

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHĪ**

Decision No. [2025] NZEnvC 259

IN THE MATTER of the Resource Management Act 1991

AND an appeal under clause 14 of the First
Schedule of the Act

BETWEEN J C & P B NAHKIES

(ENV-2023-CHC-97)

Appellants

AND SELWYN DISTRICT COUNCIL

Respondent

Environment Judge P A Steven – sitting alone under s279 of the Act

In Chambers at Christchurch

Date of Determination: 5 August 2025

DETERMINATION OF THE ENVIRONMENT COURT

A: Under s279(1)(b) RMA,¹ the Environment Court, by determination, orders
that:

- (1) the appeal is allowed to the extent that Selwyn District Council is directed to amend the plans and provisions of the Partially Operative Selwyn District Plan by making the changes set out in Appendix 1



¹ Resource Management Act 1991.

- attached to and forming part of this order; and
- (2) the appeal is otherwise dismissed.

B: Under s285 RMA, there is no order as to costs.

REASONS

Introduction

[1] This proceeding concerns an appeal by Mr and Mrs Nahkies (the Nahkies) against the decision of the Selwyn District Council to accept the Hearing Panel's recommendations in respect of the Partially Operative Selwyn District Plan (PODP).

[2] The appeal sought to amend the zoning of land at Tramway Road in Dunsandel (Lots 1 and 2 DP 74807 and Lot 1 305456 (Land)) from General Rural Zone (GRUZ) to Large Lot Residential Zone (LLRZ).

[3] The appeal was assigned to Topic 18: Rezone Dunsandel (Topic 18).

[4] There are no s274 parties to the appeal.

Agreement reached

[5] I have read and considered the consent memorandum of the parties dated 17 April 2025 which proposes to resolve the appeal.

[6] Following facilitated mediation held on 26 August 2024, and the subsequent exchange of information and discussions between the parties, the parties agree that the zoning of the Land should be amended from GRUZ to LLRZ.

[7] The parties have agreed amendments to the PODP, including:

- (a) amending the planning maps to:
 - (i) rezone the Land from GRUZ to LLRZ; and
 - (ii) consequentially remove the Land from Specific Control SCA-RD3 – West Plains and Foothills/Kakapō-tahi me Ngā Pākihi Whakatekateka o Waitaha (which relates to residential density/site sizes in the GRUZ); and
- (b) inserting an Outline Development Plan (ODP), consisting of a plan and a written narrative, into the Development Area section of the PODP. The Land becomes the first Development Area in Dunsandel, so will be referred to as ‘Dunsandel 1 Development Area’ (DEV-DU1) in the PODP;
- (c) inserting additional provisions in the subdivision chapter, specific to the Land, (with explanatory text in the ODP narrative) which:
 - (i) restrict any site created through subdivision from having a wastewater treatment and disposal system that discharges directly into the Dunsandel Community Drinking Water Protection Zone as identified in the Canterbury Land and Water Regional Plan (SUB-REQ10);
 - (ii) introduce additional matters of discretion relating to wastewater discharges associated with activities on each site (SUB-MAT7); and
 - (iii) introduce additional matters of discretion relating to noise attenuation measures to address potential reverse sensitivity effects from noise within the adjoining GIZ (SUB-MAT13).

[8] I have also read the affidavit of Elizabeth White affirmed 16 April 2025. The affidavit addresses the scope to make the changes sought and the rationale for the agreed changes in terms of s32AA RMA.

NPS-HPL

[9] In the consent documents dated 17 April 2025, the parties advised that

following court-facilitated mediation, the Nahkies provided a further assessment of the proposed rezoning against the National Policy Statement for Highly Productive Land (NPS-HPL). The Council engaged relevant experts to peer review the new material provided. The peer reviews concluded that the economic and planning assessments sufficiently demonstrated how the rezoning meets the requirements of the NPS-HPL. However, the documents supporting the consent order did not adequately address the NPS-HPL.

[10] By Minute dated 24 June 2025, I requested counsel to lodge further submissions and affidavits regarding the implications of NPS-HPL.

[11] Legal submissions and affidavits were duly received.²

[12] Environment Canterbury has not yet carried out the Highly Productive Land (HPL) mapping and identification process under cls 3.4 and 3.5. Accordingly, therefore, there are no HPL maps provided for in the regional policy statement. As such, cl 3.5(7) of the NPS-HPL applies to this appeal.

[13] In term of cl 3.5(7), the Nahkies' land is zoned general rural or rural production and is mapped as LUC 2 and 3 soils. The exceptions provided for in cl 3.5(7)(b) do not apply because the land is not identified for future urban development or subject to a Council-initiated, or an adopted notified plan change to rezone it from general rural or rural production to urban or rural lifestyle. Therefore, the NPS-HPL and the restrictions it sets out in respect of rezoning HPL apply to the Nahkies' land.³

² Legal submissions on behalf of J C and P B Nahkies dated 10 July 2025, supported by Affidavit of Geoffrey Dunham sworn 3 July 2025, Affidavit of Richard Johnson affirmed 9 July 2025, and Affidavit of Timothy Heath sworn 10 July 2025; Legal submissions on behalf of Selwyn District Council dated 16 July 2025, supported by Affidavit of Derek Foy dated 16 July 2025, Affidavit of Elizabeth White affirmed 16 July 2025, Affidavit of Hugh Blake-Manson dated 16 July 2025; Legal submissions in reply on behalf of J C and P B Nahkies dated 18 July 2025.

³ Legal submissions on behalf of Selwyn District Council dated 16 July 2025 at [2.3]-[2.6].

Nahkies' submissions

[14] The Nahkies submit the Dunsandel township is an “existing urban area” as it contains a number of zones which fall within the NPS-HPL definition of “urban” as a description of a zone. Accordingly, it is to be treated as an “urban area” for the purpose of cl 3.2(1)(a) of the National Policy Statement on Urban Development (NPS-UD), pursuant to which the Council, as a Tier 1 authority, must provide at least sufficient development capacity to meet the expected demand for housing in Dunsandel.

[15] The Nahkies say that they come within cl 3.6 of the NPS-HPL which enables the urban rezoning of their land, bypassing the application of the Policy 5 ‘avoid’ directive.⁴

[16] Mr Heath’s evidence is that Dunsandel will need an additional 46 dwellings by 2027, increasing to around 293 additional dwellings by 2054.⁵ Dunsandel currently has eight vacant residential zoned sites, leaving a deficit of dwellings over the long term of 30 years.⁶

[17] The Nahkies submit that in respect of Dunsandel, the proposed Plan is *not* currently giving effect to cl 3.2(1)(a) of the NPS-UD.⁷ Based upon Mr Heath’s evidence, cl 3.6(1)(a) of the NPS is satisfied as urban rezoning is required to provide sufficient development capacity to satisfy Policy 2 and cl 3.2(1)(a).

[18] The Nahkies submit, in accordance with cl 3.6(1)(b), there are no other reasonably practicable and feasible options for provision of at least sufficient development capacity within the same locality and market while achieving a well-functioning urban environment:

⁴ Akin to the situation in *Gardon Trust v Auckland Council* [2025] NZEnvC 58.

⁵ Affidavit of Tim Heath at [34].

⁶ Affidavit of Tim Heath at [16]-[17].

⁷ Particularly cl 3.2(1)(a), Objective 2, and Policy 2.

- (a) parties are agreed that the “locality and market” to be considered is Dunsandel;
- (b) while intensification is an alternative option, its effectiveness and feasibility in Dunsandel could face challenges in terms of community preferences, economic viability, and infrastructure costs. Mr Heath concludes, the potential for greater intensification of Dunsandel is not a reasonably practicable and feasible option for providing at least sufficient development capacity within the same locality and market, while achieving a well-functioning urban environment⁸ (cl 3.6(2)(a) NPS-HPL); and
- (c) there is no land which can be rezoned which is not highly productive or that has relatively lower production value. Mr Heath identified three parcels of non-HPL land in close proximity to Dunsandel Township, classified as LUC 4 soil.

[19] The environmental, social, cultural and economic benefits of the proposed development are considered to outweigh the long term environmental, social, cultural and economic costs associated with the loss of HPL for land-based primary production, taking into account both tangible and intangible values. This satisfies NPS-HPL cl 3.6(1)(c).⁹

[20] The proposal to provide for dwellings on a half-hectare lot meets the cl 3.6(5) requirements to ensure that the spatial extent of any urban zone covering HPL is the minimum necessary to provide the required development capacity.

[21] Ms White considers that denser development than was sought in the submission would not achieve a well-functioning urban environment, with smaller lots located further out from the centre of the township than those in closer

⁸ Affidavit of Tim Heath at [36]-[40].

⁹ Mr Heath identified the economic benefits and costs of rezoning the site for residential use. Mr Johnson gave evidence of the environmental, social, and cultural benefits of the rezoning. He concluded there would be minimal, if any, environmental costs.

proximity.¹⁰ Mr Johnson states that the options of developing houses on LUC 4 land, further away from the township, or intensification of existing lots, even if that were in scope, would not achieve a well-functioning urban environment.¹¹

[22] The Nahkies submit that in addition to passing through the “gateway” created by cl 3.6, their proposal also meets the requirements of cl 3.10 of the NPS-HPL. Mr Dunham assessed the situation in terms of cl 3.10.

The Council’s submissions

[23] The Council submits that cl 3.10 does not apply to urban rezonings and is not relevant to this appeal. Where cl 3.6 applies, there can be no recourse to cl 3.10 if the requirements in cl 3.6 are not met. Nor does cl 3.10 need to be met where the requirements in cl 3.6 are met.

[24] In reply submissions, counsel for the Nahkies submitted that if the court accepts that the elements of cl 3.6 are made out, they agree the requirements of cl 3.10 do not need to be met. I agree that cl 3.6 is a stand-alone provision. Accordingly, the provisions of cl 3.10 will not be further considered.

[25] The Council considers that all the sub-requirements of cl 3.6 are met:

- (a) Mr Foy agrees with Mr Heath that there is a shortfall of residential land supply in Dunsandel over the medium term. Therefore, Mr Foy considers that the proposed rezoning of the Land meets the requirements of cl 3.6(1)(a);¹²
- (b) Mr Foy agrees with Mr Heath that there are no other reasonably practicable and feasible options for providing the housing supply proposed on the Land.¹³ Mr Foy refers to the existing capacity for

¹⁰ Affidavit of Elizabeth White affirmed 16 April 2025 at [37].

¹¹ Affidavit of David Johnson at [75].

¹² Affidavit of Derek Foy at [31].

¹³ Affidavit of Derek Foy at [32].

around 37 additional dwellings in Dunsandel which will be utilised in the medium term, and his understanding that there are no alternative options for accommodating growth in Dunsandel.¹⁴ Ms White is satisfied that cl 3.6(1)(b) is met;¹⁵

- (c) the Council is satisfied that a range of options have been considered, including in particular (and as required by cl 3.6(2)) greater intensification in existing urban areas, rezoning of non-HPL land as urban, and rezoning HPL with relatively lower capacity;
- (d) Mr Foy agrees with Mr Heath that the proposed residential zoning would generate significant net economic benefits for the local community and broader Selwyn district, and that those would outweigh any economic costs associated with the loss of highly productive land for land-based primary production.¹⁶ Ms White's evidence is that the requirements of cl 3.6(1)(c) would be met.¹⁷ Counsel notes that the economic benefits referred to by Ms White are closely linked to the NPS-UD, and therefore to the rationale underlying the pathway available for (appropriate) urban rezoning under cl 3.6.

[26] The Council is satisfied cl 3.6(5) is met:

- (i) cl 3.6(5) requires the assessment of a range of reasonably practicable measures/options to minimise the spatial extent of urban rezoning covering HPL. If there are obvious measures or options that would minimise the spatial extent of urban rezoning covering HPL that are not within the scope of submissions or the appeal, the result may be that the

¹⁴ Affidavit of Derek Foy at [32], and Section 3.2 of Mr Foy's August 2024 memorandum, which is Exhibit C to his affidavit.

¹⁵ Affidavit of Elizabeth White affirmed 16 July 2025 at [15(b)].

¹⁶ Affidavit of Derek Foy at [33].

¹⁷ Affidavit of Elizabeth White affirmed 16 April 2025 at [36]; affidavit of Elizabeth White affirmed 16 July 2025 at [15(c)].

submission/appeal could not succeed;

- (ii) from an economic perspective, Mr Foy records that smaller residential parcel sizes on the Land (providing for the same number of residential units while retaining some of the HPL at the Land) would be preferable. However, he acknowledges that the appropriateness of small site sizes requires other expert input;¹⁸
- (iii) Mr Blake-Manson considered the wastewater servicing implications of the appeal, given that the Council has no plans to install a reticulated wastewater scheme in Dunsandel. He explains that property owners/developers will be responsible for installing and maintaining compliant onsite wastewater systems.¹⁹ Mr Blake-Manson considers that an alternative, higher density development (occupying a smaller portion of the Land) presents a risk that should be avoided when compared against that proposed;²⁰
- (iv) referring to the analysis of Mr Foy and Mr Blake-Manson, Ms White concludes that “smaller lots would not provide the type of capacity that meets the market in this locality, and would not be appropriate from an urban form perspective”.

[27] The Council is satisfied that cl 3.6 of the NPS-HPL is satisfied, such that the relief can be granted.

Consideration

[28] Having read and considered the legal submissions and affidavits, I am satisfied that the rezoning is able to pass through the cl 3.6 gateway, and the relief

¹⁸ Affidavit of Derek Foy at [34].

¹⁹ Affidavit of Hugh Blake-Manson at [45].

²⁰ Affidavit of Hugh Blake-Manson at [24].

can be granted.

[29] The NPS-HPL contains certain exceptions to the use of land containing HPL, and these exceptions should be applied strictly. Applying the approach taken in *Gardon Trust v Auckland Council* (*Gardon*), I agree with the Council that in this case “a proper exception is established”.²¹

Outcome

[30] The parties advise that all matters proposed for the court’s endorsement fall within the court’s jurisdiction and conform to the relevant requirements and objectives of the Act including, in particular, Pt 2.

[31] All parties to the proceeding have executed the memorandum requesting the orders. On the information provided to the court, I am satisfied that the orders will promote the purpose of the Act so I will make the orders sought.

[32] The parties agree that costs should lie where they fall and accordingly no order for costs is sought.



P A Steven
Environment Judge



²¹ *Gardon Trust v Auckland Council* [2025] NZEnvC 58 at [14].

Appendix 1

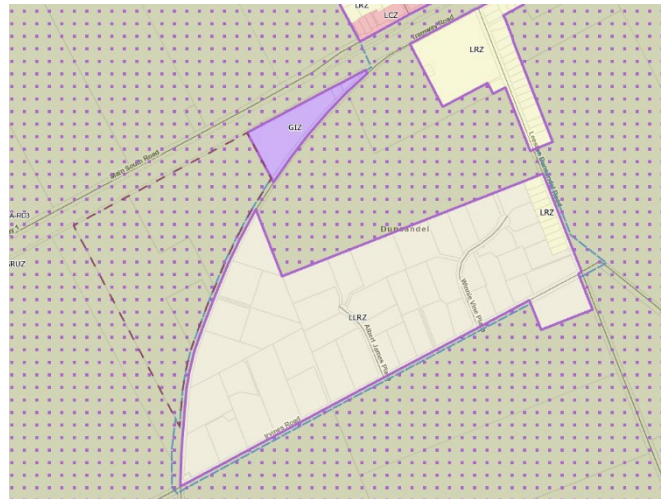
The additional text is shown in **bold underlined text** and deletions are shown in ~~strikethrough~~.

Amendments to PODP Maps

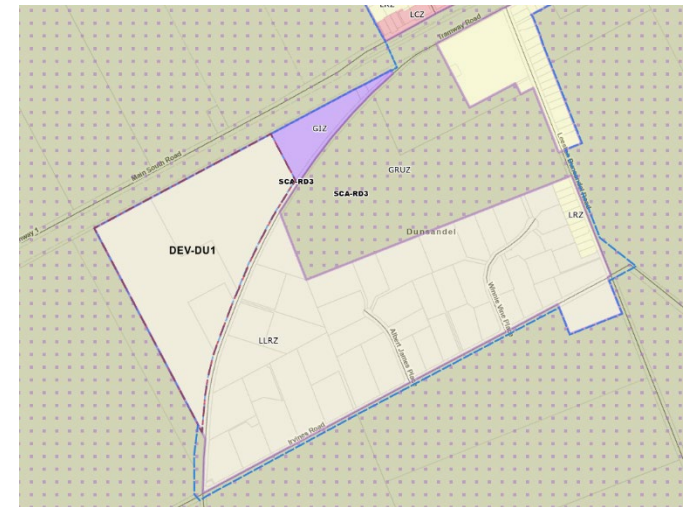
Rezone Lots 1 and 2 DP 74807 and Lot 1 DP 305456 located at Tramway Road, Dunsandel to Large Lot Residential Zone.

Zone Layer

Amend from: GRUZ



Amend to: LLRZ



Specific Control Areas – Rural Density	Remove from the subject land Specific Control Area SCA-RD3 – West Plains and Foothills/ Kakapō-tahi me Ngā Pākihi Whakatekateka o Waitaha.
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Amendments to PODP Text

Add as external links to the PODP, so that external documents are correctly referenced:

<u>Water Services Act 2021</u>	<u>Water Services Act 2021 No 36 (as at 03 September 2024), Public Act Contents – New Zealand Legislation</u>
<u>Drinking Water Standards for New Zealand 2022</u>	<u>Water Services (Drinking Water Standards for New Zealand) Regulations 2022 (SL 2022/168) Contents – New Zealand Legislation</u>

Part 1 – Introduction and General Provisions

Interpretation Chapter – Abbreviations

<u>CDWPZ</u>	<u>Community Drinking Water Protection Zone</u>
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Part 2 – District Wide Matters

Subdivision Chapter

SUB-REQ10 – Wastewater Disposal		
RESZ CMUZ GIZ KNOZ PORTZ	1. Every site created in a township with a Council reticulated wastewater network shall be supplied with a separate connection to that network. This requirement shall not apply to any site created solely for access or network utility operations.	Activity status when compliance not achieved: 2. When compliance with any of SUB-REQ10.1 is not achieved: NC
PRZ	3. Every site created for residential, accommodation or commercial purposes shall be connected to a reticulated wastewater treatment and disposal system.	Activity status when compliance not achieved: 4. When compliance with any of SUB-REQ10.3 is not achieved: NC
<u>DEV-DU1</u>	<u>5. Every site created shall avoid any discharge of treated or untreated wastewater into the Dunsandel CDWPZ as identified on the Outline Development Plan for DEV-DU1.</u>	<u>Activity status when compliance not achieved:</u> <u>6. When compliance with any of SUB-REQ10.5 is not achieved: NC</u>

SUB-MAT7 – Wastewater Disposal	
All Zones (excluding DEV-DU1)	1. Other than for sites to be connected to a reticulated wastewater network, whether each site is of an appropriate size and shape and has appropriate ground conditions to enable satisfactory on-site wastewater treatment and disposal. This shall be demonstrated via the provision with the subdivision consent application of one of: a. a relevant certificate of existing use, certificate of compliance, or discharge permit issued by the Canterbury Regional Council for each site to be created; or b. both: i. confirmation in writing from the Canterbury Regional Council that an application for a discharge permit has been formally received for each site without an existing relevant certificate of existing use, certificate of compliance, or discharge permit; and ii. the notification decision in respect to that application. 2. Other than for sites to be connected to a reticulated wastewater network, the extent to which opportunities for communal wastewater treatment and disposal have been considered and incorporated.
<u>DEV-DU1</u>	<u>3. Whether each site is of an appropriate size and shape and has appropriate ground conditions to enable satisfactory on-site wastewater treatment and disposal, taking into account:</u> <u>a. the adequacy of the dispersion modelling undertaken by a suitably qualified and experienced practitioner and the effectiveness of the measures proposed to ensure that wastewater discharge plumes extending from any site into the CDWPZ are avoided as far as practicable; and</u> <u>b. the effectiveness of the measures proposed to ensure that wastewater discharges associated with activities on each site will not result in microbiological, inorganic, or organic contaminants being able to enter the groundwater in the CDWPZ.</u>

SUB-MAT13 – Development Areas	
DEV-LI8	1. Whether, following consultation with the Ministry for Education, any land is required to be provided for education purposes within DEV-LI8.
DEV-LIC	2. Whether the subdivision would create residential sites with an individual or combined development capacity exceeding 100 residential units prior to the upgrading of the Gerald Street/Vernon Drive intersection to include traffic signalisation. 3. If the intersection upgrade is not operational, and the subdivision would create residential sites with an individual or combined development capacity exceeding 100 residential units, how the safe and efficient operation of the intersection is to be achieved.
DEV-DA8	4. In relation to the creation of any site in the GRZ or LLRZ, how adequate walking and cycling access between the site and Darfield will be provided.
DEV-DA9	5. Any adverse effects on safety for users of all transport modes at all existing level crossings in Darfield township. 6. Any adverse effects on the operation of the State Highway 73 intersections with Matthias Street and McMillan Street.
DEV-RO7	7. Whether the pattern and staging of development: a. takes into account the upgrade of the Dunns Crossing Road/Main South Road (SH1)/Walkers Road intersection by Council and NZTA, including any land requirements; and b. commences adjacent to Dunns Crossing Road to maximise connectivity and the efficient provision of infrastructure. 8. The appropriateness of any measures proposed to avoid or mitigate potential adverse effects at the interface with West Rolleston Primary School. 9. The appropriateness of any mechanism proposed to address specific setback or boundary treatment requirements. 10. Whether, following consultation with the Ministry for Education, any land is required to be provided for education purposes within DEV-RO7 – Rolleston 7 Development Area. 11. The recommendations of a field-based ecological assessment regarding the retention or management of any existing water races, ponds or any wetland features affected by the subdivision. 12. Where the subdivision of land (other than a subdivision subject only to any of SUB-R12 Boundary Adjustment in All Zones or SUB-R13 Subdivision to Create Access, Reserve, or Infrastructure Sites in All Zones) prior to 1 January 2033 provides for more than 1500 residential sites within DEV-RO7: a. whether the proposal responds to high demands for, or low capacity of, housing in Rolleston that supports the provision of additional housing capacity, as demonstrated by a shortfall identified by the Council in the medium term for Rolleston through either the latest Housing Capacity Assessment or an equivalent assessment undertaken by an

	appropriately qualified modeller. This may include consideration of the extent to which zoned residential land in Rolleston has not been, and is not likely to be, developed to deliver development capacity prior to 1 January 2033. b. with reference to the extent of zoned residential land in Rolleston existing as at 1 September 2024, whether the cumulative effects of enabling more than 1500 residential sites will compromise: i. a compact urban form, within Rolleston Township outside of DEV-RO7; ii. the efficient establishment, use and maintenance of infrastructure, within Rolleston Township outside of DEV-RO7.
<u>DEV-DU1</u>	<u>13. The effectiveness of the measures proposed to mitigate noise received at every site from the adjoining GIZ area to the level outlined in the Outline Development Plan for DEV-DU1.</u>

Part 3 – Area Specific Matters

Development Areas

DU-Dunsandel

DEV-DU1– Dunsandel 1 Development Area

Context

This area is located on the western edge of the Dunsandel Township. It is bordered by a General Industrial Zone on the eastern boundary and by a strip of railway lease land on the northern-boundary, with the Main South Railway Line and State Highway 1 running parallel to the site beyond this. It adjoins rural open pasture on the western boundary and large lot residential sites to the east.

Land Use

The design and layout of the development area will have a range of sizes with smaller sites located on the Tramway Road frontage and larger sites located on the periphery of the development area in order to reduce any reverse sensitivity or noise issues.

Additionally a noise attenuation barrier will be constructed along the development area's eastern boundary to protect residential sites from noise from the adjoining GIZ. SUB-MAT13.13 reflects the requirement for this noise mitigation to be provided. The level of noise attenuation needs to be sufficient to ensure that activities in the GIZ are able to continue operating on the same basis as before this development area was zoned LLRZ. This requires "bridging the gap" between the noise limits set out in "*NOISE-R1 Activities not otherwise specified*" as applying to activities in the GIZ when the development area (the receiving land) was GRUZ (being 55 dB $L_{Aeq(15\ min)}$ between 0700 and 2200 and 45 dB $L_{Aeq(15\ min)}$ and 70 L_{AFmax} between 2200 and 0700 at the eastern boundary of Lot 1 DP 74807) and the noise limits applying to the GIZ when the receiving land is LLRZ (being 50 dB $L_{Aeq(15\ min)}$ between 0700 and 2200 and 40 dB $L_{Aeq(15\ min)}$ and 70 L_{AFmax} between 2200 and 0700 at the eastern boundary of the LLRZ).

Access and Transport

A road in the form of a crescent will be provided to service the sites that do not front Tramway Road. A footpath/ cycleway will also be provided along the frontage of Tramway Road.

Open Space, Recreation, and Community Facilities

The development area is well positioned to benefit and utilise the existing domain and Community Centre.

Servicing

The underlying soils are free draining and support the discharge of stormwater via infiltration to ground.

Tramway Road is a sealed local road that is serviced by existing public services such as water supply and rubbish collection.

Dunsandel is not served by a reticulated wastewater system, so on-site wastewater disposal is required. The south-west part of the development area is located within a community drinking-water protection zone (CDWPZ), due to its proximity to Council's drinking water supply bore. Council has a responsibility under the Water Services Act 2021 and the Drinking Water Standards for New Zealand 2022 to ensure that this community drinking water is safe to drink. Because of this, it is essential that no wastewater is discharged directly into the CDWPZ, that disposal systems are designed to, as far as practicable, avoid any discharge plumes extending into the CDWPZ, and are then managed so that any final discharges and plumes do not result in microbiological, inorganic or organic contaminants being able to enter the groundwater.

Discharge consents will need to be sought from the regional council in respect of on-site wastewater disposal. Given the CDWPZ and the Council's obligations in respect of drinking water supply:

- the Council will be a key interested party in respect of that regional consenting process; and
- the appropriateness of the proposed on-site wastewater solution will be an important matter to be considered in the consenting process for subdividing the site.

For these reasons, it would be appropriate for subdivision and wastewater discharge consents to be lodged concurrently.

Dunsandel 1 Development Area

