

**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
Bellgrove Rangiora Limited

**LEGAL SUBMISSIONS FOR BELLGROVE RANGIORA LIMITED
REGARDING HEARING STREAM 12E**

DATED: 9 August 2024

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INTRODUCTION

- 1 These submissions are filed on behalf of Bellgrove Rangiora Limited (**BRL** or **Submitter**) in respect of the Stream 12E hearing of submissions on the Proposed Waimakariri District Plan (**Proposed Plan**).
- 2 The Submitter seeks to (generally):
 - (a) rezone approximately 63.3ha (address – **Bellgrove North**) from Rural Lifestyle Zone (**RLZ**) to Medium Density Residential Zone (**MRZ**) subject to the North East Rangiora Outline Development Plan (**NER-ODP**)¹ (**Bellgrove North Proposal**); and
 - (b) rezone approximately 31.2 ha (inclusive of 3.3 ha of Additional Land) (address - **Bellgrove South**) from RLZ to MRZ subject to the South East Rangiora Outline Development Plan (**SER-ODP**)² (**Bellgrove South Proposal**).
- 3 Except for a small 3.3ha area of land within Bellgrove South (**Additional Land**), the Bellgrove North Proposal and the Bellgrove South Proposal are both readily anticipated by the higher order planning documents, located within an area identified for future greenfield residential development by the Greater Christchurch Partnership’s Our Space 2018-2048, the CRPS (as a Future Development Area), the pWDP and more recently the Greater Christchurch Spatial Plan (**GCSP**).
- 4 Virtually all of Bellgrove North was notified as MRZ in Variation 1 to the PWRP. The case for the Submitter regarding the Bellgrove North Proposal is to support MRZ across all of Bellgrove North (including three areas that appear to have been omitted from MRZ in Variation 1) and to propose changes to the NER-ODP to better achieve a well-functioning urban environment with Bellgrove North.
- 5 Regarding Bellgrove South, this land is zoned RLZ in both the Proposed Plan and Variation 1, and the Submitter seeks MRZ for this land. The Bellgrove

¹ Changes sought to the pWDP notified NER-ODP (as per the Variation 1 Submission dated 9 September 2022) are attached at Attachment 3C of the planning evidence of Michelle Ruske-Anderson.

² Changes sought to the pWDP notified SER-ODP by BRL are at Attachment 1 of the planning supplementary evidence#1 of Michelle Ruske-Anderson

South Proposal would yield approximately 363 medium density residential lots, exceeding 15 households per hectare.

- 6 Residential zoning of the Submitter's land would give better effect to the National Policy Statement for Urban Development 2020 (**NPS-UD**), and in doing so, better give effect to Part 2 of the RMA, than would the Proposed Plan as notified.
- 7 The evidence provided by the Submitter is listed at **Appendix A**, including evidence filed on 2 August in reply to the s42A Officer Reports. This evidence is filed by the Submitter in support of its submission on the PWDP and Variation 1 seeking rezoning the Site to MRZ. For the avoidance of doubt, this evidence is relied on by the Submitter in respect of hearing Stream 12E(A) and Stream 12E(B).
- 8 The evidence filed by the Submitter shows that there are significant positive consequences that will arise from the proposed rezoning and little, if any, negative consequences. Conversely, the opposite is true in relation to the zoning in the Proposed Plan. Accordingly, the risks of accepting the Submitter's proposed rezoning are much less and will provide greater potential benefits than the zoning in the Proposed Plan.

CONTEXT

- 9 Bellgrove Rangiora Limited was established primarily by Paul McGowan, a local land developer, and Mike Flutey of Mike Greer Homes North Canterbury Limited. Both have considerable experience in delivering successful subdivision and housing projects in the Waimakariri District. More recently, a joint venture has been agreed with Ngai Tahu Property Limited to facilitate development of the Bellgrove land.
- 10 Bellgrove has demonstrated a consistent commitment to meeting demand for housing in the Waimakariri District over the past three years. Key milestones include:
 - (a) Securing approval for 198 residential lots within Stage 1 of Bellgrove North under the COVID-19 Recovery (Fast-track Consenting) Act 2020, which was approved 29 June 2022 (**Stage 1 Consent**);

- (b) Funding agreements secured under the Government's Infrastructure Acceleration Fund (**IAF**) initiative as part of the Housing Acceleration Fund³ designed to accelerate provision of housing within the Bellgrove land.
 - (c) Rezoning of virtually all of Bellgrove North to Medium Density Residential Zone as part of Variation 1 notified on 5 November 2022⁴;
 - (d) Private Development Agreement between Bellgrove and the Waimakariri District Council (**WDC** or the **Council**) covering Bellgrove North and including certain IAF funded infrastructure projects located within Bellgrove South (29 September 2023);
 - (e) Release of titles for Bellgrove North Stages 1A and Stage 1B, with titles for Stage 1C released (or soon to be released); and
 - (f) Completion (or near completion) of civil works for Stage 1A-1D, the roading upgrade to Kippenberger Avenue and a new Kippenberger Avenue roundabout.
- 11 Moving forward, Bellgrove intends to apply for subdivision consent for Stages 2-5 (the remainder of Bellgrove North) during Quarter 3 of 2024. Thereafter, Bellgrove anticipates developing Bellgrove South.

OFFICER REPORTS

- 12 On 22 July 2024 the Waimakariri District Council (**Council**) released an Officer Report for Hearing Stream 12E prepared under section 42A of the RMA containing an analysis of submissions seeking residential rezonings in Rangiora, Kaiapoi and Woodend and recommendations in response to those submissions (**Officer Report A**). The Officer Report recommends that the Bellgrove North and South Proposals be accepted.
- 13 On 22 July 2024 the Council also released an Officer Report for Hearing Stream 12E prepared under section 42A of the RMA containing an analysis of rezoning submissions in Rangiora, Kaiapoi and Woodend received on Variation 1: Housing Intensification (**Officer Report B**). Officer Report B recommends that the Bellgrove North Proposal be accepted

³ The IAF was announced in March 2021

⁴ An area of Bellgrove land adjacent to the golf course was not rezoned. This appears to be an omission. Bellgrove has filed a submission on Variation seeking MDRZ for this area.

KEY ISSUES

14 The issues to be addressed arising from the Bellgrove submission are as follows:

- (a) What is the relationship between the NPS-UD, and CRPS and the Proposed Plan;
- (b) What are the potential positive consequences of the proposed rezoning compared to the Proposed Plan;
- (c) What are the potential negative consequences proposed rezoning compared to the Proposed Plan;
- (d) Does the proposed rezoning better give effect to the NPS-UD than the Proposed Plan;
- (e) Does the proposed rezoning better give effect to the CRPS than the Proposed Plan;
- (f) Do CRPS Objective 6.2.1(3) and Policy 6.3.1 regarding 'urban limits' preclude rezoning of the Additional Land; and
- (g) Reply to the Officer Report.

STATUTORY FRAMEWORK FOR PROPOSED PLAN CHANGE DECISIONS

15 The approach to be taken in making decisions on proposed plan changes was summarised in the recent Environment Court decision of *Middle Hill Ltd v Auckland Council*,⁵ (following the decision of *Colonial Vineyard Ltd v Marlborough District Council*⁶), but incorporating the current requirement to give effect to the NPS-UD, as follows:

[29] In summary, therefore, the relevant statutory requirements for the plan change provisions include:

(e) whether they are designed to accord with and assist the Council to carry out its functions for the purpose of giving effect to the RMA;⁷

(f) whether they accord with Part 2 of the RMA;⁸

(g) whether they give effect to the regional policy statement;⁹

(h) whether they give effect to a national policy statement;¹⁰

⁵ [2022] NZEnvC 162 at [29]

⁶ [2014] NZEnvC 55 at [17]

⁷ RMA, ss 31 and 74(1)(a)

⁸ RMA, s 74(1)(b)

⁹ RMA, s 75(3)(c)

¹⁰ RMA, s75(3)

- (i) whether they have regard to [relevant strategies prepared under another Act];¹¹ and
- (j) whether the rules have regard to the actual or potential effects on the environment including, in particular, any adverse effects.¹²

[30] Under s 32 of the Act we must also consider whether the provisions are the most appropriate way to achieve the purpose of the plan change and the objectives of the Auckland Unitary Plan by:

- (a) identifying other reasonably practicable options for achieving the objectives;¹³ and
- (b) assessing the efficiency and effectiveness of the provisions in achieving the objectives, including by:¹⁴
- i. identifying and assessing the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for:
 - economic growth that are anticipated to be provided or reduced;¹⁵ and
 - employment that are anticipated to be provided or reduced;¹⁶ and
 - ii. if practicable, quantifying the benefits and costs;¹⁷ and
 - iii. assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.¹⁸

- 16 In *Colonial Vineyard Ltd* the Court adopted an approach of identifying and evaluating the potential positive consequences and potential negative consequences of the two different options that were being assessed by the Court as a means to evaluate the risks of acting or not acting in respect of each option.¹⁹ I have adopted that approach in these submissions.

STATUTORY PLANS

- 17 There are a range of statutory documents that need to be considered when assessing the merits of the Proposal, including:
- (a) National Policy Statement for Urban Development (**NPS-UD**);
 - (b) National Policy Statement for Highly Productive Land (**NPS-HPL**);
 - (c) Canterbury Regional Policy Statement (**CRPS**); and

¹¹ RMA, s74(2)(b)

¹² RMA, s76(3)

¹³ RMA, s 32(1)(b)(i)

¹⁴ RMA, s 32(1)(b)(ii)

¹⁵ RMA, s 32(2)(a)(i)

¹⁶ RMA, s 32(2)(a)(ii)

¹⁷ RMA, s 32(2)(b)

¹⁸ RMA, s32(2)(c)

¹⁹ *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [68] – [71]

- (d) Management plans and strategies prepared under other Acts, relevantly:
 - (i) Greater Christchurch Spatial Plan (**GCSP**);
 - (ii) Mahaanui Management Plan; and
 - (iii) Waimakariri 2048 District Development Strategy (**WDDS**).

18 Each of these statutory documents are discussed in the planning evidence of Ms Ruske-Anderson.²⁰ The Officer Report supports the interpretation adopted by Ms Ruske-Anderson regarding the NPS-UD, the CRPS and the WDDS, as is indicated by the Officer Report's positive recommendation for the Proposal.

WHAT IS THE RELATIONSHIP BETWEEN THE NPS-UD AND THE PROPOSED PLAN?

Hierarchy of planning documents

19 In *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd*²¹ the Supreme Court confirmed that there is a three-tiered management system – national, regional and district – created by the RMA which established a “hierarchy of planning documents”²². Subordinate planning documents, such as a district plan, must give effect to National Policy Statements. This is expressly provided for by section 75(3)(a) RMA. The Supreme Court held that-

- (a) the requirement to “give effect to” is a strong directive,²³
- (b) the notion that decision makers are entitled to decline to implement a National Policy Statement if they consider appropriate does not fit readily into the hierarchical scheme of the RMA,²⁴ and
- (c) the requirement to “give effect to” a National Policy Statement is intended to constrain decision makers.²⁵

20 This hierarchy is an important consideration when determining weighting of National Policy Statements and lower order planning instruments, particularly when the national instrument is the most recent in time. In *Bunnings Ltd v*

²⁰ Planning evidence of Ms Ruske-Anderson at [116]-[160]

²¹ [2014] NZSC 38 at [ABOAP 376]

²² At [ABOAP 381], paragraph [10]

²³ At [80]

²⁴ At [90]

²⁵ At [91]

*Queenstown Lakes District Council*²⁶ the Environment Court discussed the relationship between the Operative District Plan and Proposed District Plan (which each contained “avoid” policies intended to exclude non-industrial activities from industrial zones) and the NPS-UDC 2016. This document has been superseded by the NPS-UD 2020 however the following comments of the Court remain highly relevant:

Accordingly we consider it is appropriate to put greater weight on the NPS-UDC and, if necessary, on part 2 of the RMA (especially section 7(b)). The NPS-UDC demands greater weight because it is a later document, is higher in the statutory hierarchy, and has better regard to section 7(b) RMA.²⁷

Different approach required under the NPS-UD

21 In the *Bunnings* case, the Environment Court held that the NPS-UDC required a different approach to deciding whether land may be rezoned for residential development than had been taken up until that time, when it said (our emphasis added):²⁸

[148] The NPS-UDC directs a radical change to the way in which local authorities have approached the issue of development capacity for industry in the past. That has traditionally come close to the “Soviet” model of setting aside X ha for the production of pig iron. The ODP, PDP and even the PORPS all come close to that when they direct that non-industrial activities are to be avoided on land zoned industrial.

[149] In contrast the NPS-UDC's substantive policy PA3(b) requires us to have particular regard to providing choices for consumers. The proposal by Bunnings will do that...

[150] Importantly NPS-UDC policy PA3(b) requires us to promote the efficient use of urban land... We find that on the facts the proposal is a more efficient use of the site than waiting for an industrial activity to occur.

[151] The final “outcomes” policy, PA3(c), requires us to have regard to limiting - as much as possible — the adverse impacts of, in this case the Industrial zoning, on the competitive operation of land markets. The proposed activity is not prohibited, and so the undoubted adverse effect on competition in the land market should be limited by granting consent to this unusual application...

[155] There are further, major, problems with the Council's approach to PA1 which become obvious when the NPS-UDC is read as a whole. The spirit and intent of the substantive objectives is to open development doors, not to close them...

²⁶[2019] NZEnvC 59

²⁷ Supra at [113]

²⁸ at [148] – [155]

At least sufficient development capacity to meet demand for housing land

22 Policy 2 of NPS-UD requires:

***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.*

23 "Short term", "short-medium term", "medium term" and "long term" are defined in NPS-UD as follows:

- (a) **Short term** mean within the next 3 years;
- (b) **Short-medium term** means within the next 10 years;
- (c) **Medium term** means between 3 and 10 years; and
- (d) **long term** means between 10 and 30 years.

24 It follows that the NPS-UD is future looking and is intended to apply over a time span of at least 30 years. The Council is required by Policy 2 to provide at least sufficient development capacity to meet the expected demand for housing and for business land for the next 30 years.

WHAT ARE THE POTENTIAL POSITIVE CONSEQUENCES OF THE PROPOSED REZONING COMPARED TO THE PROPOSED PLAN

Increased development capacity for medium density housing

25 Mr Colegrave's evidence assesses the District's population and housing context, the current state of the residential housing market, the economic rationale for the Proposal, and the likely wider economic impacts. He notes the strong population growth in recent years is projected to continue well into the foreseeable future and considers the district will face a significant, widespread shortage of feasible capacity to meet demand. The Bellgrove rezone Proposal responds to this by providing a new master-planned development at pace and scale.²⁹

26 Mr Colegrave considers the latest available information on the supply of, and demand for, residential housing in the District is unreliable, and fails to test sufficiency for different dwelling types in new and existing locations, as required by the NPS-UD. For this reason, a shortfall for standalone homes in the district was not identified.³⁰

²⁹ Economic Evidence of Mr Colegrave, para 16

³⁰ Economic Evidence of Mr Colegrave, para 54

- 27 Rezoning the Additional land to MRZ would add a significant and meaningful contribution to Rangiora's housing supply and will improve the overall viability of the Bellgrove South development by spreading costs (such as bulk infrastructure provision) across a larger site.³¹

More choice and improved affordability of housing

- 28 One of the minima of a well-functioning urban environment is that it enables a variety of homes that meet the needs, in terms of type, price, and location, of different households.³²
- 29 The Proposal would enable a range of allotment sizes (approximately 250m² through to 885m²)³³ providing increased residential diversity.
- 30 In *Colonial Vineyard*,³⁴ the Environment Court gave this analysis of the relationship between shortage of housing supply and housing prices (my emphasis):

4.3 Residential supply and demand

[98] Prior to 2011, there was a demand for between 100 and 150 houses a year and an availability of approximately 1,000 greenfield sites. Based on that, counsel for the Omaka Group submitted there is no evidence that the alleged future shortfall will materialise before further greenfield sites are made available. We are unsure what to make of that submission because counsel did not explain what he meant by "shortfall". There is not usually a general shortfall. **Excess demand is an excess of a quantity demanded at a price. In relation to the housing market(s), excess demand of houses (a shortfall in supply) is an excess of houses demanded at entry level and average prices over the quantity supplied at those prices.**

[99] Mr Hayward gave evidence for CVL that there has been "a subnormal amount of residential land coming forward from residential development in Marlborough". He also stated that there was an imbalance between supply and demand, with a greater quantity demanded than supply. Further, none of the witnesses disputed Mr Hawes' evidence that the Strategies are clear that there is likely to be a severe shortfall of residential land in Blenheim if more land is not zoned for that purpose.

[100] Plan Changes 64 to 71 would potentially enable more residential sections to be supplied to the housing market. However, in view of the existence of submissions on these plan changes, we consider the alternatives represented by those plan changes are too uncertain to make reasonable predictions about.

[101] **We find that one of the risks of not approving PC59 is that the quantity of houses supplied in Blenheim at average (or below) prices is**

³¹ Economic Evidence of Mr Colegrave, para 109 and 111

³² NPS-UD Policy 1(a)

³³ Evidence of Mr Colegrave, para 32

³⁴ [2014] NZEnvC 55 at [98] – [101]

likely to decrease relative to the quantity likely to be demanded. That will have the consequence that house prices increase.

31 Against the backdrop of predicted shortfall in development capacity within the district, it seems likely that one of the risks of not approving the proposed rezoning is house price increase due to shortage of supply. Conversely, granting the proposed rezoning is likely to have a positive influence on affordability of housing at Rangiora.

Compact residential urban form that reduces urban sprawl

32 Consistent with the relevant objectives and policies in the Proposed District Plan, particularly those that relate to Urban Growth³⁵, the proposed rezoning will enable a consolidated and well-integrated development that will promote a compact urban form.

33 The scale and nature of development within the Site will be generally consistent with the development scale of the existing land use of the neighbouring development.³⁶

34 Mr Milne considers the proposed rezoning signals a logical and rational urban form extension to the existing Rangiora township. Any adverse effects visual and landscape effects of future residential development can be appropriately managed, as provided for by the Updated Revised SER-ODP.³⁷ The ODP has been designed to ensure that MRZ development integrates with adjacent areas, as well as with the rural/residential boundary.³⁸

35 Ms Ruske-Anderson considers the Site has good access to public transport, a well-integrated network of pedestrian and cycle paths, and is within 2km from the Rangiora Town Centre and General Industrial Zone.³⁹

Efficient use of infrastructure

36 The engineering evidence for the Submitter demonstrates that the Site can be appropriately served with respect to flooding and stormwater⁴⁰, potable water and wastewater,⁴¹ and transportation.⁴²

³⁵ Proposed Plan Objectives and Policies, including Policy UFD-P3

³⁶ Evidence of Michelle Ruske-Anderson, refer Attachment 6 page 92 and at [17](c)(vii)

³⁷ Evidence of Tony Milne, at [132]

³⁸ Evidence of Tony Milne at [101]

³⁹ Evidence of Michelle Ruske-Anderson, at Attachment 7 page 103

⁴⁰ Flooding Evidence of David Delagarza at [42]-[56]

⁴¹ Infrastructure Evidence of Jason Trist at [35]-[43]

⁴² Transport Evidence of Mathew Collins at [14]-[17]

37 As mentioned in the evidence of Ms Ruske-Anderson, the Proposal can be effectively integrated with infrastructure planning, funding and delivery.⁴³

38 Officer Report A regarding the Bellgrove South Proposal states that there appears to be no specific technical issues with rezoning of the South Block.⁴⁴

Biodiversity gains

39 The ecological evidence for the Submitter contains recommendations for biodiversity gains. In particular, Dr Tracy-Mines recommends that the waterways and springs on the Site be protected and enhanced by appropriate indigenous riparian planting.⁴⁵ The landscape evidence of Mr Milne considers that *the Updated Revised SER-ODP provides opportunities along the Cam/Ruataniwha River corridor for the enhancement of indigenous ecosystems and habitat.*⁴⁶ Each of these recommendations are adopted by the ODP.⁴⁷

WHAT ARE THE POTENTIAL NEGATIVE CONSEQUENCES OF THE PROPOSED REZONING COMPARED TO THE PROPOSED PLAN

Loss of highly productive soils within the Additional Land

40 Loss of highly productive soils does not preclude approval of the Bellgrove South Proposal because the NPS-HPL does not apply to RLZ. Under clause 3.5(7)(b)(i) NPS-HPL, land identified as Highly Productive Land that is proposed to be rezoned rural lifestyle zone is exempt from the NPS-HPL. This approach is supported by Mr Buckley's view expressed in his memorandum to the Hearings Panel on this topic.⁴⁸ It is also consistent with the Ministry for the Environment publication entitled *Guide to Implementation of the NPS-HPL*.

Summary of positive and negative consequences

41 In summary to this point, the Proposal will generate significant positive consequences that cannot be realised under the Proposed Plan and little, if any, negative consequences will arise.

⁴³ Evidence of Michelle Ruske-Anderson, at Attachment 7 page 104

⁴⁴ Officer Report A at [567]

⁴⁵ Ecological evidence of Dr Tracy-Mines at [103]

⁴⁶ Landscape Evidence of Mr Milne at [129]

⁴⁷ Landscape Supplementary Evidence of Mr Miller dated 8 July 2024 Graphic Attachment Sheet 21

⁴⁸ Memorandum on the NPS-HPL on 22 July 2023 (amended on 26 July 2023)

DOES THE PROPOSED REZONING BETTER GIVE EFFECT TO THE NPS-UD THAN THE PROPOSED PLAN?

42 All district plans must give effect to the NPS-UD, and in doing so, they give effect to the purpose and principles of the RMA.

Objectives 1 to 8, and policies 1,2,6,8,9 and 10 of the NPS-UD

43 These objectives and policies apply to all local authorities and must be given effect to in all district plans. The proposed rezoning of Bellgrove South sought by the Submitter achieves these objectives and implements these policies better than the Proposed Plan, in that it:

- (a) will better provide a well-functioning urban environment at Rangiora, enabling the people who live there, and in the wider community of Waimakariri, to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future;⁴⁹
- (b) will improve housing affordability by supporting competitive land and development markets;⁵⁰
- (c) will enable more people to live in an established urban environment that is near employment opportunities (within 2km of Rangiora town centre and readily accessible to the main centres of Kaiapoi and Christchurch City) and connections with the public transport network, and in an area experiencing high demand for residential housing;⁵¹
- (d) will enable the established residential township of Rangiora to continue to develop in response to the recognised demand for additional residential land, providing diversity and choice in the housing market;⁵²
- (e) The principles of the Treaty of Waitangi have been taken into account in the proposed rezoning;⁵³
- (f) Represents a significant increase in housing development capacity within the urban environment of both Rangiora and Greater Christchurch. It is required to address an identified shortfall in

⁴⁹ NPS-UD, Objective 1

⁵⁰ NPS-UD, Objective 2

⁵¹ NPS-UD, Objective 3(a), (b) and (c) refer Evidence of Michelle Ruske-Anderson at Table 6-2 page 98

⁵² NPS-UD, Objective 4

⁵³ NPS-UD, Objective 5 and Policy 9

residential land supply, and is in a strategically preferred location adjacent to an established settlement. MRZ enabled development of the Site can be appropriately integrated with infrastructure planning and funding decisions;⁵⁴

- (g) The Council will be using robust and recent information about its urban environments to inform its planning decisions;⁵⁵
- (h) by enabling a more compact urban form, near to employment opportunities, the rezoned urban environment supports reductions in greenhouse gas emissions and is resilient to current and future effects of climate change;⁵⁶
- (i) The rezoning contributes to a well-functioning urban environment-
 - (i) Having and enabling a variety of homes that meet the needs, in terms of type, price and location of different households;⁵⁷
 - (ii) Having good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of access to public transport;⁵⁸
 - (iii) Supporting and limiting as much as possible adverse impacts on, the competitive operation of land and development markets;⁵⁹
 - (iv) supporting reductions in greenhouse gas emissions compared to alternative locations for LLRZ in the district⁶⁰; and
 - (v) being resilient to the likely current and future effects of climate change⁶¹
- (j) The rezoning may involve changes to the character of the rezoned area and the outlook from adjoining properties, however the nature

⁵⁴ UD, Objective 6(a), (b), and (c)

⁵⁵ NPS-UD, Objective 7

⁵⁶ NPS-UD, Objective 8(a) and (b), Policy 1(e) and (f) and Policy 6(e)

⁵⁷ NPS-UD, Policy 1(a)(i)

⁵⁸ NPS-UD, policy 1(c) – refer to planning evidence of Michelle Ruske-Anderson at [121](c)

⁵⁹ NPS-UD, Policy 1(d)

⁶⁰ NPS-UD, Policy 1(e)

⁶¹ NPS-UD, Policy 1(f)

and character of development will be consistent and compatible with the that of the established settlement at Rangiora.⁶²

- (k) The rezoning will contribute to the Council meeting the requirements of the NPS-UD to provide or realise development capacity.⁶³
- (l) The rezoning is responsive to a proposed plan submission that will add significantly to development capacity and contribute to a well-functioning urban environment, even if out of sequence with planned land release.⁶⁴

44 Policies 2 and 10 apply to tier 1, 2 and 3 local authorities. Those policies will be better implemented by the proposed rezoning, than by the Proposed Plan as notified, in that the rezoning:

- (a) will better help the Council to 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; and⁶⁵
- (b) will result from engagement with the development sector to identify significant opportunities for urban development.⁶⁶

DOES THE PROPOSED REZONING BETTER GIVE EFFECT TO THE CANTERBURY REGIONAL POLICY STATEMENT THAN THE PROPOSED PLAN?

45 The rezoning also gives better effect to the Canterbury Regional Policy Statement (**CRPS**) than the Proposed Plan as notified. The Proposal achieves consistency with Chapter 5 and Chapter 6 of the CRPS for the reasons discussed in Ms Ruske-Anderson's evidence.⁶⁷ The Officer Report does not take issue with Ms Ruske-Anderson's analysis of the Proposal against the CRPS. Therefore, subject to the discussion regarding Objective 6.2.1(3) and Policy 6.3.1 below, the CRPS is not discussed further in these submissions.

DO CRPS OBJECTIVE 6.2.1(3) AND POLICY 6.3.1 REGARDING 'URBAN LIMITS' PRECLUDE REZONING OF THE ADDITIONAL LAND

46 The following Submissions largely comprises that contained within my Submissions prepared for Hearing Stream 10A 'Future Development Areas'

⁶² NPS-UD, Policy 6(b)

⁶³ NPS-UD, Policy 6(d)

⁶⁴ NPS-UD, Policy 8

⁶⁵ NPS-UD, Policy 2

⁶⁶ NPS-UD, Policy 10(c)

⁶⁷ Evidence of Michelle Ruske-Anderson at [138]-[142]

and relates solely to the inclusion of the Additional Land within the SER-DA, SER-ODP and the area of Bellgrove South sought to be rezoned MRZ.

47 Officer Report A supports rezoning of the Additional Land because of the SER DA to include the Additional Land because *"...the requirements in Policy 6.3.1 to give effect to the urban form as identified in Map A, CRPS, and "give effect" can be considered in light of a "well-functioning urban environment", without the overall directive and prohibitive provisions of Objective 6.2.1. The proposed boundary adjustments do not significantly alter the urban form as set out in Map A, except to move the development area boundary slightly to the east to enable safer access to the site."*⁶⁸

48 As noted in the evidence of Ms Ruske-Anderson, the intent behind Map A's inclusion relates to certainty and efficiency of infrastructure delivery for appropriately located greenfield residential development.⁶⁹

49 In the present case the policy intent of Map A and associated Objective 6.2.1 (3) is readily achieved insofar as the Additional Land is concerned. This is demonstrated by the IAF Agreements which are supported by the Private Development Agreement between Bellgrove and WDC.⁷⁰

50 It is therefore unsurprising that Mr Trist is able to confidently state with respect to infrastructure to service development of the Additional Land that⁷¹:

The Additional Land has the ability to be serviced as part of the Bellgrove South development, and has to date been factored into all conceptual masterplan designs and layout considerations. Key infrastructure proposed to service the Bellgrove South development, such as stormwater treatment facilities and sewer pump stations, are intended to be located within the Bellgrove South land and will be sized to provide capacity to service the Additional Land (enabling approximately an additional 57 lots).

The Additional Land area can be easily developed in conjunction with the wider Bellgrove South landholding, aided by the fact that all the land is in Bellgrove's sole ownership. This will provide the opportunity for the future development of this land to be comprehensively designed and master planned to ensure good connectivity, integration and continuity with the wider development area, and assist the provision of housing in accordance with the IAF

⁶⁸ Officer Report: A Residential Rezoning, para 595

⁶⁹ Evidence Ms Ruske-Anderson at [201] and see also [85]-[87]

⁷⁰ Covering Bellgrove North and including certain IAF funded infrastructure projects located within Bellgrove South

⁷¹ Evidence of Mr Trist at [57] and [58]

agreements. This also means the land can be developed without impeding on any other landowners because access can only be obtained through the Bellgrove landholding, with the Cam River providing a natural barrier with the adjoining landowners.

- 51 Ms Ruske-Anderson's evidence discusses the relevant statutory planning framework and reaches the following conclusion regarding the Additional Land (underling added):⁷²

Inclusion of the Additional Land within the SER ODP is generally consistent with the outcomes anticipated by the CRPS objectives and policies within Chapter 6 and the only point of inconsistency appears to be in relation to Objective 6.6.1(3) [sic]. Given the relatively small size of the land, its location adjacent to land already within the SER ODP, and the provision already made for servicing this area through the IAF Agreement, I do not consider any material harm arises from the inclusion of the Additional Land. Further, inclusion of the Additional Land would appear to be consistent with the outcomes for urban development anticipated by the NSP-UD.

There are a number of other matters relevant to the consideration of the Additional Land that distinguish it from other land at the periphery of urban areas, and provide comfort that the inclusion of the Additional Land within the SER DA would not set a precedent for widespread changes to the FDA's that are inconsistent with Map A.

- 52 Further, Ms Rusk-Anderson's evidence identifies a range of features relevant to the consideration of the Additional Land that distinguish it from other land at the periphery of urban areas. These features provide confidence that the inclusion of the Additional Land within the SER DA would not set a precedent for widespread changes to the FDA's that are inconsistent with Map A.⁷³

- 53 These findings are highly relevant to consideration of the alignment between the CRPS and the Submitter's request for inclusion of the Additional Land in light of the recent Supreme Court decision of *Port Otago Limited V Environmental Defence Society Incorporated*.⁷⁴ This decision relates to the relationship between a policy in the NZCPS relating to ports and a number of other policies that require adverse effects of activities to be avoided.

- 54 The Court noted that conflicts between policies are likely to be rare if those policies are properly construed, even where they seem to be pulling in

⁷² Evidence of Michelle Ruske-Anderson for Stream 12E at [204]

⁷³ Supra at [205]-[215]

⁷⁴ *Port Otago Limited V Environmental Defence Society Incorporated* [2023] NZSC 112

different directions⁷⁵ and further that concepts of mitigation and remedy may serve to meet the “avoid” standard by bring the level of harm down so that material harm is avoided.⁷⁶

55 The Court summarised it’s view as follows⁷⁷:

All of the above means that the avoidance policies in the NZCRS must be interpreted in light of what is sought to be protected including the relevant values and areas and, when considering any development, whether measures can be put in place to avoid material harm to those values and areas.

56 The *Port of Otago* decision supports an approach to interpretation of the CRPS such that the word “avoid” in Objective 6.2.1(3) should be interpreted as “avoid material harm from” urban development outside of existing urban areas or greenfield priority areas for development rather than “avoid” any such development.

57 When this approach is applied, the change requested by the Submitter is not inconsistent with Objective 6.2.1 (3) because no material harm will arise from inclusion of the Additional Land within the SER DA and rezoning the Additional Land to MRZ.

The Proposed Rezoning of the Additional Land satisfies the responsive planning provisions of the NPS-UD

58 In the event that the Panel determines that urban development is not anticipated by the CRPS in this location, the NPS-UD contemplates the situation of lower order planning document becoming outdated and acting as a closed door to development. Policy 8 provides a way around, so that-

“local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments, even if the development capacity is:

- (a) *Unanticipated by RMA planning documents; or*
- (b) *Out of sequence with planned land release.”*

59 Application of Policy 8 to rezoning proposals that were unanticipated by the CRPS has been considered in a relatively recent decision issued by a hearing panel appointed by the Selwyn District Council. The decision was appealed to the Environment Court however the appeal has recently been withdrawn. The

⁷⁵ Supra at [63]

⁷⁶ Supra at [65]

⁷⁷ Supra at [68]

decision is not binding on this Panel and is for you to determine the amount of weight it should be given in circumstances of this case. In my submission the decision is relevant and should be had regard to in your consideration of the Proposal.

60 On 29 October 2020 Rolleston Industrial Developments Limited lodged a private plan change request PC69 with the Selwyn District Council. The request seeks a change to the Operative Selwyn District Plan by rezoning approximately 190 hectares of current rural land in Lincoln to residential land. This would enable approximately 2000 residential sites and a small commercial zone.

61 The key issue arising from the application was whether it was appropriate to rezone the land given that it was not identified on Map A of the CRPS and therefore was subject to CRPS avoidance objective at 6.2.1(3).

62 The finding of the Commissioner on this issue is recorded in the decision as follows:⁷⁸

[410] Overall, it is my view, as I have previously found, that in light of the position the NPS-UD holds in the hierarchy of documents; that is the latter in time; that it was promulgated in the context of a housing crisis; and after carefully considering its text, its purpose and other contextual matters, it enables appropriate plan changes to be assessed on their merits, notwithstanding the avoidance objectives and policies of the CRPS.

[411] My findings in this regard do not render the provisions of Chapter 6 of the CRPS irrelevant, nor does it lead to a finding that significant development capacity provides, in essence, a 'trump card'. Chapter 6 of the CRPS clearly remains an important part of the overall planning framework for Canterbury. But I do not accept the avoidance objective and policies mean that this request must be declined.

63 The Commissioner proceeded to rely on Policy 8 NPS-UD to approve the Plan Change request.

64 In this case the evidence filed by the Submitter demonstrates that the Proposal qualifies under the responsive planning decision regime provided by the NPS-UD (Policy 8 and Clause 3.8).

65 In particular:

⁷⁸ PC69 Recommendation by Commissioner David Caldwell Date 13 May 2022, [410]-[411].

- (a) The economic evidence of Mr Colegrave is that the proposed development of approximately 28 dwellings enabled on the Additional Land represents a significant increase in capacity for the Waimakariri district.⁷⁹ Mr Colegrave's supplementary evidence further discusses the likely significance of the Proposal and concludes that the Proposal is a significant increase in development capacity for the purposes of the NPS-UD.⁸⁰
- (b) The planning evidence of Ms Ruskd-Anderson is that, taking into account the technical evidence filed by the Submitter, inclusion of the Additional Land within the Bellgrove South Proposal will contribute to a well-functioning urban environment.⁸¹

REPLY TO OFFICER REPORTS

66 As mentioned, Officer Report A supports the Bellgrove South Proposal (inclusive of the Additional Land). Officer Report A and B both support the Bellgrove North Proposal. Even so, there remain some points of difference between the Submitter and Officer Report A and B. This section discusses these matters. For convenience they have been organised under three broad topics below followed by the Submitter's reply in respect of each topic.

Bellgrove South

- 67 The following matters are raised by Officer Report A regarding Bellgrove South:
- (a) Eastern boundary green buffer requirements;
 - (b) Transport – extension of the existing connection off Goodwin Street to Bellgrove South;
 - (c) Greenspace – sizing of indicative open space reserve shown on the SER-ODP;
 - (d) Recommendation the SER-ODP includes narrative text on drains and setbacks; and
 - (e) Recommendation for substantially different SER-ODP (shown on Figure 41 of the Officer Report A), including a proposed vehicle bridge

⁷⁹ Economic evidence of Fraser Colegrave at [108]-[109]

⁸⁰ Supplementary economic evidence of Fraser Colegrave at [9]-[13]

⁸¹ Planning evidence of Michelle Ruske-Anderson at [220]

across Cam/Ruataniwha River to connect Bellgrove South with Kelly block and Leech block (**Officer SER-ODP**).

- 68 Each of these matters are discussed in the supplementary evidence planning filed by Ms Ruske-Anderson, supplementary expert technical evidence and evidence of Mr McGowan (landowner/developer).
- 69 In summary, matters (a) –(d) can be addressed by additional narration on the ODP or are more appropriately addressed at the time of subdivision.
- 70 The main point of difference between the Officer Report A and the Submitter relates to (e) above. There are a number of significant differences between the Officer SER-ODP and the SER-ODP proposed by the Submitter (the most recent version of which is identified as “Updated SER-ODP” in Ms Ruske-Anderson’s supplementary evidence.⁸²
- 71 In summary, should the Panel be minded to approve the Bellgrove South Proposal then it is submitted that the Updated SER-ODP will better achieve a well-functioning urban environment within Bellgrove South than the Officer SER-ODP.⁸³
- 72 Further the proposed vehicle bridge is entirely dependent on the Panel adopting the Officer Report recommendation to rezone the Kelly and Leech blocks. It is unclear whether there is sufficient legal scope and/or technical evidence available to support this recommendation. Further, even if rezoning of these blocks is justified, it is considered unnecessary to show a proposed vehicle bridge across the Cam/Ruataniwha River to connect Bellgrove South to them because such a crossing is not required to serve Bellgrove South and the Kelly and Leech blocks can readily be accessed from Rangiora Woodend Road.

Bellgrove North

- 73 The following matter is raised by Officer Report A regarding Bellgrove North:
- (a) The NER-ODP
- 74 This matter is discussed in the planning supplementary evidence filed by Ms Ruske-Anderson and supplementary expert technical evidence.

⁸² Supplementary evidence of Michelle Ruske-Anderson at [24](e)

⁸³ Supra at [28]

- 75 Ms Ruske-Anderson is concerned that the Reporting Officer's recommendation for changes to the NER ODP maps is limited to changes that reflect the Stage 1 Consent.⁸⁴
- 76 Ms Ruske-Anderson considers that the changes need to extend across the balance of the NER ODP in order to provide for the extent of the stormwater reserve area and modifications to the alignment of the primary road movement network that are located outside the Stage 1 consent area (i.e. within stages 2-5).⁸⁵
- 77 In summary, the NER ODP must be amended to include all the changes sought by BRL in order to ensure the development of the North Block achieves a well-functioning urban environment.⁸⁶

Variation 1

- 78 The following matters are raised by Officer Report B regarding Variation 1:
- (a) The exclusion of part of the Bellgrove North Land from rezoning as Variation 1 MRZ, specifically:
 - (i) The Future East West Collector Road; and
 - (ii) Road 1.
- 79 This matter is discussed in the planning supplementary evidence filed by Ms Ruske-Anderson and supplementary expert technical evidence.
- 80 In summary, Ms Ruske-Anderson considers that the Future East West Collector Road and Road 1 should be included in the Variation 1 Maps and rezoned MRZ.

CONCLUSION

- 81 The NPS-UD directs a "radical change" to the way in which local authorities must approach the issue of development capacity – the spirit and intent of substantive objectives is to open development doors rather than to close them.
- 82 The Bellgrove North Proposal and the Bellgrove South Proposal will provide a number of important positive consequences for Rangiora and the District that are not attainable under the zoning pattern proposed by the Proposed Plan.

⁸⁴ S42A Officer Report: PDP Residential Rezoning at [439]

⁸⁵ Supplementary evidence of Michelle Ruske-Anderson at [38]-[39]

⁸⁶ Supplementary evidence of Michelle Ruske-Anderson at [40]

These include increased development capacity for residential housing, more choice and improved affordability of housing, more efficient use of existing infrastructure, a coordinated pattern of development that integrates with and supports the existing pattern of residential development at Rangiora. Further there are little, if any negative consequences arising from the proposed rezoning.

- 83 These outcomes are consistent with the outcomes that must be achieved by local authorities under the NPS-UD. The Submitter's rezoning proposals for North and South Bellgrove are also consistent with the funding agreements secured under the Government's Infrastructure Acceleration Fund and the Property Development Agreement between BRL and the Council.
- 84 Overall the changes requested by the Submitter are considered necessary to provide for plan-enabled residential development within Bellgrove North and Bellgrove South so that the Submitter can continue to provide much-needed housing supply to the District and meet its commitments under the IAF Agreements.

Dated: 8 August 2024



Chris Fowler
Counsel for Bellgrove Rangiora Limited

Evidence filed on behalf of the SubmitterEvidence filed 30 April 2024:

- Evidence of Jan Kupec (Geotech)
- Evidence of Wendy Whitley (Contamination)
- Evidence of Geoffrey Dunham (Soils)
- Evidence of Jason Trist (Infrastructure)
- Evidence of Mat Collins (Transport)
- Evidence of Tony Milne (Landscape)
- Evidence of David Delagarza (Flooding)
- Evidence of Fraser Colegrave (Economics)
- Evidence of Morgan Tracy-Mines (Ecology)
- Evidence of Michelle Ruske-Anderson (Planning)

Supplementary Evidence filed 27 June 2024

- Supplementary Evidence of Michelle Ruske-Anderson (Planning)
- Supplementary Evidence of Tony Milne (Landscape)

Evidence filed 2 August 2024

- Supplementary Evidence of Mat Collins (Transport)
- Supplementary Evidence of Fraser Colegrave (Economics)
- Supplementary Evidence of Della Bennet (Ecology)
- Supplementary Evidence of Tony Milne (Landscape)
- Supplementary Evidence of Michelle Ruske-Anderson (Planning)
- Supplementary Evidence of David Delagarza (Flooding)
- Evidence of Paul McGowan (Land owner / Developer)