BEFORE INDEPENDENT HEARING COMMISSIONERS APPOINTED BY THE WAIMAKARIRI DISTRICT COUNCIL

IN THE MATTER OF	The Resource Management Act 1991 (**RMA** or **the Act**)
AND	
IN THE MATTER OF	Hearing of Submissions and Further Submissions on the Proposed Waimakariri District Plan (**PWDP** or **the Proposed Plan**)
AND	
IN THE MATTER OF	Hearing of Submissions and Further Submissions on Variations 1 and 2 to the **Proposed** Waimakariri District Plan
AND	
IN THE MATTER OF	Submissions and Further Submissions on the Proposed Waimakariri District Plan by **Momentum Land Limited**

LEGAL SUBMISSIONS FOR MOMENTUM LAND LIMITED REGARDING HEARING STREAM 12E(B): PROCEDURAL ISSUES

DATED: 9 August 2024

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INTRODUCTION

1. These submissions are filed on behalf of Momentum Land Limited (**MLL** or **Submitter**) in respect of the Stream 12E(B) hearing of submissions on the Proposed Waimakariri District Plan (**Proposed Plan**) and Variation 1 to the Proposed Plan.

2. The Submitter seeks, through its submissions on the Proposed Plan and Variation 1, to rezone its currently rurally zoned land to residential. The Submitters land is an area of approximately 35ha (310 Beach Road and 143, 145, and 151 Ferry Road – **the Site**) in Northeast Kaiapoi. The Submitter's land is zoned Rural under the Operative District Plan and Rural Lifestyle Zone (**RLZ**) in the Proposed Plan.

3. In its submission on the Proposed Plan and Variation 1, the Submitter sought Medium Density Residential Zoning (**MRZ**), which would enable a yield in the order of approximately 1,000 dwellings, with subdivision and development guided by an ODP (**Proposal** or **proposed rezoning**).

4. The Officer Report on Proposed Plan rezonings (**Officer Report A**) recommends that the Proposal be accepted. In contrast, the Officer Report on Variation 1 rezonings (**Officer Report B**) recommends that the Proposal be rejected on the basis that the Submitter's submission on Variation 1 (**Momentum Submission** or **Submission**) is not within scope of the Variation.

5. These submissions are confined to the procedural issue raised by Officer Report B, namely whether the Submission is within scope of the Variation. The matters discussed below elaborate on matters discussed within my Memorandum of Counsel filed for the Submitter in June 2023 in response to Minute 2 which addressed the scope of Variation 1 and Clause 16B of the First Schedule.[1]

6. In summary, there are several shortcomings with the guidance provided by the Council legal opinion on the question of scope which cause that guidance to be unduly conservative. Further, Variation 1 is contextually different from the circumstances of the case law discussed in the Council legal opinion relied upon by Officer Report B and Variation 1 as notified proposes new residential zones

[1] Memorandum of Counsel for Momentum Land Limited in response to Minute 2: Procedural Issues dated 30 June 2023

which are contestable via the Schedule 1 submission process. When all the relevant factors are properly identified and considered, the Submission satisfies each factor and therefore is within scope of Variation. 1

OFFICER REPORT B RECOMMENDATION

7. Officer Report B [2]addresses scope of Variation 1 in the context of rezonings at section 3.3.1 and states that:

> *On the basis of the legal advice, I consider that this means that I do not have scope, as a s42A reporting officer to now recommend additional new residential zones in response to submissions (i.e. in addition to the new residential zones included in Variation 1 as notified), apart from to resolve minor errors or omissions, as the Council has already specified its intention on which additional areas it intended to rezone*

8. Officer Report B applies the Council legal advice to the Submitter's rezoning proposal and concludes that there is not scope to rezone these properties. The key commentary is as follows:[3]

> *287. I consider that there is scope from the submission to consider rezoning this land.*
>
> *288. In respect to the scope of the Variation itself, I consider that this land was not included within the Variation, and as such, extensions to it, whether as a relevant residential zone, new residential zone, or an NPSUD Policy 3 area, are not within scope of the Variation. Variation 1 proposes no changes to the zoning or associated provisions for these properties.*
>
> *289. I do not consider there is scope to rezone these properties as the request is not "on" V1. Under the Clearwater and Motor Machinist tests, it is a large area of new land – not incidental and consequential - and was not notified for public submission, and as such I consider there may be affected persons who have not had an opportunity to submit on it.*

COUNCIL LEGAL OPINION

9. Legal opinion to Council on the Scope of Variation relied on by the reporting officer is appended to Officer Report B at Appendix D (**Council legal opinion**).

10. The central guidance to Council within the legal opinion is started at paragraph 20 as follows:

[2] Officer Report B at [52]
[3] Supra at [287]-[289]

> *In summary, and for the reasons given above, we consider that if a rezoning request relates to land that has not had its management regime (e.g. zoning) altered by Variation 1, then:*
>
> *(a) If that land is not adjacent to land that has had its management regime (e.g. zoning) altered by Variation 1, then it will fall outside the scope of Variation 1.*
>
> *(b) If that land is adjacent to land that has had its management regime (e.g. zoning) altered by Variation 1, then it can be considered as falling within the scope of Variation 1 only if, on a precautionary assessment of fact, circumstances, scale and degree, it can be considered as an "incidental or consequential extension of zoning changes" proposed by Variation 1. Factors relevant to consider when making the precautionary assessment include:*
>
> *(i) the policy behind a variation;*
> *(ii) the purpose of the variation;*
> *(iii) whether the request raises matters that should have been addressed in the s32 evaluation and report;*
> *(iv) the scale and degree of difference between the submission request and the variation;*
> *(iv) whether the request gives rise to a real risk that persons potentially affected by changes sought have been denied an effective opportunity to participate in the decision-making process.*

11. There are several shortcomings with this guidance, as discussed below.

Hierarchy of factors identified by Council legal opinion

12. First and most importantly, the above guidance on how to approach the assessment of whether a submission is within scope is significantly narrower and more conservative than expressed by caselaw authorities. In particular, it confines each of the factors at (i)-(v) to evaluation of whether the submission can be construed as an "incidental or consequential extension of zoning changes". That approach is not evident from the case-law authorities.

13. Instead, the case-law authorities identify the factors at (i)-(iv) as matters that may assist the decision-maker to evaluate whether a submission is "on" the plan change or variation in question.

14. However, relevant factors are not confined to (i)-(vi) above. For example, whether the submission can be construed as an "incidental or consequential

extension of zoning changes" is simply one of many factors to consider alongside (i)-(vi) above; it does not sit above them in the hierarchy of considerations.

15. This point is illustrated by the approach adopted in decision *In Option 5 Incorporated v Marlborough District Council*[4] where the High Court commented that:[5]

> *[27] As William Young J said in Clearwater Resort Limited and Canterbury Golf International v Christchurch City Council (HC CHCH, AP 34/02, 14 March 2003) at [56]:*
>
> > *[56] Whether a submission is "on" a variation poses a question of apparently irreducible simplicity but which may not necessarily be easy to answer in a specific case.*
>
> *[28] He identified two considerations, which he thought might assist in the analysis of whether or not a submission was "on" a variation. He said:*
>
> > *[66] On my preferred approach:-*
> >
> > *1. A submission can only fairly be regarded as "on" a variation if it is addressed to the extent to which the variation changes the pre-existing status quo.*
> >
> > *2. But if the effect of regarding a submission as "on" a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, this is a powerful consideration against any argument that the submission is truly "on" the variation.*
>
> *[29] I agree with the approach of William Young J in Clearwater. I accept that his first point may not be of particular assistance in many cases. His second point will be of vital importance in many cases and may be the determining factor in some cases. As the Environment Court said in this case so much will depend upon scale and degree.*

16. The High Court in *Option 5* later approves the Environment Court's approach by stating:

> *The Court correctly took into account when assessing whether the submission was on the variation:*
> *a) the policy behind the variation;*
> *b) the purpose of the variation;*
> *c) whether a finding that the submissions were on the variation would deprive interested parties of the opportunity for participation.*

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[4] *In Option 5 Incorporated v Marlborough District Council* (2009) 16 ELRNZ 1 (HC)
[5] Supra at [27]-[30]

17. There is no suggestion in *Option 5* that the factors relating to the policy behind the variation, or the purpose of the variation, should be limited to assessing whether the submission can be construed as an "incidental or consequential extension of zoning changes". Instead these matters are identified by the High Court as factors directed towards establishing whether a submission in "on" the variation.

18. The same point is equally applicable regarding the balance factors (iii)-(v) identified in the Council legal opinion.

Relevance of section 32 report

19. The Council legal opinion includes the following assessment factor regarding the s32 evaluation: [6]

> *(iii) whether the request raises matters that should have been addressed in the s32 evaluation and report;*

20. This factor derives from the following quote in *Palmerston North City Council v Motor Machinists Limited*:[7]

> *[81] In other words, the submission must reasonably be said to fall within the ambit of the plan change. One way of analysing that is to ask whether the submission raises matters that should have been addressed in the s 32 evaluation and report. If so, the submission is unlikely to fall within the ambit of the plan change. If it is not then a submission seeking a new management regime for that resource is unlikely to be "on" the plan change... Yet the Clearwater approach does not exclude altogether zoning extension by submission. Incidental or consequential extensions of zoning changes proposed in a plan change are permissible, provided that no further s 32 analysis is required to inform affected persons of the comparative merits of that change.*

21. In *Albany North Landowners v Auckland City Council*[8] it was considered the review for the Auckland unitary plan was wide (as a full district plan review) unlike the discrete variations and plan changes in *Clearwater* and *Motor Machinists*. The High Court in *Albany* did not accept that a submission would be out of scope if the relief raised is not specifically addressed in the original section 32 report. The court set out its reasoning as follows (emphasis added):

> *[130] Furthermore, I do not accept that a submission on the PAUP is likely to be out of scope if the relief raised in the submission was not*

[6] Buddle Finlay opinion at [20]
[7] *Palmerston North City Council* v *Motor Machinists Limited* [2013] NZHC 1290 at [81]
[8] *Albany North Landowners v Auckland City Council* [2016] NZHC 138

> *specifically addressed in the original s 32 report. I respectfully doubt that Kós J contemplated that his comments about s 32 applied to preclude departure from the outcomes favoured by the s 32 report in the context of a full district plan review.* ***Indeed, Kós J's observations were clearly context specific, that is relating to a plan change and the extent to which a submission might extend the areal reach of a plan change in an unanticipated way. A s 32 evaluation in that context assumes greater significance, because it helps define the intended extent of the change from the status quo.***
>
> *[131] By contrast a s 32 report is, in the context of a full district plan review, simply a relevant consideration among many in weighing whether a submission is first "on" the PAUP and whether the proposed change requested in a submission is reasonably and fairly raised by the submission.*
>
> *[132] To elaborate, the primary function served by s 32 is to ensure that the Council has properly assessed the appropriateness of a proposed planning instrument, including by reference to the costs and benefits of particular provisions prior to notification****. Section 32 does not purport to fix the final frame of the instrument as a whole or an individual provision. The section 32 report is amenable to submissional challenge and there is no presumption that the provisions of the proposed plan are correct or appropriate on notification.*** *On the contrary, the schemes of the RMA and Part 4 clearly envisage that the proposed plan will be subject to change over the full course of the hearings process, including in the case of the PAUP, a further s 32 evaluation for any proposed changes which is to be published with (or within) the recommendations on the PAUP. While it may be that some proposed changes are so far removed from the notified plan that they are out of scope (and so require "out of scope" processes), it cannot be that every change to the PAUP is out of scope because it is not specifically subject to the original s 32 evaluation.153 To hold otherwise would effectively consign any submission beyond the precise scope of the s 32 evaluation to the Environment Court appellate procedure. This is not reconcilable with the streamlined scheme of Part 4.*

22. The Environment Court[9] in *Bluehaven Management Ltd v Western Bay of Plenty District Council*[10] also expressed reservations about reference to the s32 report as a factor in determining whether a submission is within scope of a plan change. In *Bluehaven* the proposal sought to amend operative provisions of the district plan relating to the Rangiuru Business Park. The theme of submissions in opposition was that the proposal would deviate from the original intended purpose of the business park, which was primarily for industrial activity. The Court made these comments about s32 (underlining added):

[9] Two judge bench comprising Judge Smith and Judge Kirkpatrick

[10] *Blue Haven Management Ltd v Western Bay of Plenty District Council* [2016] NZEnvC 191

[34] ***While accepting the usefulness of an approach which includes an analysis of the relevant resource management issues in the form the Council is required to undertake pursuant to s 32 to comply with clause 5(1)(a) of Schedule 1 to the Act, we respectfully consider that some care needs to be taken in assessing the validity of a submission in those terms.*** *As Kós J expressly recognises, there is no requirement in the legislation for a submitter to undertake any analysis or prepare an evaluation report in terms of s 32 when making a submission.* ***The extent and quality of an evaluation report under s 32 of the Act depends very much on the approach taken by the relevant regional or district council in preparing it.*** *As provided in s 32A, a submission made under clause 6 of Schedule 1 may be based on the ground that no evaluation report has been prepared or regarded or that s 32 or 32AA37 has not been complied with.*

[35] As held in Leith v Auckland City Council, there is no presumption in favour of a planning authority's policies or the planning details of the instrument challenged, or the authority's decisions on submissions. An appeal before the Environment Court is more in the nature of an inquiry into the merits when tested by submissions and the challenge of alternatives or modification.

[36] In that sense, we respectfully understand the questions posed in Motor Machinists as needing to be answered in a way that is not unduly narrow, as cautioned in Power. In other words, while a consideration of whether the issues have been analysed in a manner that might satisfy the requirements of s 32 of the Act will undoubtedly assist in evaluating the validity of a submission in terms of the Clearwater test, ***it may not always be appropriate to be elevated to a jurisdictional threshold without regard to whether that would subvert the limitations on the scope of appeal rights and reduce the opportunity for robust participation in the plan process****.*

[37] In that context, we respectfully suggest that one might also ask, in the context of the first limb of the Clearwater test, whether the submission under consideration seeks to substantially alter or add to the relevant objective(s) of the plan change, or whether it only proposes an alternative policy or method to achieve any relevant objective in a way that is not radically different from what could be contemplated as resulting from the notified plan change. The principles established by the decisions of the High Court discussed above would suggest that submissions seeking some major alteration to the objectives of a proposed plan change would likely not be "on" that proposal, while alterations to policies and methods within the framework of the objectives may be within the scope of the proposal.

[38] ***It may be that this issue can be encapsulated by regarding the first test as including an assessment of whether the s 32 evaluation report should have covered the issue raised in the submission****.* ***This follows Kós J's wording closely and involves an evaluation of the submission in terms of the issue as it is (or is not) addressed by the proposed plan change and the context in which it arises. In particular, such contextual evaluation should***

> ***include consideration of whether there are statutory obligations, national or regional policy provisions or other operative plan provisions which bear on the issue raised in the submission. A failure to address the context expressly in the s 32 report may well indicate a failure to consider a relevant matter.***

23. Given the contextual factors present in this case, the formulation proposed in *Bluehaven* is preferred.[11] Adopting this approach, the s32 assessment factor identified by the Buddle Finlay opinion[12] should be amended as follows (deletions shown as strike through and new text underlined):

> *(iii)* *whether the s32 evaluation prepared for the plan change addresses, or should have addressed, the matter raised in the submission; ~~request raises matters that should have been addressed in the s32 evaluation and report;~~*

24. Finally, the *Bluehaven* dicta quoted above is highly relevant to the present case given the particular statutory context in which Variation 1 arises and the need to consider national policy considerations (in the form of the NPS-UD) that have a direct bearing on the issues raised by MLL's submission.

VARIATION 1 CONTEXTUALLY DIFFERENT

25. Variation 1 is contextually very different to the circumstances of the case law discussed in the Council legal opinion because the Variation stems from the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**Amendment Act**) which directs specified territorial authorities, including the Council, to notify an Intensification Planning Instrument (**IPI**). Variation 1 is the Council's IPI which seeks to implement the directives of the Amendment Act at the district level. This contextual setting is highly relevant to identifying whether a submission falls within the ambit of the variation.

26. The Council legal opinion refers to the following passage in *Motor Machinists Limited v Palmerston North City Council*[13] (underlining added):

> *[80] For a submission to be on a plan change, therefore, it must address the proposed plan change itself. That is, to the alteration of the status quo brought about by that change. The first limb in Clearwater serves as a filter, based on direct connection between the submission and the degree of notified change proposed to the extant plan. It is the dominant consideration. It involves itself 2 aspects: the*

[11] At [60]
[12] Buddle Findlay opinion at [20]
[13] *Palmerston North City Council* v *Motor Machinists Limited* [2013] NZHC 1290 at [80]

> *breadth of alteration to the status quo entailed in the proposed plan change, and whether the submission then addresses that alteration*.

27. The circumstances of this case can be distinguished from the caselaw authorities that address relatively discrete plan changes and variations. The ambit of such proposals is typically narrow and quite confined.

28. See for example *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003 where the proposal was to vary the noise contour polices of the then proposed Christchurch District Plan; *Palmerston North City Council* v *Motor Machinists Limited* [2013] NZHC 1290 where the proposal was to rezone 7.63 ha from Residential to Outer Business*; Option 5 Inc v Marlborough District Council* (2009) 16 ELRNZ 1 (HC) where the proposal was to support the central Blenheim CBD and to avoid commercial developments outside the CBZ; *Re Palmerston North Industrial and Residential Developments Ltd* [2014] NZEnvC 17 where the proposal was to rezone a discrete area for residential development.

29. In this case the breadth of the alteration to the status quo entailed by Variation 1 is informed not just by the words used in Variation 1 but also by the purpose of the Amendment Act and the directives it contains regarding preparation of an IPI.

30. In particular, the Amendment Act expressly provides that a specified territorial authority may, when preparing an IPI, create new residential zones.[14] The key point here is that the empowering legislation provides Council a discretion to create new residential zones via an IPI.

31. The ambit of an IPI with respect to new residential zones is relatively wide because it requires the territorial authority preparing the IPI to actively consider whether new residential zones are required in the areas of the district where "relevant residential zones" are located.

32. In this case, the relevant residential zones are Kaiapoi, Rangiora, Woodend (including Ravenswood) and Pegasus.[15] A submission that seeks the inclusion of new residential zones adjacent to these urban areas should be considered within the ambit of Variation 1 where they satisfy the relevant assessment

[14] Amendment Act at s77G(4)
[15] Section 32 Report, Variation 1: Housing Intensification at page 9

factors. This point is discussed further below with reference to the MLL submission.

33. Also relevant to context is the decision by Council to include two new residential zones in Variation 1. The public notice for Variation 1 refers to rezoning at Rangiora and states:

> *As part of the variation, two areas in north east and south west Rangiora that were identified in the Proposed District Plan as future development areas are also proposed to be rezoned to the MDRS zoning*

34. This is a key consideration in the assessment of scope and whether a submission in "on" the Variation. Section 86BA(1)(c)(i) provides that a rule in an IPI does not have immediate legal effect in an area of a new residential zone. This indicates that such zones are intended to be contestable through the Schedule 1 submission process. It follows that a submitter on an IPI such as Variation 1 that proposes a new residential zone may support or oppose the new zone, or propose a new residential zone either in addition to or in place of the zone proposed by the IPI.

ASSESSMENT OF THE MLL SUBMISSION AGAINST THE RELEVANT FACTORS

Is the MLL land adjacent to land rezoned MDRZ by Variation 1

35. The Momentum land is located immediately adjacent to land that is rezoned from General Residential Zone to MDRZ by Variation 1 and therefore the MLL submission satisfies this assessment factor.

The policy behind Variation 1

36. As mentioned, Variation 1 is contextually very different to the case law authorities discussed by the Council legal opinion. In the present case, the Council has been directed by the Amendment Act to make changes to the Proposed Plan and the legislation contains highly directive provisions that provide for:

    (a) what must be, and what may be, included in the variation,[16]

    (b) notified of the variation by a specific date,[17] and

[16] Amendment Act section 77G and Schedule 3, clause 33(3)(d)

(c) what functions need to be performed when undertaking the variation.[18]

37. The Amendment Act itself does not contain any stated purpose. However, the Cabinet Paper to the Cabinet Legislation Committee dated 30 September 2021 provides insight into the policy intent of the Amendment Act. It seeks approval to introduce the Resource Management (Enabling Housing Supply And Other Matters) Amendment Bill (the Bill) to rapidly accelerate housing supply where the demand for housing is high.[19]

38. The Paper explains that this will be achieved by the Bill by:[20]

(a) bringing forward the NPS-UD by enabling councils to implement all policies by mid-2023 and

(b) making medium density the default residential zone in major urban areas by August 2022.

39. The Cabinet Paper records that these amendments to the RMA will allow more homes to be built close to where people live and work. Increasing housing supply is one of the key actions government can take to improve housing affordability in New Zealand's main cities.[21]

40. Accordingly, the policy intent of the Amendment Act is to rapidly accelerate housing supply where the demand for housing is high and improve housing affordability in New Zealand's major urban areas. These outcomes are entirely consistent with key objectives and policies of the NPS-UD that seek the same outcomes. This is important because NPS-UD provides the national policy framework that guides and informs implementation of the Amendment Act, particularly with regard to creation of new residential zones via an IPI such as Variation 1.

The purpose of the Variation 1

41. Given the directive nature of the Amendment Act, it follows that the purpose of Variation 1 is to implement the Amendment Act at the district level by

[17] Amendment Act, Schedule 3, clause 33(2)(b)
[18] Supra at clause 33(3)(c)
[19] Cabinet paper at paragraph 1
[20] Supra at paragraph 7
[21] Supra at paragraph 8

accelerating housing supply and improving housing affordability in areas within the Waimakariri District where the demand for housing is high.

42. The Amendment Act directs how this is to be achieved. Relevant to MLL's submission, the Amendment Act provides for:

(a) Inclusion of new objectives in the district plan[22],

(b) the incorporation of MDRZ into every relevant residential zone;[23] and

(c) discretion to create new residential zones.[24]

43. The discretion to create new residential zones via Variation 1 is not unfettered and instead is informed by whether the proposal achieves the objectives of the Proposed Plan[25] and whether the proposal gives effect to a national policy statement.[26]

44. The Amendment Act requires to that Variation 1 inserts New Objective 1 and Objective 2 into the Proposed Plan as follows (underlining added):

> *Objective 1*
>
> *(a) a well-functioning urban environment that enables all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.*
>
> *Objective 2*
>
> *(b) a relevant residential zone provides for a variety of housing types and sizes that respond to-*
>
> *(i) Housing needs and demand; and*
>
> *(ii) The neighbourhood's planned urban built character, including 3-storey buildings.*

45. The relevant national policy statement in this case is the NPS-UD. Relevantly, it contains Objective 1, Objective 2 and Objective 6 as follows:

> ***Objective 1**: New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.*

[22] RMA s77G(5)(a)
[23] RMA s77G(21
[24] RMA s77G(4)
[25] RMA s32(1)(b)
[26] RMA s75(3)(a)

> ***Objective 2:*** *Planning decisions improve housing affordability by supporting competitive land and development markets.*
>
> ***Objective 6:*** *Local authority decisions on urban development that affect urban environments are:*
>
> *(a) integrated with infrastructure planning and funding decisions; and*
>
> *(b) strategic over the medium term and long term; and*
>
> *(c) responsive, particularly in relation to proposals that would supply significant development capacity.*

46. It is noteworthy that the above-mentioned new District Plan Objective 2(b)(i) is consistent with Policy 2 of the NPS-UD which requires that (underlining added):

> ***Policy 2****: Tier 1, 2, and 3 local authorities, at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term.*

47. With respect to creation of new residential zones, the purpose of Variation 1 is to implement the above provisions of the NPS-UD by (among other matters) creating sufficient new residential zones incorporating MDRS to provide at least sufficient development capacity to meet expected demand for housing over the timeframes required by Policy 2.

48. It follows that the breadth of the alteration to the status quo entailed by Variation 1 is relatively wide. The context of Variation 1 is quite different because the extent to which creation of new residential zones are necessary will be critically informed by economic evidence relating to housing demand, housing supply and housing affordability within the district.

49. Variation 1 includes two new residential zones at Rangiora (known as Bellgrove and Townshend Fields). The economic evidence for MLL is that this is insufficient, and that additional residential zoned land is urgently required to provide housing supply and improve housing affordability at Kaiapoi. The MLL submission on Variation 1 seeks to address this issue by the creation of a new residential zone at Kaiapoi. On this basis the MLL submission is comfortably within the ambit of the policy intent and purpose of Variation 1.

Whether the s32 evaluation prepared for the plan change addresses, or should have addressed, the matter raised in the submission

50. The Section 32 Report for Variation 1: Housing Intensification (**s32 Intensification Report**) records that the relevant residential zones regarding Variation 1 are Kaiapoi, Rangiora, Woodend (including Ravenswood) and Pegasus on the basis that each meets the 5,000 population threshold.[27]

51. The Overview and Purpose section of the s32 Intensification Report records that context for the Variation 1 evaluation as follows:[28]

> *This s32 responds to the Government's direction. For the variations to the PDP proposed under the NPS-UD and the Amendment Act, the purpose of this evaluation report is not to assess the costs and broader impacts of the proposed changes themselves and the objectives and policies of the NPS-UD, which have already been determined, but rather those matters where the Council has options or alternatives for how best to address the issues. It also identifies the qualifying matters the Council is proposing to use for where alternative density standards are proposed, together with the required assessment under the Amendment Act.*

52. With respect to the issue of housing supply and housing affordability, one of the matters about which the Councill has "options or alternatives" is to evaluate the need for new residential zones within Kaiapoi. However, that has not occurred in the s32 Intensification report or the separate section 32 Report for Variation 1 – Housing Intensification (Rezoning land in North East and South West Rangiora) (**s32 Rezoning Report**). Instead, both these reports focus on housing land supply issues at Rangiora and do not consider housing supply issues elsewhere in the District.

53. The s32 Intensification Report contains a section entitled "New Zoning Enabled Through this Variation"[29] that discusses the justification (at a high level) for rezoning of land at North East and South West Rangiora, and refers the reader to the s32 Rezoning Report for further details. This Report also focuses exclusively on the need for additional residential activity at Rangiora. Put simply, neither of these reports contains an evaluation of the need for additional residential activity at Kaiapoi (or other relevant residential areas within the District).

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[27] Section 32 Report for Variation 1: Housing Intensification at page 9.
[28] Supra at page 6
[29] Supra at page 41

54. This is despite the commissioner panel appointed by the Environmental Protection Agency on a Covid-19 Fast-Track subdivision resource consent application by Bellgrove Rangiora Limited commenting that:[30]

> *[37] This indicates to the panel that there is an extreme shortage which is driving up the price. The only way of correcting this is to provide more sections, … we are strongly of the view that there is some urgency about the need for supply in the short term and long term. This consent process will not solve the entire problem, but it is a step in the right direction.*

55. It is acknowledged that council officers faced very demanding timeframes to prepare Variation 1 for notification and it is not surprising that they focussed on those parts of the district where the shortfall in supply was best understood and where landowners had already furnished the council with technical reports that enabled them to evaluate the merits of rezoning land at Rangiora before notification of Variation 1.

56. MLL approached Council officers to include the MLL land in the notified IPI and was advised in July 2022 that time has run out for Council to include any more land into the Variation.[31] Whilst this is understandable in the circumstances, lack of resources within Council should not determine the scope of permissible submissions on Variation 1.

57. The case for MLL on Variation 1 is that:[32]

    (a) *there is a lack of available residential zoned land in and around Kaiapoi to meet ongoing demand caused by current and projected fast growth in the district's population;*

    (b) *the new MDRS are unlikely to have much impact on district dwelling capacity, at least in the short-to-medium term; and*

    (c) *additional supply like the Momentum land needs to be enabled for residential activity to meet NPS-UD obligations and to ensure that market supply keeps pace with demand at Kaiapoi; and*

    (d) *the Momentum rezoning submission is an extremely significant increase in development capacity for the purposes of the NPS-UD.*

[30] Refer to s32 Rezoning Report at page 6. Although the application related to land at Rangiora, the economic assessment discussed by the Panel considered housing supply and affordability issues across the District

[31] Email communication between MLL and Council officers

[32] Refer to economic evidence and supplementary evidence of Fraser Colegrave for MLL

58. In my view the circumstances of this case are akin to those discussed in above the *Bluehaven* decision and the issue of housing supply at Kaiapoi should have been included in the s32 report for Variation 1.

The scale and degree of difference between the submission request and the Variation

59. The difference between MLL's submission request and variation 1 notified can be assessed by reference to land area, anticipated yield and the contribution that the Momentum land makes towards meeting projected housing demand within the District.

The s32 Rezoning Report records that the:

> *District's population is projected to grow to about 100,000 people by 2051 (35,300 more people that live here today). The District will need an additional 13,600 new dwellings (or 450 new dwellings per annum to accommodate this growth over the next 30 years). The proposed rezoning of 68 ha of land at Rangiora will support a further 1,000 houses.*[33]

60. Once the long-term NPS-UD competitiveness marginal 15% is added to this figure of 13,600 new dwellings, the long-term (thirty-year) demand will be 15,600 extra households. The evidence for MLL is that the Council forecasts of short-to medium-term future demand are conservative relative to recent trends and are likely to understate the true extent of future demand.[34] Even so, for the purpose of the assessment that follows Council figures have been adopted.

61. With respect to land area, the Momentum land contains 41 ha, which is less than the area of land rezoned at North East Rangiora (65 ha) and more than the area of land proposed to be rezoned at South West Rangiora (21 ha). Given that Rangiora and Kaiapoi are approximately the same size, the Momentum request is on par with the land area proposed to be rezoned at Rangiora.

62. Regarding yield, the Momentum land is anticipated to yield approximately 720 new dwellings across the North Block (580 dwellings) and South Block (140 dwellings). Again, this is on par with the anticipated yield (1000 new dwellings) from the land at Rangiora proposed to be rezoned.

[33] s32 Rezoning Report at page 3
[34] Refer to economic evidence of Fraser Colegrave for MLL

63. Applying the Council's figures above for projected housing demand[35] the 720 dwellings supplied by the Momentum land equates to approximately 1.7 years' worth of the projected demand of 450 new dwellings per annum required to meet the Councils long-term growth projections.

64. In these circumstances, the difference between MLL's rezoning request and Variation 1 as notified is considered modest and in keeping with the scale and degree of Variation 1.

Whether the request gives rise to a real risk that persons potentially affected by changes sought have been denied an effective opportunity to participate in the decision-making process

65. As discussed above, the purpose of Variation 1 is to implement the Amendment Act at the district level by accelerating housing supply and approving housing affordability where the demand for housing is high. The Variation as notified included proposals to rezone 68 ha of greenfield land identified within the North-East and South-West Rangiora development areas of the Proposed Plan. These areas are also identified for future residential growth in the WDDS 2048 and in the CRPS.

66. Kaiapoi sits alongside Rangiora as the largest urban area in the Waimakairi District. It is generally well-known that the population of the district has grown rapidly over the past 5-10 years and that house prices have increased considerably, especially during recent years.

67. The Momentum land presents features very similar to the greenfield land at Rangiora proposed for rezoning by Variation 1. For example, the Momentum land is immediately adjacent to existing residential areas that are rezoned MDRZ by Variation 1 and, in similar fashion to the Rangiora land, the Momentum land is identified for future residential growth in the WDDS 2048, the CRPS and the Proposed Plan.

68. In these circumstances a reasonably informed member of the public would understand that the Momentum land is an obvious candidate for rezoning to provide additional greenfields residential land at Kaiapoi. Such a person would not be surprised by a submission on Variation 1 seeking to rezone this land to MDRZ or consider such a submission to be "out of left field".

[35] Namely, that the District will need an additional 13,600 new dwellings (or 450 new dwellings per annum to accommodate this growth over the next 30 years)

69. In these circumstances it is very unlikely that persons potentially affected by the rezoning sought by MLL's submission on Variation 1 have been denied an effective opportunity to participate in the decision-making process. They could make their own decisions about whether to become involved in the process by lodging submissions, or by reviewing the notified summary of submissions and then deciding whether to join the process by lodging further submissions.

70. Finally, it is noted that MLL's submission on the Proposed Plan also sought residential rezoning of Momentum land. Members of the public are (or should be) aware that the Proposed Plan process is wide (being a full district plan review) and that they need to review submissions on the PDP and file further submissions if they have any concerns about changes requested by submitters. The only further submission on MLL's Proposed Plan submission is from CIAL. No other further submissions were received by MLL. Exactly the same outcome occurred vis-à-vis MLL's submission on Variation 1. The absence of further submissions on both MLL's submissions (apart from CIAL) supports a finding that no persons in the community will be disenfranchised by the MLL submission on Variation 1.

OVERALL SUMMARY OF RELEVANT FACTORS

71. In summary to this point, it is submitted that the MLL submission satisfies each of the various factors requiring assessment and it should therefore be considered as comfortably falling within the permissible scope of submissions on Variation 1.

Dated: 9 August 2024

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