

**UNDER THE**

Resource Management Act 1991

**IN THE MATTER OF**

the submissions of B & A Stokes on the Proposed Waimakariri District Plan (#214) and Variation 1 (#29)

**AND**

Hearing Stream 12E: Rangiora, Kaiapoi, Woodend; Variation 1

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**SUMMARY OF LEGAL SUBMISSIONS ON BEHALF OF  
B & A STOKES**

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**1 INTRODUCTION**

- 1.1 Brian and Anne Stokes (the **Stokes**) are seeking the Medium Density Residential zone for their property located at 81 Gressons Road and 1375 Main North Road (the **Site**) under the proposed Waimakariri District Plan (**PDP**). The purpose of that zoning outcome is to enable the provision of housing on that Site in accordance with the outline development plan (**ODP**) submitted with Mr Clease's supplementary evidence (the **Proposal**).
- 1.2 As illustrated in **Tab 1** of the Graphic Set, the Site is situated between Ravenswood and Woodend to the south of the Site, Waikuku Village to the north, and Pegasus to the east.<sup>1</sup> As described by Ms Lauenstein, enabling urban development of the Site in accordance with the proposed ODP completes the "gap" in urban context of those existing townships and "supports more integrated, balanced urban form."<sup>2</sup>
- 1.3 Alongside Ms Lauenstein, a range of other experts have lent their expertise to the development of the Stokes' Proposal.
- 1.4 Mr Hall has provided critical input on the way in which existing natural hazard risks can be appropriately managed as well as options for managing stormwater so as to ensure that the increase in run-off resulting from development of the Site does not compromise the environment (including water quality) within or downstream of the Site.<sup>3</sup> Mr Hall has also identified various options for servicing the Proposal, and has worked with the Council's engineering team to confirm the suitability of those options.

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<sup>1</sup> Opening Legal Submissions, page 5.

<sup>2</sup> Lauenstein Evidence in Chief (**EiC**) at [1.3].

<sup>3</sup> Hall EiC at section 9.

- 1.5 Working alongside Ms Lauenstein, Mr Rossiter has identified appropriate locations for active mode and vehicle connections within the Site that, along with its natural features, will form the backbone for the development, and will provide safe, efficient and integrated access to and throughout the Site (see **Tab 9** of the Graphic Set).
- 1.6 Mr Lester and Ms Lauenstein have considered the interfaces between the Site and the adjoining land uses (as well as the broader urban context), and have prepared cross-sections to ensure that those transitions are sensitive to those existing uses and achieve quality urban and landscape outcomes (see **Tab 10** of the Graphic Set).<sup>4</sup> Ms Lauenstein has advised on the appropriate location of density within the Site, resulting in its concentration towards the Ravenswood Key Activity Centre (**KAC**) and around green spaces within the development.<sup>5</sup> She has also worked with Mr Lester to identify the appropriate quantum and location of green spaces within the Site to provide essential breathing room for the development. They have also worked with Mr Payne to address how the existing ecological features of the Site can be utilised and enhanced as central elements of the Proposal.
- 1.7 With assistance from those experts (together with Ms Hampson, Mr Farrelly and others), Mr Clease has assessed the Proposal against the directions of the relevant national and regional documents, the notified objectives of the PDP and the other relevant RMA considerations, including the Mahaanui Iwi Management Plan (**IMP**).<sup>6</sup> He has also considered the other reasonably practicable options for achieving the PDP objectives and the directions of the higher order documents, including retention of the Site's notified zoning and adoption of a Large Lot Residential zone across the Site.<sup>7</sup> He concludes that the Proposal (being the MDR option) is the most appropriate planning outcome for the Site.<sup>8</sup>

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<sup>4</sup> Refer, for example, Lauenstein EiC at Appendix A - *Recommendations - interfaces and edge treatment*.

<sup>5</sup> Lauenstein EiC at [6.29].

<sup>6</sup> Clease EiC at sections 12, 14, 15 and 16.

<sup>7</sup> Clease Supplementary at section 7.

<sup>8</sup> Clease EiC at section 18; Supplementary at section 8.

## 2 LEGAL SUBMISSIONS

### Context

- 2.1 Our legal submissions filed on 9 August 2024 provided some context for the Proposal, highlighting first and foremost the Site's location within an area of particular significance for Ngāi Tūāhuriri Rūnanga and Te Rūnanga o Ngāi Tahu generally.<sup>9</sup>
- 2.2 The Stokes acknowledge that significance, and the role of Ngāi Tūāhuriri Rūnanga as tangata whenua and kaitiaki over that area. Where the Stokes have been made aware of particular features of value to tangata whenua, they have sought to reflect and protect those features through the ODP. Protection of the wāhi tapu area, located on the eastern boundary of the Site, is one such example. Another example is through the proposed management of stormwater and the ecological enhancement initiatives referenced in the ODP. If the Proposal is approved, the relevant iwi management plan and PDP provisions, as well as feedback from the Rūnanga directly, will continue to shape how development on this Site is designed and delivered.
- 2.3 As set out in our legal submissions, the Stokes wish to transition this land to its next stage of use, being the provision of housing.<sup>10</sup> In doing so however, they want to ensure that the life-sustaining natural features of this Site as well as the sacred wāhi tapu area are protected and in some cases enhanced. While the Rūnanga have advised that they do not, at this stage, consider themselves to be affected parties for the Proposal, the Stokes are nevertheless committed to ongoing engagement with the Rūnanga in relation to the Proposal to ensure that those aspirations can be appropriately realised.
- 2.4 The other aspect of contextual significance is the hydrology of the Site as well as the overland flow path which extends through the central part of the Site (see **Tab 4** of the Graphic Set). Those features, along with the proposed management of stormwater and the Site's existing natural features, have had a significant influence on the design of the ODP, and will be addressed by Mr Hall in his presentation.

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<sup>9</sup> Opening Legal Submissions, pages 5 – 8.

<sup>10</sup> Opening Legal Submissions, page 6.

## Legal Framework

- 2.5 The legal framework for the Panel’s decision on the Stokes’ Proposal is briefly addressed in our legal submissions.<sup>11</sup> In short, that decision is primarily concerned with identifying the most appropriate planning outcome for the Site to achieve the objectives of the PDP and the purpose of the RMA. That decision however is limited in scope to the matters which have been “reasonably and fairly raised in submissions.”<sup>12</sup>
- 2.6 The Stokes’ submissions on the PDP provide scope for the MDR option underpinning the Proposal, as does their submission on Variation 1.
- 2.7 In our submissions (in response to the position of Mr Wilson for Waimakariri District Council), we also outlined why we consider the Panel has scope to zone the Site to MDR through Variation 1, notwithstanding that it was not identified as a “relevant residential zone” in that notified variation. In short, doing so would, in our opinion, most appropriately fulfil the requirements of Policy 3(d) of the NPS-UD (being one of the outcomes sought through Variation 1) to enable building heights and densities of urban form commensurate with the level of commercial activity and community services adjacent to the Ravenswood KAC. That is plainly not achieved by a Rural Lifestyle zoning of the Site. It would however be achieved by the Proposal.
- 2.8 Should however the Panel determine, in response to the Stokes’ PDP submissions, that a residential zoning is appropriate for the Site, then any issue of scope in terms of Variation 1 is moot. The PDP’s General Residential and MDR zones are “relevant residential zones” under Variation 1, and would therefore become MDR in accordance with that Variation.

## NPS-UD

- 2.9 The application of the NPS-UD and its interplay with the Canterbury Regional Policy Statement (**CRPS**) has been addressed at length over the course of the PDP hearings, and our position on those matters in terms of the Proposal is set out in some detail in our legal submissions.<sup>13</sup>

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<sup>11</sup> Opening Legal Submissions at section 2.

<sup>12</sup> *Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 145 at [166], cited in *Royal Forest and Bird Protection Society Inc v Southland District Council* [1997] NZRMA 408 at page 9, and *Tussock Rise Ltd v Queenstown Lakes District Council* [2019] NZEnvC 111 at [51].

<sup>13</sup> Opening Legal Submissions at section 3.

2.10 In summary, we submit that:

- (a) The *urban environment* for the purposes of the Panel’s decision on the Proposal is Greater Christchurch.<sup>14</sup> That does not exclude other urban environments which may also fall within the NPS-UD definition. The Site is located within Greater Christchurch and therefore the NPS-UD is engaged in respect of this decision.
- (b) The NPS-UD is concerned with enabling the provision of sufficient housing capacity that meets different housing needs.<sup>15</sup> That requires consideration of different typologies, price points, and locations for housing within an urban environment, not simply the overall quantum.<sup>16</sup>
- (c) Engagement of the “responsive planning” provisions of the NPS-UD does not require demonstration of an existing shortfall in development capacity. Nor does the engagement of those provisions mean that the subject proposal will automatically qualify for approval through the PDP. Those “responsive planning” provisions instead provide an additional “tool” for local authorities and plan makers to realise the directions of the NPS-UD.<sup>17</sup>
- (d) The provision of that “tool” was intended to recognise that, for all their advantages, RMA documents including spatial plans and supporting directions like Map A and Chapter 6 of the CRPS are not the only method for achieving a well-functioning urban environment, and are limited in their ability to respond promptly to societal, economic and environmental changes.<sup>18</sup>
- (e) Policy 8 of the NPS-UD addresses that shortcoming by providing plan-makers with the ability to consider significant proposals which are not anticipated by those subsidiary documents but which will nevertheless contribute to well-functioning urban environments.<sup>19</sup>

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<sup>14</sup> Opening Legal Submissions at [3.4] – [3.9]; as shown on Map A of the Canterbury Regional Policy Statement.

<sup>15</sup> Opening Legal Submissions at [3.10] – [3.12].

<sup>16</sup> As indicated in the NPS-UD definition of “well-functioning urban environment” and acknowledged in Waimakariri District Council’s submission on the draft NPS-UD discussion document; see [3.10] – [3.12] of Opening Legal Submissions.

<sup>17</sup> Opening Legal Submissions at [3.13] – [3.17].

<sup>18</sup> Opening Legal Submissions at [3.1].

<sup>19</sup> Opening Legal Submissions at [3.1].

- (f) In that sense (and in the Greater Christchurch context), Policy 8, as the higher-order direction, prevails over the constraint on urban growth imposed by Map A and the relevant objectives and policies of Chapter 6 of the CRPS.<sup>20</sup>
- (g) The NPS-UD does not, however, discharge proponents or decision-makers from any obligation to consider the CRPS. The directions of that document are still relevant to the PDP, and to the extent they are not inconsistent with, or otherwise overcome by, the NPS-UD, the directions of the CRPS must be implemented.<sup>21</sup>

### **The Proposal**

- 2.11 If not for the “responsive planning” provisions in the NPS-UD, the Proposal would generally be precluded by the CRPS urban growth constraints as the Site is neither identified as a greenfield priority area or as a future development area in that document. If the “responsive planning” provisions are engaged however, then those specific constraints are overcome.
- 2.12 The Panel will be well versed in the NPS-UD Policy 8 criteria – they relate to whether a proposal will add significantly to development capacity; whether it will contribute to well-functioning urban environments; and whether it will be well-connected to transport corridors.
- 2.13 Both Mr Clease and Mr Wilson find that the Proposal will add significant development capacity.<sup>22</sup>
- 2.14 Drawing on the assessments of the Stokes’ experts, Mr Clease concludes that the Proposal will also contribute to a well-functioning urban environment, and is well-connected along transport corridors.<sup>23</sup> Consequently, Policy 8 enables the Panel to consider the Proposal which would have otherwise been precluded by the CRPS.
- 2.15 The NPS-UD however goes further than just opening the door; it also directs you to have particular regard to the development capacity enabled by the Proposal.<sup>24</sup> It is in that context that we turn to the evidence of Ms Hampson. As the Panel is aware,

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<sup>20</sup> Opening Legal Submissions at [3.2].

<sup>21</sup> Opening Legal Submissions at [4.6(b)].

<sup>22</sup> Clease EIC at [14.47] – [14.51]; Section 42A Report at [881].

<sup>23</sup> Clease EIC at [14.52] – [14.75] and [15.13].

<sup>24</sup> NPS-UD clause 3.8(2).

Ms Hampson has identified what she describes as a significant shortfall in housing capacity in the Woodend/Pegasus area over the medium term.<sup>25</sup>

- 2.16 For the reasons set out in her supplementary evidence, the answer to that shortfall is not, and should not, be the availability of capacity elsewhere in the district. The demand is in Woodend / Pegasus. Consequently, if the NPS-UD directions regarding housing affordability and the availability of housing to meet different needs in different localities are to be taken seriously, as the RMA requires, then as Ms Hampson concludes, that shortfall must be addressed in the Woodend / Pegasus area.
- 2.17 The capacity enabled by the Proposal will ensure that that shortfall (and the Council's obligations to meet it) can be addressed. Ms Hampson, however, is unequivocal in stating that even if no such shortfall existed or is indeed less acute than she predicts, there is still clear support in the NPS-UD for approving the Proposal and the "generous surplus" it would provide.<sup>26</sup>
- 2.18 That support is found in the directions relating to housing affordability and competitive land markets.<sup>27</sup> In her supplementary evidence, Ms Hampson outlines a number of positive economic outcomes associated with providing more than sufficient capacity.<sup>28</sup>
- 2.19 That support is also found in the directions requiring local authorities to enable more people to live in areas where employment opportunities and existing or planned public transport are available and where there is high demand for housing relative to other areas within the urban environment.<sup>29</sup> In that regard, Ms Hampson concludes that the Proposal performs strongly compared to other rezoning proposals in the Woodend/Pegasus area.<sup>30</sup> On her analysis, and that of Mr Yeoman, Woodend is experiencing higher demand for housing compared to the other urban areas of Waimakariri.<sup>31</sup> An appropriate economic response would be to provide additional capacity in that location.<sup>32</sup> The Site's strategic location in close proximity to the Ravenswood KAC also has numerous economic and urban efficiency advantages, and

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<sup>25</sup> Hampson EIC at Table 2 and [7.27].

<sup>26</sup> Hampson Supplementary at [7.3].

<sup>27</sup> NPS-UD Objective 2, clause 3.9

<sup>28</sup> Hampson Supplementary at [7.6].

<sup>29</sup> NPS-UD Objective 3.

<sup>30</sup> Hampson Supplementary at [1.4] and [6.16] – [6.23].

<sup>31</sup> Hampson Supplementary at [6.13].

<sup>32</sup> Hampson Supplementary at [6.33].

aligns with the NPS-UD direction towards enabling more people to live closer to those areas.<sup>33</sup>

- 2.20 Finally, through the inclusion of specific initiatives in the Proposal and the way in which those initiatives were developed, the Stokes have sought to uphold the principles of Te Tiriti, particularly as they apply to good faith engagement and the protection of tangata whenua interests. The PDP provisions engaged by the identification of the Site within the Ngā Tūranga Tūpūna and Wāhi Tapu overlays will ensure that those matters continue to be accounted for in the development of the Site.
- 2.21 In summary, the evidence of the Stokes' experts demonstrates that the Proposal will give effect to the NPS-UD.
- 2.22 As we have outlined, although the CRPS's constraints on the location of urban development are overcome in this instance through Policy 8 of the NPS-UD, the other directions of the CRPS remain relevant for your decision. These include objective 6.2.2(2) which directs the provision of higher density living environments and a greater range of housing types in and around Key Activity Centres, and 6.2.2(5) which encourages sustainable and self-sufficient growth of, amongst other towns, Woodend.
- 2.23 Mr Cleese's careful assessment of the Proposal against these provisions and the objectives of the PDP concludes that – of the zoning options before the Panel – the Proposal will most appropriately achieve those directions for the Site.<sup>34</sup>

### **Section 42A report**

- 2.24 Mr Wilson identified three aspects of the Proposal where he considered further information was required to support his recommendation: the Proposal's anticipated yield; the availability of mechanisms to ensure that the necessary infrastructure is in place for the development; and the Proposal's implication on downstream capacity for stormwater.<sup>35</sup>

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<sup>33</sup> Hampson Supplementary at [1.5]; Opening Legal Submissions at [3.24] and [3.29] – [3.32].

<sup>34</sup> Cleese EiC at section 18; Supplementary at section 8.

<sup>35</sup> Section 42A Report at [887].



2.25 All three matters have been addressed in the supplementary evidence of Mr Hall and Mr Clease:<sup>36</sup>

- (a) The ODP has been updated to clarify that the Proposal will deliver a target yield of 15 households per hectare.
- (b) Both Mr Clease and Mr Hall outline the available regulatory mechanisms that will ensure infrastructure for the Proposal is delivered and funded appropriately.<sup>37</sup>
- (c) In his evidence, Mr Hall explains how the additional stormwater run-off generated by the Proposal will be attenuated on Site so that peak flow rates from the Site will be the same as pre-development rates.<sup>38</sup> Consequently, the Proposal will not generate any additional effect on stormwater capacity/management downstream of the Site.

2.26 For her part, Ms Hampson has again considered the evidence of Mr Yeoman in relation to the sufficiency of capacity in the Woodend/Pegasus urban area.<sup>39</sup> She remains of the opinion that there is a shortfall in capacity in Woodend/Pegasus to meet medium-term demand and that the expected shortfall "is highly likely to eventuate, is materially significant, and therefore requires a response under the NPS-UD."<sup>40</sup> In that context, simply identifying the Site as a Development Area (as suggested by Mr Yeoman) is not, in her opinion, appropriate as it would not satisfy the requirements of the NPS-UD, and would delay the significant economic benefits of the Proposal that are outlined in her evidence.<sup>41</sup> She concludes that the Proposal "is both necessary to meet the shortfall in capacity, and entirely appropriate in terms of the NPS-UD."<sup>42</sup>

2.27 We commend those conclusions to you, and the robust basis on which Ms Hampson's evidence is founded.

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<sup>36</sup> Hall Supplementary at sections 5 and 6; Clease Supplementary at [5.12] – [5.27].

<sup>37</sup> Hall Supplementary at section 5.

<sup>38</sup> Hall Supplementary at [5.5] – [5.10].

<sup>39</sup> Hampson Supplementary at [6.1] – [6.23].

<sup>40</sup> Hampson Supplementary at [1.3].

<sup>41</sup> Hampson Supplementary at [1.5].

<sup>42</sup> Hampson Supplementary at [1.4].

### 3 CONCLUSION

- 3.1 The Proposal provides the opportunity to achieve a more integrated, coherent urban form in the Ravenswood/Woodend area that consolidates and supports the operation of an important KAC in the Waimakariri District. That outcome, and the provision of significant housing capacity in close proximity to that commercial centre, aligns with the objectives and policies of the NPS-UD. With the exception of its Map A directions regarding the *location* of new urban growth in the Greater Christchurch area, the Proposal is also consistent with the CRPS.
- 3.2 This Proposal is not only about delivering housing however. The Stokes take seriously their responsibilities to ensure that the Site's transition to this next stage of use is sensitive to, and will protect, the life-sustaining natural and cultural features of the Site. That has translated into the Proposal in numerous ways, informing the proposed management of waterbodies on the Site, the provision for riparian enhancement and significant areas of green space, the protection of the wāhi tapu area, and the provision of an ecological restoration area. Those aspects, and others, provide the basis for Mr Payne's conclusion that the ODP has secured an opportunity to achieve a net biodiversity gain through the Proposal<sup>43</sup> – a significant achievement given the scale of the project.
- 3.3 In our submission, this Proposal is worthy of your support.

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<sup>43</sup> Payne EIC at [7.3(d)] and [7.8].