

Before the Independent Commissioners appointed by the Waimakariri District Council

In the matter of the Resource Management Act 1991 (**the Act**)

And

In the matter of Proposed Waimakariri District Plan

And

In the matter of the submission by Alistair John Dugald Cameron (#180)
seeking the rezoning of land at 2 Auckland Street, Ashley
Village.

Legal submissions on behalf of Alistair Cameron

Dated: 12 July 2024

Andrew Schulte (andrew.schulte@cavell.co.nz)
Counsel for A J D Cameron (submitter #180)

CavellLeitch >
LIMITED

AJS-132179-179-56-V1-e

Level 3, BNZ Centre
111 Cashel Mall
PO Box 799, Christchurch
T: +64 3 379 9940 F: +64 3 379 2408

Legal submissions on behalf of Mr A J D Cameron

Introduction

1. The subdivision and development of 2 Auckland Street, Ashley (**site**) has been the subject of discussion for some time. It has also evolved over the years, most recently from a proposal to subdivide the land, with wastewater managed on-site, to what has been proposed under Mr Cameron's submission.
2. The evolution includes the decision to prefer the alternative relief sought under the submission (i.e. a settlement zoning – **SETZ** – for the site) and support that in evidence. Mr Cameron considers that this outcome would be the best for the land, and for Ashley Village, including the fact that it would provide the potential to enable wastewater reticulation for the entire Village.
3. Mr Cameron is not able to be at the hearing of his submission. He had planned an overseas trip that accounted for the original hearing dates but was caught out by the change of dates. Mr Cameron would have preferred to be here, being a 'hands on' developer, and apologises for his absence.
4. Issues:
 - 4.1. Statutory framework.
 - 4.2. Scope?
 - 4.3. Outline development Plan (**ODP**).
 - 4.4. Suitability – servicing, roading, ground condition, hazards.
 - 4.5. Yield and village character.
 - 4.6. Consistency with planning instruments, including:
 - 4.6.1. the National Policy Statements for Urban Development (**NPS-UD**) and Highly Productive Land (**NPS-HPL**);
 - 4.6.2. the Canterbury Regional Policy Statement (**CRPS**); and,
 - 4.6.3. the Proposed Waimakariri District Plan's (**PWDP**) objectives and policies.
 - 4.7. Risks of acting or not acting?
 - 4.8. Most appropriate way to achieve the objectives for the settlement zone and the PWDP generally.

5. In summary, Mr Cameron's position is that:
 - 5.1. An ODP has been provided (attached to supplementary evidence of Mr P L Glasson¹);
 - 5.2. The land can be appropriately serviced for utilities and 3 waters;
 - 5.3. The land is suitable geotechnically for subdivision and is not subject to greater hazards than other locations;
 - 5.4. The local road network will not be adversely impacted by the subdivision of the site, subject to minor improvements that will form part of any subdivision application;
 - 5.5. There is suitable access from the site via active transport to local public transport hubs – the park and ride at River Road, Rangiora;
 - 5.6. The NPS-HPL does not apply to the site;
 - 5.7. The NPS-UD presents no impediment to granting the proposed rezoning;
 - 5.8. The matters relevant to rezoning under the CRPS are satisfied by this proposed rezoning, as Ashley Village sits outside Greater Christchurch and there is no conflict with the avoidance policies for new greenfields development;
 - 5.9. The rezoning will maintain (and even enhance) the character of Ashley Village, and represents the only logical extension to the village;
 - 5.10. The PWDP zoning of this land Rural Lifestyle, is not an efficient use of the land, and would not lead to a significant service upgrade (wastewater) that could benefit Ashley Village more widely; and
 - 5.11. There is no apparent downside to rezoning this land to SETZ, nor any scope issues in doing so.
 - 5.12. It is understood that the issues raised in the section 42A officers' report (**s.42A**) have now been addressed.

Statutory framework

6. By this stage in the PWDP process, the Panel will no doubt have been fully and meticulously appraised of the relevant statutory planning process, which I have no intention of repeating here. I hope it suffices to highlight the following, that:

¹ Supplementary evidence of Peter Lloyd Glasson dated 4 July 2024, Appendix 1.

- 6.1. There is no presumption in favour if the zonings contained in the PWDP, except insofar as they are more or less appropriate when considered within the statutory planning framework. Notified zoning can also impact of the relevance of some instruments (e.g. an urban intention displaces the NPS-HPL);
- 6.2. While specifically referring to the risks of acting or not acting in relation to a particular zoning request, the broader framework is also geared towards acknowledging the benefits that a request can also deliver. A position accentuated under the NPS-UD and the concept of contributing to well-functioning urban environments; and
- 6.3. The primary question remains whether the proposed zoning is the most appropriate way of achieving the objectives and policies of the PWDP, and in assisting the Council fulfil its functions under the RMA.

Scope

7. As noted in the s.42A Mr Cameron's original submission sought a range of potential outcomes, all in contrast to Rural Lifestyle Zone (**RuLZ**) identified in the PWDP. The relief sought included:

Rezoning of the property to Settlement Zone in accordance with the adjoining Ashley Township.

8. Accordingly, while the focus of Mr Cameron's evidence reflects something of a reversal of the order of preference from the original submission, there can be no doubt that the relief now supported was *fairly and reasonably raised* by the submission². Scope, therefore, is not an issue of concern for the Panel.

Outline Development Plan

9. Mr Glasson's evidence includes the reasons why he did not consider Mr Cameron's rezoning required an ODP³. Specifically, that the site is a single property in single ownership, the development of which does not involve other landowners (except perhaps the Waimakariri District Council (**Council**) as the 'owner' of the road network).
10. However, as Mr Glasson also records it is accepted that the PWDP not contains requirements for ODPs (Rule SUB-P6) and an ODP has, therefore, been provided with the supplementary evidence of Mr Glasson.

² The exercise of confirming scope was discussed in detail in *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [115]

³ Reasons I also agreed with.

Suitability – servicing, roading, ground condition, hazards.

Servicing

Water supply and stormwater

11. The ability to provide water to the site was confirmed in evidence, and by Council officers. However, providing a high-pressure system was noted as a main issue, though not included in s.42A list of matters to be addressed. Mr Maloney's servicing clarification memorandum dated 2 July 2024, confirms that modelling for the upgrade required will be carried out by the Hurunui District Council, but that water quantity is not an issue, and all works will be carried out to the required standards.
12. Mr Maloney's memorandum also contains and calculation for the size of the treatment ponds that will be required for stormwater management, with a first flush pond of 2,000m² and an attenuation/infiltration pond of 1,400m². Again, the design will be in accordance with established guidance and best engineering practice.

Wastewater

13. The one issue that has created the most debate over the redevelopment of this site over the years is the management of wastewater. Given that Ashley is not currently reticulated for wastewater, Mr Cameron has always been open to the potential of providing a pump station as part of his development and running the wastewater to the Council pump station at Cones Road.
14. The sticking points have always been the cost and route to be taken. If the current rezoning proposal were granted, the issue of cost would be alleviated due to the yield that would be achievable under the rezoning.
15. However, the question of the route for the wastewater pipe would remain to be finalised between Mr Cameron, as developer, and the Council. The logical and feasible options are also identified in Mr Maloney's memorandum.
16. The existence of a wastewater connection to Cones Rd is accepted as a fundamental condition precedent to development of the site.

Roading and Transport

Roading

17. While no roading evidence has been provided, that is because there is understood to be no issue with the ability of the road network to accommodate the increase in traffic from the development. Mr Binder's appendix to the s.42A does not suggest otherwise.

However, he notes some roading improvements (the widening of local road widths in the vicinity of the site) will be required.

18. Again, such improvements are accepted as likely conditions of any subdivision consent and can be more appropriately be addressed, in detail, at that stage.

Transport

19. These comments relate to public and active transport.
20. As Mr Glasson's supplementary evidence acknowledges, it having been alluded to in both his evidence in chief and the s.42A report (including Mr Binder's Appendix), there is currently no public transport at Ashley Village.
21. However, the distance to the closest park and ride facility is not onerous (approximately 3.5 kms). And there are additional active transport (e.g. cycling) options between Ashley (including the site) and Rangiora.
22. It is also noted that, in terms of any potential for a public transport route to be extended over the river to Ashley, there would have to be sufficient population to justify that outcome. The proposed rezoning could be a factor in the future that may assist in making a case for a relatively minor extension to the public transport service.

Ground conditions

23. As the evidence of Elliot Duke and Gareth Oddy confirm the ground conditions at the site are suitable for development, and are not subject to contamination constraints.

Hazards

24. In respect of the key hazard issue of flooding, the evidence of Ian Lloyd concludes that while the site (and Ashley Village generally) lies on the floodplain of Ashley River Rakahuri, given the protection provided by the river control scheme stopbanks, the overall flood hazard is considered very low.
25. However, finished floor levels should be at least 400mm above undisturbed ground level, with the final floor levels to be determined at subdivision design stage.

Yield and Village Character

26. As noted, and discussed in Mr Glassons evidence, Mr Cameron has responded to the requirement under Objective 1 in relation to the SETZ, that development recognises and retains the character of the existing Ashley Village settlement. He has done so by opting for a minimum lot size that is consistent with the lot sizes in the existing village.

27. So, in order to maintain the character of Ashley Village, Mr Cameron has indicated his intention to subdivide the site to an average lot size that is greater than the minimum allowed for in the Settlement Zone (SETZ): 800m sections versus 600m minimums for the SETZ.
28. That increase in lot size is referred to in the s.42A, where it is indicated in the s.32AA evaluation⁴ as “a preferred density”.

Consistency with planning instruments

29. It is noted that there is a great deal of consistency between the matters raised in the planning evidence for Mr Cameron and the s.42A report, in relation to the primary planning instruments that relate this rezoning request. As a result, these submissions summarise the positions reached.

National Policy Statements for Urban Development and Highly Productive Land

NPS-UD

30. The s.42A indicates (and we agree) that the NPS-UD is a relevant consideration for a rezoning to SETZ. We also agree that the proposed rezoning would be consistent with outcomes sought under the NPS-UD.
31. The rezoning contributes to the variety of typologies in housing that the NPS-UD seeks to encourage. Providing additional housing stock can also assist in housing affordability, though the intention to provide larger lot sizes will also be a factor in that calculation.
32. It is understood that there is interest in sections at Ashley, so of which can be address by infill. The proposed rezoning would provide a further part of the response to that demand.
33. Ultimately, the NPS-UDs key directive of providing well-functioning urban environments, in the context of a settlement zone will also be furthered by the rezoning as is also recognised in the s.42A evaluation under s.32AA⁵.
34. We also agree that the ‘economics’ of the situation is less of a determinant, with the rezoning providing extra capacity in the context of a SETZ. As noted below, there is no need to justify the rezoning as a new greenfield area within Greater Christchurch (**GC**), given that Ashley Village sits outside GC.
35. Because the NPS-UD requires “at least sufficient” capacity, it is not considered an impediment if the Council (here the Panel) determines that zoning for more residential

⁴ Section 42A dated 23 May 2024 at paragraph 313, 1st bullet point.

⁵ Ibid, 4th bullet point.

development is sensible and also represents the most appropriate means of achieving the objectives of the PWDP and assisting the Council in the exercise of its functions.

36. This will usually, and as is often the case, boil down to a matter of assessing constraints, and looking at overall efficiencies, especially with regard to infrastructure, housing choice, providing for reasonable development levels.

NPS-HPL

37. In relation to the NPS-HPL, we also agree that it is inapplicable in circumstances whether the PWDP sought to zone the site RuLZ. Under the interim provisions of the NPS-HPL, that inclusion means the land is not considered HPL: see clause 3.5(7)(b)(ii).

Canterbury Regional Policy Statement

38. Again, we agree that because Ashley Village sits outside the boundary to GC, the proposed rezoning is not impacted by the 'avoid' provisions in Chapter 6. As the s.42A further response says⁶:

Those properties outside the Greater Christchurch Area are not subject to the restricted provisions of Chapter 6 RPS. Any rezoning of land to LLRZ outside of the Greater Christchurch Area does however have to consider the provisions of Chapter 5 of the RPS, along with other relevant provisions, for example hazard policies in chapter 11.

39. The same considerations, in chapter 5 and elsewhere also applies to a rezoning to SETZ.

40. Mr Glasson and the s.42A assess the rezoning under chapter 5 in more detail. Both conclude that the rezoning is consistent with the objectives in the CRPS. In particular, the site is:

- 40.1. Adjacent to the Village, achieving consolidated growth and providing housing choice;
- 40.2. To be comprehensively developed to ensure the development will be consistent and in keeping with the existing Village character; and
- 40.3. Able to utilise the sewer infrastructure at Cones Road and facilitate the reticulation of the existing Village for Wastewater.

Proposed Waimakariri District Plan's objectives and policies.

41. As noted above the proposed rezoning will be consistent with the SETZ objective (and policy) in the PWDP.

⁶ Comment under question relating to paras 55, 57, 64-71 at page 11, Preliminary response to Panels Questions dated 27 June 2024.

42. As Mr Glasson notes it will also be consistent with the Urban Form and Development requirements under Policy UFD-P. Those requirements are also, unsurprisingly, consistent with the NPS-UD and CRPS requirements.

43. The s.42A evaluation under s.32AA also concludes⁷:

The rezoning is consistent with the Objectives of the RPS and Proposed plan.

Risks of acting or not acting?

44. This point simply reiterates that the ability to develop at the density proposed is necessary in order to justify the costs of providing for currently non-existent wastewater reticulation at Ashley Village. Accordingly, the 'risk' is that the opportunity would be lost.

45. Mr Cameron would prefer this to be seen as a benefit of the rezoning rather than a risk if it is declined, but the implication is likely the same.

Most appropriate way to achieve the objectives for the settlement zone and the PWDP generally.

46. Overall, Mr Cameron is of the view, and considers the evidence he has provided and the view of the s.42A (once the ODP is provided) confirm that the proposed rezone will represent the most appropriate way to achieve the objectives for the SETZ and the PWDP generally.

47. Most appropriate does not mean that the outcome has to be the 'best' but that it is an objectively superior outcome to others that may be considered. However, in this case, Mr Cameron is of the view that rezoning as SETZ would be the best outcome for the site and for Ashley Village overall.

Section 42A recommendation

48. The s.42A recommendation altered in the course of the questions by the panel from being that Mr Cameron's submission be accepted in part, to that the submission be declined unless the issues raising at paragraph 309 of the s.42A report were addressed.

49. Those 'conditions' were:

49.1. An updated ODP in accordance with SUB-P6;

49.2. A wastewater reticulation network including pump stations;

49.3. 'Required' upgrades to the roading network; and

⁷ Fn 4 above, 5th bullet point.

- 49.4. The provision of public reserves.
50. The preliminary response to the Panels questions I understood to have reduced these conditions, in that the provision of public reserves was recognised as being subject to need (as was indicated in Mr Cameron's evidence in chief), while the provision of roading upgrades is generally recognised as being a matter for detailed consideration as subdivision stage.
51. In addition, the refence to a wastewater network layout was a little confusing, to the extent that the on-site 'network' would again be part of the specific design stage for a subdivision. Therefore, the conditions really boiled down to the provision of an ODP, which has now been provided.
52. Mr Glasson also discusses the matters raised in the s.42A and the preliminary answers, and on the basis of what has now been supplied, in terms of additional plans and information, in our view the 'conditions' have now been met and the recommendation can be to allow the rezoning sought.

Conclusions

53. The opportunity exists to provide for some additional residential development at Ashley Village at a density and of a design that will maintain and even enhance the Village.
54. The opportunity includes the installation of a reticulated wastewater system that, in time could enable the rest of the Village to also become reticulated for wastewater. That outcome has obvious and potentially significant environmental benefits.
55. The site itself is suitable for development, both in ground conditions, contamination and hazards status and the ability to provide all the necessary services.
56. In addition, the proposed rezoning is consistent with the requirements of the relevant planning instruments.
57. Overall, there appears to be more than sufficient reasons to allow the rezoning and few, if any, to decline the proposal.
58. Thanks for considering the submission.

Dated: 12 July 2024



A J Schulte
Counsel for A J D Cameron (submitter #180)