

Before the Hearings Panel
appointed by Waimakariri District Council

Under the Resource Management Act 1991

In the matter of a hearing on submissions on the proposed Waimakariri District
Plan

Hearing Stream 12A: Rezoning – Commercial / Industrial

Ravenswood Developments Limited

Submission Number: 347

Legal submissions on behalf of Ravenswood Developments Limited

24 May 2024

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May it please the Commissioners

- 1 These submissions are provided on behalf of Ravenswood Developments Limited (**RDL**, Submission: 347), on the proposed Waimakariri District Plan (**PWDP**), Stream 12A: Rezoning – Commercial / Industrial hearing.
- 2 RDL is a subsidiary of Infinity Investment Group Limited, an established and leading developer of master-planned communities across the South Island, including Ravenswood.
- 3 Ravenswood is located north of the existing Woodend Township, and west of the State Highway roundabout that also leads to Pegasus Town. Ravenswood comprises approximately 150ha of largely flat land, which contains an emerging town centre and a fast-growing residential community of approximately 1,350 existing and planned residential sections.
- 4 RDL was the proponent of private plan change 30 (**PC30**) to the operative Waimakariri District Plan, providing for the expansion of the Ravenswood commercial area. PC30 became operative on 26 June 2023.
- 5 RDL has presented legal submissions in Streams 1 - 2, 5 and 9 of the PWDP process. This hearing addresses the focus of RDL's submission on the PWDP, which is to carry over the PC30 rezoning in the operative Plan to the PWDP.
- 6 At the time RDL made submissions on the PWDP, PC30 was still being processed. RDL's position in respect of some of its submission points on the PWDP has been amended to ensure consistency with the PC30 outcome.
- 7 As detailed further in these submissions and in evidence for RDL, rezoning of the Ravenswood commercial area has been thoroughly tested through the PC30 process. With the exception of Lot 203, PC30 largely reflects existing or consented development within the centre. The commercial zoning gives effect to, and in some cases is anticipated by, the higher order planning framework. It is an outcome agreed with WDC, recommended by the s42A officer, and accepted by the community. PC30 received a number of submissions, but only one submitter appeared at the hearing, in support of the plan change. RDL's submission on the PWDP seeking rezoning of the commercial centre has attracted no further submissions.
- 8 With one exception (in relation to TCZ-P1), RDL requests that the Panel accept the amendments to provisions set out in Annexure A to Mr Haines evidence.

Proposed Waimakariri District Plan provisions

- 9 The vision for the Ravenswood KAC is a high amenity commercial area, that is modern in its design, with a more integrated rather than street-based layout. It will comprise well designed buildings, with a high level of pedestrian connectivity, easily accessible off-street parking, and community and recreational space provided by a town square reserve and the adjacent Taranaki Stream reserve. The commercial area is complemented by an area of industrial development to the north. The proposal largely reflects development in the centre that has been achieved or is

anticipated by existing resource consents (as shown in the masterplan appended to Mr Croft's evidence). Lot 203 is the remaining undeveloped area, and has been the focus of the PC30 provisions.

- 10 Key provisions in approved PC30 include:¹
 - (a) rezoning of land within the Ravenswood development to a mix of Business 1 and 2;
 - (b) identification of the North Woodend area as an emerging Key Activity Centre (**KAC**);
 - (c) inclusion of new Outline Development Plans; and
 - (d) a number of new and amended District Plan provisions to manage retail provision, urban form and transport matters within the KAC.

- 11 In translating PC30 to the PWDP, RDL has focussed on carrying over the site-specific objectives, policies and rules. Some of the supporting text from PC30 (such as explanations and reasons, environmental results anticipated) has not been carried over as there are no corresponding provisions in the PWDP.² A table summarising the translation of the PC30 provisions into the PDP is included at [34] of the evidence of David Haines.

- 12 The PWDP package includes:
 - (a) North Woodend Development Area provisions:
 - (i) NWD Introduction – amended to include reference to new ODP and clarify purpose of ODPs;
 - (ii) New policies DEV-NWD-P1 (avoid retail distribution effects on Rangiora and Kaiapoi) and DEV-NWD-P2 (development at North Woodend KAC);
 - (iii) New rules DEV-NWD-R2 (capping core retail activity); DEV-NWD-R3 (trade suppliers permitted activity in North Woodend TCZ), DEV-NWD-R4 (development within North Woodend KAC); and DEV-NWD-R5 (development within Lot 203 prior to construction of the town square);
 - (iv) New matters of discretion DEV-NWD-MD1 (retail activity North Woodend TCZ); DEV-NWD-MD2 (development of North Woodend KAC); and DEV-NWD-MD3 (development prior to construction of town square/reserve);
 - (v) Updated ODP (DEV-NWD-APP1) for North Woodend (with PWDP zoning);

¹ Refer evidence of David Haines at [29] for complete list

² Evidence of David Haines at [31]

- (vi) New ODP and narrative for North Woodend KAC (DEV-NWD-APP2).
- (b) Commercial and Mixed Use provisions:
 - (i) TCZ introduction – amended to include North Woodend as a KAC while maintaining role and function of Rangiora and Kaiapoi;
 - (ii) TCZ-P1 – minor amendment to reflect that Ravenswood custom will not only be drawn from the Woodend/Pegasus catchment;
 - (iii) TCZ-R1 – advice note added stating that this permitted activity rule for construction/alteration of a building does not apply to development in the North Woodend Town Centre Zone where resource consent is required under rule DEVNWD-R4 and DEV-NWD-MD2; and
 - (iv) TCZ-R24 – advice note added stating that this restricted discretionary activity rule for trade suppliers does not apply in the North Woodend Town Centre Zone, which is covered by rule DEV-NWD-R3.

Evidence

- 13 In confirming amendments sought to achieve the rezoning, the approach taken by RDL has been to replicate the PC30 provisions as closely as possible. That is because PC30 has only very recently been made operative. The Environment Court approved the provisions and PC30 became part of the operative Waimakariri District Plan on 26 June 2023. The approved provisions were the subject of mediation between the parties and extensive expert witness caucusing that addressed policy alignment, potential effects, and detailed consideration of the drafting of provisions. In addition to a consent memorandum and draft provisions, the Court was provided with joint witness statements on traffic, urban design, economics and planning, setting out the experts support and evidential basis for the agreed provisions.
- 14 RDL's experts have reviewed the PWDP provisions proposed by RDL alongside the PC30 provisions. The experts maintain that the proposed rezoning is appropriate and the PWDP provisions will:
- (a) Andrew Metherell (transport) – enable an integrated development supportive of travel by a range of modes; have acceptable wider area effects on the transportation network, recognizing that some detail from PC30 provisions has been removed due to the different format of the PWDP;³
 - (b) Ian Munro (urban design) – provide for the same or very similar urban design outcomes as the PC30 provisions, including key characteristics classifying the centre as a TCZ; retaining

³ Evidence of Andrew Metherell, dated 26 March 2024, at [28] and [34]

an ODP; requiring restricted discretionary activity resource consent for new buildings and other key spatial outcomes;⁴

- (c) Fraser Colegrave (economics) – recognise that development within the Ravenswood town centre is enabled at a scale that avoids significant retail distribution effects on Rangiora and Kaiapoi (DEV-NWD-P1); replicate the 25,500m² GFA cap on permitted core retail activity, and the corresponding matters of discretion for any retail activity proposed in excess of that cap (DEV-NWD-R2 and DEV-NWD-MD2); and not create any material risk of retail distribution effects on town centres by classifying trade suppliers as a permitted activity, because they are not integral to the role and function of such locations.⁵
- (d) David Haines (planning) – provide for a high-quality development and emerging town centre, located immediately next to State Highway 1 with direct connectivity to greater Christchurch; give effect to the higher order policy directives in the NPS-UD (providing plan-enabled capacity for housing and business uses) and the CRPS (providing a KAC in the location of Woodend Pegasus and including necessary elements of an ODP); and support the sustainable management purpose of the Act.⁶

Scope

- 15 RDL and Council are satisfied that the essence of the approved PC30 provisions has been captured in the PDP provisions, allowing for some difference in form given the very different structure of the PDP compared with the operative Waimakariri District Plan.
- 16 For the avoidance of doubt, RDL addresses the Panel on the issue of whether the relief sought in the form of the PWDP package is within scope of RDL's submission on the PWDP.

Law on scope

- 17 In *Re an application by Vivid Holdings Limited*⁷ the Environment Court found that any decision of the Council (or Environment Court, on appeal) must be:
 - (a) Fairly and reasonably within the general scope of:
 - (i) an original submission; or
 - (ii) the proposed plan as notified; or
 - (iii) somewhere in between.provided that

⁴ Evidence of Ian Munro, dated 26 March 2024, at [16] and [18]

⁵ Evidence of Fraser Colegrave, dated 26 March 2024, at [29] and [33]

⁶ Evidence of David Haines, dated 26 March 2024, at [39], [42] and [67]

⁷ *Re an application by Vivid Holdings Limited*, (1999) 5 ELRNZ 264 at 271 (footnotes omitted).

- (b) the summary of the relevant submissions was fair and accurate and not misleading.

18 The local authority must consider whether any amendment made to a proposed plan as notified goes beyond what is reasonably and fairly raised in submissions on the proposed plan. It will usually be a question of degree, judged by the terms of the proposed change and the content of submissions (the *Countdown* test).⁸

19 In *Royal Forest v Bird Protection Society of New Zealand Incorporated v Southland District Council*⁹ Pankhurst J adopted the *Countdown* test, adding:

It is important that the assessment of whether any amendment was reasonably and fairly raised in the course of submissions, should be approached in a realistic workable fashion rather than from the perspective of legal nicety.

20 The reasoning is explained by Wylie J in *General Distributors Limited v Waipa District Council*:¹⁰

... one of the underlying purposes of the notification/submission/further submission process is to ensure that all are sufficiently informed about what is proposed. Otherwise the plan could end up in a form which could not reasonably have been anticipated resulting in potential unfairness.

21 Consequential relief cannot be used to extend the scope of a district plan appeal.¹¹ It must be a lesser relief than that sought initially and lie on the spectrum between the relief sought and the provisions currently contained in the plan.¹²

Applying the law

22 On 26 November 2021 RDL lodged its submission on the PWDP. RDL's concerns are clearly stated, as below:

7 RDL has a strong interest in ensuring that the established and planned residential and commercial areas of Ravenswood are afforded the necessary zoning and planning provisions under the PWDP to meet the present and future needs of this growing community, and of the District at large.

8 RDL considers that the notified version of the PWDP clearly fails to provide for those needs. Most notably, it has simply carried over the outdated zoning pattern for Ravenswood from the Operative District Plan. The Outline Development Plan for North Woodend, which has lost its relevance and integrity and does not reflect existing development, has also been "rolled over" into the PWDP. In this regard, the Council's obligations under s32 of the Resource Management Act 1991 (**RMA**) have not been adequately addressed.

9 More substantively, the notified PWDP provisions fail to recognise and provide for the ongoing development and growth of the Ravenswood Commercial Area

⁸ *Countdown Properties (Northlands) Ltd v Dunedin City Council* (1994) 1B ELRNZ 150 at 171 (HC).

⁹ *Royal Forest and Bird Protection Society of New Zealand v Southland District Council* [1997] NZRMA 408 (HC)

¹⁰ *General Distributors v Waipa District Council*, (2008) 15 ELRNZ 59 (HC), at [55].

¹¹ *Shaw and Halswater Holdings Ltd and anor v Selwyn District Council* C183/2000, 26 October 2000 at [12].

¹² *Woodvale v Christchurch City Council* C056/04 at [8].

as the third Key Activity Centre (**KAC**) within the District by not providing a sufficient quantum of Town Centre zoned land.

- 23 Consistent with PC30, RDL's submission on the PWDP sought rezoning (PC30: Business1 and Business 2 to PWDP: TCZ and GIZ), to facilitate the growth of Ravenswood as a KAC; together with changes to the ODP, including updated zoning and the addition of a specific ODP for the KAC. The submission also sought a number of specific changes to the PWDP provisions, including provision for trade suppliers as a permitted activity, identification of Ravenswood as a KAC, and general support for urban design matters of discretion where implemented through the revised ODP.
- 24 Finally, the submission sought:¹³
- (b) such other relief as may be required to give effect to this submission, including alternative, further or consequential amendments to objectives, policies, rules and definitions of the PWDP that address the matters raised by RDL.
- 25 No submissions were lodged opposing the rezoning sought by RDL.¹⁴
- 26 Where changes now sought to the PWDP provisions were not specifically sought in RDL's submission, it is submitted that these changes remain within scope, either as:
- (a) consequential relief to the TCZ rezoning sought, to better explain and integrate the rezoning into the structure of the PWDP, for example the amendments to the NWD introduction; or
 - (b) lesser relief than that sought in its submission, being a more stringent outcome for RDL than the largely unconstrained TCZ rezoning sought in the submission, for example the NWD provisions addressing management of urban design and potential retail distribution effects.

The Officer's Report

- 27 The Officer supports the transfer of the very recently agreed PC30 outcome into the Proposed Plan, with as little amendment as possible.¹⁵ The Officer takes the approach that if the proposed provisions have the same or similar effect to the approved Consent Order provisions, then they can be deemed to still be the most appropriate (given they were only very recently agreed). On that basis no further or only a light assessment in the Officer's Report and in evidence would be required.¹⁶

¹³ RDL's submission at [13].

¹⁴ Waka Kotahi (FS 110) support in part RDL 347.19 (SIGN-R7 activity status off site signs); Z Energy NZ, BP Oil NZ, Mobil Oil NZ, BP Oil (FS104) support RDL 347.15 (Delete EW-S2).

¹⁵ Officer's Report at [208].

¹⁶ Officer's Report at [208]

- 28 The Proposed Plan has been updated in line with current legislative and higher order policy direction and has a new format that follows the requirements of the National Planning Standards 2019.¹⁷ As noted by the Officer, "the key challenge to carrying over the PC30 provisions is that the format and style of the Proposed Plan is significantly different from the Operative Plan."¹⁸
- 29 The Officer notes that no substantive changes to the PC30 provisions are considered necessary, with only minimal changes proposed to the provisions to align with the structure and drafting of the Proposed Plan. He agrees with Mr Haines that PC30's section 32AA assessment (including for trade suppliers) remains current, so no further s32AA evaluation is required.¹⁹
- 30 Importantly, the Officer concludes, with three minor exceptions noted below:²⁰

I consider the proposed package of provisions in Mr Haines evidence is consistent with the PC30 mediated agreement. I consider that the proposed package of provisions can work functionally when integrated into the Proposed Plan.

Minor exceptions

- 31 In relation to the minor outstanding drafting matters:
- (a) RDL's submission originally sought that the Ravenswood area be referred to as "Ravenswood" in the PWDP. RDL now accepts and has drafted provisions using "North Woodend" as the description of the development area, consistent with WDC's preferred drafting.
 - (b) In relation to the CMUZ introduction, the Officer prefers to retain the notified reference to North Woodend "playing a secondary role" to established centres of Kaiapoi and Rangiora, finding it more consistent with the rule framework that includes a retail cap for North Woodend.²¹ RDL continues to prefer the wording proposed in Mr Haines' Annexure 2 and addressed in his evidence. Retail development thresholds (beyond which resource consent is required) have been applied to maintain the role and function of Rangiora and Kaiapoi, and RDL acknowledges that Rangiora and Kaiapoi are and will continue to be the principal centres for community services and public expenditure. RDL agrees that, as a new and emerging centre, Ravenswood will have a different role to Rangiora and Kaiapoi but considers that describing it as having a "secondary role" undermines the TCZ and its recognition as a KAC.

¹⁷ Evidence of David Haines at [31]

¹⁸ Officer's Report at [209]

¹⁹ Officer's Report at [229]

²⁰ Officer's Report at [213]

²¹ Officer's Report at [212]

- (c) Mr Haines had proposed amendment to TCZ-P1 in response to pre-hearing discussions with Mr Willis, but did not consider these changes were necessary. Mr Willis is now also of the opinion that changes to TCZ-P1 are unnecessary to provide policy support for trade supplier activities at North Woodend, finding that the proposed North Woodend provisions include specific and detailed policy support for the anticipated North Woodend development (e.g. DEV-NWD-P2), and further explanation is provided in the ODP explanatory text.²² However, RDL seeks the below amendment to clarify that Ravenswood custom will not be drawn only from the Woodend/Pegasus catchment:

TCZ-P1 Town Centre hierarchy

Recognise that:

1. Rangiora and Kaiapoi are the District's principal town centres with significant established community services and public expenditure;
2. North Woodend is a new emerging centre that will provide opportunities over time for town centre activities ~~in the Woodend/Pegasus commercial catchment.~~

Conclusion

- 32 RDL submits, and the Officer agrees, that the PWDP package is consistent with the PC30 provisions approved by the Environment Court.
- 33 RDL respectfully requests that the amendments set out in Annexure 2 of Mr Haines' evidence, with the additional amendment set out in paragraph 31(c) above, be accepted.

Dated 24 May 2024



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²² Officer's Report at [212]