

Decision of Hearings Commissioner appointed by the Waimakariri District Council pursuant to the Resource Management Act 1991 on Private Plan Change 28 – PG Harris

Introduction

1. I was appointed by the Waimakariri District Council to hear and determine this Private Plan Change according to the provisions of the RMA. In reaching my decision I have also considered all written submissions and further submissions received to PC28.
2. Proposed Plan Change 28 (PC28) seeks to rezone Lots 1 – 3 DP 476847, held in certificates of title CFR 659932, CFR 659933 and CFR 659934. The land is known as 116, 136 and 148 McHughs Road, Mandeville North.
3. The identified plan change amendments seek to retain the existing Rural Zoning of the area comprising the former gravel pit known as 148 McHughs Road, and to rezone 116 and 136 McHughs Road from Rural to Residential 4A. Therefore any actual change in zoning sought from Rural to Residential 4A only affects a portion of the land subject to the PC28. The area of land to remaining as a Rural Zone is not proposed to be included within the Outline Development Plan area.
4. As notified, PC28 proposes changes to introduce a new Outline Development Plan into the District Plan, amends associated planning maps and adds or amends rules. The changes proposed are:
 - Insert District Plan Map 179 - Mandeville North McHughs Road, Mandeville Road Outline Development Plan;
 - Amend District Plan Maps 56, 57, 92 and 93 to show the proposed Residential 4A Zone and existing Rural Zone;
 - Add new Rule 27.1.1.32 (minimum floor heights within the Mandeville North McHughs Road, Mandeville Road Outline Development Plan Map 179);
 - Add new exemption Rule 30.6.2.14 (exemption to Rule 30.6.1.26 relating to vehicle crossing separation distances to intersections within the Mandeville North McHughs Road, Mandeville Road Outline Development Plan Map 179);
 - Add new exemption Rule 30.6.2.15 (exemption to Rule 30.6.1.32 relating to road separation distances to intersections within the Mandeville North McHughs Road, Mandeville Road Outline Development Plan Map 179);
 - Add new Rule 31.1.1.50 (fencing of pedestrian walkways within the Mandeville North McHughs Road, Mandeville Road Outline Development Plan Map 179);
 - Add new Rule 32.1.1.20 (maximum allotment numbers within the Mandeville North McHughs Road, Mandeville Road Outline Development Plan Map 179);
 - Add new Rule 32.1.1.89 (minimum subdivision floor heights within the Mandeville North McHughs Road, Mandeville Road Outline Development Plan Map 179);
 - Add new clause (aj) to Rule 32.1.1.27 (compliance with development within the Mandeville North McHughs Road, Mandeville Road Outline Development Plan Map 179); and,
 - Consequential amendments to numbering, maps and cross references.
5. Public notification of PC28 occurred on 11 June 2016 with submissions closing on 8 July 2016. Five submissions were received. A summary of the submissions was publically notified on 13 August 2016 with further submissions closing on 26 August 2016. One party lodged a further submission.
6. Prior to the hearing a report pursuant to Section 42A of the Resource Management Act (the Act) was prepared by Mr Matthew Bacon, which included supporting reports from

Kalley Simpson (stormwater and flood risk), Kelly LaValley (wastewater and water), Bill Rice (transportation) and Jon Read (off road linkages and community park facilities). The report was circulated to the required parties before the hearing.

7. The hearing for PC28 took place on 23 November 2016 in Rangiora. Following the hearing the hearing was adjourned and subsequently the applicant provided a written right of reply which I received on 7 December 2016. I considered the information provided within this right of reply and further considered whether I required any further information prior to formally close in hearing. I determined that nothing further was required and formally closed the hearing on 16 December 2016.

Plan Change Environment

8. The Plan Change site comprises two areas. The first is approximately 4.5 hectares and contains a former gravel pit (148 McHughes Road). This pit descends to a depth of up to 3 metres below ground level and forms a steep bank on three sides. Some filling has occurred raising the level of a number of forestry access tracks within this area. This area is identified as an area of high flood hazard. The zoning of this land is proposed to remain as Rural.
9. The remainder of the site is generally flat and is in pasture. There is a stock water race which runs along the southern boundary of the site. This remaining area of land is proposed to be rezoned to a Residential 4A Zone.
10. The wider environment is rural residential zoned land (mix of Residential 4A and 4B which makes up the Mandeville community. In addition within the wider environment lies the recently Operative Amendable North Business 4 Zone (Operative December 2015).

Hearing Appearances

11. Evidence on behalf of the applicant had been pre-circulated prior to the hearing. Three briefs of evidence had been precirculated being from Mr Paul Thompson (Planning), Mr Tim McLeod (Provision of Infrastructure) and Mr Andrew (Andy) Carr (Traffic).
12. At the hearing Mr Paul Thompson appeared introduced the Plan Change on behalf of the applicant. Mr Thompson is employed as a Senior Resource Management Planner at Elliott Sinclair Partners Limited. Mr Thompson identified that Mr Harris (on behalf of the applicant) would be attending the hearing although due to other commitments could not be present at the start of hearing. Mr Harris did not present any evidence or make presentations at the hearing. Mr Thompson also introduced Mr Carr who was present at the hearing. Mr Thompson also advised that Mr McLeod was not present and would not be appearing at the hearing to present his evidence.
13. I expressed concern to Mr Thompson that Mr McLeod was not present and was therefore not available to answer any questions. While there was a high level of agreement between Mr McLeod and the Section 42A report authors on the infrastructure matters addressed relating to wastewater, water and stormwater Mr McLeod in his evidence did take some issue with one recommendation in the Section 42A report. This related to the implications of providing an additional reserve link. In his evidence he stated that he considered any changes to the ODP that has the potential to further restrict flood flow path to be imprudent. In response to his precirculated evidence there were some questions I would have posed to Mr McLeod on this part of his evidence had he been available. While I have considered the evidence of Mr McLeod I have not been able to afford it as much weight as I may have were he present at the hearing and able to answer questions.

14. Mr Thompson a planning consultant outlined the proposal and addressed matters raised in the Officers Report. He also addressed the statutory provisions and the planning framework. He considered that there was a high level of agreement between himself and Mr Bacon. He identified that there are two areas where there was not agreement. The first related to the appropriateness of an additional non-vehicular connection and the second was that he disagreed that the exemption to the location of vehicle crossings should be removed. Mr Thompson addressed some specific changes to rules including those relating to fencing and access. Mr Thompson concluded that the benefits arising from PC28 outweigh the costs and include the efficient utilisation of the land resource while providing for a high quality residential environment with minimal environmental impacts beyond the zone. He concluded that in his opinion the purpose of the Act would be better achieved through the approval of PC 28 as notified with the additional amendments contained in his evidence.
15. Mr Carr presented traffic evidence. Mr Carr is a director of Carriageway Consulting Limited a specialist traffic engineering and transport planning consultancy. In his evidence he addressed the transportation aspects of the plan change request. Mr Carr particularly focused on responding to questions or uncertainties raised in the Section 42A report, particularly that part prepared by Mr Rice, and in addressing concerns raised in submissions. Mr Carr provided updated evidence relating to peak hour assessments (morning and evening peak hour), updated accident records, pedestrian and cycling linkages and separation distances between new vehicle crossings and intersections. Overall, Mr Carr concluded that having considered traffic effects of PC28 he remained of the view that it would not give rise to any adverse efficiency or road safety effects, particularly at the nearby Tram Road/McHughs Road intersection. He considered that an additional pedestrian/cyclist route was not required within the site to connect with land that was subject to Plan Change 33. He did recommend a minor change be made to the exemption sought to Rule 30.6.1.26 to ensure that vehicle crossings are not located immediately adjacent to the minor approach to intersections on the same side of the road.

Submitters

16. No submitters appeared at the hearing. At the start of the hearing I was provided with an email on behalf of the New Zealand Fire Service Commission advising that the Commission withdrew its request to be heard at the hearing on the Proposed Plan Change. I have read and considered the written submissions from submitters who did not attend the hearing in making this decision.

Council Officers

17. I heard from Mr Matthew Bacon, the author of the Section 42A report, together with Mr Rice, Mr Simpson and Mr Read. Mr Bacon advised that Mrs LaValley was available to attend the hearing. However as I had no questions her appearance was not necessary.

Statutory Framework and Considerations

18. The statutory framework and considerations were outlined in the Section 42A report by Mr Bacon and in the evidence of Mr Thompson.
19. Relevant to this application, a District Plan (change) is to accord with and assist the Council to carry out its functions so as to achieve the purpose of the Act.
20. When considering any District Plan Change, the territorial authority is to have regard to any proposed Regional Policy Statement (there is not one) and give effect to the operative Regional Policy Statement.

21. On 19 April 2016 the Greater Christchurch Regeneration Act (Regeneration Act) replace the former Canterbury Earthquake Recovery Act 2011. Of particular note Section 60 of the Regeneration Act requires that any person exercising powers or performing functions under the Resource Management Act 1991 must not make a decision or recommendation relating to or part of greater Christchurch that is inconsistent with any recovery plan. Section 60 of the Regeneration Act requires that my decision on this Plan Change not be inconsistent with the Land Use Recovery Plan.
22. I must also have regard to any relevant management plans and strategies under other Acts. I also have to take into account any relevant planning document recognised by the iwi authority.
23. I note the duties under sections 31, 32, 74, 75 and the overall assessment required under Part II of the Act. I recognise that this Plan Change is to be processed in accordance with the matters contained in Part 1 of the First Schedule of the Resource Management Act.

Section 32

24. PC28 does not seek to alter any objectives in the Plan. Therefore any section 32 evaluation must:
 - (b) Examine whether the provisions (policies, rules, or other methods to:
 - (i) implement the objectives) are the most appropriate way to achieve the objectives by identifying other reasonably practicable options for achieving the objectives
 - (ii) assess the efficiency and effectiveness of the provisions in achieving the objectives; and
 - (iii) summarise the reasons for deciding on the provisions.
25. A Section 32 report was available at the time of notification. I am required to undertake a further evaluation under Section 32AA for any changes that are made to PC28 since the initial Section 32 report was prepared. This is to be undertaken in accordance with Section 32(1) to (4) at a level of detail that corresponds to the scale and significance of the changes.
26. This evaluation is able to be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken. Any changes to the notified Plan Change provisions have been evaluated and considered as part of this decision.

The Issues

27. I am mindful that my consideration of the Plan Change and the issues associated with it requires an assessment of whether or not the Change achieves the purpose of the Resource Management Act (RMA). The purpose of the RMA is the promotion of sustainable management of natural and physical resources. In considering the sustainable management of these resources I have considered a range of matters and on the basis of the application, submissions received, evidence presented at the hearing, the matters addressed in the Section 42A report and the responses to questions of those parties who attended the hearing I record my findings.
28. The principal issue is whether that part of the site where the zoning is sought to be changed from Rural to Residential 4A should be rezoned. As part of addressing the principal issue there are a number of sub issues raised in the application, the Section 42A report, the evidence presented and in the submissions that need to be addressed which are summarised as:
 - Infrastructure (water, wastewater, stormwater and flooding) effects
 - Character and amenity
 - Traffic, Roding and linkages

29. I address each of these before reaching an overall finding.
30. The Section 42A report, the evidence of the applicant and answers provided to questions at the hearing by on behalf of the applicant and the Waimakariri District Council addressed all of the matters raised in submissions. As expressed earlier I did not hear additional information from many submitters at the hearing. Therefore, in preparing this decision I have sought not to duplicate evaluations and information provided to me in the Section 42A reports and the evidence presented at the hearing, unless I have reason to do so.

Infrastructure Effects

31. Some of the written submissions expressed concern over the provision of an adequate water supply, including for firefighting capability. One submission sought that the use of on-site private wells be forbidden.
32. The report of Mrs LaValley identified that should the Plan Change application be approved, there is adequate capacity within the Mandeville Water Supply to accommodate the proposed development area. She also identified that adequate firefighting protection can be provided for the development, but recognised it would require provision of on-site 20,000 litre storage tanks.
33. I note provision of wells is a matter managed by Environment Canterbury under its functions and as such is outside matters I can properly consider in relation to this Plan Change. I have not therefore made any changes to the Plan Change to address this matter.
34. With respect to wastewater and stormwater these were not raised in any submissions however, Mrs LaValley (wastewater) and Mr Simpson (stormwater) confirmed that there were likely no impediments to future sewer or stormwater servicing of the land subject to the change in zoning. Mr Simpson did note that the actual design for stormwater so could you can be addressed at the subdivision and building consent stage. He recognised that the discharge of stormwater from the right-of-way will likely require consent from Environment Canterbury who will address any actual or potential effects relating to this. I acknowledge that Mr McLeod also reached this conclusion.
35. Turning to flood risk concerns were raised by one submitter relating to filling of the gravel pit and the implications of this on flood risk. In considering this I recognise that the land covered by the pit is not proposed to be rezoned to facilitate residential development. Mr Simpson acknowledged that should the pit be filled in the future then it would require a more detailed investigation of the flood capacity and any potential benefit of that providing flood attenuation. Mr Bacon advised that the current District Plan provisions that would apply to the Rural Zone sufficient to ensure that if further earthworks were undertaken in the pit such assessment would likely be required. I accept the evidence provided to me that as this land is not proposed to be rezoned I do not find it necessary to impose additional rules or controls relating to the area of the gravel pit.
36. With respect to the remainder of the site proposed to be rezoned to Residential 4A accept the evidence that proposed rule 27.1.1.32 to set the floor levels and minimum of 300 mm above the 200 year flood event (0.5% AEP flood event) is appropriate to mitigate the flood risk based on the modelling. Providing that this rule is inserted I accept the evidence that this is adequate to ensure that the proposal is appropriate from a flood risk perspective and that specific matters are able to be carefully considered and the subdivision stage to ensure that existing flood flow path are not affected by the development.

37. Mr Bacon advised the existing District Plan provisions enable matters relating to water supply, wastewater and stormwater to be adequately addressed at the time of subdivision and as such I have found no need to insert any further provisions into PC28 relating to these matters. With respect to floor levels I determine that with the insertion of proposed rule 27.1.1.32 into the District Plan along with the existing matters that are able to be considered at the time of subdivision are sufficient to ensure that any issues associated with floor levels, flooding and flow paths are able to be adequately managed.

Character and Amenity

38. Some submissions raised issues relating to character and amenity matters.
39. I accept that changing the zoning on part of this property from Rural to Residential 4A will change the character and amenity, especially as experienced from neighbouring properties. However, as identified by both Mr Thompson and Mr Bacon the site of PC28 is within the growth management boundary identified for Mandeville in the District Plan (reflected in Objective 18.1.3 and Policy 18.1.3.1). As such, it is clear that the District Plan anticipates that the character and amenity of land within the growth boundary will change. Therefore, I accept the opinions expressed by both Mr Bacon and Mr Thompson that while PC28 will change the outlook on amenity for some sites this is anticipated by the District Plan and will result in development consistent with the anticipated character of Mandeville.
40. The other key matter addressed in submissions relates to the appropriateness or otherwise of certain types of fencing within the area proposed to be rezoned as Residential 4A. There was agreement amongst Mr McLeod and Mr Bacon at the hearing that this was an appropriate matter to be addressed by way of an additional rule in the District Plan. I accept their opinions on this matter and consider it is necessary and appropriate to impose an additional rule that manages the impacts of fencing design. The rules proposed control permeability and location fencing. I consider that the addition of two additional rules being 31.1.1.50 and 31.4.1 will contribute to the achievement of maintaining the opportunity for a rural outlook from the zone. This is consistent with Objective 17.1 and Policy 17.1.1.1. I accept the opinion of Mr Bacon that in accordance with Section 32(2)(a) there are not likely to be any additional economic or employment opportunities resulting from this change in accordance with Section 32 (2)(b) there are unlikely to be any risks associated with the change, given the narrow scope of these additional District Plan methods.
41. The final matter relating to character and relates to the maximum number of lots that can be created within the PC28 area. While addressing this matter under character and amenity I acknowledge overall yield is also a key determinant when identifying the actual or potential effects on the environment of this Plan Change. A limitation on overall yield was proposed as part of the original plan change. In his evidence Mr Thompson identified that the maximum number of residential allotments that will be able to be provided within the PC 28 area is actually 21 cannot 22 as originally proposed. He stated that a further change to Rule 32.1.20 is not strictly necessary as the rule refers the maximum number of residential allotments he considered it appropriate for the rule to refer to 21 allotments. He considered this provided greater clarity as to maximum residential allotment yield and that providing an accurate number was in the interests of managing community expectations and directly responded to the submission seeking a maximum number of lots be specified. I accept Mr Thompson's evidence and consider it is most appropriate to accurately reflect the maximum number of allotments that would be possible within this area as 21. Based on evidence I have heard I have determined to amend Rule 32.1.1.22 to refer to 21 allotments.

Traffic, Roading and Linkages

42. Issues associated with traffic and provision of linkages was the focus of much of the evidence presented at the hearing. I firstly address traffic and roading matters and then turn to linkages.
43. With respect to traffic and roading matters in addition to the written submissions at the hearing both Mr Carr and Mr Rice, experienced and qualified to address traffic and transportation matters, were available to present their evidence/reports, respond to any outstanding matters and answer questions. Both Mr Carr and Mr Rice considered all traffic related matters that were raised in the submissions.
44. Overall, there was a high level of agreement between Mr Carr and Mr Rice in their opinions of the impacts of the plan change from a traffic and transportation perspective. Mr Rice in his Section 42A appendix identified some additional matters that he considered should be addressed in more detail at the hearing. Mr Carr did address these matters; in particular he provided updated information relating to accidents between 2014 and 2016. He also addressed design matters associated with proving access.
45. Mr Carr in his evidence outlined his assessment methodology for determining peak hour (evening and morning) incorporating traffic associated with Plan Change 33 that has been approved but not fully implemented. Mr Carr's conclusions were that when allowing for Plan Change 33 traffic any changes and queues and delays associated with PC28 are small and will not be perceptible. Mr Rice was provided an opportunity to respond updated information presented by Mr Carr and he concurred with Mr Carr's opinions.
46. Mr Carr provided updated information relating to road safety. He reinforced his view that safety performance of the intersection is no different than what would be expected and is no evidence of any safety related deficiencies in the intersection geometry.
47. Mr Carr also addressed the exemption sought in the PC 28 from Rule 30.6.1.26 being the minimum separation distances between vehicle crossings and intersections. Mr Rice was of the view that providing a complete exemption should not be allowed as he considered that matters such as sight distance and the location of other accesses did need to be taken into account. Mr Carr in his evidence accepted that the rule as proposed in PC28 could enable access to be located immediately adjacent to an intersection and he confirmed that this was not the intended. Mr Carr was of the view that concerns relating to sight distances are able to be taken into account through existing Rule 30.6.1.24 of the District Plan and that in addition Rule 30.6.1.19 also enabled the location of other accesses to be addressed. He therefore considered that additional rules to address these matters were not necessary.
48. Mr Carr did remain of the view that an exemption from the rule for this site is appropriate as otherwise there remained potential that non-compliance of this rule would render the entire activity a discretionary activity when there may be negligible or no traffic effects. Mr Carr did recognise that Mr Rice had valid concerns that while unlikely, providing a complete exemption from the rule, could potentially give rise to adverse road safety effects. Mr Carr considered that this concern could be addressed through amending the rule as sought by including a caveat that the exemption applies "subject to the vehicle crossing being sited adjacent to the lot boundary which is further from intersection located on the same side of the road". This was a minor change to the wording included in the evidence of Mr Thompson. In the right of reply Mr Thompson confirmed the wording of the rule that was proposed was consistent with that set out by Mr Carr.
49. Setting aside the issue of linkages which I address next Mr Rice at the hearing advised that having received Mr Carr's evidence and heard the questioning of Mr Carr that he was satisfied that Mr Carr's evidence has addressed any outstanding matters he had raised. I therefore accept the evidence of both Mr Carr and Mr Rice that subject to amendment of

Rule 30.6.2.14 as suggested by Mr Carr that any traffic and transportation effects of PC28 are appropriate and are consistent with the outcomes sought in the objectives and policies of the District Plan.

50. I now turn to the matter of linkages. This was the one topic that hearing remained an area of disagreement between the applicant's evidence and that of the Council at the conclusion of the hearing.
51. On the Outline Development Plan it is proposed to show the area to be rezoned as Residential 4A, a local road accessing the site from McHughs Road (proposed local road) as well as an area proposed to as a local reserve and pedestrian/cycle access.
52. Mr Thompson at the hearing presented an indicative subdivision concept plan which showed a potential layout of lots. This included 6 lot access directly of a right of way off Mandeville Road and four lots accessed from a right of way off the proposed local road. I accept that this layout is indicative only and this level of detail not intended to be shown on the Outline Development Plan; rather it was provided to illustrate how the development of this site may occur.
53. There was a high level of agreement in the evidence presented at the hearing in relation to the features to be included on the outline development plan on the south-western portion of the site. This included the continuation of a walkway from Mandeville Park in the South through to Truro Close to the east of the plan change area. The area where there was not agreement related to whether an additional pedestrian/cycle access should be provided directly from the site onto Mandeville Road.
54. In the Section 42A report Mr Bacon, relying on the report and opinions of Mr Read and Mr Rice, considered that a link from the site directly to Mandeville Road should be provided and that this would enhance non-vehicular connectivity. Mr Bacon concurred with the evidence of Mr Rice and Mr Read and considered that provision of a walkway and cycleway from the proposed local road to the Mandeville Road Plan Change Area boundary should form part of the Outline Development Plan. He considered this to be the most effective way to promote non-vehicular trips within the Mandeville North settlement and to the future Business 4 Zone. Mr Bacon further noted that the addition of a walkway/cycleway would have the added benefit of removing a 90° reserve corner that was addressed in by Mr Read in paragraph 2.2 of his report.
55. Mr Bacon recognised that given shape and width of the underlying title of 136 McHughs Road meant there were limited options of where to locate such a connection to Mandeville Road. He considered the most obvious options being either along the northern boundary of the gravel pit or to the south along the boundary of the Truro close subdivision. Mr Bacon's view was the preferred option would be to the South as this would avoid locating this walkway/cycleway conflict near the banks of the gravel pit. Mr Bacon considered that there was a degree of scope for adding an additional linkage within submission point 87.1 (Gavin Bennett and Yvonne Thompson) which sought a more detailed Outline Development Plan. Mr Bacon did recognise that Mr Read had identified that the District Plan does contain some subdivision design matters could potentially be used to require further public linkages to Mandeville Road at the time of future subdivision development occurring. Mr Read identified matter of control (iii) in the subdivision design requirements as relevant as it is to provide safe and efficient pedestrian and cycle access. Mr Bacon was of the view that having the additional linkage shown as detail on the Outline Development Plan would provide greater clarity to the framework of future development and therefore was preferable.
56. Mr Thompson disagreed with Mr Bacon on the matter of the provision of an additional pedestrian/cycle link. Mr Thompson addressed this in his evidence in two ways. The first whether there was scope within the submissions received to the Plan Change to require

an additional linkage. Mr Thomson's view was there was not scope. Secondly, Mr Thompson also addressed the merits of providing an additional link and his evidence and considered that on its merits an additional linkage should not be provided.

57. Firstly I address the matter of scope. Mr Thompson, while recognising he had no legal qualifications did in some detail address case law on the matter of scope in his evidence. I do think that scope is a matter that appropriately qualified and experienced planners can give consideration to when presenting planning evidence. In particular, it is relevant for planners to consider whether there are actual or potential effects of a proposal or in this case a change to an Outline Development Plan that might affect parties other than those who submitted on the original proposal. Mr Thompson did this in his evidence when he considered whether providing an additional pedestrian linkage along the southern boundary of the Plan Change site may result in effects on those properties adjoining any new public walkway. As a linkage was not shown on the notified Plan Change, and was not specifically identified in submissions, he considered it was possible that had other parties known a public access area was to be provided near their property (those immediately adjoining properties fronting Truro Close) that some parties may have chosen to lodge submissions. Mr Bacon also acknowledged this potential at the hearing.
58. In evidence, and responding to questions arising from evidence at the hearing, alternatives to providing an additional access link to Mandeville Road along the southern boundary of the property that would not impact on property owners in Truro Close were explored. This included providing a linkage along the northern boundary of the Outline Development Plan area and another alternative of providing pedestrian cycle linkage joining the two rights of way that were shown on the indicative subdivision layout. At the hearing I was able to explore the actual or potential effects of these options with the witnesses that were available. In particular I was able to explore the positive versus negative effects of having a pedestrian/cycle linkage between the two right of ways with both Mr Rice and Mr Carr who are experienced appropriately qualified traffic engineers. Both recognised that while best practice is for pedestrians and vehicles to be physically separated it was likely a safe design could be accommodated.
59. I did have some concerns, which I explored with Mr Thompson through questioning, as to whether the level of detail he had gone to in citing case law and legal principles was within his expertise as an expert planning witness. This is a matter that expert witnesses need to be exceedingly cautious of.
60. The applicant provided a written right of reply following adjournment of the hearing. Part of this right of reply included a legal opinion from A C Hughes-Johnson QC addressing the issue of scope. The opinion considered the background to this situation as well as the relevant law and legal principles which govern the ability of a local authority to amend the provisions of a plan change. The legal opinion concluded that as it cannot be assumed that the pursuit of additional linkages would not have attracted submissions from interested parties had public notice been given that, if there are not submissions already existing on the plan change that would allow such change that in applying the precautionary principles it would not be lawful for such change to be made. The legal opinion also considered whether there was scope within the original submissions that an additional pedestrian/cycle link could be considered a reasonable outcome arising from this submission. The opinion identifies that there are not submissions that can be considered to clearly seek this outcome.
61. This legal opinion which forms a valid part of the right of reply does address the matters of scope from a legal perspective in a way that aids my decision-making. In this situation I find that, irrespective of the merits of requiring an additional pedestrian/cycle access, there is not scope available for me to require this. On this basis, irrespective of its merits or otherwise, I have not included the additional linkage addressed in the Section 42A reports.

62. Having reached this conclusion as to the scope for this Plan Change I acknowledge that Mr Read and Mr Bacon have identified that there are other options outside of PC28 to consider the merits of an additional walkway/cycleway connection to Mandeville Road. This was also acknowledged by Mr Thompson in the applicant's right of reply. I accept the evidence that the provision of an additional linkage is still a matter that is able to be considered at a later time, for example at the time a detailed subdivision design is submitted and the subdivision consent considered by the consent authority. For avoidance of doubt I record have made no determinations in relation to Plan Change 28 that would mean further pedestrian/cycle links in addition to that shown on the ODP are not able to be considered in future processes.

Changes to Rules necessary to address effects and matters raised in submissions

63. In the above paragraphs I have addressed the matters at issue in the consideration of this Plan Change. As a result of the submissions, reports and evidence presented at the hearing, some modification to the provisions of PC 28 as notified are before me to consider. Apart from the issue of an addition pedestrian access there was agreement amongst the experts for the applicant and the Council as to the appropriate form and content of the rules and provisions necessary to give effect to this Plan Change. These were summarized evidence and in the Right of Reply provided in writing by Mr Thompson.
64. I have considered whether the changes proposed are within scope. I consider the amendments are within the scope. They are lesser in scale or intensity or degree of adverse effects than the proposal originally notified and/or respond to issues arising from submissions. I find that the changes do not affect any existing party to any different or greater degree than the original proposal, nor would they lead to any party lodging submissions who has not already done so. I therefore have considered and determined PO28 on the basis of the amended version presented.

Statutory Considerations

Waimakariri District Plan

65. Mr Bacon and Mr Thompson addressed the Waimakariri District Plan provisions. The District Plan includes a number of objectives and policies that are relevant to this Plan Change Proposal. .
66. PC28 does not seek any amendments to any of the objectives and policies. Mr Bacon in his Section 42A report described the thrust and direction of the objectives and policy framework applicable to the Mandeville North settlement as anticipating:
- a. The Residential 4A and 4B zones within Mandeville are very low density detached living environments in a rural setting
 - b. Tram Road, as an arterial transport network, is protected;
 - c. Further growth at Mandeville utilises the reticulated water and sewer utilities provided to the settlement;
 - d. The quality, form and function of Mandeville is maintained and enhanced;
 - e. The Residential 4A and 4B zones in Mandeville have a relationship with the Rural Zone that retains a sense of living in a rural environment and supports the characteristics of the Rural Zone.
67. Of particular relevance is that this land is located within the Mandeville Growth Boundary and is consistent with Policy 18.1.3.1 and gives effect to Objective 18.1.3
68. PC28 will ensure appropriate servicing, access, and the minimum level of pedestrian/cycle connectivity is provided (and does not prohibit further connectivity being provided). It

shows adverse effects relating to stormwater and flooding can be appropriately managed, and will maintain amenity and character of the anticipated environment. Given the scope of the matters I am able to consider I find that the provisions of PC28 implement and achieve the existing objectives and policies in the District Plan.

Canterbury Regional Policy Statement

69. Mr Bacon also addressed the Regional Policy Statement. He identified the key provisions being those contained in Chapter 5 Land-use and Infrastructure, Chapter 6 – Recovery and Rebuilding of Greater Christchurch and Chapter 11 – Natural Hazards. I find that there are no areas of tension between PC28 and the operative RPS and it can be considered to give effect to the Regional Policy Statement.

Other Documents

70. Mr Bacon also addressed the Land Use Recovery Plan. As identified earlier I must not make a decision or recommendation that is inconsistent with the Recovery Plan on any of the following matters under the Resource Management Act which includes (f) the preparation, change, variation, or review of an RMA document under Schedule 1.
71. In considering this I have not identified any conflict or inconsistency between the PC28 and the Land Use Recovery Plan.

Part 2

72. My overall consideration of PC28 is subject to Part 2 of the Act. I am of the view that PC28 as amended is consistent with the sustainable management purpose of the Act.
73. I do not consider any of the matters of national importance in Section 6 to be applicable to my determination of the Plan Change, nor has any party put any of the matters addressed in Section 8 before me. In terms of section 7, I consider the efficient use and development of natural and physical resources 7(b), the maintenance and enhancement of amenity values 7 (c), and the maintenance and enhancement of the quality of the environment 7(f), are most relevant and I have had particular regard to these matters in making my decision.

Section 32

74. No new objectives or changes to objectives in the District Plan have been proposed in PC28. I am required to assess whether the amended policies and rules are the most appropriate for achieving the objectives. As identified earlier there are no new policies or changes to policies proposed. Therefore, it is changes to rules and any other provisions that I am to consider. I have referred earlier in this decision to the relevant provisions of the District Plan. I conclude that the amendments to the rules and other provisions are the most appropriate way of achieving the objectives of the District Plan.
75. I have considered alternative development and whether the maintenance of the status quo would be more appropriate. Fully informed by the provisions of the District Plan including the growth boundary around Mandeville, I do not consider any alternative development or maintenance of the status quo would be more appropriate.
76. Having considered all of the effects, I conclude that the provisions of PO28 are the most appropriate for achieving the objectives of the District Plan.
77. I am required to undertake further evaluation under Section 32AA of any provisions changed from those notified. Those changes are summarised in the evidence and right

of reply provided by Mr Thompson, in the evidence and response to questioning by Mr Carr and Council officers and in this decision. Based on the information before me in the application, submissions, evidence and right of reply I find these provisions to be most appropriate.

78. In relation to the potential for a new vehicle crossing and road intersection, given the evidence of Mr Carr, and confirmation from Mr Rice that the amendment to rules 30.6.2.14 and 30.6.2.15 addresses the concerns he had expressed in his report – I consider that the rule addressing the setback from an intersection is appropriate and necessary to achieve the objectives of safe and efficient functioning of the roading network.
79. The addition of a rule managing the type and location of fencing is appropriate to ensure that an appropriate amenity results from the subsequent development of this area. Inserting new Rule 31.1.1.50 is most appropriate and necessary.
80. Providing for a maximum residential yield of 21 lots is consistent with the evidence provided to me and is consistent with the assessment of effects of the Plan Change addressed in evidence. This is most appropriate and necessary.
81. Overall, I consider that the benefits of the changes proposed are important and the amended PC28 is the most appropriate.

Decision

82. PC28 to the District Plan is approved subject to the amendments set out in the schedule to this decision (Attachment 1), together with any consequential amendments necessary to give effect to these changes.
83. The reasons for my decision have been set out above, and are summarised in Attachment 2.
84. The submissions in support of PC28 are accepted or accepted in part, and the submissions in opposition rejected.



Jane Whyte
Commissioner

Date: 28 February 2017

Attachment 1 - Amended Provisions

Chapter 27: Natural Hazards

Insert new rule 27.1.1.32

Within the Mandeville Road/ McHughs Road, Mandeville Outline Development Plan area shown on District Plan Map 179, any dwellinghouse shall have a finished floor level of 300mm above the 0.5% Annual Exceedance Probability flood event.

Chapter 30: Utilities and Traffic

Insert new rule 30.6.2.14 as follows;

Within the Residential 4A Zone (Mandeville Road/McHughs Road, Mandeville North) shown on District Plan Map 179, vehicle crossings onto McHughs Road are exempt from complying with Rule 30.6.1.26 subject to the vehicle crossing being sited against the lot boundary which is furthest from the intersection located on the same side of the road.

Insert new rule 30.6.2.15 as follows;

The local road shown on the Residential 4A Zone (Mandeville Road/McHughs Road, Mandeville North) shown on District Plan Map 179 is exempt from complying with Rule 30.6.1.32.

Chapter 31: Health, Safety and Wellbeing

Insert new rule 31.1.1.50 as follows;

Within the Mandeville Road – McHughs Road Residential 4A Zone shown on District Plan Map 179, any fence greater than 1.2 metres in height or less than 50% visually permeable shall be:

- a. Located a minimum of 15 metres from any road boundary, a minimum of 10 metres from any internal site boundary, or and a minimum of 20 metres from any Rural Zone; and*
- b. Limited to a length of not more than 20 metres along any one side.*

Amend rule 31.4.1

Except as provided for by Rules 31.1.2, 31.2, 31.3, 31.5 and 31.6 any land use which does not comply with one or more of Rules 31.1.1.10 to 31.1.1.17, 31.1.1.20 to 31.1.1.64 is a discretionary activity.

Chapter 32: Subdivision

Insert new rule 32.1.1.20 as follows;

Within the Residential 4A Zone (Mandeville Road/McHughs Road, Mandeville North) shown on District Plan Map 179 the maximum number of residential allotments shall be 21.

Insert new rule 32.1.1.89 as follows:

Within the Mandeville Road/McHughs Road, Mandeville Outline Development Plan area shown on District Plan Map 179 any application for subdivision consent shall identify the minimum finished floor level required to achieve 300mm above a 0.5% Annual Exceedance Probability flood event for each new residential allotment.

Add the following new clause to Rule 32.1.1.27 Outline Development Plans;

- ai. *The Residential 4A Zone (Mandeville Road/McHughs Road, Mandeville North) identified on District Plan Map 179.*

Amend District Plan Maps 56, 57, 92 and 93 of the operative District Plan to zone the land Residential 4A as detailed on the following plans.

Any other consequential amendments

Attachment 2 - Decisions on submissions

Name	Sub #	Decision	Summary of Reasons for Decision
Gavin Bennett and Yvonne Thompson	87.1	Accept in Part	The submission sought a more detailed Outline Development Plan be provided. . The Outline Development Plan approved as part of PC28 identifies the land to be rezoned and identifies the minimum features which are to be retained or provided for.
	87.2	Accept in Part	The submission sought a maximum residential lot yield be specified which would inform the traffic assessments and other reports. Rule 32.1.1.20 specifies the maximum number of residential allotments is 21. This number is consistent with the assessments and evidence provided at the hearing.
	87.3	Accept in Part	This submission sought the status of the "forestry block" be protected. At the hearing the evidence provided by the applicant made it clear that the "forestry block" was not sought to be rezoned to Residential 4A. This area is no longer shown as being part of the Outline Development Plan.
	87.4	Accept in Part	<p>The submitter sought that a vehicular access from Mandeville Road be prevented and a lot yield is limited to be compatible with the safe and efficient vehicle access along McHughs Road.</p> <p>Based on the assessments provided by the applicant and in the Section 42A reports and the evidence and answers presented at hearing by Mr Carr and Mr Rice I have not found it necessary to restrict any form of vehicle access from the Plan Change area to Mandeville Road. It is recognised that the main road access will be from McHughs Road and this is shown on the Outline Development Plan. In response to submission 87.2 the maximum number of residential allotments is restricted to 21. The acceptance in part of this submission relates to limiting the maximum allotment yield.</p>
	87.5	Accept in Part	The submitter sought that the traffic impact assessment be updated to take into account changes that have occurred post September 2014 and that safety and well-being implications be considered. Mr Carr presented evidence at the hearing that

			reflected the updated traffic environment. Having heard this evidence, which Mr Rice concurred with I accept the evidence that traffic effects can be managed in an appropriate manner.
	87.6	Accept in Part	<p>The submitter sought that further detail on the capacity of the former gravel pit including filling be provided to confirm flood risk to the wider Mandeville community.</p> <p>This matter was addressed in evidence of both the applicant and in the Section 42A reports. This land is not sought to be rezoned to provide for residential activity and does not form part of the Residential 4A zoning shown on the Outline Development Plan.</p> <p>At the hearing it was determined that there are sufficient rules already within the Waimakariri District Plan to manage earthworks, including additional fill, in this area.</p> <p>Evidence provided at the hearing showed that all stormwater and flood risk effects associated with the land proposed to be rezoned for residential development could be effectively and suitably managed.</p>
Trevor Keats	84.1	Reject	The submitter sought that the application be declined. Based on the information before me including the Plan Change application, the Section 32 Report, submissions, further submissions, evidence and the Section 42A report I consider the Plan Change as amended by my decision is appropriate and the Plan Change should not be declined as requested in the submission.
New Zealand Fire Service	83.1	Accept in Part	The submitter sought that provision for sufficient water supply and access to firefighting purposes be provided in the event that the Private Plan Change is approved. As addressed in the decision evidence was provided that appropriate water supply including that firefighting could be provided and that the matter can be addressed at the time any subdivision consent is granted.
Waimakariri District Council	85.1	Accept in Part	The submission sought that the Plan Change be approved subject to the

Supported by Further Submission of PG Harris		Further Submission Accept in Part	amendments sought in other submission points. These matters are addressed in the two points below. My decision is that the Plan Change is approved.
Supported by Further Submission of PG Harris	85.2	Accept in Part Further Submission Accept in Part	The submitter seeks the new rule controlling fencing be provided. This matter is addressed in my substantive decision which recognises the importance of controls of fencing and providing for the amenity and characteristics sought in the Residential 4A zone.
Supported by Further Submission of PG Harris	85.3	Accept in Part Further Submission Accept in Part	The submitter seeks the new rule controlling fencing be provided. This matter is addressed in my substantive decision which recognises the importance of controls of fencing and providing for the amenity and characteristics sought in the Residential 4A zone.
Trevor Walmsley	86.1	Reject	The submitter sought seeks that the drilling private wells on sections be forbidden. This matter is addressed in my substantive decision which recognises that the provision of wells is a matter controlled by Environment Canterbury. My decision is that there is no need, nor ability, for me to for prohibit the digging of private wells.