercial Activity <u>(excluding retail activity)</u> in the Business A, B, C and D zones;

   Rule 5.8.5 h) – Discretionary Activities

   h) Commercial Activity <u>(excluding retail sales)</u> in the Business E Zone

   Rule 5.8.6 l) – Non-Complying Activities

   l) Commercial Activity <u>(excluding retail activity)</u> in the Business F Zone

9. As a preliminary point, the Council subsequently clarified that the reference to "retail sales" in Rule 5.8.5h) should have read "retail *activities*", consistent with the other amendments proposed under Part A of PPC1.

10. The ODP makes provision for "Commercial Activities", which is very broadly defined, as a permitted activity in a number of different Business Zones, which by implication includes "shops". However it also seeks to restrict retail activities under the zone rules according to the nature of the particular business zone as follows;

11. The Business A Zone applies to the Ashburton town centre and the rural town centres in the district, and is focused on small scale comparison shopping. Other than when specified, a retail activity (excluding a service station) is limited to a *maximum* gross floor tenancy of 500m² [2].

12. The Business B Zone provides for large scale and 'big box' retailing including associated car parking, and other than when specified, provides for a *minimum* gross floor area of 500m² [3].

13. The Business C Zone is described as providing for commercial, retail, service and community activities (such as indoor sports facilities), and other than when specified, provides for a *maximum* gross floor area of 750m² [4].

[2] Rule 5.8.2f)
[3] Rule 5.8.2g)
[4] Rule 5.8.2h)

14. The Business D and Business E Zones provide for light and medium to heavy industrial activities respectively. Other than when specified elsewhere, retailing is limited to single retail outlets selling goods produced or processed on the site with the *minimum* gross floor area of 150m².

15. The Business F Zone is specific to meat processing sites.

16. The difficulty that the Council has experienced arises from issues involving supermarkets, which as a commercial activity are listed as a *permitted* activity in the Business A, B, C and D Zones. Depending on their size, supermarkets will typically not have permitted activity status because of restrictions on their floorspace limits in all but the Business B Zone, where it is understood that this activity is encouraged by the ODP to locate. Put another way, while a reader of the plan could reasonably conclude from the *definition* of 'commercial activity' (which includes 'shop') that a supermarket is a permitted activity in the Business A – D zones generally, the rules and zone descriptions clearly suggest otherwise. Typically a supermarket might range in floor space from 1000m² to 5000m².

17. Floorspace restrictions on retail activities are supported at the policy level[5] and in the 'reasons for rules'[6] in the ODP.

18. The Council proposes to address this problem through PPC1 by qualifying the activity status of retail activities in the Business A – D Zones, as well as the Business E and F Zones through the addition of the words *"excluding retail activity"* after the words *"commercial activity".*

Submissions

19. ***Foodstuffs (Submission PC1 – 2, Sub. Point 1)*** submitted on PPC1 seeking that supermarkets be identified as a permitted activity in the Business A, B, and C Zones; or in the alternative that they be made a controlled activity in the Business A Zone and Business C Zones ***(PC1 – 2, Sub. Point 2)***; and that in the Business B Zone that single retail outlets include supermarkets which contain a *Lotto* kiosk and/or a café ***(PC1 – 2, Sub. Point 2)***. They also sought such other alternative or consequential relief as to address the matters raised in their submission ***(PC1 – 2, Sub. Point 3)***.

Evidence

20. In a letter dated 13 February, Sarah Eveleigh of Anderson Lloyd, counsel for the submitter, advised that they no longer wished to be heard, but requested that their submission be "placed before the Commissioner for due consideration". I understood discussions had taken place between the submitter and Ms Whillans, but in response to a question from me she indicated that there had been no specific response to the proposals made in her section 42A officer's report.

Assessment

21. In her report, Ms Whillans noted that supermarkets clearly fell under the definition of retail activities and it was the clear intention of the plan that they were expected to locate in the Business B Zone. She was convinced that retail activities were intended

[5] Objective 5.1 (c)
[6] Refer Clause 5.7.16 of the ODP

to be addressed separately from other commercial activities as *"if this was not the case, provision would not have been made for retail activities at all*"[7].

22. I consider that all of the activities defined under "retail activity" also fall within the definition of "commercial activity". I am satisfied there is accordingly an inconsistency with respect to the activity status of supermarkets (and potentially other retail activities) in the Business Zone rules as a result of the overlapping definitions of 'Commercial Activity' and 'Retail Activity'. It is apparent from the framing of the rules that there is a clear intention to restrict some retail activities in the Business A, B, and C Zones according to floorspace. Accordingly, it is an issue that needs to be addressed to remove the inconsistency and restore certainty for plan users. Restrictions on retail floorspace is a relatively common tool in district plans, particularly in town centre locations.

23. The Councils chosen approach is to alter the zone rules in the Business Zones by the simple expedient of adding the words "excluding retail" after the word "commercial". Consequential amendments are also made to the Business D-F zone rules for consistency. That said, the overlapping definitions are less than optimal, and despite retail activity being subsumed under commercial activity, these words do not appear in the definition of commercial activity, which instead uses the word "shop". There is a case for the words 'retail activity' to appear under the definition of 'commercial activity', but I am reluctant to entertain such an amendment in the context of this confined plan change and wider scope issues.

24. Foodstuffs have sought that supermarkets be made a permitted activity in the Business A and C Zones, or a controlled activity with the removal of restrictions on minimum or maximum floorspace. I consider this would be within scope as "on" the plan change. Whatever the merits of the relief sought however, I have no evidence before me of what the effects of such amendments would be in the physical context of the zones affected. These potentially include visual and traffic impacts on the Business A and C Zones. There are also issues as to whether any such amendments should be confined to supermarkets, or include other forms of retail activities; and there is the issue of compatibility with the objective/ policy framework. I conclude that the potential implications of the relief sought by Foodstuffs would require a more comprehensive assessment with accompanying evidence, but this was not put before me.

25. Foodstuffs also sought a detailed amendment to permit the presence of cafes and *Lotto* kiosks in supermarkets, a trend which has become readily apparent in recent years. These could arguably be seen as ancillary to the primary supermarket activity, and I agree with Ms Whillans that a café is also (at least arguably) a permitted activity in the Business B Zones as "restaurants" are not subject to a floorspace minimum. However, for the removal of doubt, I accept the submitter's proposal, that both *Lotto* kiosks and a cafe be specified as a permitted activity provided they are ancillary to and associated with the supermarket.

26. In conclusion, I recommend that the Councils proposed minor amendments to the Business Zone rules be adopted, that submission points 1 and 3 by Foodstuffs be rejected, and submission point 2 accepted in part to the extent of providing for an

[7] Section 42 a report paragraph 3.1.5

ancillary lottery kiosk in association with a supermarket in the Business B Zone. The text changes are set out in Appendix 2 to these recommendations.

Section 32AA

27. I am satisfied that the Council's Section 32 analysis is sufficient to justify recommending the adoption of Part A of PPC1. The matter of whether Part A should extend into wider provision for supermarkets would necessitate evidence being provided to enable the benefits and costs of such a course of action to be comprehensively assessed, and such information was not put before me in order to make an informed judgement. Accordingly, the issue is confined to whether the Council's proposals are appropriate as a means of clarifying the intent and operation of the existing zone provisions and activity rules. Although Part A of PPC1 does not entirely address the deficiencies in the wording of the definitions, I consider that the councils proposed amendments are a measured response to the need to provide clarity.

28. The only amendment made since the 'evaluation report' was prepared, was the officer's recommendation to make *specific* provision for lotto kiosks, and the additional request by the submitter to also provide specifically for a cafe. Both of these activities are sought in conjunction with the operation of the supermarket. I consider these are only minor amendments which provides a degree of clarification to the rules specific to modern supermarkets. I consider no further explanation is required, noting that section 32AA subsection (1) (c) requires that a further evaluation *"be undertaken at a level of detail that corresponds to the scale and significance of the changes…."*. I am satisfied that the scale and significance of these changes are very minor in scope.

Part B – Building Density in the Rural Zone

29. Under Chapter 3, Rule 3.10.1 (Residential Density) the minimum allotment size for residential dwelling in the Rural A Zone is 8 ha. Under Rule 3.9.2 the maximum permitted site coverage is 10% or 2000m², whatever is lesser.

30. Under Chapter 3, Rule 3.10.1 the minimum allotment size for a residential dwelling in the Rural B Zone is 50ha. Under Rule 3.9.2 the maximum permitted site coverage is 5%.

31. Under Rule 3.8.4, where an otherwise permitted activity does not comply with the above standards, it is assessed as a restricted discretionary activity.

32. Under the 'Assessment Matters' in Rule 3.11.1 (Residential Density and Building Coverage) the following assessment matters under clauses a) and b) require consideration. The amendments shown as underlined or in strikeout are proposed by the Council through Change 1:

"a) the degree to which the residential density or building coverage has an adverse effect on the open character of the site and surrounding area, in particular:

- *in the Rural A and B Zones the extent to which building coverage on the site would visually dominate a site which would be out of character with the local environment;*
- *in the Rural C Zone the extent to which residential units or building coverage would impact on the remote experience of the area, or impact on the landscape values of*

an area, including the values of spaciousness, expressive landforms, extensive tussock and grass cover, and views and panoramas.

b) The degree to which ~~residential density~~ building coverage shall compromise the productivity of Land Capability Classes I and II (New Zealand Land Resource Inventory) in the Rural A and B Zones".

Submissions

33. The submission from Federated Farmers ***(Submission PC1-1, Sub. Point 1)*** supports the protection of versatile or productive soils, and the addition of building coverage as an assessment matter, but seeks the retention of residential density as a factor. Environment Canterbury supported the Council's proposed amendments ***(Further Submission PC – F 1)***. Neither appeared at the hearing to present evidence.

Assessment

34. This part of PPC1 does not alter the rules themselves (activity status) as they relate to minimum lot sizes for dwellings, or site coverage. The amendment only relates to the matters that are taken into account when considering an application which breaches either or both of the minimum area and coverage standards.

35. The extent to which building coverage can affect rural productivity of versatile soils is likely to be relatively modest except on small sites – and in combination with coverage by impervious surfaces as well as buildings. Nevertheless there is the potential for adverse effects to occur bearing in mind that the "thresholds" are set at a relatively generous level.

36. However I also agree with Federated Farmers original submission that residential density is a relevant factor in terms of both visual character and the effect on versatile soils. The rules relating to residential density remain in place, as do the 'reasons for rules' which explain the basis for restrictions on density.

37. It may be that the Council have sought to exclude residential density based on the "reasons for rules" which note that *"the residential density for the Rural Zones has been set at a level which is consistent with the prevailing rural character*"[8]. The balance of the reasons for the site density rule do not refer to versatile soils. However importantly, Objective 3.1 and Rural Policy 3.1A state:

"Objective 3.1: Rural Primary Production

To enable primary production to function efficiently and effectively in the Rural A and B Zones through the protection and use of highly versatile and/or productive soils and the management potential adverse effects.

Policy 3.1 A

Provide for the continued productive use through farming activities and protection of highly productive and/or versatile soils and their associated irrigation resources, by ensuring such land is not developed for intensive residential activity and/or non-rural activities and the extent of coverage by structures or hard surfaces is limited" (my emphasis).

[8] Chapter 3, Clause 3.7.1

38. As noted before, the rules themselves are beyond the scope of PPC1, as are the higher order objectives and policies. It is readily apparent that the above policy framework specifically anticipates that *both* residential density and building coverage are relevant matters to consider with respect to building density.

39. In conclusion, I recommend that the Councils proposed amendments to the 'Assessment Matters' for Building Density in the Rural Zone be adopted in part through the inclusion of building coverage as an assessment matter, but that the Council's proposal to remove "residential density" from subclause 3.11.1 b) be rejected. I recommend that submission point 1 of Environment Canterbury be **accepted in part**, and that submission point 1 of Federated Farmers be **accepted**. The text changes are set out in Appendix 2 to these recommendations.

Section 32AA

40. I have recommended that the Council's proposed amendments be accepted in part, because I have concluded that the words 'residential density' should not be excluded from the assessment matters under clause 3.11.1b) as proposed in PPC1 as notified.

41. I note that section 32 is hierarchical in character to the extent that an evaluation report is required to examine whether the provisions in a proposal are the most appropriate way to achieve the objectives of the Plan. In this case the scope of Part B of PPC1 is very limited – it does not change the relevant objectives, policies, or rules pertaining to residential density or site coverage on rural sites. It only seeks to change assessment matters which are applied in considering any breach of the relevant rules.

42. As discussed above, the relevant objective – and particularly the policy framework – clearly addresses residential density as a relevant matter. The Council's proposed amendment to remove reference to residential density would accordingly not give better effect to this framework, and for that reason I agree with the submission of NZFF.

43. I agree with Part B of PPC1 in that building *coverage* is a matter relevant to the protection of versatile soils, and note that the only submission received was in support of including building coverage as an assessment matter. I recommend that Part B of PPC1 be adopted, subject to the retention of 'residential density' under Clause 3.11.1b).

Part C – Hut Settlement Rules

44. The Planning Maps in the ODP identify the small 'hut' settlements at Hakatere (Ashburton River Mouth), and the Rakaia and Rangitata River Mouths, as being zoned Residential C (Planning Maps U83, R75, and R90).

45. The zone description for Residential C describes this as being a medium low density zone covering the suburban residential areas of Ashburton, along with the townships of Methven, Rakaia, Mount Somers, Hinds, Chertsey, Mayfield, Fairton, Lauriston, and Barrhill[9]. PPC1 proposes to change the zoning of these settlements on the Planning Maps from Residential C to Residential B.

[9] Chapter 4, Clause 4.3.3

46. The Residential B Zone is described as a medium high density zone which applies to the inner suburbs of Ashburton and to the central part of the township of Rakaia, and provides "principally for moderate density, generally permanent living accommodation, to a higher density than the suburban area……" It goes on to state that "*the zone also applies to the hut settlements of Lake Clearwater (Te Puna-O Taka), Rakaia Huts, Hakatere Huts and Rangitata Huts, which provide permanent and holiday accommodation. The density of development is historic and aligns closely to that anticipated around central Ashburton (Kapuka)"*[10].

47. The Council has identified an obvious inconsistency with the planning maps, as it is clear that the zoning as shown on the planning maps (except for Lake Clearwater) is inconsistent with the extracts from the zone descriptions quoted above.

Submissions

48. SRBOA ***(Submission PC1 – 4, Sub. Point 1)*** have submitted in opposition to the change in zoning on the planning maps, suggesting that instead it would be appropriate to amend Zone Standard 4.10.1 to read as follows:

*"No additional residential units shall be constructed in or relocated into the Residential ~~**B**~~ Zone**s** at Lake Clearwater, Hakatere, Rakaia or Rangitata River Mouths".*

(Submission PC1 – 4, Sub. Point 2)

49. Environment Canterbury initially supported the proposed rezoning ***(Submission PC1 – 3, Sub. Point 2)***; but subsequently offered qualified support by way of further submission for the amended wording sought by SRBOA as being potentially simpler than the Council's proposed rezoning, subject to it not disrupting other rules or policies applicable to the Residential B Zone ***(Further Submission PC – F 1).*** I note in passing at this point that the concerns of Environment Canterbury relate to the ongoing need to restrict further development in the hut settlements which are or may be exposed to natural hazards (flooding).

50. SRBOA have also sought – at this stage it lodged its submissions – that there be future revisions to the District Plan that recognises the difference between the hut settlements *and* lifts the restrictions on the number of dwellings permitted at South Rakaia Huts ***(Submission PC1 – 4, Sub. Point 3)***. A further submission point made reference to an exclusion from the road setback requirement in the Residential B Zone at Lake Clearwater ***(Submission PC1 – 4, Sub. Point 4)***.

51. In his evidence on behalf of SRBOA, Mr Harford explained that the association owns the freehold tenure of 12 ha of land at the Rakaia River mouth within which there are 71 individually owned homes. He said that each 'allotment' was subject to a 'licence to occupy', and did not have an individual certificate of title. Given this situation, in terms of compliance with the bulk and location standards (e.g. setbacks, coverage etc) the Council had adopted a 'pragmatic' approach whereby each hut holders 'allotment' is treated in the same way as a typical fee simple allotment.

52. He said that on average the hut holder's allotments exceed 1000m² in size, whereas the Residential B Zone provides a minimum area for a residential unit of only 280m². His contention was that the South Rakaia Huts settlement was not a good 'fit' for the

[10] Chapter 4, Clause 4.3.2

description given to the Residential B zone. The intention of rule 4.10.1 is to restrict further development in the South Rakaia Huts settlement, and response to a question from me it was agreed by SRBOA that further development was inappropriate, notwithstanding the apparently successful operation of stop banks during previous flood events. Mr Harford also acknowledged that while the removal of the qualification of the zone description "B" from Zone Standard 4.10.1 might overcome issues with describing the character of the settlement, it would still leave a problem with the content of the zone description and its reference to this settlement and others as being expected to have a Residential B zoning.

53. He put forward the possibility that another solution might be to reword the zone description by leaving the settlement zoned Residential C by making an exception for the South Rakaia Huts.

Assessment

54. In response to a question put to SRBOA, it was confirmed that the amendments sought were essentially on the basis of 'planning principle' rather than a means of subverting the restrictions on further residential growth or infill. Provided the restriction in Zone Standard 4.10.1 remained applicable to the South Rakaia Huts, there was no apparent advantage to the residents at South Rakaia Huts in opposing the Councils proposed rezoning on the planning maps.

55. From questions put to SRBOA, Mr Harford and Ms Whillans, it became clear that the character of the four settlements was quite different. Hakatere, and apparently to some extent Rangitata Huts, were of a higher density than South Rakaia Huts, and in turn were quite different again in character from the settlement at Lake Clearwater. It would appear that a very broad brush approach has been taken to the zoning of the hut settlements, possibly in the interests of simplification, by incorporating the hut settlements into the same zone as the older housing areas in the central part of Ashburton. From my site visit it was apparent that the density of settlement at the South Rakaia Huts was relatively low (despite the presence of several substantial dwellings), and there was no scope under the ODP for further infill development. The streetscape was also much more informal in character than inner suburban Ashburton with its grid layout.

56. Overall, I agree with SRBOA that the Residential B zoning is not a particularly good fit in the context of the South Rakaia Huts. There is a good case for reviewing the plan provisions as they apply to these settlements, possibly with a view to giving them their own specific zoning with rules tailored to the circumstances of each hut settlement, and arguably the implications of the land tenure involved on the application of the rules. However while I support the concerns of SRBOA in principle, that part of their relief under submission point 3 is beyond the scope of these hearings.

57. It is also important – and was acknowledged at the hearing – that the restrictions accompanying further development in this and the other huts settlements were appropriate.

58. I have given some consideration to the suggestions made on Mr Harford's evidence, and whether they might be within the scope. Having done so, there is still a problem with retaining Residential C zoning over South Rakaia Huts, as this does not fit the zone description of being primarily for "…..*generally permanent living*

accommodation"[11]*.* I understand only approximately 30% of the dwellings in South Rakaia Huts are permanently occupied[12].

59. In addition, Residential C is also not a good fit in terms of zoning either, as the Ashburton suburbs and rural townships covered by that zoning (quite apart from density) have a distinctly different suburban character primarily identified by formal grid street layouts or modern engineered subdivisions. No submissions have opposed rezoning of the other three settlements to Residential B, and there is a likelihood of similar arguments with respect to those other settlements having at least some validity. Possible issues also arise in terms of the application of the plan rules, given the tenure arrangements at South Rakaia Huts and possibly the other settlements as well. This further emphasises the need for the Council to explore a more suitable zoning and rules framework better aligned to the character of these somewhat unique coastal settlements.

60. I have concluded that matters are finely balanced in terms of whether it would be preferable to create an exception and retain a Residential C zoning over the South Rakaia Huts, or the Council's proposal to rezone this particular settlement Residential B. However while I see merit in the case put forward by SRBOA, I have reluctantly concluded that the Council's proposed rezoning to Residential C is marginally the more preferable option at this time. Certainly the option of slightly altering the wording of Zone Standard 4.10.1 would still leave an inconsistency within the ODP. As indicated before, I consider there is a need to revisit the zoning and regulatory framework for the hut settlements, but this is a matter beyond the scope of PPC1.

61. In conclusion, I recommend that the Councils proposed amendments to the Planning Maps to rezone the four settlements to Residential B be adopted. I recommend that submission point 2 of Environment Canterbury be accepted in part, and that it's further submission be rejected. I also recommend that the submission points of SRBOA be rejected. The changes to the Planning Maps are set out in Appendix 2 to these recommendations.

Section 32AA

62. I have recommended that no changes be made to the proposals in Part C as notified, and as assessed under the Councils original section 32 assessment, the conclusions of which I adopt.

Part D – Diesel Storage Rules in the Business Zones

63. There were no submissions on this component of PPC1, and accordingly I must recommend that it be adopted as notified. The text changes are contained in Appendix 2 to these recommendations.

Part E – Firefighting Water Supplies

64. The amendments under Part E of PPC 1 proposes a series of amendments to Section 9 of the ODP (Subdivision) which relate to the supply of water for firefighting purposes in the Open Space and Business Zones, and for utilities.

[11] Clause 4.3.3

[12] Evidence of David Harford, paragraph 8

65. The first amendment seeks to alter Rule 9.7.3 (controlled activities) to add reference to water supply for firefighting purposes, and potential demonstration of compliance with the New Zealand Fire Service Code of Practice for Firefighting Water Supplies *SNZ PAS 4509:2008*. It also distinguishes situations where subdivision has the status of a restricted discretionary activity.

66. The second amendment relates to clause 9.7.4 and the assessment matters to be taken into account when considering restricted discretionary subdivisions, by adding as a matter of discretion any subdivision where compliance with the New Zealand Fire Service Code of Practice for Firefighting Water Supplies cannot be demonstrated.

67. The third amendment relates to clause 9.7.7 (Notification/Consultation/Notes) by informing plan readers that resource consents in relation to provision for firefighting water supply and managing associated risk, shall not be publicly notified.

68. The fourth amendment relates to the addition of a "Note" recognising the New Zealand Fire Service Code of Practice for Firefighting Water Supplies; and the potential imposition of a consent notice requiring a firefighting water supply to be available.

69. The fifth amendment proposes the addition of an "Assessment Matter" under clause 9.10.7 (Water Supply) which enables the Council to consider whether compliance has been demonstrated with the New Zealand Fire Service Code of Practice for Firefighting Water Supplies.

70. The sixth amendment proposes that Rule 9.9.4 (Water Supply) be deleted, as it specifies that failure to provide for firefighting water supply in accordance with the code of practice be a noncomplying activity, which the Council considers is onerous.

71. Further to the above suite of amendments, the explanation accompanying this Part E of PPC1 notes that:

"The Plan requires all allotments resulting from subdivisions to provide a water supply compliant with the firefighting water supplies code of practice, regardless of whether the type of development for the site is known at the time. This requirement is considered unsuitable and onerous when the nature of the development and its firefighting requirements may not yet be known"[13].

It goes on to explain that the current rules are particularly onerous in rural areas where there is no reticulated water supply *"……and the code of practice requires detailed and technical assessments of water flow rates and volumes in order to prove a compliant supply*…..[14]". The Council's proposed amendments will instead require developers to demonstrate *an ability* to provide a complying water supply by connection to a reticulated water network, or alternatively by placing a consent notice on the title.

Submission

72. The NZFS submitted in partial support of PPC1, and responded to the officer's proposal is in a letter from their consultants (Beca) on 20 February 2017. With respect to Rule NZFS 9.7.3, it sought the following amendments to Rule 9.7.3:

[13] Proposed Plan Change 1, (Summary of Issues) page 2
[14] Proposed Plan Change 1, page 35

9.7.3

"…….. Provision for firefighting water supply, access to that water supply and managing associated risk, (~~this could be~~ demonstrated by compliance with the New Zealand Fire Service Code of Practice for Firefighting Water Supplies SNZ PAS 4509:2008").

(Submission PC1 – 5, Sub. Point 1).

73. NZFS were concerned with the words *"this could be"* while Ms Whillans reiterated the difficulties when the nature of future development was unknown at the subdivision stage. She recommended the addition of the following words at the end of the clause:

"…… *or approval from the New Zealand Fire Service".*

74. With this further amendment, NZFS were in agreement with the amendments to Rule 9.7.3[15].

75. Similarly, and consistent with the above wording, Ms Whillans and NZFS were agreed on the wording of the assessment matter in Clause 9.10.7c)[16] through the removal of the words "*this could be*", reference to "*SNZ PAS 4509:2008*" and a minor correction of the description of the NZFS.

(Submission PC1 – 5, Sub. Point 2).

76. NZFS had sought that the plan include further provision to require compliance with the New Zealand Fire Service Code of Practice for Firefighting Water Supplies at the time of development ***(Submission PC1 – 5, Sub. Point 4)*** – and were critical of the Council's section 32 process with respect to this matter. NZFS ***(Submission PC1 – 5, Sub. Point 3)*** also sought that reference to new allotments created by subdivision apply to all zones. Ms Whillans commented that the provisions incorporated into the ODP through the review process in 2014 were considered acceptable by NZFS at the time, and that introducing the amendments sought now by NZFS and their extension to other zones would be beyond the scope of PPC1.

77. Instead, she proposed the following wording, which was accepted by NZFS[17]:

"9.7.4

c) all new allotments created by subdivision in Open Space Zones and Business Zones or for utilities other than allotments for access, roads and utilities, that cannot prove an ability to provide a firefighting water supply in accordance with the New Zealand Fire Service Code of Practice for Firefighting Water Supplies SNZ PAS 4509:2008 or obtain approval from the New Zealand Fire Service".

78. Ms Whillans also noted that the amendments to Rule 9.7.4 made reference to subdivision in "Open Space Zones and Business Zones" as a controlled activity, but not for utilities, although this was touched on in the reasons for the amendments

[15] Statement tabled by Beca Consultants, 20 February 2017, page 1
[16] ibid

[17] ibid, pp1-2

contained in PPC1[18]. Accordingly she made reference to the need to correct this omission as a "minor amendment"[19].

Assessment

79. Mr Swaffield's letter (Beca) of 20 February 2017 concludes by stating that:

"The Commission request that, if the Commissioner is of a mind to approve the proposed Fire Fighting water supplies provisions of Plan Change 1, that the Officer's recommendations relating to the Commissions relief as sought in its submission be accepted"[20].

80. Through a somewhat iterative process the Council and the NZFS have arrived at text changes that are acceptable to both parties. I understand the New Zealand Fire Service Code of Practice for Firefighting Water Supplies *(SNZ PAS 4509:2008")* is currently under review and I am concerned that there are pitfalls in incorporating references in the District Plan to an external standard which may itself change. In such an event, it may be that the Council could subsequently address this problem under Clause 16(2) of the First Schedule to the Act, but that is separate matter upon which it would need to obtain legal advice at the time.

81. However I have concluded that the contents of PPC1 with respect to firefighting water supplies are less onerous, and more practical from an administration perspective, than those currently contained in the ODP and form the basis of a workable arrangement with a suitable degree of flexibility for the assessment of subdivisions. No other parties have submitted on the Council's proposed text changes. Ideally, it would be preferable for the appropriate standard to have the statutory authority to be able to be implemented at the development stage, without a cross-reference being required in the district plan, but I understand this is currently an option which is not available.

82. The proposed amendments to the text of the plan are set out in Appendix 2 of these recommendations, including in part the amendments sought and agreed to by NZFS. I recommend that submission point 1 and 2 of NZFS be accepted, and that submission point 3 and 4 be rejected.

Section 32AA

83. I am satisfied that the primary amendments sought through Part E of PPC1 concerning water supplies for firefighting purposes, would be more efficient than the present provisions in the ODP. The current provisions are too indiscriminate in their application to the circumstances of particular subdivisions, and the nature of land uses which may eventually establish as a result. The proposed rules framework focuses on the particular issues arising from the provision of water for firefighting, and provide an alternative and more flexible approach of compliance with the New Zealand Standard, or alternatively as agreed with NZFS. The other amendments suggested by NZFS provide greater refinement to the re-drafted rule provisions.

[18] PPC 1, "4. Recommendation", page 44

[19] Section 42 a report, paragraph 3.5.15

[20] Statement tabled by Beca Consultants, 20 February 2017, page 2

Part F – Acoustic Treatment of Dwellings adjacent to State Highways

84. It is now relatively commonplace for district plans to include rules requiring the mitigation of traffic noise and residential dwellings where these adjoin a State Highway corridor and sometimes other arterial roads. This can be achieved through noise insulation of the dwelling itself, setback distances, or measures such as mounding/fencing, or a combination of such measures.

85. Section 3, Rule 3.9.4 (Setback from Roads) specifies setbacks for buildings in the Rural Zones. Part of subclause 3.9.4a) requires that a building shall be set back 20m from the left edge of the nearest traffic lane with respect to State Highways 1 and 77. Furthermore subclause 3.9.4b) additionally requires that:

"b) any residential units or additions or alterations to the same erected between 20 – 80m from the nearest traffic lane of SH 1 and SH 77 shall be required to comply with the international noise guidelines outlined in AS/NZ 2107:2000".

86. The officer's report notes that Rule 3.9.4b) requires property owners to obtain a report from an acoustic engineer that the internal spaces within a dwelling, where all or part within of that dwelling is within the setback, comply with the guidelines. The Council have become concerned that this is unduly onerous owing to the need to require a specialist report, where additions and alterations within the setback do not include additional *habitable* spaces. The Council proposes to address this matter by adding a definition of "Habitable Space" in Section 17 of the ODP (Definitions).

Submission

87. NZFF ***(Submission PC1-1, Sub. Point 2)*** lodged a submission supporting this part of PPC1 in part, but raised concerns with respect to how 'habitable spaces' would be defined in practice. Subsequent discussions took place with the Council, whereby it was agreed that the following definition would be appropriate:

"Habitable Space

means a space used for activities normally associated with domestic living, but excludes any bathroom, laundry, water closet, pantry, walk-in wardrobe, corridor, hallway, lobby, clothes drying room, or other space of a specialised nature which is not occupied frequently or for extended periods. For clarity, a kitchen is only considered to be a habitable space where there is sufficient space for seating (including but not limited to kitchen tables, sofas and breakfast bar seating), or whether the kitchen shares an open plan area with another habitable space".

Assessment

88. I understand the second sentence of this "agreed" definition is that resulting from discussions between the Council and NZFF. However as acknowledged in the section 42A report, there are a number of potentially ambiguous aspects to the definition. An example is the term "not occupied frequently or for extended periods", although I note this term is used in the Auckland Unitary Plan. A further issue is how to define which parts of a kitchen might be a habitable space.

89. I did not hear any evidence as to the *extent* to which the current rule is a problem with rural dwellings with respect to frequency and compliance costs, although I expect it

would arise, perhaps more particularly in the case of dwellings within the Rural A Zone, containing small allotments, or on existing allotments of more than 2 ha in area.

90. The Christchurch Replacement District Plan contains a definition of "habitable space" which excludes a bathroom, laundry, toilet, pantry, walk-in wardrobe, corridor, hallway, lobby, or clothes drying room[21]. A number of plans (Ashburton, Timaru, and Waimakariri District Plans) do not define this term. However where they are defined in both the Christchurch and Auckland District Plans, both of which have rural components, kitchens are not excluded.

91. While I am entirely supportive of a collaborative approach to resolving submissions, I have significant reservations about the exclusion of *some* kitchen spaces as worded, including the manner in which the definition has been framed. I note that Ms Whillans, while understandably wary about having an exhaustive list of habitable rooms, has conceded that the definition is "somewhat ambiguous"[22]. My concerns are as follows:

- The proposed definition of habitable space is quite orthodox except for the attempted exclusion of *some* kitchen spaces by way of seating arrangements;
- I have reservations as to whether a kitchen should be excluded from habitable space, noting how this is defined in other plans;
- A significant part of people's time can be spent in kitchens;
- I would foresee difficulties in administering a proposal where a Council officer was trying to determine whether there was "sufficient space for seating".
- It is likely that many extensions to existing dwellings within the setback would still involve habitable spaces, requiring compliance with existing procedures.

92. I consider that a more pragmatic option would be to exclude kitchens where these are separate from the main living area of a dwelling. Although imperfect, I consider this would be more appropriate and certainly easier to administer. The other alternative would be to exclude kitchens or combined kitchens/living spaces altogether from the application of the rules, but I do not think this would accord with current practice and the fact that combined living/kitchen areas are quite common in modern dwellings. On this basis, and again without wishing to detract from the constructive engagement between NZFF and the Council, I consider that only part of the proposed definition of habitable space as agreed between the Council and the submitter be adopted, and the definition of habitable space be as follows:

"Habitable Space

means a space used for activities normally associated with domestic living, but excludes any bathroom, laundry, water closet, pantry, walk-in wardrobe, corridor, hallway, lobby, clothes drying room, or other space of a specialised nature which is not occupied frequently or for extended periods. For clarity, a kitchen is only considered to be a habitable space where the kitchen shares an open plan area with another habitable space".

93. I note that NZFF did not seek specific wording through their submission and I am satisfied that the above amendment is within scope. The recommended text changes

[21] CRDP, definition of 'Habitable Space' (Decision 16).
[22] Section 42 a report, paragraph 3.6.3

are set out in Appendix 2 to these recommendations, and I also recommend that the submission of NZFF be **accepted in part**.

Section 32AA

94. The primary thrust of the amendments in Part F is a reduction in regulatory requirements as it relates to extensions to dwellings in close proximity to State Highways 1 or 77 – in other words, it is an 'enabling', albeit modest, amendment. I agree with the conclusions of the Councils section 32 assessment, and acknowledge that there are currently inefficiencies and unjustified costs to affected parties in requiring a noise assessment to be undertaken for building extensions involving those parts of dwellings which are not used for rest or sleeping. This is also a rule which relates to protecting property owners from road noise on two major routes in the District, rather than an issue relating to adverse effects on third parties.

Part G – Definition of Rural Activity and Rural Service Activity

95. The issue that has resulted in this final amendment sought through PPC 1 is described succinctly by the Council as follows:

"The key issue is confusion over which activities fall under the definition of Rural Service Activity. Rural Service Activities are Discretionary Activities in the Rural Zone while other Commercial Activities have a Non-Complying status. However, it is unclear whether the line should be drawn between Commercial Activities and Rural Service Activities. This confusion arises as there is currently no definition of a Rural Activity in the Plan. Farming Activities are defined in the Plan, however activities that can establish in a Rural Zone without resource consent are broader than farming activities".

96. The Council proposes to address this issue by adding a definition of Rural Activities and amending the definition of Rural Service Activities as follows:

"Rural Activities

means the use of land and buildings for the primary purpose for farming (sic) and includes farming activities intensive farming activities and forestry activities".

"Rural Service Activities

means any activity that provides a commercial service ~~service activities that are related~~ to a rural activity such as seed cleaning rural contractors and grain drying"..

Submission

97. The only submission was from NZFF ***(Submission PC1-1, Sub. Point 3)*** who sought that the term rural activity be more simply defined as meaning "farming activities, intensive farming activities, and forestry activities".

Assessment

98. I agree with Ms Whillan's observation that the alternative wording proposed by NZFF simplifies the definition and is preferable to the proposed wording of the term "Rural Activities" as notified by the Council.

99. In terms of justifying the change itself, I note that as rural activity is not defined under the Plan, consequentially the meaning of rural service activity is also unclear and it is

possible that service activities linked to rural activities could be inadvertently captured as a commercial activity. The Council's primary concern appears to be that the current definition of rural service activity is somewhat too broad, and could lead to a larger scale 'industrial' activity being able to establish as of right, having only limited connection to the rural environment, under the guise of being "related to" a rural activity.

100. In conclusion, I consider that this component of PPC1 is justified as it better defines the relationship between rural activities and rural service activities, and accordingly would clarify the administration of the ODP. There have been no submissions in opposition to this component of PPC1 in principle. I recommend that the definition of "Rural Activity" as proposed by Federated Farmers be incorporated into the ODP, and that the definition of "Rural Service Activity as notified as part of PPC1 also be incorporated into the ODP. I also recommend that the submission of NZFF be accepted.

Section 32AA

101. The effect of Part F of PPC1, and the clarification of the relationship between rural activities and rural service activities would be to provide greater certainty for plan users. It does have the potential to make some categories of activities with a more *general* linkage to the rural area potentially more likely to require consent, although there would be an offsetting advantage to rural services directly related to rural activities. However the only submission was effectively in support of these amendments. I adopt the conclusions of the Councils section 32 assessment.

RC Nixon

Hearings Commissioner

Date: Monday, 20 March 2017